

# 2

# The Constitution

## Politics in Action: Amending the Constitution



Gregory Lee Johnson knew little about the Constitution, but he knew that he was upset. He felt that the buildup of nuclear weapons in the world threatened the planet's survival, and he wanted to protest presidential and corporate policies concerning nuclear weapons. Yet he had no money to hire a lobbyist or to purchase an ad in a newspaper. So he and some other demonstrators marched through the streets of Dallas, chanting political slogans and stopping at several corporate locations to stage "die-ins" intended to dramatize the consequences of nuclear war. The demonstration ended in front of Dallas City Hall, where Gregory doused an American flag with kerosene and set it on fire.

Burning the flag violated the law, and Gregory was convicted of "desecration of a venerated object," sentenced to one year in prison, and fined \$2,000. He appealed his conviction, claiming that the law that prohibited burning the flag violated his freedom of speech. The U.S. Supreme Court agreed in the case of *Texas v. Gregory Lee Johnson*.

Gregory was pleased with the Court's decision, but he was nearly alone. The public howled its opposition to the decision, and President George H. W. Bush called for a constitutional amendment authorizing punishment of flag desecraters. Many public officials vowed to support the amendment, and organized opposition to it was scarce. However, an amendment to prohibit burning the American flag did not obtain the two-thirds vote in each house of Congress necessary to send it to the states for ratification.

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The Constitution guarantees rights, even in the face of widespread public opposition. Thus, protestors, like those pictured here, can engage in the unpopular act of burning the flag to make a political point.



**The Big Picture** What does the Constitution leave out? Author George C. Edwards III delves into why the government becomes deadlocked and how understanding the Constitution allows us to adjust expectations for what the government can—and cannot—accomplish.



**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?** Discover why change in the government sometimes seems next-to-impossible. Author George C. Edwards III illustrates how the Constitution encourages government to move slowly, and provides some theories on why that might not be such a bad thing.



Instead, Congress passed a law—the Flag Protection Act—that outlawed the desecration of the American flag. The next year, however, in *United States v. Eichman*, the Supreme Court found the act an impermissible infringement on free speech.

After years of political posturing, legislation, and litigation, little has changed. Burning the flag remains a legally protected form of political expression despite the objections of the overwhelming majority of the American public. Gregory Johnson did not prevail because he was especially articulate, nor did he win because he had access to political resources, such as money or powerful supporters. He won because of the nature of the Constitution.

Understanding how an unpopular protestor like Gregory Lee Johnson could triumph over the combined forces of the public and its elected officials is central to understanding the American system of government. The Constitution supersedes ordinary law, even when the law represents the wishes of a majority of citizens. The Constitution not only guarantees individual rights but also decentralizes power. Even the president could not force Congress to start the process of amending the Constitution. Power is not concentrated efficiently in the hands of one person, such as the president. Instead, there are numerous checks on the exercise of power and many obstacles to change. Some complain that this system produces stalemate, while others praise the way in which it protects minority views. Both positions are correct.

Gregory Johnson's case raises some important questions about government in America. What does democracy mean if the majority does not always get its way? Is this how we should be governed? And is it appropriate that the many limits on the scope of government action, both direct and indirect, sometimes prevent action desired by most people?

A **constitution** is a nation's basic law. It creates political institutions, allocates power within government, and often provides guarantees to citizens. A constitution is also an unwritten accumulation of traditions and precedents that have established acceptable means of governing. As the body of rules that govern our nation, the U.S. Constitution has an impact on many aspects of our everyday lives, such as the rights we enjoy, the health care we receive, and the taxes we pay. Our theme of the scope of government runs throughout this chapter, which focuses on what the national government can and cannot do. A nation that prides itself on being “democratic” must evaluate the Constitution according to democratic standards, the core of our other theme. To understand government and to answer questions about how we are governed and what government does, we must first understand the Constitution.

## constitution

A nation's basic law. It creates political institutions, assigns or divides powers in government, and often provides certain guarantees to citizens. Constitutions can be either written or unwritten.

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# The Origins of the Constitution

2.1

Describe the ideas behind the American Revolution and their role in shaping the Constitution.

**I**n the summer of 1776, a small group of men met in Philadelphia and passed a resolution that began an armed rebellion against the government of what was then the most powerful nation on Earth. The resolution was, of course, the Declaration of Independence, and the armed rebellion, the American Revolution.

The attempt to overthrow a government forcibly is a serious and unusual act. All countries, including the United States, consider it treasonous and levy serious punishments for it. A set of compelling ideas drove our forefathers to take such drastic and risky action. Understanding the Constitution requires an understanding of these ideas.

## □ The Road to Revolution

By eighteenth-century standards, life was not bad for most people in America at the time of the Revolution (slaves and indentured servants being major exceptions). In fact, white colonists “were freer, more equal, more prosperous, and less burdened with

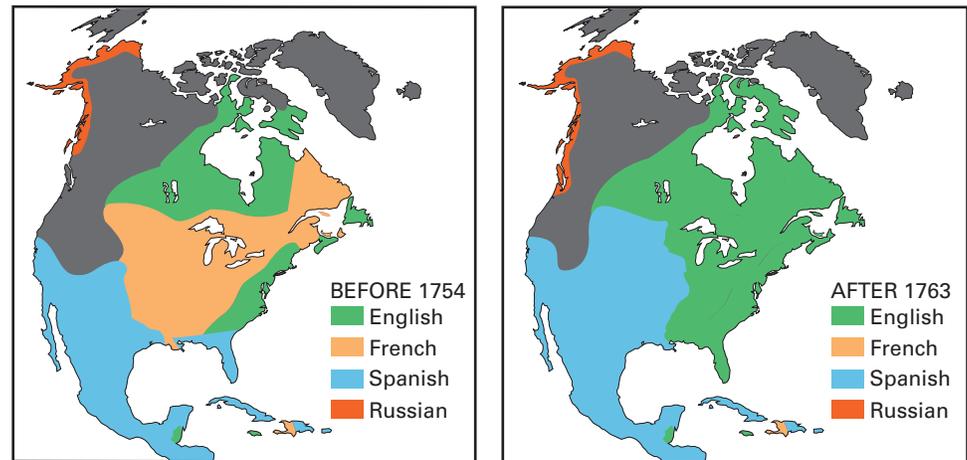
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## Declaration of Independence

The document approved by representatives of the American colonies in 1776 that stated their grievances against the British monarch and declared their independence.

## FIGURE 2.1 EUROPEAN CLAIMS IN NORTH AMERICA

Following its victory in the French and Indian War in 1763, Britain obtained an enormous new territory to govern. To raise revenues to defend and administer the territory, it raised taxes on the colonists and tightened enforcement of trade regulations. (Britain also gained Florida from Spain as a result of the war.)



cumbersome feudal and monarchical restraints than any other part of mankind.”<sup>1</sup> Although the colonies were part of the British Empire, the king and Parliament generally confined themselves to governing America’s foreign policy and trade. Almost everything else was left to the discretion of individual colonial governments. Although commercial regulations irritated colonial shippers, planters, land speculators, and merchants, these rules had little influence on the vast bulk of the population, who were self-employed farmers or artisans.

As you can see in Figure 2.1, Britain obtained an enormous new territory in North America after the French and Indian War (also known as the Seven Years’ War) ended in 1763. The cost of defending this territory against foreign adversaries was large, and Parliament reasoned that it was only fair that those who were the primary beneficiaries—the colonists—should contribute to their own defense. Thus, in order to raise revenue for colonial administration and defense, the British Parliament passed a series of taxes on newspapers, official documents, paper, glass, paint, and tea. Britain also began tightening enforcement of its trade regulations, which were designed to benefit the mother country, not the colonists.

The colonists lacked direct representation in Parliament and resented the legislature imposing taxes without their consent. They protested, boycotted the taxed goods, and, as a symbolic act of disobedience, even threw 342 chests of tea into Boston Harbor. Britain reacted by applying economic pressure through a naval blockade of the harbor, further fueling the colonists’ anger. The colonists responded by forming the First Continental Congress in September 1774, sending delegates from each colony to Philadelphia to discuss the future of relations with Britain.

## □ Declaring Independence

Talk of independence was common among the delegates. Thomas Paine’s fiery tract *Common Sense* appeared in January 1776 and fanned the already hot flames of revolution. In May and June 1776, the Continental Congress began debating resolutions about independence. On June 7, Richard Henry Lee of Virginia moved “that these United States are and of right ought to be free and independent states.” A committee composed of Thomas Jefferson of Virginia, John Adams of Massachusetts, Benjamin Franklin of Pennsylvania, Roger Sherman of Connecticut, and Robert Livingston of New York was formed to draft a document to justify the inevitable declaration. On July 2, Congress formally approved Lee’s motion to declare independence from England. Congress adopted the **Declaration of Independence** two days later, on July 4.

The primary author of the Declaration of Independence was Thomas Jefferson, a 33-year-old, well-educated Virginia lawmaker who was a talented author steeped in the philosophical writings of European moral philosophers.<sup>2</sup> The Declaration quickly became one of the most widely quoted and revered documents in America. Filled with fine principles and bold language, it can be read as both a political tract and a philosophical treatise.

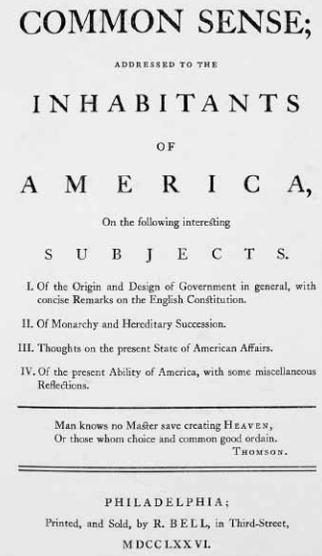
Politically, the Declaration was a polemic, a political argument, announcing and justifying a revolution to the citizens of the colonies. Most of the document—27 of its 32 paragraphs—listed the ways in which the king had abused the colonies. The delegates accused George III of all sorts of evil deeds, including inciting the “merciless Indian savages” to make war on the colonists. The delegates focused blame on the king because they held that only he, not Parliament, had authority over the colonies.

The Declaration’s polemical aspects were also important because the colonists needed foreign assistance to take on Britain, the most powerful nation in the world. France, which was engaged in a war with Britain, was a prime target for the delegates’ diplomacy and eventually provided aid that was critical to the success of the Revolution.

Today, we study the Declaration of Independence more as a statement of philosophy than as a political call to arms. In just a few sentences, Jefferson set forth the American democratic creed, the most important and succinct statement of the philosophy underlying American government—as applicable today as it was in 1776.

## □ The English Heritage: The Power of Ideas

The Declaration articulates ideas that were by then common knowledge on both sides of the Atlantic, especially among those people who wished to challenge the power of kings. Franklin, Jefferson, James Madison of Virginia, Robert Morris of Pennsylvania, Alexander Hamilton of New York, and other intellectual leaders in the colonies were learned and widely read men, familiar with the works of English, French, and Scottish political philosophers. These leaders corresponded about the ideas they were reading,



Thomas Paine’s *Common Sense* encouraged the colonists to declare independence from Britain.

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Credit: FPO



Credit: FPO

John Adams (from right), Roger Sherman, Robert R. Livingston, Thomas Jefferson, and Benjamin Franklin submit the Declaration of Independence to Continental Congress President John Hancock. Legend has it that Hancock remarked, “We must be unanimous; there must be no pulling different ways; we must hang together,” to which Franklin replied, “We must indeed all hang together, or, most assuredly, we shall hang separately.”

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### **natural rights**

Rights inherent in human beings, not dependent on governments, which include life, liberty, and property. The concept of natural rights was central to English philosopher John Locke's theories about government and was widely accepted among America's Founders.

### **consent of the governed**

The idea that government derives its authority by sanction of the people.

### **limited government**

The idea that certain restrictions should be placed on government to protect the natural rights of citizens.

quoted philosophers in their debates over the Revolution, and applied those ideas to the new government they formed through the framework of the Constitution.

John Locke was one of the most influential philosophers read by the colonists. His writings, especially *The Second Treatise of Civil Government* (1689), profoundly influenced American political leaders. His work was “the dominant political faith of the American colonies in the second quarter of the eighteenth century.”<sup>3</sup>

The foundation on which Locke built his powerful philosophy was a belief in **natural rights**—rights inherent in human beings, not dependent on governments. Before governments arose, Locke held, people existed in a state of nature, in which they were governed not by formal laws but by the laws of nature—laws determined by people's innate moral sense. This natural law provided natural rights, including life, liberty, and property. Natural law could even justify a challenge to the rule of a tyrannical king because it was superior to manmade law. Government, Locke argued, must be built on the **consent of the governed**; in other words, the people must agree on who their rulers will be. It should also be a **limited government**; that is, there must be clear restrictions on what rulers can do. Indeed, the sole purpose of government, according to Locke, was to protect natural rights. The idea that certain things were beyond the realm of government contrasted sharply with the traditional notion that kings possessed divinely granted absolute rights over their subjects.

Two limits on government were particularly important to Locke. First, governments must provide standing laws so that people know in advance whether their acts will be acceptable. Second, and Locke was very forceful on this point, “the supreme power cannot take from any man any part of his property without his consent.” To Locke, the preservation of property was the principle purpose of government. The sanctity of property was one of the few ideas absent from Jefferson's draft of the Declaration of Independence, which altered Locke's phrase “life, liberty, and property” to “life, liberty, and the pursuit of happiness.” We shall soon see, however, how the Lockean idea of the sanctity of property figured prominently at the Constitutional Convention. James Madison, the most influential member of that body, directly echoed Locke's view that the preservation of property is the purpose of government.

Locke argued that in an extreme case, people have a right to revolt against a government that no longer has their consent. Locke anticipated critics' charges that this right would lead to constant civil disturbances. He emphasized that people should not revolt until injustices become deeply felt. The Declaration of Independence accented the same point, declaring that “governments long established should not be changed for light and transient causes.” But when matters went beyond “patient sufferance,” severing these ties was not only inevitable but also necessary.

Locke represented only one element of revolutionary thought from which Jefferson and his colleagues borrowed. In the English countryside, there was also a well-established tradition of opposition to the executive power of the Crown and an emphasis on the rights of the people. Moreover, the American colonists themselves had developed a set of ideas stressing moral virtue, patriotism, relations based on merit, and the equality of independent citizens. These American ideas intensified the radicalism of the British “country” ideology and linked it with older currents of European thought, stretching back to antiquity, regarding the rights of citizens and the role of government.

## **□ The American Creed**

There are some remarkable parallels between Locke's thought and Jefferson's language in the Declaration of Independence (see Table 2.1). Finessing the issue of how the rebels knew that men had rights, Jefferson simply declared that it was “self-evident” that men were equally “endowed by their Creator with certain unalienable rights,” including “life, liberty, and the pursuit of happiness.” Because the purpose of government was to “secure” these rights, the people could form a new government if it failed to do so.

**TABLE 2.1** LOCKE AND THE DECLARATION OF INDEPENDENCE: SOME PARALLELS

Locke	Declaration of Independence
<b>Natural Rights</b> “The state of nature has a law to govern it” “life, liberty, and property”	“Laws of Nature and Nature’s God” “life, liberty, and the pursuit of happiness.”
<b>Purpose of Government</b> “to preserve himself, his liberty, and property”	“to secure these rights”
<b>Equality</b> “men being by nature all free, equal and independent”	“all men are created equal”
<b>Consent of the Governed</b> “for when any number of men have, by the consent of every individual, made a community, with a power to act as one body, which is only by the will and determination of the majority”	“Governments are instituted among men, deriving their just powers from the consent of the governed.”
<b>Limited Government</b> “Absolute arbitrary power, or governing without settled laws, can neither of them consist with the ends of society and government.” “As usurpation is the exercise of power which another has a right to, so tyranny is the exercise of power beyond right, which nobody can have a right to.”	“The history of the present King of Great Britain is a history of repeated injuries and usurpations.”
<b>Right to Revolt</b> “The people shall be the judge. . . . Oppression raises ferments and makes men struggle to cast off an uneasy and tyrannical yoke.”	“Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes. . . . But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government.”

It was in the American colonies that the powerful ideas of European political thinkers took root and grew into what Seymour Martin Lipset termed the “first new nation.”<sup>5</sup> With these revolutionary ideas in mind, Jefferson claimed in the Declaration of Independence that people should have primacy over governments, that they should rule instead of being ruled. Moreover, each person was important as an individual, “created equal,” and endowed with “unalienable rights.” Consent of the governed, not divine rights or tradition, made the exercise of political power legitimate.

No government had ever been based on these principles. Ever since 1776, Americans have been concerned about fulfilling the high aspirations of the Declaration of Independence.

## □ Winning Independence

The pen may be mightier than the sword, but declaring independence did not win the Revolution—it merely announced its beginning. John Adams wrote to his wife, Abigail, “You will think me transported with enthusiasm, but I am not. I am well aware of the toil, blood, and treasure that it will cost us to maintain this Declaration, and support and defend these states.” Adams was right. The colonists seemed little match for the finest army in the world, whose size was nearly quadrupled by hired guns from the German state of Hesse and elsewhere. In 1775, the British had 8,500 men stationed in the colonies and had hired nearly 30,000 mercenaries. Initially, the colonists had only 5,000 men in uniform, and their number waxed and waned as the war progressed. Nevertheless, in 1783, the American colonies won their war of independence. How they eventually won is a story best left to history books. In the following sections we will explore how they formed a new government.

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## Articles of Confederation

The first constitution of the United States, adopted by Congress in 1777 and enacted in 1781. The Articles established a national legislature, the Continental Congress, but most authority rested with the state legislatures.

## □ The “Conservative” Revolution

Revolutions such as the 1789 French Revolution, the 1917 Russian Revolution, and the 1978–1979 Iranian Revolution produced great societal change—as well as plenty of bloodshed. The American Revolution was different. Despite the revolutionary ideas behind it, the Revolution was essentially a conservative movement that did not drastically alter the colonists’ way of life. Its primary goal was to restore rights that the colonists felt were theirs as British subjects and to enable them to live as they had before Britain tightened its regulations following the Seven Years’ War.

American colonists did not feel the need for great social, economic, or political upheavals. Despite their opposition to British rule, they “were not oppressed people; they had no crushing imperial shackles to throw off.”<sup>6</sup> As a result, the Revolution did not create class conflicts that would split society for generations to come. The colonial leaders’ belief that they needed the consent of the governed blessed the new nation with a crucial element of stability—a stability the nation would need.

## The Government That Failed: 1776–1787

**2.2** Analyze how the weaknesses of the Articles of Confederation led to its failure.



he Continental Congress that adopted the Declaration of Independence was only a voluntary association of the states. In 1776, Congress appointed a committee to draw up a plan for a permanent union of the states. That plan, our first constitution, was the **Articles of Confederation**.<sup>7</sup>

## □ The Articles of Confederation

The Articles established a government dominated by the states. The United States, according to the Articles, was a confederation, a “league of friendship and perpetual union” among 13 states. The Articles established a national legislature with one house; states could send as many as seven delegates or as few as two, but each state had only one vote. There was no president and no national court, and the powers of the national legislature were strictly limited. Most authority rested with the state legislatures because the new nation’s leaders feared that a strong central government would become as tyrannical as British rule. Table 2.2 summarizes the key provisions of the Articles.

**TABLE 2.2** KEY PROVISIONS OF THE ARTICLES OF CONFEDERATION

Feature of National Government	Provision
Central government	Weak
Executive	None
Legislature	One chamber with one vote per state
Courts	None
Regulation of commerce	None
Taxation	Dependent on states
Amendment of Articles	Required unanimous consent
National defense	Could raise and maintain an army and navy
Power over states	None

Because unanimous consent of the states was needed to put the Articles into operation, the Articles adopted by the Continental Congress in 1777 did not go into effect until 1781, when laggard Maryland finally ratified them. In the meantime, the Continental Congress barely survived, lurching from crisis to crisis. At one point during the war, some of Washington's troops threatened to create a monarchy with him as king unless Congress paid their overdue wages.

Even after the states ratified the Articles of Confederation, many logistical and political problems plagued Congress. State delegations attended haphazardly. Congress had few powers outside maintaining an army and navy—and little money to do even that. It had to request money from the states because it had no power to tax. If states refused to send money (which they often did), Congress did without. In desperation, Congress sold off western lands (land east of the Mississippi and west of the states) to speculators, issued securities that sold for less than their face value, or used its own presses to print money that was virtually worthless. Congress also voted to disband the army despite continued threats from Britain and Spain.

Congress lacked the power to regulate commerce, which inhibited foreign trade and the development of a strong national economy. It did, however, manage to develop sound policies for the management of the western frontiers, passing the Northwest Ordinance of 1787 that encouraged the development of the Great Lakes region.

In general, the weak and ineffective national government could take little independent action. All government power rested in the states. The national government could not compel the states to do anything, and it had no power to deal directly with individual citizens. The weakness of the national government prevented it from dealing with the hard times that faced the new nation. There was one benefit of the Articles, however: when the nation's leaders began to write a new Constitution, they could look at the provisions of the Articles of Confederation and know some of the things they should avoid.

## Why It Matters to You

### A Strong National Government

One of the most important features of the Constitution is the creation of a strong national government. If the Framers had retained a weak national government, as under the Articles of Confederation, Congress could not create a great national economic market through regulating interstate commerce, the president could not conduct a vigorous foreign policy, federal courts could not issue orders to protect civil rights, and the federal government could not raise the funds to pay for Social Security benefits or grants and loans for college students.

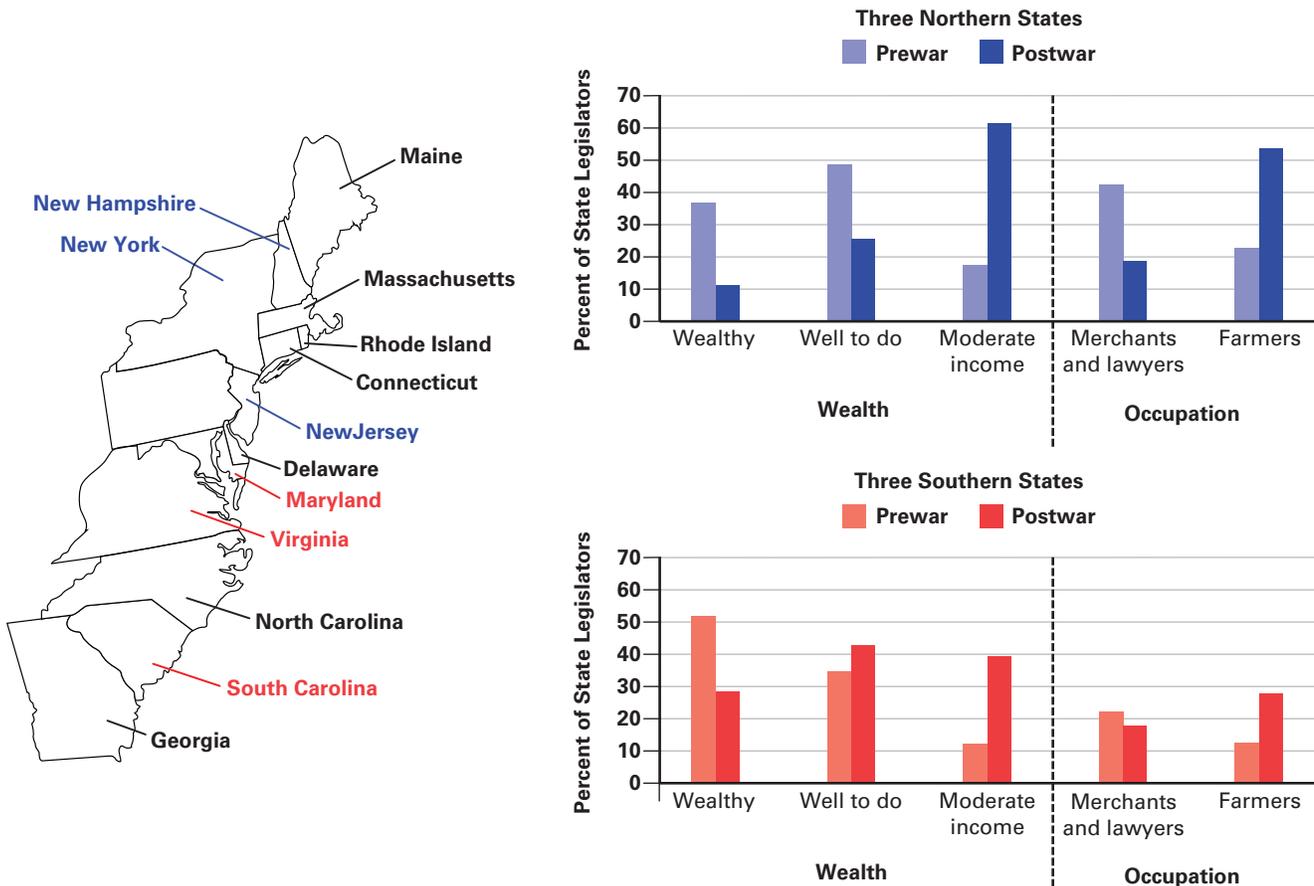
## ▣ Changes in the States

What was happening in the states was as important as what was happening in Congress. The most significant change was a dramatic increase in democracy and liberty, at least for white males. Many states adopted bills of rights to protect freedoms, abolished religious qualifications for holding office, and liberalized requirements for voting.

Expanded political participation brought to power a new middle class, which included artisans and farmers who owned small homesteads. Before the Revolution, almost all members of New York's assembly had been wealthy urban merchants, large landowners, or lawyers. In the 1769 assembly, for example, only 25 percent of the legislators were farmers, even though nearly 95 percent of New Yorkers were farmers. After the Revolution, a major power shift occurred. With expanded voting privileges, farmers and artisans became a decisive majority in the New York assembly, and the old

## FIGURE 2.2 POWER SHIFT: ECONOMIC STATUS OF STATE LEGISLATORS BEFORE AND AFTER THE REVOLUTIONARY WAR

After the Revolution, power in the state legislatures shifted from the hands of the wealthy to those with more moderate incomes and from merchants and lawyers to farmers. This trend was especially evident in the northern states.



elite saw its power shrink. The same change occurred in other states as power shifted from a handful of wealthy individuals to a more broad-based group (see Figure 2.2). Democracy was taking hold everywhere.

The structure of government in the states also became more responsive to the people. State constitutions concentrated power in the legislatures because most people considered legislators to be closer to the voters than governors or judges. Legislatures often selected the governors and kept them on a short leash, with brief tenures and limited veto and appointment powers. Legislatures also overruled court decisions and criticized judges for unpopular decisions.

The idea of equality, at least among white males, was driving change throughout the nation. Although the Revolutionary War itself did not transform American society, it unleashed the egalitarian tendencies in American life. Americans were in the process of becoming “the most liberal, the most democratic, the most commercially minded, and the most modern people in the world.”<sup>8</sup> Members of the old colonial elite found this turn of affairs quite troublesome because it challenged their hold on power.

### □ Economic Turmoil

Economic issues were at the top of the political agenda. A postwar depression had left many small farmers unable to pay their debts and threatened them with mortgage foreclosures. Now under control of people more sympathetic to debtors, the state legislatures listened to the demands of small farmers. A few states, notably Rhode Island, demonstrated their support of debtors, passing policies favoring them



Credit: FPO

## Shays' Rebellion

A series of attacks on courthouses by a small band of farmers led by Revolutionary War Captain Daniel Shays to block foreclosure proceedings.

Shays' Rebellion, in which farmers physically prevented judges from foreclosing on farms, helped spur the birth of the Constitution. News of the small rebellion spread quickly around the country, and some of the Philadelphia delegates thought a full-fledged revolution would result. The event reaffirmed the Framers' belief that the new federal government needed to be a strong one.

over creditors. Some printed tons of paper money and passed “force acts” requiring reluctant creditors to accept the almost worthless money. Debtors could thus pay big debts with cheap currency.

Policies favoring debtors over creditors did not please the economic elite, who had once controlled nearly all the state legislatures. They were further shaken when, in 1786, a small band of farmers in western Massachusetts rebelled at losing their land to creditors. Led by Revolutionary War captain Daniel Shays, this rebellion, called **Shays' Rebellion**, was a series of armed attacks on courthouses to prevent judges from foreclosing on farms. Farmers in other states were also unruly—although never in large numbers. The economic elite were scared at the thought that people had taken the law into their own hands and violated the property rights of others. Neither Congress nor the state was able to raise a militia to stop Shays and his followers, so elites assembled a privately paid force to do the job. This necessity further fueled dissatisfaction with the weakness of the Articles of Confederation system.

## □ The Aborted Annapolis Meeting

In September 1786, a handful of leaders assembled in Annapolis, Maryland, to consider commercial conflicts that had arisen among the states under the Articles of Confederation. Only five states—New York, New Jersey, Delaware, Pennsylvania, and Virginia—were represented at the meeting. The delegates decided that a larger meeting and a broader proposal were needed. They therefore issued a call for a full-scale meeting of the states in Philadelphia the following May—in retrospect, a rather bold move by so small a group. The Continental Congress granted their request, however, and called for a meeting of all the states. In May 1787, what we now term the Constitutional Convention got down to business in Philadelphia.

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## U.S. Constitution

The document written in 1787 and ratified in 1788 that sets forth the institutional structure of U.S. government and the tasks these institutions perform. It replaced the Articles of Confederation.

# Making a Constitution: The Philadelphia Convention

**2.3** Describe the delegates to the Constitutional Convention and the core ideas they shared.

**R**epresentatives from 12 states came to Philadelphia to heed the Continental Congress’s call to “take into consideration the situation in the United States.” Only Rhode Island, a stronghold of paper-money interests and thus skeptical of reforms favoring creditors, refused to send delegates. Virginia’s Patrick Henry (the colonial firebrand who had declared, “Give me liberty or give me death!”) feared a centralization of power and also did not attend.

The delegates were ordered to meet “for the sole and express purpose of revising the Articles of Confederation.” The Philadelphia delegates did not pay much attention to this order, however, because amending the Articles required the unanimous consent of the states, which they knew would be impossible. Thus, the 55 delegates ignored their instructions and began writing what was to become the **U.S. Constitution**.

## □ Gentlemen in Philadelphia

Who were these 55 men? They may not have been “demigods,” as Jefferson, perhaps sarcastically, called them, but they were certainly an elite group of economic and political notables. They were mostly wealthy planters, successful (or once-successful) lawyers and merchants, and men of independent wealth. Many were college graduates, and most had practical political experience. Most were coastal residents rather than residents of the expanding western frontiers, and a significant number were urbanites rather than part of the primarily rural American population.

## □ Philosophy into Action

The delegates in Philadelphia were an uncommon combination of philosophers and shrewd political architects. The debates moved from high principles on the big issues to self-interest on the small ones.<sup>9</sup> The delegates devoted the first two weeks mainly to general debates about the nature of republican government (government in which ultimate power rests with the voters). After that, practical and divisive issues sometimes threatened to dissolve the meeting.

Obviously, these 55 men did not share the same political philosophy. For example, democratic Benjamin Franklin held very different views from a number of delegates who were wary of democracy. Yet at the core of their ideas existed a common center. The group agreed on questions of (1) human nature, (2) the causes of political conflict, (3) the objects of government, and (4) the nature of a republican government.

**HUMAN NATURE** In his famous work titled *Leviathan*, written in 1651, Thomas Hobbes argued that man’s natural state was war and that a strong absolute ruler was necessary to restrain man’s bestial tendencies. Without a strong government, Hobbes wrote, life would be “solitary, poor, nasty, brutish, and short.” The delegates agreed that people were naturally self-interested and that government should play a key role in containing these impulses. However, the Founders opposed Hobbes’s powerful monarch, siding with Locke’s argument that government should be limited.<sup>10</sup>

**POLITICAL CONFLICT** Of all the words written by and about the delegates, none have been more widely quoted than these by James Madison from Federalist 10: “The most common and durable source of factions has been the various and unequal distribution of property.” In other words, *the distribution of wealth* (land was the main form of

wealth in those days) *is the source of political conflict*. “Those who hold and those who are without property,” Madison went on, “have ever formed distinct interests in society.” Other sources of conflict included religion, views of governing, and attachment to various leaders.<sup>11</sup>

Arising from these sources of conflict are **factions**, which we might call parties or interest groups. A majority faction might well be composed of the many who have little or no property; the minority faction, of those with property. If unchecked, the delegates thought, one of these factions would eventually tyrannize the other. The majority would try to seize the government to reduce the wealth of the minority; the minority would try to seize the government to secure its own gains. Governments run by factions, the Founders (also called the Framers) believed, are prone to instability, tyranny, and even violence. The Founders intended to check the effects of factions.

**PURPOSE OF GOVERNMENT** To Gouverneur Morris of Pennsylvania, the preservation of property was the “principal object of government.” Morris was outspoken and plainly overlooked some other purposes of government, including security from invasion, domestic peace, and promotion of the public’s health and welfare. However, Morris’s remark typifies the philosophy of many of the delegates. As property holders themselves, these delegates could not imagine a government that did not make its principal objective an economic one: the preservation of individual rights to acquire and hold wealth. A few (like Morris) were intent on shutting out the propertyless altogether. “Give the votes to people who have no property,” Morris claimed, “and they will sell them to the rich who will be able to buy them.”

**NATURE OF GOVERNMENT** Given their beliefs about human nature, the causes of political conflict, the need to protect property, and the threat of tyranny by a faction, what sort of government did the delegates believe would work? They answered in different ways, but the message was always the same. Power should be set against power so that no one faction would overwhelm the others. The secret of good government is “balanced” government. They were influenced in their thinking by the writings of a French aristocrat, Baron Montesquieu, who advocated separate branches of government with distinct powers and the ability to check the other branches. The Founders agreed, concluding that a limited government would have to contain checks on its own power. So long as no faction could seize the whole of government at once, tyranny could be avoided. A balanced government required a complex network of checks, balances, and separation of powers.

## factions

Groups such as parties or interest groups, which according to James Madison arose from the unequal distribution of property or wealth and had the potential to cause instability in government.

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## Critical Issues at the Convention

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Categorize the issues at the Constitutional Convention and outline the resolutions reached on each type of issue.

**T**he delegates in Philadelphia could not merely construct a government from ideas. They wanted to design a government that was consistent with their political philosophy, but they also had to confront some of the thorniest issues facing the fledgling nation at the time—issues of equality, the economy, and individual rights.

### □ The Equality Issues

The Declaration of Independence states that all men are created equal; the Constitution, however, is silent on equality. Nevertheless, some of the most important issues on the policy agenda in Philadelphia concerned equality. Three issues occupied more attention than almost any others: whether the states were to be equally represented, what to do about slavery, and whether to ensure equality in voting.

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### New Jersey Plan

The proposal at the Constitutional Convention that called for equal representation of each state in Congress regardless of the state's population.

### Virginia Plan

The proposal at the Constitutional Convention that called for representation of each state in Congress in proportion to that state's share of the U.S. population.

### Connecticut Compromise

The compromise reached at the Constitutional Convention that established two houses of Congress: the House of Representatives, in which representation is based on a state's share of the U.S. population; and the Senate, in which each state has two representatives.

**EQUALITY AND REPRESENTATION OF THE STATES** One crucial policy issue was how to constitute the new Congress. The **New Jersey Plan**, proposed by William Paterson of New Jersey, called for each state to be equally represented in the new Congress. The opposing strategy, suggested by Edmund Randolph of Virginia, is usually termed the **Virginia Plan**. It called for giving each state representation in Congress based on the state's share of the American population.

The delegates resolved this conflict with a compromise devised by Roger Sherman and William Johnson of Connecticut. The solution proposed by this **Connecticut Compromise** was to create two houses in Congress. One body, the Senate, would have two members from each state (the New Jersey Plan), and the second body, the House of Representatives, would have representation based on population (the Virginia Plan). The U.S. Congress is still organized in exactly this way. Each state has two senators, and a state's population determines its representation in the House.

Although the Connecticut Compromise was intended to maximize equality among the states, it actually gives more power to people who live in states with small populations than to those who live in more heavily populated states. Every state has two senators and at least one member of the House, no matter how small its population. To take the most extreme case, Wyoming and California have the same number of votes in the Senate (two), although Wyoming has less than 2 percent of California's population. Thus, a citizen of Wyoming has about *70 times* the representation in the Senate as does a citizen of California.<sup>12</sup>

Because it is the Senate, not the House, that ratifies treaties, confirms presidential nominations, and hears trials of impeachment, citizens in less populated states have a greater say in these key tasks. In addition, in presidential elections the electoral college (the body that actually elects the president) gives small states greater weight. And if no presidential candidate receives a majority in the electoral college, the House of Representatives makes the final decision—with each state having one vote. In such a case (which has not occurred since 1824), the votes of citizens of Wyoming would again carry about 70 times as much weight as those of Californians.

Whether representation in the Senate is "fair" is a matter of debate. What is not open to question is that the delegates to the 1787 convention had to accommodate various interests and viewpoints in order to convince all the states to join an untested union.

## Why It Matters to You

### Representation in the Senate

The Senate both creates a check on the House and overrepresents states with small populations. If there were only one house of Congress, governance would be more efficient. If representation were based solely on population, interests centered in states with small populations would lose an advantage and there might be a closer correspondence between public opinion and public policy. At the same time, there would be one fewer important check on government action. Which do you prefer?

**SLAVERY** The second equality issue was slavery. The contradictions between slavery and the sentiments of the Declaration of Independence are obvious, but in 1787 slavery was legal in every state except Massachusetts. It was concentrated in the South, however, where slave labor was commonplace in agriculture. Some delegates, like Gouverneur Morris, denounced slavery in no uncertain terms. But the Convention could not accept Morris's position in the face of powerful Southern opposition led by Charles C. Pinckney of South Carolina. The delegates did agree that Congress could limit *future importing* of slaves (they allowed it to be outlawed after 1808), but they did not forbid slavery itself. The Constitution, in fact, inclines toward recognizing slavery; it states that persons legally "held to service or labour" (referring to slaves) who escaped to free states had to be returned to their owners.

# Point to Ponder

The Framers could not reach agreement regarding slavery. As a result, it persisted for several generations until the Civil War resolved the issue. Yet one could argue that leaving difficult decisions to future generations is a primary reason for the survival of the nation.

**What do you think—were the Framers copping out, or smartly trying not to take on too much conflict at once and leaving flexibility for future generations?**



Another difficult question about slavery arose at the Convention. How should slaves be counted in determining representation in Congress (and thus also electoral votes)? Southerners were happy to see slaves counted toward determining their representation in the House of Representatives (though reluctant to count them for apportionment of taxation). Here the result was the famous *three-fifths compromise*. Representation and taxation were to be based on the “number of free persons,” plus three-fifths of the number of “all other persons.” Everyone, of course, knew who those other persons were.

**EQUALITY IN VOTING** The delegates dodged one other issue on equality. A handful of delegates, led by Franklin, suggested that national elections should require universal manhood suffrage (that is, a vote for all free adult males). This still would have left a majority of the population disenfranchised, but for those still smarting from Shays’ Rebellion and the fear of mob rule, the suggestion was too democratic. Many delegates wanted to include property ownership as a qualification for voting. Ultimately, they decided to leave the issue to the states. People qualified to vote in state elections could also vote in national elections. Table 2.3 summarizes how the Founders dealt with the three issues of equality.

## □ The Economic Issues

The Philadelphia delegates were deeply concerned about the state of the American economy. Economic issues were high on the Constitution writers’ policy agenda. People disagreed (in fact, historians still disagree) as to whether the postcolonial economy was in a shambles.<sup>13</sup> The writers of the Constitution, already committed to a strong national government, charged that the economy was indeed in disarray and that they needed to address the following problems:

- The states had erected tariffs against products from other states.
- Paper money was virtually worthless in some states; however, many state governments, which were controlled by debtor classes, forced it on creditors anyway.
- Congress was having trouble raising money because the economy was in a recession.

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**TABLE 2.3** HOW THE CONSTITUTION RESOLVED THREE ISSUES OF EQUALITY

Problem	Solution
<p><b>Equality of the States</b></p> <p>Should states be represented equally (the New Jersey Plan) or in proportion to their population (the Virginia Plan)?</p>	Both, according to the Connecticut Compromise. States have equal representation in the Senate, but representation in the House is proportionate to population.
<p><b>Slavery</b></p> <p>What should be done about slavery?</p> <p>How should slaves be counted for representation in the House of Representatives?</p>	<p>Although Congress was permitted to stop the importing of slaves after 1808 and states were required to return runaway slaves from other states, the Constitution is mostly silent on the issue of slavery.</p> <p>Give states credit for three-fifths of slaves in determining population for representation.</p>
<p><b>Equality in Voting</b></p> <p>Should the right to vote be based on universal manhood suffrage, or should it be very restricted?</p>	Finesse the issue. Let the states decide qualifications for voting.

Understanding something about the delegates and their economic interests gives us insight into their views on the role of government in the economy. They were, by all accounts, the nation's postcolonial economic elite. Some were budding capitalists. Others were creditors whose loans were being wiped out by cheap paper money. Many were merchants who could not even carry on trade with a neighboring state. Virtually all of them thought a strong national government was needed to bring economic stability to the chaotic union of states that existed under the Articles of Confederation.<sup>14</sup>

It is not surprising, then, that the Framers of the Constitution would seek to strengthen the economic powers (and thus the scope) of the new national government. One famous historian, Charles A. Beard, claimed that their principal motivation for doing so was to increase their personal wealth. The Framers, he said, not only were propertied, upper-class men protecting their interests but also held bonds and investments whose value would increase if the Constitution were adopted. The best evidence, however, indicates that although they were concerned about protecting property rights, the Founders' motivations related to the broad goal of building a strong economy rather than to the narrow one of increasing their personal wealth.<sup>15</sup>

The delegates made sure that the Constitution clearly spelled out the economic powers of Congress (see Table 2.4). Consistent with the general allocation of power in the Constitution, Congress was to be the chief economic policymaker. It could obtain revenues through taxing and borrowing. These tools, along with the power to appropriate funds, became crucial instruments for influencing the economy. By maintaining sound money and guaranteeing payment for the national debt, Congress was to encourage economic enterprise and investment in the United States. The Constitution also allocates to Congress power to build the nation's infrastructure by constructing post offices and roads and to establish standard weights and measures. To protect property rights, Congress was charged with punishing counterfeiters and pirates, ensuring patents and copyrights, and legislating rules for bankruptcy. Equally important (and now a key congressional power, with a wide range of implications for the economy) was Congress's new ability to regulate interstate and foreign commerce. In sum, the Constitution granted Congress the power to create the conditions within which markets could flourish.

In addition, the Framers prohibited practices in the states that they viewed as inhibiting economic development, such as maintaining individual state monetary systems, placing duties on imports from other states, and interfering with lawfully contracted debts. Moreover, the states were to respect civil judgments and contracts made in other states, and they were to return runaway slaves to their owners. To help the states, the national government guaranteed them "a republican form of government" to prevent a recurrence of Shays' Rebellion, in which some people used violence instead of legislation and the courts to resolve commercial disputes.

## TABLE 2.4 ECONOMICS IN THE CONSTITUTION

### Powers of Congress

1. Levy taxes.
2. Pay debts.
3. Borrow money.
4. Coin money and regulate its value.
5. Regulate interstate and foreign commerce.
6. Establish uniform laws of bankruptcy.
7. Punish piracy.
8. Punish counterfeiting.
9. Create standard weights and measures.
10. Establish post offices and post roads.
11. Protect copyrights and patents.

### Prohibitions on and Obligations of the States

States could not ...	States were to ...
1. Coin money or issue paper money.	1. Respect civil court judgments and contracts made in other states.
2. Tax imports or exports from abroad or from other states.	2. Return runaway slaves from other states.
3. Pass laws impairing the obligations of contract.	
4. Require payment of debts in paper money.	

### Other Key Provisions

1. The new government assumed the national debt contracted under the Articles of Confederation.
2. A republican form of government was guaranteed.

### writ of habeas corpus

A court order requiring jailers to explain to a judge why they are holding a prisoner in custody.

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The Constitution also obligated the new government to repay all the public debts incurred under the Continental Congress and the Articles of Confederation—debts that totaled \$54 million. Paying off the debts would ensure from the outset that money would flow into the American economy and would also restore the confidence of investors in the young nation.

## □ The Individual Rights Issues

Another major item on the Constitutional Convention agenda for the delegates was designing a system that would preserve individual rights. There was no dispute about the importance of safeguarding individualism, and the Founders believed that this would be relatively easy. After all, they were constructing a limited government that, by design, could not threaten personal freedoms. In addition, they dispersed power among the branches of the national government and between the national and state governments so that each branch or level could restrain the other. Also, most of the delegates believed that the various states were already doing a sufficient job of protecting individual rights.

As a result, the Constitution says little about personal freedoms. The protections it does offer are the following:

- It prohibits suspension of the **writ of habeas corpus** (except during invasion or rebellion). Such a court order enables persons detained by authorities to secure an immediate inquiry into the causes of their detention. If no proper explanation is offered, a judge may order their release. (Article I, Section 9)
- It prohibits Congress or the states from passing bills of attainder (which punish people without a judicial trial). (Article I, Section 9)
- It prohibits Congress or the states from passing *ex post facto* laws (which punish people or increase the penalties for acts that were not illegal or not as punishable when the act was committed). (Article I, Section 9)
- It prohibits the imposition of religious qualifications for holding office in the national government. (Article VI)

- It narrowly defines and outlines strict rules of evidence for conviction of treason. To be convicted, a person must levy war against the United States or adhere to and aid its enemies during war. Conviction requires confession in open court or the testimony of *two* witnesses to the *same* overt act. The Framers of the Constitution would have been executed as traitors if the Revolution had failed, and they were therefore sensitive to treason laws. (Article III, Section 3)
- It upholds the right to trial by jury in criminal cases. (Article III, Section 2)

The delegates were content with their document. When it came time to ratify the Constitution, however, there was widespread criticism of the absence of specific protections of individual rights, such as free expression and various rights of the accused.

## The Madisonian System

### 2.5

Analyze how the components of the Madisonian system addressed the dilemma of reconciling majority rule with the protection of minority interests.

**T**he Framers believed that human nature was self-interested and that inequalities of wealth were the principal source of political conflict. Regardless, they had no desire to remove the divisions in society by converting private property to common ownership; they also believed that protecting private property was a key purpose of government. Their experience with state governments under the Articles of Confederation reinforced their view that democracy was a threat to property. Many of them felt that the nonwealthy majority—an unruly mob—would tyrannize the wealthy minority if given political power. Thus, the delegates to the Constitutional Convention faced the dilemma of reconciling economic inequality with political freedom. How could they devise a government that was responsive to the majority while protecting private property?

### □ Thwarting Tyranny of the Majority

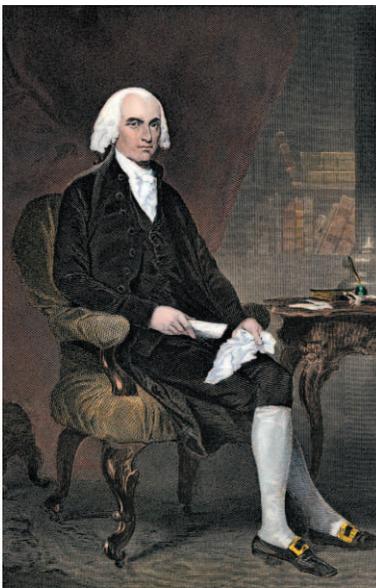
James Madison was neither wealthy nor a great orator. He was, however, a careful student of politics and government and became the principal architect of the government's final structure, which we sometimes refer to as the *Madisonian system*.<sup>16</sup> He and his colleagues feared both majority and minority factions. Either could take control of the government and use it to their own advantage. Factions of the minority, however, were easy to handle; the majority could simply outvote them. Factions of the majority were harder to handle. If the majority united around some policy issue, such as the redistribution of wealth, they could oppress the minority, violating the latter's basic rights.<sup>17</sup>

As Madison would later explain in Federalist 51:

∴ Ambition must be made to counteract ambition. . . . If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and then in the next place oblige it to control itself.<sup>18</sup>

To prevent the possibility of a tyranny of the majority, Madison proposed the following:

1. Place as much of the government as possible beyond the direct control of the majority.
2. Separate the powers of different institutions.
3. Construct a system of checks and balances.



Credit: FPO

James Madison was the key figure in writing the Constitution. His views on checking power remain at the core of the structure of American government.

**LIMITING MAJORITY CONTROL** Madison believed that to thwart tyranny by the majority, it was essential to keep most of the government beyond their power. His plan, as shown in Figure 2.3, placed only one element of government, the House of Representatives, within direct control of the votes of the majority. In contrast, state legislatures were to elect senators and special electors were to choose the president; in other words, a small minority, not the people themselves, would elect most government officials. The president was to nominate judges. Even if the majority seized control of the House of Representatives, they still could not enact policies without the agreement of the Senate and the president. To further insulate governmental officials from public opinion, the Constitution gave judges lifetime tenure and senators terms of six years, with only one-third elected every two years, compared with the two-year election intervals of all members of the House of Representatives.

**SEPARATING POWERS** The Madisonian scheme also provided for a **separation of powers**. Each of the three branches of government—executive (the president), legislative (Congress), and judicial (the courts)—would be relatively independent of one another so that no single branch could control the others. The Founders gave the

**separation of powers**

A feature of the Constitution that requires each of the three branches of government—executive, legislative, and judicial—to be relatively independent of the others so that one cannot control the others. Power is shared among these three institutions.

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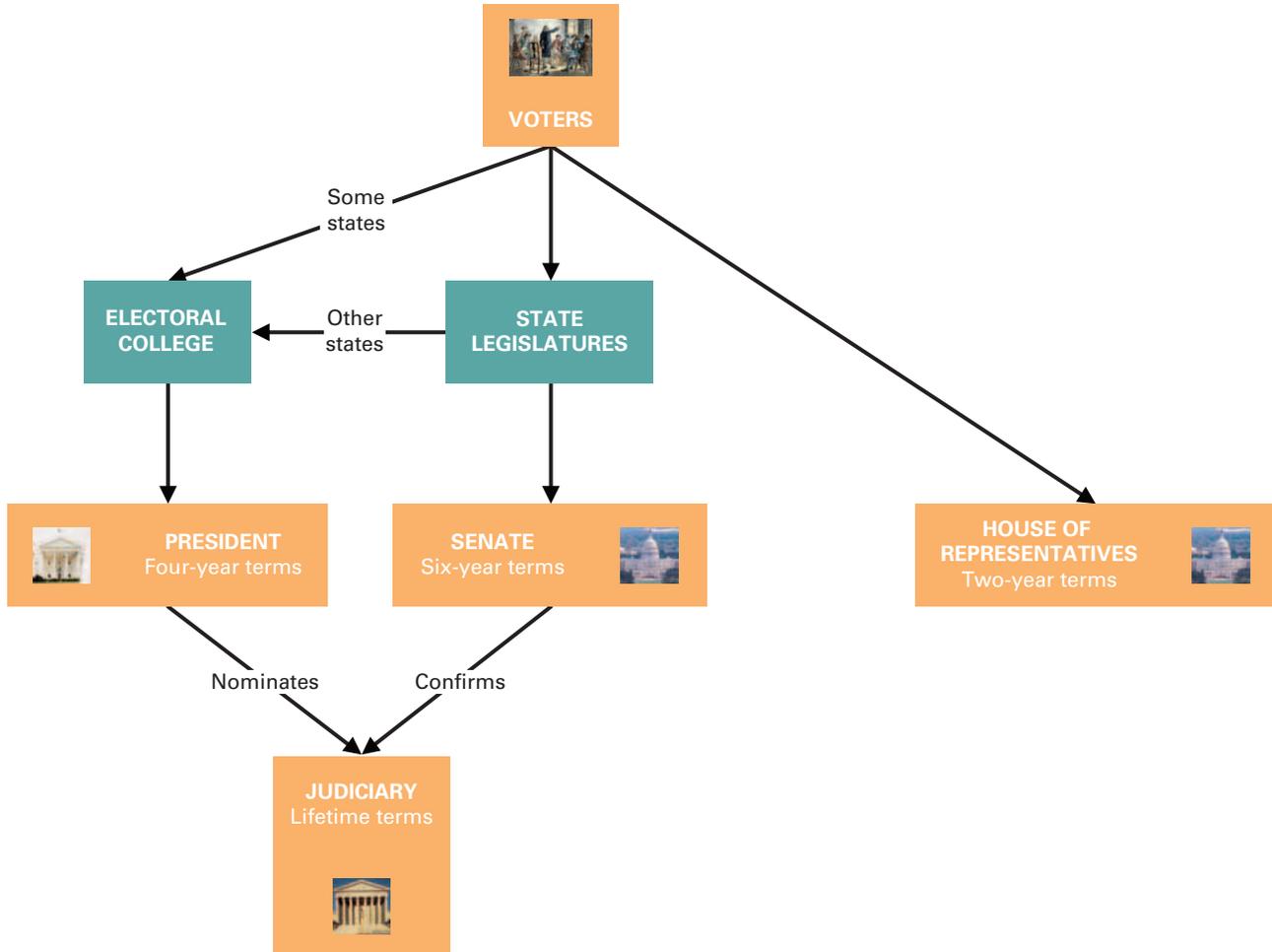
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**FIGURE 2.3 THE CONSTITUTION AND THE ELECTORAL PROCESS: THE ORIGINAL PLAN**

Under Madison's plan, which was incorporated in the Constitution, voters' electoral influence was limited. Voters directly elected only the House of Representatives. Senators and presidents were indirectly elected—senators by state legislatures, and presidents by the electoral college, whose members, depending on the state, were chosen by state legislatures or by voters; the president nominated judges. Over the years, Madison's original model has been substantially democratized. The Seventeenth Amendment (1913) established direct election of senators by popular majorities. Today, the electoral college has become largely a rubber stamp, voting the way the popular majority in each state votes.



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**checks and balances**

Features of the Constitution that limit government’s power by requiring each branch to obtain the consent of the others for its actions, limiting and balancing power among the branches.

**republic**

A form of government in which the people select representatives to govern them and make laws.

president, Congress, and the courts independent elements of power. The Constitution does not divide power absolutely, however. Instead, it *shares* it among the three institutions.

**CREATING CHECKS AND BALANCES** Because powers were not completely separate, each branch required the consent of the others for many of its actions. This created a system of **checks and balances** that reflected Madison’s goal of setting power against power to constrain government actions. He reasoned that if a faction seized one institution, it still could not damage the whole system. The system of checks and balances was an elaborate and delicate creation. The president checks Congress by holding veto power; Congress, in turn, holds the purse strings of government and must approve presidential nominations.

The courts also figured into the system of checks and balances. Presidents could nominate judges, but their confirmation by the Senate was required. The Supreme Court itself, in *Marbury v. Madison* (1803), asserted its power to check the other branches through judicial review: the right to hold actions of the other two branches unconstitutional. This right, which is not specifically outlined in the Constitution, considerably strengthened the Court’s ability to restrain the other branches of government. For a summary of separation of powers and the checks and balances system, see Figure 2.4.

**Why It Matters to You**

**Checks and Balances**

People often complain about gridlock in government, but gridlock is a product of checks and balances. Making it difficult for either a minority or a majority to dominate easily also makes it difficult to pass legislation over which there is disagreement.

**ESTABLISHING A FEDERAL SYSTEM** The Founders also established a federal system of government that divided the power of government between a national government and the individual states. Most government activity at the time occurred in the states. The Founders thus saw the federal system as an additional check on the national government.

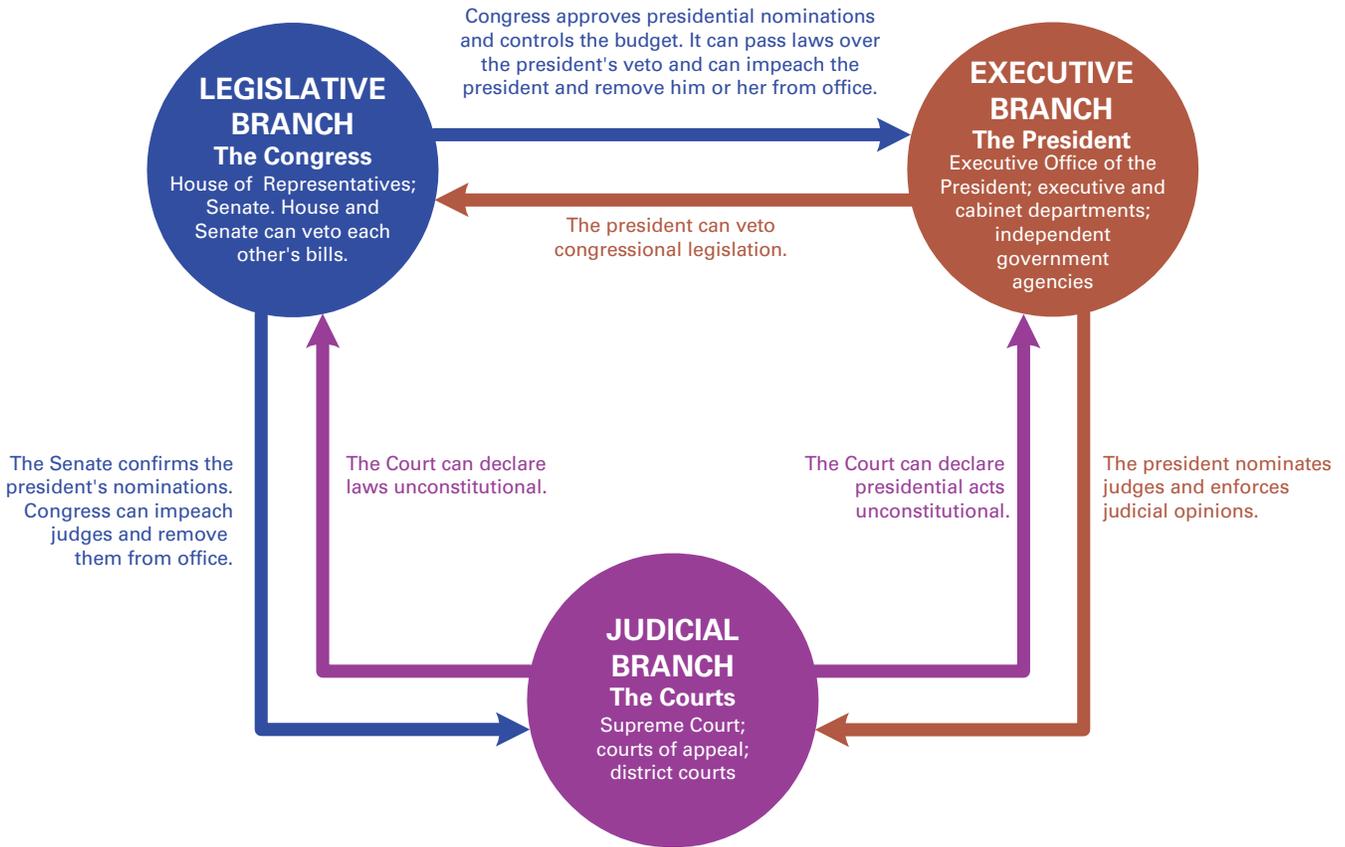
**□ The Constitutional Republic**

When asked what kind of government the delegates had produced, Benjamin Franklin is said to have replied, “A republic ... if you can keep it.” Because the Founders did not wish to have the people directly make all decisions (as in a town meeting where everyone has one vote), and because even then the country was far too large for such a proposal to be feasible, they did not choose to create a direct democracy. Their solution was to establish a **republic**: a system based on the consent of the governed in which representatives of the public exercise power. This deliberative democracy required and encouraged reflection and refinement of the public’s views through an elaborate decision-making process.

The system of checks and balances and separation of powers favors the status quo. Those opposed to change need only win at one point in the policymaking process—say in obtaining a presidential veto—whereas those who favor change must win *every* battle along the way. To win all these battles usually requires the support of a sizable majority of the country, not just a simple majority of 51 percent. Change usually comes slowly, if at all. As a result, the Madisonian system encourages moderation

**FIGURE 2.4** SEPARATION OF POWERS AND CHECKS AND BALANCES IN THE CONSTITUTION

The doctrine of separation of powers allows the three branches of government to check and balance one another. Judicial review—the power of courts to hold executive and congressional policies unconstitutional—was not explicit in the Constitution but was soon asserted by the Supreme Court in *Marbury v. Madison*.



and compromise and slows change. It is difficult for either a minority or a majority to tyrannize, and both property rights and personal freedoms (with only occasional lapses) have survived.

Franklin was correct that such a system is not easy to maintain. It requires careful nurturing and balancing of diverse interests. Some critics argue that the policymaking process lacks efficiency, preventing effective responses to pressing matters. We will examine this issue closely throughout *Government in America*.

## □ The End of the Beginning

On the 109th day of the meetings, in stifling heat made worse because the windows of the Pennsylvania statehouse were closed to ensure secrecy, the final version of the Constitution was read aloud. Then Benjamin Franklin rose with a speech he had written; however, he was so enfeebled that he had to ask James Wilson to deliver it. Franklin noted, “There are several parts of this Constitution of which I do not at present approve, but I am not sure that I shall never approve them,” and then asked for a vote. Ten states voted yes, and none voted no, although South Carolina’s delegates were divided. After all but three of the delegates who had remained at the convention signed the document (Elbridge Gerry of Massachusetts and Edmund Randolph and George Mason of Virginia refused to sign), they adjourned to a tavern. The experience of the last few hours, when conflict intermingled with consensus, reminded them that implementing this new document would be no small feat.

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**Federalists**

Supporters of the U.S. Constitution at the time the states were contemplating its adoption.

**Anti-Federalists**

Opponents of the U.S. Constitution at the time when the states were contemplating its adoption.

**Federalist Papers**

A collection of 85 articles written by Alexander Hamilton, John Jay, and James Madison under the name “Publius” to defend the Constitution in detail.



Credit: PFO

George Washington presides over the signing of the Constitution. “The business being closed,” he wrote, “the members adjourned to the City Tavern, dined together and took cordial leave of each other.”

## Ratifying the Constitution

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Compare and contrast the Federalists and Anti-Federalists in terms of their background and their positions regarding government.



Explore on MyPoliSciLab

Simulation: You Are a Founder



The Constitution did not go into effect once the Constitutional Convention in Philadelphia was over. The states had to ratify it. Our awe of the Founders sometimes blinds us to the bitter politics of the day. There is no way of determining precisely the public’s feelings about the new document, but as John Marshall (who later became chief justice) suggested, “It is scarcely to be doubted that *in some of the adopting states, a majority of the people were in opposition*” (emphasis added).<sup>19</sup> The Constitution itself required that only 9 of the 13 states approve the document before it could be implemented, ignoring the requirement that the Articles of Confederation be amended only by unanimous consent.

### □ Federalists and Anti-Federalists

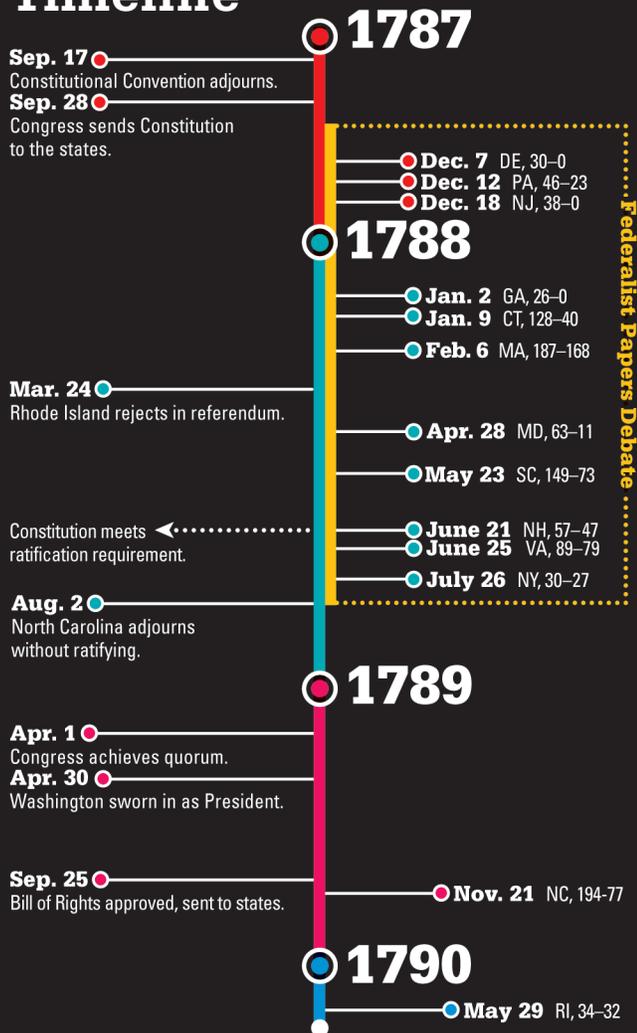
Throughout the states, a fierce battle erupted between the **Federalists**, who supported the Constitution, and the **Anti-Federalists**, who opposed it. Newspapers were filled with letters and articles, many written under pseudonyms, praising or condemning the document. In praise of the Constitution, three men—James Madison, Alexander Hamilton, and John Jay—wrote a series of articles under the name Publius. These articles, known as the **Federalist Papers**, are second only to the Constitution itself in reflecting the thinking of the Framers.

On October 27, 1787, barely a month after the Convention ended, the first of the 85 Federalist Papers appeared in New York newspapers as part of the ratification debate in New York. They not only defended the Constitution detail by detail but also represented an important statement of political philosophy. (The essays influenced few of the New York delegates, however, who voted to ratify the Constitution only after New York City threatened to secede from the state if they did not.)

# How Long Did It Take to Ratify the Constitution?

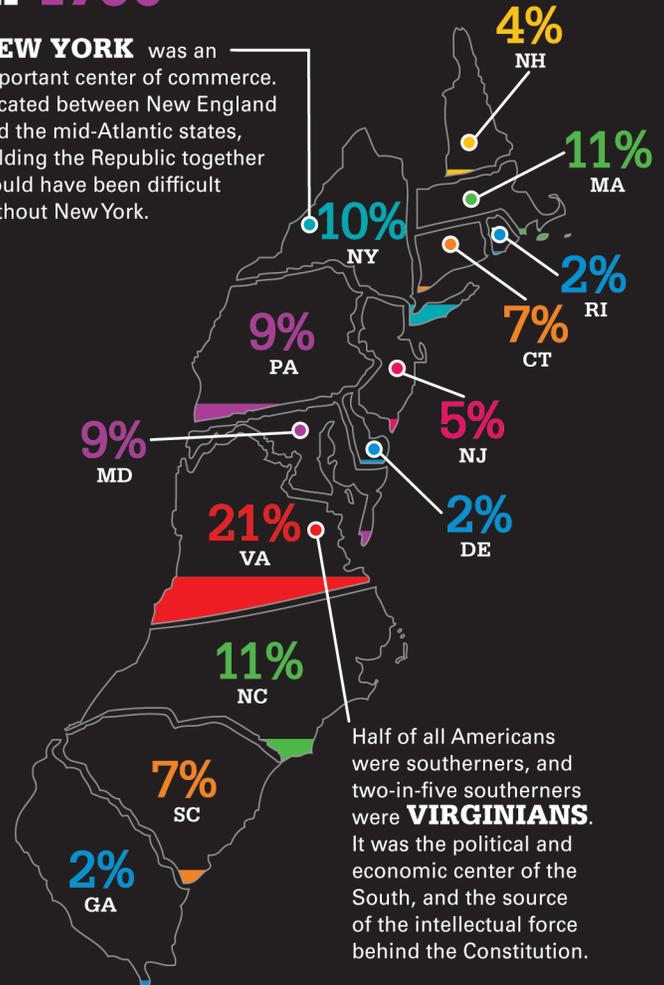
Americans today overwhelmingly support the principles of the Constitution, but after the Framers adjourned on September 17, 1787, three years passed before all thirteen states approved the document. The ensuing ratification debate was an inherently political game of multiple moves, in which the Constitution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



Half of all Americans were southerners, and two-in-five southerners were **VIRGINIANS**. It was the political and economic center of the South, and the source of the intellectual force behind the Constitution.

\* 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.

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## Bill of Rights

The first 10 amendments to the U.S. Constitution, drafted in response to some of the Anti-Federalist concerns. These amendments define such basic liberties as freedom of religion, speech, and press and guarantee defendants' rights.

**TABLE 2.5** FEDERALISTS AND ANTI-FEDERALISTS COMPARED

Anti-Federalists	Federalists
<b>Backgrounds</b>	
Small farmers, shopkeepers, laborers	Large landowners, wealthy merchants, professionals
<b>Government Preferred</b>	
Strong state government	Weaker state governments
Weak national government	Strong national government
Direct election of officials	Indirect election of officials
Shorter terms	Longer terms
Rule by the common man	Government by the elite
Strengthened protections for individual liberties	Expected few violations of individual liberties

Far from being unpatriotic or un-American, the Anti-Federalists sincerely believed that the new government was an enemy of freedom, the very freedom they had just fought a war to ensure. They launched bitter, biting, even brilliant attacks on the work of delegates such as Washington, Madison, Franklin, and Hamilton, and frankly questioned the motives of the Constitution's authors.

One objection was that the new Constitution was a class-based document, intended to ensure that a particular economic elite controlled the public policies of the national government.<sup>20</sup> Another fear of the Anti-Federalists was that the new government would erode fundamental liberties. Why, they asked, was there no list of rights in the Constitution? You can compare the views of the Federalists and Anti-Federalists in Table 2.5.

To allay fears that the Constitution would restrict personal freedoms, the Federalists promised to add amendments to the document specifically protecting individual liberties. They kept their word; James Madison introduced 12 constitutional amendments during the First Congress in 1789. Ten were ratified by the states and took effect in 1791. These first 10 amendments to the Constitution, which restrain the national government from limiting personal freedoms, have come to be known as the **Bill of Rights** (see Table 2.6). Another of Madison's original 12 amendments, one dealing with congressional salaries, was ratified 201 years later as the Twenty-seventh Amendment.

Opponents also feared that the Constitution would weaken the power of the states (which it did). Patrick Henry railed against strengthening the federal government at the expense of the states. "We are come hither," he told his fellow delegates to the Virginia ratifying convention, "to preserve the poor commonwealth of Virginia."<sup>21</sup> Many state political leaders feared that the Constitution would diminish their own power as well.

Finally, not everyone wanted the economy placed on a more sound foundation. Creditors opposed the issuance of paper money because it would produce inflation and make the money they received as payment on their loans decline in value. Debtors favored paper money, however. Their debts (such as the mortgages on their farms) would remain constant, but if money became more plentiful, it would be easier for them to pay off their debts.

## □ Ratification

Federalists may not have had the support of the majority, but they made up for it in shrewd politicking. They knew that many members of the legislatures of some states were skeptical of the Constitution and that state legislatures were filled with political leaders who would lose power under the Constitution. Thus, the Federalists specified that the Constitution be ratified by special conventions in each of the states—not by state legislatures.

**TABLE 2.6 THE BILL OF RIGHTS (ARRANGED BY FUNCTION)**

<b>Protection of Free Expression</b>	
Amendment 1:	Freedom of speech, press, and assembly Freedom to petition government
<b>Protection of Personal Beliefs</b>	
Amendment 1:	No government establishment of religion Freedom to exercise religion
<b>Protection of Privacy</b>	
Amendment 3:	No forced quartering of troops in homes during peacetime
Amendment 4:	No unreasonable searches and seizures
<b>Protection of Defendants' Rights</b>	
Amendment 5:	Grand jury indictment required for prosecution of serious crime No second prosecution for the same offense No compulsion to testify against oneself No loss of life, liberty, or property without due process of law
Amendment 6:	Right to a speedy and public trial by a local, impartial jury Right to be informed of charges against oneself Right to legal counsel Right to compel the attendance of favorable witnesses Right to cross-examine witnesses
Amendment 7:	Right to jury trial in civil suit where the value of controversy exceeds \$20
Amendment 8:	No excessive bail or fines No cruel and unusual punishments
<b>Protection of Other Rights</b>	
Amendment 2:	Right to bear arms
Amendment 5:	No taking of private property for public use without just compensation
Amendment 9:	Unlisted rights are not necessarily denied
Amendment 10:	Powers not delegated to the national government or denied to the states are reserved for the states or the people

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Delaware was the first to approve, on December 7, 1787. Only six months passed before New Hampshire's approval (the ninth) made the Constitution official. Virginia and New York then voted to join the new union. Two states were holdouts: North Carolina and Rhode Island made the promise of the Bill of Rights their price for joining the other states.

With the Constitution ratified, it was time to select officeholders. The Framers of the Constitution assumed that George Washington would be elected the first president of the new government—even giving him the Convention's papers for safekeeping—and they were right. The general was the unanimous choice of the electoral college. He took office on April 30, 1789, in New York City, the first national capital. New Englander John Adams became the vice president—or, as Franklin called him, “His Superfluous Excellence.”

## Changing the Constitution

2.7

Explain how the Constitution can be formally amended and how it changes informally.



he Constitution,” said Jefferson, “belongs to the living and not to the dead.” The U.S. Constitution is frequently—and rightly—referred to as a living document. It is constantly being tested and altered.

Constitutional changes are made either by formal amendments or by a number of informal processes. Formal amendments change the letter of the Constitution. Informal processes, by changing an unwritten body of tradition,

practice, and procedure related to the Constitution, may change the way the constitutional system functions.

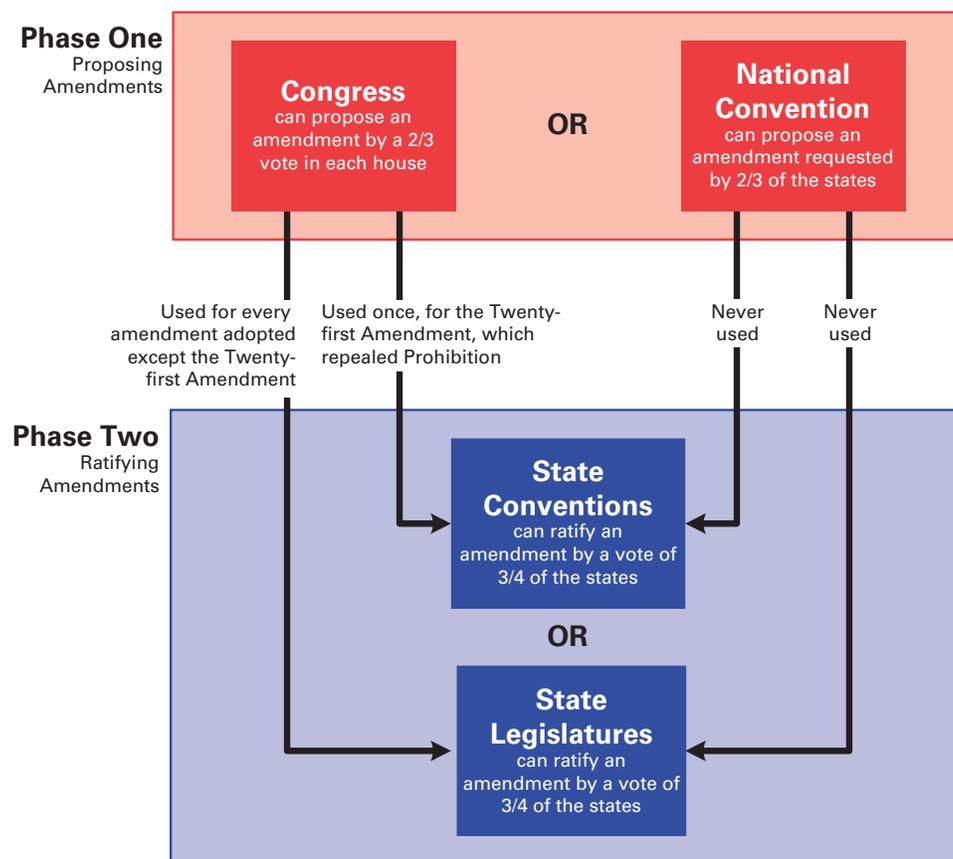
## □ The Formal Amending Process

The most explicit means of changing the Constitution is through the formal process of amendment. Article V of the Constitution outlines procedures for formal amendment. There are two stages to the amendment process—proposal and ratification—and each stage has two possible avenues (see Figure 2.5). An amendment may be proposed either by a two-thirds vote in each house of Congress or by a national convention called by Congress at the request of two-thirds of the state legislatures. An amendment may be ratified either by the legislatures of three-fourths of the states or by special state conventions called in three-fourths of the states. The president has no formal role in amending the Constitution, although the chief executive may influence the success of proposed amendments. In general, it is difficult to formally amend the Constitution (see “America in Perspective: The Unusual Rigidity of the U.S. Constitution”).

All but one of the successful amendments to the Constitution have been proposed by Congress and ratified by the state legislatures. The exception was the Twenty-first Amendment, which repealed the short-lived Eighteenth Amendment—the prohibition amendment that outlawed the sale and consumption of alcohol. The amendment was ratified by special state conventions rather than by state legislatures. Because proponents of repeal doubted that they could win in conservative legislatures, they persuaded Congress to require that state conventions be called when it proposed the amendment.

**FIGURE 2.5** HOW THE CONSTITUTION CAN BE AMENDED

The Constitution sets up two alternative routes for proposing amendments and two for ratifying them. One of the four combinations has been used in every case but one.



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Overall, the most important effect of the amendments has been to make the Constitution more democratic and egalitarian, expanding liberty and equality in the United States. Amendments that emphasize equality and increase the ability of a popular majority to affect government now provide a balance to the emphasis on economic issues in the original document. The Bill of Rights, discussed in detail in the civil liberties chapter, heads the amendments (see Table 2.6). Later amendments, including the Thirteenth Amendment abolishing slavery, forbid various political and social inequalities based on race, gender, and age. Yet other amendments, discussed later in this chapter, have democratized the political system, making it easier for voters to influence the government. Only one existing amendment specifically addresses the economy—the Sixteenth, or “income tax,” Amendment.

Some amendments have been proposed by Congress but not been ratified by the states. The best known of these is the **Equal Rights Amendment (ERA)**. The ERA stated simply, “Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.” This seemingly benign amendment sailed through Congress and the first few state legislatures.<sup>22</sup> Despite clear public support,<sup>23</sup> it failed, in part because many conservative Southern states

### Equal Rights Amendment

A constitutional amendment passed by Congress in 1972 stating that “equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.” The amendment failed to acquire the necessary support from three-fourths of the state legislatures.

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## America in Perspective

### The Unusual Rigidity of the U.S. Constitution

In the Federalist 43, James Madison wrote that the Founders designed a process for adopting amendments to the U.S. Constitution that “guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults.” In other words, Madison felt that the American Constitution was rigid enough to provide stability in government yet also flexible enough to allow adaptation over time.

Most other democracies have a procedure for adopting constitutional amendments, but few of the world’s established democracies have made it as difficult as it is in the United States. We can measure constitutional rigidity based on the percentage vote required at the most demanding stage of the amending process.

In the United States, this would be 75 percent because at least three-quarters of the state legislatures or of conventions in the states must approve constitutional amendments. As you can see in the following table, only 4 of 22 other established democracies require a majority of greater than two-thirds to amend their national constitution. In this regard, then, the U.S. Constitution is unusually rigid.

#### CRITICAL THINKING QUESTIONS

1. Would it be better if it were easier to change the U.S. Constitution?
2. Does the difficulty of changing the Constitution make it too rigid?

#### Requirements for Constitutional Amendments in Developed Democracies, 2012

Simple Majority (50% Plus 1)	Between a Simple Majority and Two-Thirds Majority	Two-Thirds Majority	Supermajority (Greater Than Two-Thirds)
Great Britain	Denmark	Austria	Australia
Iceland	France	Belgium	Canada
Israel	Greece	Finland	Japan
New Zealand	Ireland	Germany	Switzerland
	Italy	Netherlands	United States
	Sweden	Norway	
		Portugal	
		Spain	

opposed it, so that it fell a few states short of the three-fourths of states required. In response to this failure, more than 20 states have amended their own constitutions by adding versions of the ERA.

Proponents of other constitutional amendments have been active in recent years. You can consider the issue of the frequency of amending the Constitution in “You Are the Policymaker: How Frequently Should We Amend the Constitution?”

## □ The Informal Processes of Constitutional Change

Think for a moment about all the changes in American government that have taken place without a word or a letter of the written document having been changed. For example, there is nothing in the Constitution related to any of the following developments:

- The United States has a two-party system (the oldest in the world).
- Abortions through the second trimester of pregnancy (when the fetus cannot live outside the mother’s womb) are legal in the United States.
- Members of the electoral college almost always follow the preference of their state’s electorate.
- Television influences our political agenda and guides our assessments of candidates and issues.
- The president has become the driving force in national policymaking.

None of these things is “unconstitutional.” The parties emerged, first technology and then the law permitted abortions, parties named as electors loyalists who would

# You Are the Policymaker

## How Frequently Should We Amend the Constitution?

Since the ratification of the Bill of Rights in 1791, there have been only 17 amendments to the Constitution—an average of 1 amendment every 13 years. It is now common, however, for political activists—and even political party platforms—to call for amendments. Some recent examples include prohibiting gay marriage, the burning of the American flag, and abortion; permitting prayer in public schools; requiring a balanced national budget; limiting the number of congressional terms; guaranteeing women’s rights (the ERA); and protecting victims’ rights.

Conservatives have been in the forefront of most recent calls for amendments (the ERA being an exception); many of the proposals for constitutional change are designed to overcome liberal Supreme Court decisions. Liberals, quite naturally, have opposed these amendments. There is a larger question here than just the particular changes that advocates of amending the Constitution support, however. The central question is “How frequently should we change the fundamental law of the land?”

Those who support amending the Constitution argue that it should reflect the will of the people. If the overwhelming majority of the public wants to prohibit burning the American flag, for example, why shouldn’t

the Constitution reflect its preference? There is little possibility that a minority or even a narrow majority will be able to impose its will on the people, they argue, because the Constitution requires an extraordinary majority to ratify an amendment. So why should we be reluctant to test the waters of change?

Opponents of more frequent changes to the Constitution have their own arguments. It is ironic, they say, that conservatives, who typically wish to preserve the status quo, should be in the forefront of fundamental change. They argue that the Constitution has served the United States very well for more than two centuries with few changes. Why should we risk altering the fundamentals of the political system? And if we do, will we be setting a dangerous precedent that will encourage yet more change in the future? Will such changes undermine the very nature of a constitution that is designed to set the basic rules of the game and be above the political fray?

**What do you think?** Are the arguments simply a reflection of ideologies? Should the Constitution reflect the current sentiment of the public and be changed when public opinion changes? Or should we show more caution in amending the Constitution no matter how we feel about a specific amendment?

support their candidates if they won the popular vote, television came to prominence in American life—and none of this required any tinkering with the Founders’ handiwork. These developments could occur because the Constitution changes *informally* as well as formally. There are several ways in which the Constitution changes informally: through judicial interpretation, through political practice, and as a result of changes in technology and changes in the demands on policymakers.

**JUDICIAL INTERPRETATION** Disputes often arise about the meaning of the Constitution. If it is the “supreme law of the land,” then someone has to decide how to interpret the Constitution when disputes arise. In 1803, in the famous case of *Marbury v. Madison*, the Supreme Court decided it would be the one to resolve differences of opinion. It claimed for itself the power of **judicial review**. Implied but never explicitly stated in the Constitution,<sup>24</sup> this power gives courts the right to decide whether the actions of the legislative and executive branches of state and national governments are in accord with the Constitution.

Judicial interpretation can profoundly affect how the Constitution is understood. For example, in 1896, the Supreme Court decided that the Constitution allowed racial discrimination despite the presence of the Fourteenth Amendment. Fifty-eight years later, it overruled itself and concluded that segregation by law violated the Constitution. In 1973, the Supreme Court decided that the Constitution protected a woman’s right to an abortion during the first two trimesters of pregnancy when the fetus is not viable outside the womb—an issue the Founders never imagined.

**CHANGING POLITICAL PRACTICE** Current political practices also change the Constitution—stretching it, shaping it, and giving it new meaning. Probably no changes are more important to American politics than those related to parties and presidential elections.

### *Marbury v. Madison*

The 1803 case in which the Supreme Court asserted its right to determine the meaning of the U.S. Constitution. The decision established the Court’s power of judicial review over acts of Congress.

### judicial review

The power of the courts to determine whether acts of Congress and, by implication, the executive are in accord with the U.S. Constitution. Judicial review was established by *Marbury v. Madison*.

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Credit: FPO

Amending the Constitution to give women the right to vote was an important step in the women’s rights movement. Here suffragettes march for the right to vote, in New York City in 1913.

2.1 Political parties as we know them did not exist when the Constitution was written. In fact, its authors would have disliked the idea of parties, which are a type of faction. Regardless, by 1800 a party system had developed, and it plays a key role in making policy today. American government would be radically different if there were no political parties, even though the Constitution is silent about them.

2.2 Changing political practice has also changed the role of the electoral college in selecting the president. The writers of the Constitution intended that there be no popular vote for the president; instead, state legislatures or the voters (depending on the state) would select wise electors who would then choose a “distinguished character of continental reputation” (as the Federalist Papers put it) to be president. These electors formed the electoral college.

2.3 In 1796, the first election in which George Washington was not a candidate, electors scattered their votes among 13 candidates. By the election of 1800, domestic and foreign policy issues had divided the country into two political parties. To increase their chances of achieving a majority of the electoral vote, the parties required electors to pledge in advance to vote for the candidate who won their state’s popular vote, leaving electors with a largely clerical role. Nothing in the Constitution prohibits an elector from voting for any candidate (which occasionally happens). Nevertheless, the idea of electors exercising independent judgments is a constitutional anachronism, changed not by formal amendment but by political practice.

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**TECHNOLOGY** Technology has also greatly changed the Constitution. The media have always played an important role in politics—questioning governmental policies, supporting candidates, and helping shape citizens’ opinions. Modern technology, however, spurred the development of a *mass* media that can rapidly reach huge audiences, something unimaginable in the eighteenth century, and, more recently, gave rise to the Internet. These media developments have fundamentally changed the way in which we select elected officials. The government bureaucracy has grown in importance with the development of computers, which create new potential for bureaucrats to serve the public (such as writing over 55 million Social Security checks each month)—and, at times, create mischief. Electronic communications and the development of atomic weapons have given the president’s role as commander in chief added significance, increasing the power of the president in the constitutional system.

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**INCREASED DEMANDS FOR NEW POLICIES** The significance of the presidency has also grown as a result of increased demands for new policies. The evolution of the United States in the realm of international affairs—from an insignificant country that kept to itself to a superpower with an extraordinary range of international obligations—has concentrated additional power in the hands of the chief executive, whom the Constitution designates to take the lead in foreign affairs. Similarly, the increased demands of domestic policy have positioned the president in a more prominent role in preparing the federal budget and a legislative program.

Consider, as an example, the war on terrorism. Wars increase presidential power because they place additional demands on the commander in chief. Congress of necessity delegates to the president the authority to prosecute a war, which involves a multitude of decisions, ranging from military strategy to logistics. The war on terrorism has taken delegation of authority one step further, however. Because the enemy may be not a country but, rather, an amorphous group of people who employ the weapons of terrorism as political instruments, it is more difficult for Congress to specify the president’s authority.

Thus, following the attacks of September 2001, Congress passed a broad resolution authorizing the president to use force against those nations, organizations, or persons that he alone determined were involved in the attacks. This resolution served as the legal basis for the war in Afghanistan that began that year. In addition, several weeks



The Constitution is a short document that has survived for more than 200 years, in large part because of its adaptability to the needs of new generations.

after the attacks, Congress passed the USA Patriot Act, giving the executive branch broad new powers for the wiretapping, surveillance, and investigation of terrorism suspects. The invasion of Iraq in March 2003, similarly, followed a congressional resolution authorizing the president to use “all means necessary and appropriate,” including the use of military force, to defend the United States against Iraq—a broad grant of power delegating to the president the right to determine if and when the United States would go to war.

## □ The Importance of Flexibility

The Constitution, even with all 27 amendments, is a short document containing fewer than 8,000 words. It does not prescribe in detail the structure and functioning of the national government. Regarding the judiciary, the Constitution simply tells Congress to create a court system as it sees fit. The Supreme Court is the only court required by the Constitution, and even here the Constitution leaves the number of justices and their qualifications up to Congress. Similarly, many of the governing units we have today—such as the executive departments, the various offices in the White House, the independent regulatory commissions, and the committees of Congress, to name only a few examples—are not mentioned at all in the Constitution.

It is easy to see that the document the Framers produced over 200 years ago was not meant to be static, written in stone. Instead, the Constitution’s authors created a flexible system of government, one that could adapt to the needs of the times without sacrificing personal freedom. The Framers allowed future generations to determine their own needs. (The constitutions of the various states tend to be much longer and much more detailed.) As muscle grows on the constitutional skeleton, it inevitably gives new shape and purpose to the government. This flexibility has helped ensure the Constitution’s—and the nation’s—survival. Although the United States is young compared to most other Western nations, it has the oldest functioning constitution. France, which experienced a revolution in 1789, the same year the Constitution took effect, has had 12 constitutions over the past 2 centuries. Despite the great diversity of the American population, the enormous size of the country, and the extraordinary changes that have taken place over the nation’s history, the U.S. Constitution is still going strong.

# Understanding the Constitution

2.8

Assess whether the Constitution establishes a majoritarian democracy and how it limits the scope of government.



The Constitution sets the broad rules for government and politics in America. As we will see, *these rules are never neutral*. Instead, they give some participants and some policy options advantages over others in the policymaking process.

## □ The Constitution and Democracy

Although the United States is often said to be one of the most democratic societies in the world, few would describe the original Constitution as democratic. This paradox is hardly surprising, considering the political philosophies of the men who wrote it. Members of eighteenth-century upper-class society generally despised democratic government. If democracy was a way of permitting the majority's preference to become policy, the Constitution's authors wanted no part of it. The American government was to be a government of the "rich, well-born, and able," as Hamilton said, a government in which John Jay's wish that "the people who own the country ought to govern it" would be a reality. Few people today would consider these thoughts democratic.

The Constitution did not, however, create a monarchy or a feudal aristocracy. It created a republic, a representative form of democracy modeled after the Lockean tradition of limited government. Thus, the undemocratic—even antidemocratic—Constitution established a government that permitted substantial movement toward democracy.

One of the central themes of American history is the gradual democratization of the Constitution. What began as a document characterized by numerous restrictions on direct voter participation has slowly become much more democratic. Today, few people share the Founders' fear of democracy. The expansion of voting rights has moved the American political system away from the elitist model of democracy and toward the pluralist model.

The Constitution itself offered no guidelines on voter eligibility, leaving it to each state to decide. As a result, only a small percentage of adults could vote; states excluded women and slaves entirely. Of the 17 constitutional amendments passed since the Bill of Rights, 5 focused on the expansion of the electorate. The Fifteenth Amendment (1870) prohibited discrimination on the basis of race in determining voter eligibility (although it took the Voting Rights Act of 1965 to make the amendment effective). The Nineteenth Amendment (1920) gave women the right to vote (although some states had already done so). The Twenty-third Amendment (1961) accorded the residents of Washington, D.C., the right to vote in presidential elections. Three years later, the Twenty-fourth Amendment prohibited poll taxes (which discriminated against the poor). Finally, the Twenty-sixth Amendment (1971) lowered the voter eligibility age to 18 (see "Young People and Politics: Lowering the Voting Age").

Not only are more people eligible to vote, but voters now have more officials to elect. The Seventeenth Amendment (1913) provided for direct election of senators. The development of political parties has fundamentally altered presidential elections. By placing the same candidate on the ballot in all the states and requiring members of the electoral college to support the candidate who receives the most votes, parties have increased the probability that the candidate for whom most Americans vote will also receive a majority of the electoral college vote. Nevertheless, it is possible for the candidate who receives the most popular votes to lose the election, as occurred in 1824, 1876, 1888, and 2000.

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# Young People & Politics

## Lowering the Voting Age

The 1960s were a tumultuous era, and massive protests by students and other young people regarding the war in Vietnam were common in the last half of the decade. Many young people felt that protesting was the best they could do because the voting age was 21 in most states—even though 18-year-olds were old enough to marry, work, and pay taxes as other adults did. In the Vietnam War, the average age of U.S. soldiers was 19, and young citizens often asserted, “If we’re old enough to fight, we’re old enough to vote.” (Imagine the response today if soldiers fighting overseas could not vote.)

Agreeing that the voting age was unfair, Congress passed the Voting Rights Act of 1970, which lowered the voting age to 18 in both federal and state elections. The Supreme Court, however, held that Congress had exceeded its authority and could set voting ages only in national elections. Changing the voting age in state elections would require a constitutional amendment.

In 1971, Senator Jennings Randolph, a Democrat from West Virginia, proposed an amendment to lower the voting age to 18 years: “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.” Randolph was a warrior for peace and had great faith in young people, arguing, “They possess a great social conscience, are

perplexed by the injustices in the world, and are anxious to rectify those ills.”

Aided by appreciation of the sacrifices of young soldiers in Vietnam, the amendment passed the Senate unanimously and the House of Representatives by a vote of 400 to 19. It was then sent to the states for ratification. No state wanted to maintain two sets of voter registration books and go to the expense of running separate election systems for federal elections and for all other elections. Thus, the states were receptive to the proposed amendment, and in just 100 days three-fourths of the states ratified it.

On July 5, the Twenty-sixth Amendment was formally adopted into the Constitution, adding 11 million potential voters to the electorate. Half of these young voters cast their ballots in the 1972 presidential election.

### CRITICAL THINKING QUESTIONS

1. There are proposals in some states to lower the voting age below 18. What is the appropriate age for voting?
2. Would it be appropriate for different states to have different ages for voting in either national or state and local elections?

Technology has also diminished the separation of the people from those who exercise power. Officeholders communicate directly with the public through television, radio, and targeted mailings. Air travel makes it easy for members of Congress to commute regularly between Washington and their districts. Similarly, public opinion polls, the telephone, e-mail, and the Internet enable officials to stay apprised of citizens’ opinions on important issues. Even though the American population has grown from fewer than 4 million to more than 310 million people since the first census was taken in 1790, the national government has never been closer to those it serves.

## □ The Constitution and the Scope of Government

The Constitution created the U.S. system of government—its political institutions and the rules for politics and policymaking. Many of these rules limit government action, protecting liberty and opening the system to a broad range of participants. This limiting function is what the Bill of Rights and related provisions in the Constitution are all about. Thus, for example, it would be unconstitutional for the government to establish a state-supported church.



Credit: FPO

Because the Constitution decentralizes power, officials usually must negotiate to pass legislation. Here Democrat president Barack Obama meets the Republican Speaker of the House, John Boehner.

Even with these limits, the potential range of action for the government is quite wide. Thus, it would be constitutionally permissible, although highly unlikely, for the national government to, say, abolish Social Security payments to the elderly or take over ownership of the oil industry or the nation's airlines.

Nonetheless, the separation of powers and checks and balances—crucial aspects of the system of government created by the Constitution—have profound implications for what the government does and does not do.

On one hand, the system of separation of powers and checks and balances allows almost all groups some place in the political system where their demands for public policy can be heard. Because many institutions share power, groups can usually find at least one sympathetic ear in government. Even if the president opposes the policies a particular group favors, Congress, the courts, or some other institution can help the group achieve its policy goals. In the early days of the civil rights movement, for example, African Americans found Congress and the president unsympathetic, so they turned to the Supreme Court. Getting their interests on the political agenda would have been much more difficult if the Court had not had important constitutional power.

On the other hand, the system encourages stalemate. By providing effective access for so many interests, the Founders created a system of policymaking in which it is difficult for the government to act. The separation of powers and the system of checks and balances promote the politics of bargaining, compromise, and playing one institution against another. The system of checks and balances implies that one institution is checking another.

Some scholars suggest that so much checking was built into the American political system that effective government is almost impossible.<sup>25</sup> If the president, Congress, and the courts all pull in different directions on policy, the result may be either no policy at all (gridlock) or an inadequate, makeshift policy. The outcome may be nondecisions when the country requires that difficult decisions be made. If government cannot respond effectively because its policymaking processes are too fragmented, then its performance will be inadequate. Perhaps the Constitution limits the ability of government to reach effective policy decisions, thus in effect reducing the scope of government. Certainly, radical departures from the status quo are atypical in American politics.

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## Review the Chapter



### The Origins of the Constitution

**2.1** Describe the ideas behind the American Revolution and their role in shaping the Constitution, p. 33.

The American Revolution was built on the foundation of belief in natural rights, consent of the governed, limited government, the responsibility of government to protect private property, and the equality of citizens. The Constitution would reflect all these ideas.

### The Government That Failed: 1776–1787

**2.2** Analyze how the weaknesses of the Articles of Confederation led to its failure, p. 39.

The Articles of Confederation established a government dominated by the states, without a permanent executive or national judiciary. A weak central government could not raise sufficient funds to support a national defense, regulate commerce to encourage trade, protect property rights, or take action without the unanimous consent of the states.

### Making a Constitution: The Philadelphia Convention

**2.3** Describe the delegates to the Constitutional Convention and the core ideas they shared, p. 42.

The Framers of the Constitution were more educated, wealthy, and urban than most Americans. They shared some core ideas, including that people were self-interested, that the distribution of wealth was the principal source of political conflict, that the main object of government was protecting private property, and that power should be set against power to balance government.

### Critical Issues at the Convention

**2.4** Categorize the issues at the Constitutional Convention and outline the resolutions reached on each type of issue, p. 43.

Conflicts over equality led to the Connecticut Compromise, the three-fifths compromise on slavery, and the decision to leave the issue of voting rights to the states. The greatest inequality of all—that of slavery—was so contentious an issue that the Framers simply avoided addressing it.

The Framers, many of whom belonged to the economic elite, believed that the American economy was in shambles and intended to make the national government an economic

stabilizer. They also knew that a strong national government would be better able to ensure the nation's security. The specificity of the powers assigned to Congress left no doubt that Congress was to forge national economic policy.

Because they believed that the limited government they had constructed would protect freedom, the Framers said little about individual rights in the Constitution. They did, however, take a number of specific steps, including substantially limiting the suspension of the writ of habeas corpus.

### The Madisonian System

**2.5** Analyze how the components of the Madisonian system addressed the dilemma of reconciling majority rule with the protection of minority interests, p. 48.

The Founders reconciled majority rule with minority interests by constraining both the majority and the minority. The Madisonian system did this primarily by dispersing power among separate branches of government, each with a somewhat different constituency, and giving them shared powers so that each branch had a check on the others.

### Ratifying the Constitution

**2.6** Compare and contrast the Federalists and Anti-Federalists in terms of their background and their positions regarding government, p. 52.

Ratification of the Constitution was not a foregone conclusion. The Federalists, who were largely from the economic elite, supported a strong national government and preferred to insulate public officials from public opinion. Anti-Federalists, largely from the middle class, supported a weaker national government and direct forms of democracy, and they wanted stronger protection of individual liberties than the original Constitution offered. As a result, the Federalists promised to propose what became the Bill of Rights.

### Changing the Constitution

**2.7** Explain how the Constitution can be formally amended and how it changes informally, p. 55.

Constitutional change—both formal and informal—continues to shape and alter the letter and the spirit of the Madisonian system. The formal amendment process, requiring supermajorities in both houses of Congress and among the states, poses difficult hurdles to overcome. However, judicial interpretation, changing political practices, technology, and the increasing demands on policymakers have also changed the constitutional system in fundamental ways, providing a valuable flexibility.

## Understanding the Constitution

2.8

Assess whether the Constitution establishes a majoritarian democracy and how it limits the scope of government, p. 62.

The Constitution did not create a majoritarian democracy. Majorities do not always rule in America. Nevertheless, there has been a gradual democratization of the Constitution as the right to vote has expanded, direct election of senators has

been instituted, electors have become agents of political parties, and technology has facilitated direct, two-way communication between office holders and the public.

By protecting individual rights, and thus limiting the ability of officials to restrict them, the Constitution limits the scope of government. By dispersing power among institutions, it increases the access of interests to government but also allows these interests to check each other and produce a stalemate.

## Learn the Terms



**Study** and **Review** the Flashcards

constitution, p. 33  
Declaration of Independence, p. 34  
natural rights, p. 36  
consent of the governed, p. 36  
limited government, p. 36  
Articles of Confederation, p. 38  
Shays' Rebellion, p. 41  
U.S. Constitution, p. 42

factions, p. 43  
New Jersey Plan, p. 44  
Virginia Plan, p. 44  
Connecticut Compromise, p. 44  
writ of habeas corpus, p. 47  
separation of powers, p. 49  
checks and balances, p. 50  
republic, p. 50

Federalists, p. 52  
Anti-Federalists, p. 52  
Federalist Papers, p. 52  
Bill of Rights, p. 54  
Equal Rights Amendment, p. 57  
*Marbury v. Madison*, p. 59  
judicial review, p. 59

## Test Yourself



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

**1.** The notion that the people must agree on who their rulers will be is referred to as

- a. sanctity of property rights.
- b. natural rights.
- c. consent of the governed.
- d. limited government.
- e. direct democracy.

**2.** What were John Locke's views of the purpose of and limits on government?

**3.** Why is the American Revolution called a "conservative" revolution? Do you agree with this interpretation? Why or why not?

**4.** The primary result of Shays' Rebellion was to

- a. spread similar, unruly behavior to ever larger and more effective groups.
- b. force states to pass "force acts" and print money.
- c. calm the elite's fears about the economic climate.
- d. serve as a factor motivating the American Revolution.
- e. precipitate a review of the Articles of Confederation in Annapolis.

**5.** The Articles of Confederation established a strong central government to respond to issues of economic and national crisis.

True \_\_\_\_\_ False \_\_\_\_\_

**6.** Explain how the Articles of Confederation failed but still provided a positive influence on the subsequent Constitution.

**7.** According to James Madison, which of the following is the primary source of political conflict?

- a. differing political ideologies
- b. different religious views
- c. the distribution of wealth
- d. self-interested human nature
- e. the lack of education

**8.** The delegates at the Philadelphia convention believed that humans were primarily self-interested.

True \_\_\_\_\_ False \_\_\_\_\_

**9.** What were the four core ideas on which the delegates at the Philadelphia convention agreed? Briefly explain each.

**10.** The Connecticut Compromise did which of the following?

- a. It guaranteed that slaves would count as three-fifths of a person in calculating a state's representation in Congress.
- b. It ensured that states would continue to influence the national government through a federalist system.
- c. It created two houses of Congress with different bases for determining congressional representation.

- d. It established that a state's representation in Congress would be based solely on the state's population of free citizens.
- e. It ensured that citizens of larger states would have more power than citizens of smaller states.

**11.** Which of the following economic powers are given to Congress in the U.S. Constitution?

- a. the power to tax and borrow money
- b. the power to regulate interstate and foreign commerce
- c. the power to broadly protect property rights
- d. the power to print and coin money
- e. all of the above

**12.** The U.S. Constitution in its original form, prior to amendment,

- a. dealt more thoroughly with economic issues than with issues of equality.
- b. dealt more thoroughly with issues of equality than with economic issues.
- c. emphasized both economic and equality issues to a large degree.
- d. mentioned both economic and equality issues only in passing.
- e. dealt with neither economic nor equality issues.

**13.** The original Constitution provided for universal suffrage for males.

True \_\_\_\_\_ False \_\_\_\_\_

**14.** The system of governance set up in the U.S. constitutional republic tends to

- a. favor the status quo and limit political change.
- b. be relatively efficient in producing political results.
- c. encourage direct democracy.
- d. centralize power.
- e. do all of the above.

**15.** The Framers believed that, like the separation of powers and checks and balances, federalism would act as a check on the national government.

True \_\_\_\_\_ False \_\_\_\_\_

**16.** What provisions did Madison write into the Constitution in his attempt to limit the possibility of a "tyranny of the majority"?

**17.** Historian and political scientist James McGregor Burns has argued that the extensive system of checks and balances in the Constitution has made effective government almost impossible. Do you agree or disagree with him, and why? Explain, using concrete examples.

**18.** The Bill of Rights was adopted primarily to

- a. allay fears that the Constitution would restrict freedom.
- b. ensure that the Constitution had the support of the Federalists.
- c. protect the states against the potential for abuses by the national government.

- d. guarantee that Congress had sufficient authority to address national economic crises.
- e. satisfy Madison's concerns about factions and to check their effects.

**19.** The Constitution went into effect once the delegates in Philadelphia had voted to approve the document.

True \_\_\_\_\_ False \_\_\_\_\_

**20.** What were three issues the Federalists and Anti-Federalists disagreed on, and what positions did they take on these issues?

**21.** Why did the Federalists support amending the Constitution with a Bill of Rights even though the original (unamended) Constitution contained several protections for individuals?

**22.** Which of the following means of amending the Constitution has never been used to date?

- a. proposal by two-thirds support in both houses of Congress
- b. ratification by three-fourths of state legislatures
- c. ratification by three-fourths of state conventions
- d. proposal through a national convention called by Congress
- e. Each of the above has been used at least once.

**23.** The Equal Rights Amendment is an example of a constitutional amendment that failed to be ratified.

True \_\_\_\_\_ False \_\_\_\_\_

**24.** How is the formal amendment process, consistent with our Madisonian system of government, designed to thwart tyranny of the majority?

**25.** Using examples of informal changes in the functioning of the constitutional system, assess whether they have effectively adapted the Constitution to the twenty-first century.

**26.** Which statement is correct?

- a. Members of the eighteenth-century upper class generally supported democracy.
- b. The Constitution has gradually been democratized over time.
- c. A republic is a form of democracy in which voters directly control government.
- d. As the country has grown, elected officials are less close to those they represent.
- e. The Constitution encourages efficiency in policymaking.

**27.** How has the expansion of voting rights moved the American political system away from the elitist model of democracy and toward more of a pluralist model?

**28.** Is it fair for minorities to thwart the will of the majority? Explain, giving examples.

# Explore Further

## WEB SITES

<http://www.earlyamerica.com/earlyamerica/milestones/commonsense/>

Thomas Paine's *Common Sense*

<http://www.usconstitution.net/articles.html>

The Articles of Confederation

<http://thomas.loc.gov/home/histdox/fedpapers.html>

Federalist Papers in support of the ratification of the Constitution

<http://www.wepin.com/articles/afp/index.htm>

Anti-Federalist writings opposing the ratification of the Constitution

<http://www.usconstitution.net/constframedata.html>

Background of the Framers

## FURTHER READING

**Bailyn, Bernard.** *The Ideological Origins of the American Revolution*. Cambridge, MA: Harvard University Press, 1967. A leading work on the ideas that spawned the American Revolution.

**Becker, Carl L.** *The Declaration of Independence: A Study in the History of Political Ideas*. New York: Random House, 1942. Classic work on the meaning of the Declaration.

**Dahl, Robert A.** *How Democratic Is the American Constitution?* 2nd ed. New Haven, CT: Yale University Press, 2003. Questions the extent to which the Constitution furthers democratic goals.

**Hamilton, Alexander, James Madison, and John Jay.** *The Federalist Papers*. 2nd ed. Edited by Roy P. Fairfield. Baltimore: Johns Hopkins University Press, 1981. Key tracts in the campaign for the Constitution and cornerstones of American political thought.

**Higginbotham, A. Leon, Jr.** *In the Matter of Color: Race and the American Legal Process, the Colonial Period*. New York: Oxford University Press, 1978. Chronicles how colonial governments established the legal foundations for the enslavement of African Americans.

**Jensen, Merrill.** *The Articles of Confederation*. Madison: University of Wisconsin Press, 1940. Definitive and balanced treatment of the Articles.

**Norton, Mary Beth.** *Liberty's Daughters*. Boston: Little, Brown, 1980. Examines the role of women during the era of the Revolution and concludes that the Revolution transformed gender roles, setting women on the course to equality.

**Rakove, Jack N.** *Original Meanings: Politics and Ideas in the Making of the Constitution*. New York: Alfred A. Knopf, 1996. Shows the difficulty of divining the original intentions of the Framers.

**Rossiter, Clinton.** *1787: The Grand Convention*. New York: Macmillan, 1966. A well-written study of the making of the Constitution.

**Storing, Herbert J.** *What the Anti-Federalists Were For*. Chicago: University of Chicago Press, 1981. Analysis of the political views of those opposed to ratification of the Constitution.

**Wood, Gordon S.** *The Creation of the American Republic*. Chapel Hill: University of North Carolina Press, 1969. In-depth study of American political thought prior to the Constitutional Convention.

**Wood, Gordon S.** *Empire of Liberty: A History of the Early Republic, 1789–1815*. New York: Oxford University Press, 2009. Excellent account of America's pivotal first quarter-century.

**Wood, Gordon S.** *The Radicalism of the American Revolution*. New York: Vintage, 1993. Shows how American society and politics were thoroughly transformed in the decades following the Revolution.