

2.1 Roots of the American Constitutional Tradition

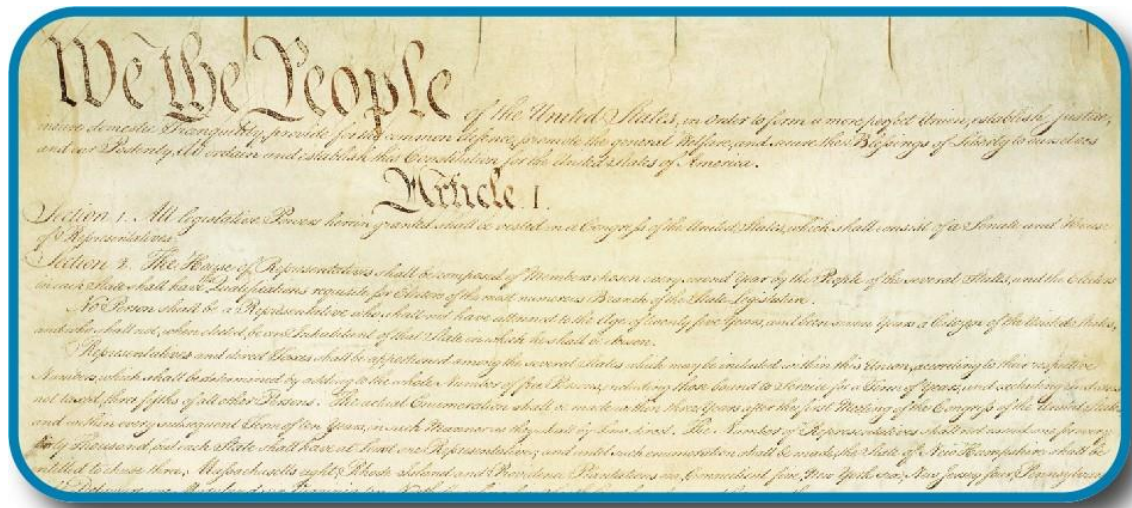


Image 2.1 Photo of the Constitution

The U.S. Constitution was written in 1787, ratified in 1789, and amended twenty-seven times. The U.S. Constitution has served as the basis for U.S. government for more than two hundred years. (Credit: modification of work by National Archives and Records Administration)

Learning Objectives

- Identify the origins of political thought leading to the development of a written constitution for the United States.
- Identify some of the events related to the American Revolution that impacted the development of the U.S. constitutional tradition.
- Understand the concepts of unalienable rights and consent of the governed in the writings of John Locke and Thomas Jefferson.

Chart 2.1 Learning Objectives for Constitutional Traditions and Consent

The American people *have* a contract with their government—the *Constitution of the United States of America*. Written in 1787 and amended twenty-seven times, this document is the basis for U.S. government.¹⁴ The *Constitution* is the oldest and shortest written constitution of the modern era, the culmination of American (as well as British/European/Greek/etc.) political thought about government power. The *U.S. Constitution*, is one of the world's most enduring documents of representative democracy.

The framers of this contract were not like-minded individuals aligned in thought or purpose, and its writing and its constitutional provisions were by no means inevitable. The new 1787 Constitution was

designed largely out of necessity following the failure of the first written constitution, the Articles of Confederation. If individuals were to band together to form a new stronger government (“a more perfect union”), give their consent to this government to gain the protection of their unalienable liberties, and work to improve collective order and security, it is preferable to put the rules of consent in writing—a contract. Of all the political thinkers who influenced American beliefs about government, the most important is surely John Locke and his ideas regarding the relationship between government and natural rights or unalienable rights (whether arising from a belief in a higher power bestowing these rights or from a human ability to reason that such rights exist).

Consider the Original

From John Locke, Second Treatise of Government...

Chapter 8 OF THE BEGINNING OF POLITICAL SOCIETIES.

“MEN being, as has been said, by nature, all free, equal, and independent, no one can be [...] subjected to the political power of another, without his own consent. The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society (i.e. Government), is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another [...].”

CHAPTER. 9. ENDS OF POLITICAL SOCIETY AND GOVERNMENT.

“If man in the state of nature be so free, [...] why [...] part with his freedom? why [...] this state is very unsafe, very insecure. This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: [...] he seeks out, and is willing to join in society with others, [...] for the mutual preservation of their lives, liberties and estates, which I call by the general name, property [...] only with an intention in everyone the better to preserve himself, liberty and property; (for no rational creature can be supposed to change his condition with an intention to be worse) the power of the society (government), or legislative constituted by them, can never be supposed to extend farther, than the common good [...].”

Credit: Project Gutenberg, The Project Gutenberg eBook of Second Treatise Of Government By John Locke, www.gutenberg.org/files/7370/7370-h/7370-h.htm.

Chart 2.2 Excerpt from John Locke



Image 2.2 Portrait of John Locke

The idea of natural or unalienable rights, that no other individual or government has the right to take away life, restrict their liberty, or take property—without a particularly good reason.

According to Locke, people agree or consent to band together and form a government to protect life, liberty and property. These bonds may have a contractual agreement limiting governmental authority because individuals and governments do not always respect the life, liberty, and property of others. Throughout history few governments have recognized individual rights. John Locke, a 17th century philosopher, wrote about the relationship between government and unalienable or natural rights (whether arising from a belief in a higher power bestowing these rights or from a human ability to reason that such rights exist).

Locke was not the first to suggest such rights. The English elites sought to protect lives, liberties, and property of English freemen long before the settling of North American colonies. In 1215, King John signed *Magna*

John Locke was one of the most influential thinkers of the Enlightenment period. His writings form the basis for many modern political ideas. (Credit: The Hermitage, Godfrey Kneller, Portraiture, 1697)

Carta—a contract protecting life, liberty, and property—“No freemen shall be taken, imprisoned . . . or in any way destroyed . . . except by the lawful judgment of his peers or by the law of the land.”^[2] While *Magna Carta* afforded protections only to the English barons who were in revolt against King John in 1215, these protections were considered a cornerstone of liberty for freemen of all socio-economic conditions by the time of the American Revolution—rights always possessed by the people but begrudgingly acknowledged by King John.^[3] A belief in unalienable or natural rights of all human beings indicates a belief that rights are only protected by government and not granted or conveyed by government. The problem with *Magna Carta* is significant. If a king may grant rights, a king may remove rights. If rights are unalienable--not granted by any individual or government--people may never be separated from these rights of life, liberty and property. Governments may protect the rights or infringe/restrict them, but they do not bestow or grant them.

Locke also addressed the purpose of government. For centuries monarchies claimed their authority originated from God. Locke, however, asserted that human beings created government.^[4] People sacrifice some freedom in exchange for government protection of their lives, liberty, and property.

Locke called this implicit agreement between a people and their government the **social contract**. Should government deprive people of their rights by abusing its authority, the contract would be broken, and the people no longer bound by its terms. The people could thus withdraw their consent to obey and form another government for their protection—**popular sovereignty**. For Locke, withdrawing consent meant replacing one monarch with another.

In the seventeenth century, the British legislature, the Parliament removed and replaced a King and passed a English Bill of Rights which the new monarchy committed not to violate. The English Bill of Rights, heavily influenced by Locke’s ideas, enumerated the natural rights of English citizens and explicitly guaranteed rights to life, liberty, and property. This document would profoundly influence the development of a written U.S. Constitution and Bill of Rights.

The desire to limit the power of government is closely related to the belief that people should govern themselves. This core tenet of American political thought was rooted in a variety of traditions. First, the British government did allow for a degree of representative self-government with laws made by Parliament voted into office by property-owning males. By the eighteenth century, all the colonies had established legislatures to which representatives were elected to make the laws for their fellow colonists. When American colonists felt that this longstanding tradition of representative self-government was threatened by the actions of Parliament and the King, the American Revolution began.

Why revolt?

How did disagreement move from thought to war? Over time the British monarchy came to treat colonists differently from other freemen living in Britain. Learned men among the colonies’ leadership familiar with the works of Locke and other political philosophers boldly argued that the colonists had equal political rights with those living in Great Britain. While they sought a solution, appeals to the monarchy failed. Parliament and King George III made decisions for colonists without their

input/consent especially over taxation. The colonists objected that since they had no elected local representatives in Parliament, Parliament should have no authority to tax the colonists; that is, the cry became “no taxation without representation.”

Ultimately, colonists determined that their political rights had been violated and that the social contract was broken, and they sought a means of self-government. Separation was the solution.

In December 1773, a group of Boston men boarded a ship in Boston harbor and threw a cargo of tea into the water. The protest concerned granting of a monopoly on tea to the British East India Company, which many colonial merchants resented.^[5]

NO TAXATION WITHOUT REPRESENTATION

Image 2.3 Motto Statement from Revolutionary War Period



Image 2.4 Painting of the Boston "Tea Party"

In the iconic lithograph “The Destruction of Tea at Boston Harbor,” colonists protest what they perceive as Great Britain’s unfair taxation (on tea) without colonial consent through representation in the Parliament. (Credit: Library of Congress)

In 1774, Parliament responded to colonial defiance with laws called the Coercive Acts, punishing Boston for leading resistance to British rule. This assault on Massachusetts and its economy enraged people throughout the colonies, and delegates from all the colonies except Georgia formed the First Continental Congress to create a unified opposition to Great Britain and to develop a declaration of rights and grievances. King George III continued to ignore the reasoned appeals of colonial leaders for equal treatment. In 1775, delegates met again as the Second Continental Congress. Armed conflict had begun with skirmishes between colonial militiamen and British troops at Lexington and Concord, Massachusetts. Congress drafted a *Declaration of Causes* explaining the colonies' reasons for rebellion. On July 2, 1776, Congress declared American independence from Britain and two days later signed the *Declaration of Independence*.

Britain had deprived the colonists of their political rights and civil liberties. Included among the statements in the *Declaration of Independence* documenting these abuses were the following: 1) imposing taxes without consent; 2) suspending legislatures and declaring themselves invested with power to legislate for colonies in all cases whatsoever; 3) depriving colonies of benefits of trial by jury; etc. In summary, the Declaration concluded that the King had “establish[ed] . . . an absolute Tyranny over these States.” Just as their English forebears had removed King James II from the throne in 1689, the colonists now wished to establish a new rule. There was a crucial difference this time. The colonists did not want a new king. They wanted self-government.^[6]

With their signing of the *Declaration of Independence*, the founders of the United States committed themselves to the creation of a new government based upon specific concepts of governance. Jefferson drafted the document which paralleled principles stated by John Locke over the purpose of government—to secure natural rights. “To secure these rights Governments are instituted...deriving their just powers from the consent of the governed.”

Consider the Original

Thomas Jefferson, *Declaration of Independence*

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, its is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

(Credit: National Archives at USA.gov)

Chart 2.3 Excerpt from the Declaration of Independence



Thomas Jefferson explains in the *Declaration of Independence* why many colonists felt the need to form a new nation. His evocation of the natural rights of man and his list of grievances against the king also served as the model for the *Declaration of Sentiments* that was written in 1848 in favor of giving women in the United States rights equal to those of men.

Constitutions: Questions to Consider

1. What reason would you give for maintaining the written contract U.S. citizens have with the government?
2. Would you like to see the contract/constitution changed? In what way?
3. Would a verbal contract work for government?
4. What principles written in the Declaration of Independence by Thomas Jefferson match principles expressed by John Locke?
5. Is a government more accountable to the people because of a written contract or agreement? Why or Why not?
6. What key tenets of political thought influenced the decision to declare independence from Britain?
7. What action by the British government, as outlined in the *Declaration of Independence*, convinced the colonists they needed to declare independence?

1. *accountability; personal opinion question*
2. *open for discussion*
3. *open for discussion*
4. *that government must be based upon consent of the governed/people and that the purpose of government is to secure/protect natural/unalienable rights*
5. *personal opinion question*
6. *following the principles argued by John Locke, Americans believe they possessed natural rights to life, liberty and property and that government needed to have the consent of the governed and that these basic rights were being violated; the concept of natural or unalienable rights also is related to principles coming from Magna Carta and the British Bill of Rights*
7. *Britain had deprived the colonists of their political rights and civil liberties; included among the statements documenting these abuses were the following: 1) imposing taxes without consent; 2) suspending legislatures and declaring themselves invested with power to legislate for colonies in all cases whatsoever; 3) depriving colonies of benefits of trial by jury; etc.*

Terms to Remember

consent—citizens may consent to give up some liberties to governing authority/rule of law in order to receive a benefit like security/order

Declaration of Independence—declares that government is established by the consent of the governed to secure the unalienable or inseparable rights of life, liberty and pursuit of happiness. states reasons for political, economic separation between colonies in America and Great Britain

Natural rights—liberties retained by individuals such as the right to life, liberty, and property; believed to be given by a Higher Power or understood by human reasoning ability; no government may give/convey these rights; government may only protect or infringe on these rights

Social contract—an agreement between people and government in which citizens consent to be governed so long as the government protects their natural rights

Popular sovereignty—the people are sovereign/rulers rather than a monarch or oligarchy; the rule of law places people above politics

Constitutions: Works Consulted

1. credit: modification of work by National Archives and Records Administration [\[i\]](#)
2. <https://www.archives.gov/exhibits/featured-documents/magna-carta> [\[i\]](#)
3. <https://www.archives.gov/exhibits/featured-documents/magna-carta> [\[i\]](#)
4. From Project Gutenberg at <http://www.gutenberg.org/ebooks/10615> [\[i\]](#)
5. Bernhard Knollenberg. 1975. *Growth of the American Revolution: 1766-1775*. New York: Free Press, 95-96. [\[i\]](#)
6. Declaration of Independence complete transcript available with the National Archives at USA.gov [\[i\]](#)

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PUBLIC DOMAIN CONTENT

The Declaration of Independence: A Transcription. **Authored by:** Thomas Jefferson. **Provided by:** Second Continental Congress at usa.gov. **Located at:** http://www.archives.gov/exhibits/charters/declaration_transcript.html. **License:** [Public Domain: No Known Copyright](#)

2.2 Constitutions: The *Articles of Confederation*—The First Constitution

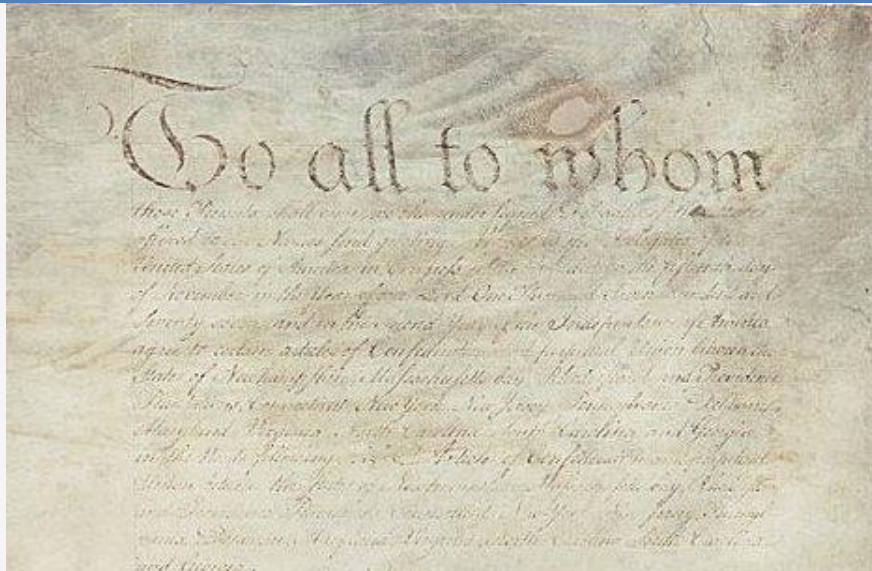


Image 2.5 Photo of Articles of Confederation

Articles of Confederation (1777) (Credit: OurDocuments.gov at <https://www.ourdocuments.gov/>)

Learning Objectives

- Describe the steps taken during and after the American Revolution to create a government.
- Identify basic tenets of the *Articles of Confederation*.
- Describe some unexpected consequences of the *Articles of Confederation*.

Chart 2.4 Learning Objectives for Articles of Confederation

Establishing a New Framework for Governing

Following their Declaration of Independence, waging a successful war against Great Britain required that the now fully sovereign and independent states (that often distrusted one another), create some form of government capable of directing their common defense. Gaining recognition and aid from foreign nations would also be easier if the new United States had a government able to borrow money and negotiate treaties. Accordingly, the Second Continental Congress called upon its delegates to create a new government strong enough to win the country's independence but not too powerful. Americans wished their new government to be a **republic**, a regime in which the people, not a monarch, held power and elected representatives to govern. Many, however, worried that even a government of representatives elected by the people might become too powerful and overbearing. In addition, Many, feared that a nation as large as the United States could not be ruled effectively as a single representative republic. In fact, following the Declaration of Independence, each of the thirteen states had drafted and ratified

separate constitutions providing for a representative form of government. Each state had a governor and an its own elected legislature. In the new nation, the independent states wished to remain free to govern their residents as they wished.

The final draft of the *Articles of Confederation*, which formed the basis of the new nation's government and first written constitution, was accepted by Congress in 1777 and submitted for ratification by all thirteen states. Ratification, however, took some time. Maryland argued that territory west of the Appalachian Mountains, to which some states had laid claim, should instead be held by the national government as public land for the benefit of all. The last of these states, Virginia, relinquished its land claims in 1781, clearing the way for Maryland's approval and ratification of the *Articles*.¹¹

The *Articles* defined a governmental structure (a confederacy) based upon a **confederation** of states— independent and self-governing entities unified in the form of an alliance for the primary purpose of common defense. Newly separated from a monarchy with a **unitary** or highly centralized power structure, the representatives sought an emphasis on decentralized power in the individual states, which they believed were best suited to manage states' unique interests. Fearful of replacing one oppressive national government with another, the framers of this confederation created an alliance of sovereign states held together by a weak central government.



View the [Articles of Confederation](#) at the National Archives. The [timeline for drafting and ratifying the Articles of Confederation](#) is available at the Library of Congress.

Under the *Articles of Confederation*, the central government had written authority to act for national defense. States were assumed to have a common interest in defense and a common desire to supply militias. In the careful balance between power for the national government and liberty for the states, the *Articles of Confederation* favored the states. Powers given to the central government were limited. The Confederation Congress had the authority to exchange ambassadors, make treaties with foreign governments and Indian tribes, declare war, coin currency, borrow money, and settle disputes between states. Each state legislature appointed delegates to the Congress. Regardless of its size or the number of delegates it chose to send, each state had one vote. To avoid an elite professional political class, delegates served for no more than three consecutive years. Nine of thirteen votes were required before the central government could act, and the *Articles of Confederation* could be changed only by unanimous approval of all thirteen states.

Under the *Articles* there was no independent chief executive nor judiciary at the national level and enforcement of decisions made by the Confederation congress were dependent on the states to be implemented.

Why did the *Articles* fail?

The *Articles of Confederation* satisfied the goal of a weak central government with limited power. It soon became apparent that, while the sovereignty of the states was protected, the *Articles* had created a central government too weak to function effectively. Fearful of creating a system no better than the oppressive monarchy they fought to escape, the men drafting the *Articles of Confederation* limited the powers of the central government. The states maintained the right to locally govern their residents, while the central

government could declare war, coin money, and conduct foreign affairs. An inability to impose taxes, regulate commerce, or raise an army hindered the defense of the nation and payment of debts. A solution had to be found. Miraculously, this confederation managed to win a war with the world's leading superpower of the 18th century despite its weaknesses.

One of the biggest problems was that the national government had no power to impose taxes. To avoid any perception of "taxation without representation," the Articles of Confederation allowed only state governments to levy taxes. To pay for its expenses, the national government had to request money from the states, which were required to provide funds in proportion to the value of the land within their borders. The states, however, were often negligent in this duty, and the national government was underfunded. Without money, it could not pay debts owed from the Revolution and had trouble conducting foreign affairs. Foreign governments were also, understandably, reluctant to loan money to a nation that might never repay it because it lacked the ability to tax its citizens.

The country's economic woes were made worse by the fact that the central government also lacked the power to impose tariffs on foreign imports or regulate interstate commerce. Compounding the problem, states often imposed tariffs on items produced by other states and otherwise interfered with their neighbors' trade.

The national government also lacked the power to raise an army or navy. Fears of a standing army in the employ of a tyrannical government had led the writers of the Articles of Confederation to leave defense largely to the states. Although the central government could declare war and agree to peace, it had to depend upon the states to provide soldiers. If state governors chose not to honor the national government's request, the country would lack an adequate defense.

Weakness	<i>Articles of Confederation</i> —Result of Identified Weakness
taxation	money requests not always honored by states; no predictable national income
trade & commerce	US hurt by foreign competition; states competing with each other
no national military	states could ignore request for militia/troops; hard to coordinate national defense
one vote per state	populous states underrepresented; lack of equal access for citizens
unanimous vote to change	problems with <i>Articles</i> not easy to fix
no national courts	no way to enforce limited central power; no way to resolve disputes between states
no executive branch	enforcing and implementing acts passed by Congress was impossible

Chart 2.5 Weaknesses of the Articles of Confederation

Constitutions: Questions to Consider

1. What are 2 reasons the *Articles of Confederation* hindered the government during the American Revolution?
2. Why would lack of a national judicial system be considered a weakness of the *Articles*?
3. What is a confederation?

1. *lack of ability to enforce taxation; interstate competition; inability to coordinate national defense effectively; unequal access of citizens; unanimous vote by all state to achieve change; lack of effective dispute resolution*
2. *no effective way to resolve disputes; especially between states*
3. *decentralized structure of government; roughly co-equal entities/states band together in an alliance for mutual protection and other agreed upon purposes*

Constitution: Terms to Remember

Articles of Confederation—the first constitution for the United States of America; adopted in 1781; created an alliance of sovereign states held together by a weak central government with no chief executive

confederacy/confederation—a highly decentralized structure of government; roughly co-equal entities/sovereign states form an alliance for purposes such as mutual defense or any other agreed purpose

unitary—a form of government in which any other level of government below the national government is dependent on the central government, where substantial authority is concentrated

Constitutions: Works Consulted

1. Stuart Bruchey. 1990. *Enterprise: The Dynamic Economy of a Free People*. Cambridge, MA: Harvard University Press, 223. [\[1\]](#)

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2.3 The Development of the *U.S. Constitution*



Image 2.6 Photo of Independence Hall in Philadelphia

Independence Hall, Philadelphia, Pennsylvania (Credit: Carol M. Highsmith; Library of Congress Collection)

Learning Objectives

- Understand the controversies and compromises of the Constitutional Convention.
- Understand the reasoning behind the separation of powers and checks and balances system.

Chart 2.6 Learning Objectives for the Constitutional Convention

If the *Articles* are not working, what do we do next?

Fifty-five delegates arrived at Philadelphia in May 1787 tasked with reworking the *Articles of Confederation*. It was apparent that the very loose confederation of states and the weak central government would not work as a long-term solution for governing the new nation. Throughout the long, hot Philadelphia summer, delegations from twelve states discussed, debated, and finally worked out a new blueprint for the nation—designed to resolve conflicts between small and large states, northern and southern states, and those favoring a strong national government with those arguing for state sovereignty. Many delegates to what is now called the **Constitutional Convention** wanted to strengthen the role and authority of the national government but feared allowing too much centralized power. They intended to preserve state autonomy without preventing states from working collectively. They wanted

to protect the political rights of all free men but also feared mob rule. Delegates replaced the *Articles of Confederation* rather than make revisions.

Although James Madison is known as the father of this new contract—the *Constitution*—George Washington’s support gave the convention and the *Constitution* hope of success due to his perceived sense of fairness, his overall credibility, and his reputation as a non-partisan leader.

After rejecting a monarchy and living with the weaknesses of the government set up under the *Articles of Confederation* during the revolutionary period, the delegates opted for a new system with a stronger national government balanced by state and local power. The new structure would employ separation of power as well as checks and balances between branches (legislative, executive, and judicial). Division of power between branches of government and between the federal and state governments, slavery, trade, taxes, foreign affairs, representation, and even the procedure to elect a president were just a few of the contentious issues of the Convention. Diverging plans, strong egos, regional demands, and states’ rights made solutions difficult. Five months of debate, compromise, and creative strategies produced a new constitution creating a federal representative republic with a stronger national government than existed under the *Articles of Confederation*, leaving considerable power with the state governments.

Ten months of public and private debate were required to secure ratification by the minimum nine states. Even then Rhode Island and North Carolina held out until after the adoption of a Bill of Rights.

Consider the Original

“For we are sent hither to consult *not* contend, with each other;
and Declaration of a fix’ Opinion, and of determined Resolutions never to change it,
neither enlighten nor convince us.”

Let’s decipher this statement... Franklin says they come to the convention to consult on important issues and not to be contentious or argumentative with each other. Individuals who have declared their opinions to be fixed and unchangeable are not there to consult; and, they are also not likely to persuade others to their point of view when they approach all discussion from this contentious or argumentative position.

Benjamin Franklin, Speech in Congress, June 11, 1787¹¹ (Credit: Joseph-Siffrede Duplessis, Prints and Photographs Division of the Library of Congress)

Chart 2.7 Excerpt from Ben Franklin

No decision about structure, function, or agenda for the new Republic’s government was easy. Delegates from small states did not want their interests pushed aside by populous states like Virginia. Everyone was concerned about slavery, no matter which side of this contentious issue was supported.

Representatives from southern states worried that delegates from free states might try to outlaw slavery nationwide. Conversely, free states feared southerners might attempt to make slavery permanent.

They all agreed on the election of George Washington, former commander of the Continental Army and hero of the American Revolution, to chair the convention. A core question needed to be answered. If you

intend to implement a representative republic, how do you represent all states and citizens in a fair and equitable manner regardless of the geographical size or population of each state?



Howard Chandler Christy's interpretation of the signing of the *Constitution*, painted in 1940. (Credit: Architect of the Capitol at <https://www.aoc.gov/art/other-paintings-and-murals/signing-constitution>)

How do you organize representation in a republic?

The *Constitution* consists of a **preamble** and seven articles. The first three articles divide the national government into three branches—the legislative branch, the executive branch, and the federal judiciary—and describe the powers and responsibilities of each, while

establishing a government based upon separation of powers. In Article I, ten sections describe the structure of Congress, the basis for representation for both the House of Representatives and the Senate, the requirements for serving in Congress, the length of Congressional terms, and the powers of Congress taken together and separately for each chamber. The national legislature created by Article I reflects the compromises reached by the delegates regarding many issues discussed at the convention. Article I is much longer than the other articles describing the executive and judicial branches because the delegates were particularly concerned about lawmaking functions.

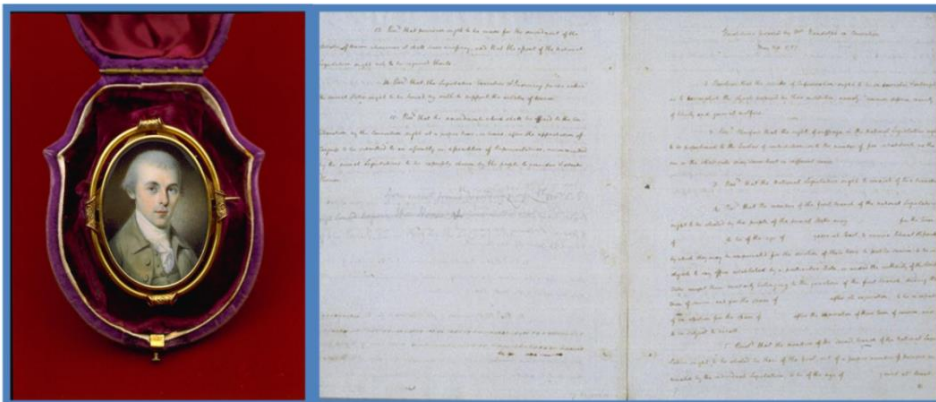


Image 2.8 Portrait of James Madison and Picture of the Virginia Plan

Miniature Portrait of James Madison Alongside a Portion of Notes on the Virginia Plan. (Credit: modification of images from the Library of Congress; at <https://www.loc.gov/item/95522332> and http://www.loc.gov/exhibits/creating-the-united-states/Constitution/Ratification/Assets/us0056_01_enlarge.jpg)

James Madison came to the convention prepared. Following months of preparation and research, he developed an initial working draft of a governmental

structure that was officially submitted by the Virginia delegation during the opening days of the convention. In addition to the suggestion to create some form of national executive, the delegates from Virginia called for a **bicameral legislature** consisting of two chambers, with a state's representatives in each chamber based on the state's population. The plan assumed that the national government would have greater powers and it would be wise to further divide legislative power between two chambers,

creating a second chamber we now call the Senate. Delegates from small states objected to this **Virginia Plan** and offered another proposal, the **New Jersey Plan**.

Consider the Original

The Debates in the Federal Convention of 1787; Tuesday, June 26
by James Madison

Mr. MADISON. In order to judge of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were,—first, to protect the people against their rulers; secondly, to protect the people against the transient impressions into which they themselves might be led. A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of government most likely to secure their happiness, would first be aware, that those charged with the public happiness might betray their trust. An obvious precaution against this danger would be, to divide the trust between different bodies of men, who might watch and check each other. In this they would be governed by the same prudence which has prevailed in organizing the subordinate departments of government, where all business liable to abuses is made to pass through separate hands, the one being a check on the other. It would next occur to such a people, that they themselves were liable to temporary errors, through want of information as to their true interest; and that men chosen for a short term, and employed but a small portion of that in public affairs, might err from the same cause. This reflection would naturally suggest, that the government be so constituted as that one of its branches might have an opportunity of acquiring a competent knowledge of the public interests.

(Credit: Excerpt from The National Archives, Founders Online at <https://founders.archives.gov>)

Chart 2.8 Excerpt from James Madison

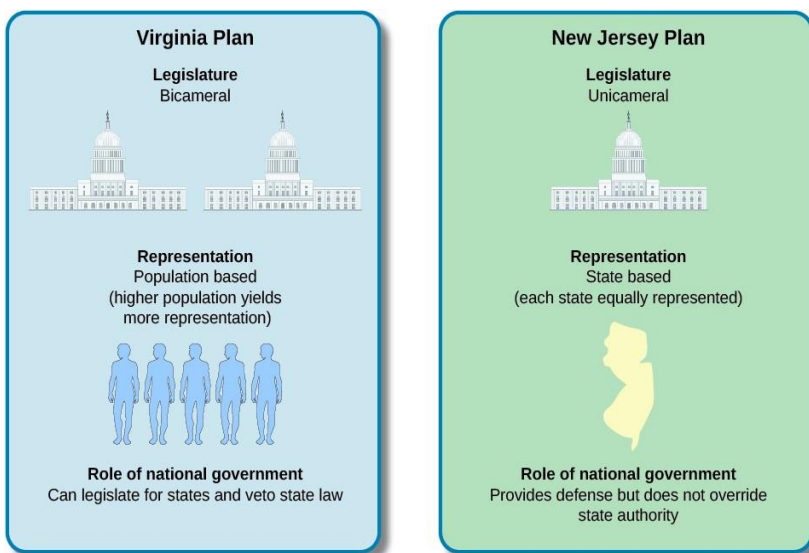


Chart 2.9 Examples of the Virginia and New Jersey Plans

The **New Jersey Plan**, called for a **unicameral legislature** with one chamber and each state possessing one vote with a weak executive committee removable by a vote of the states. Thus, smaller states would have the same power in the national legislature as larger states.

Although many at the convention viewed this entire proposal as a weakness already observed under the *Articles of Confederation*, the supporters of this plan really wanted extremely limited change from the *Articles* with its limited national

power. In opposition to the New Jersey Plan, the larger states argued that because they had more residents, they should be allotted more legislators to represent their interests. They argued populations should be represented proportionally—equal access by individual citizen rather than equal share of power by states. As evidence the founders were concerned over the future under a weak alliance of

states, or confederation, examine Alexander Hamilton's concerns about state rivalry and dissension in *Federalist No. 6*.

Consider the Original

In Federalist No. 6, Alexander Hamilton states...

I shall now proceed to delineate dangers of a different and, perhaps, still more alarming kind—those which will in all probability flow from dissensions between the States themselves [...] who can seriously doubt that, if these States should either be wholly disunited, or only united in partial confederacies, the subdivisions into which they might be thrown would have frequent and violent contests with each other. To presume a want of motives for such contests as an argument against their existence, would be to forget that men are ambitious, vindictive, and rapacious. To look for a continuation of harmony between a number of independent, unconnected sovereignties in the same neighborhood, would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages.

The causes of hostility among nations are innumerable. There are some which have a general and almost constant operation upon the collective bodies of society. Of this description are the love of power or the desire of pre-eminence and dominion—the jealousy of power, or the desire of equality and safety. There are others which have a more circumscribed though an equally operative influence within their spheres. Such are the rivalships and competitions of commerce between commercial nations. And there are others, not less numerous than either of the former, which take their origin entirely in private passions; in the attachments, enmities, interests, hopes, and fears of leading individuals in the communities of which they are members. Men of this class, whether the favorites of a king or of a people, have in too many instances abused the confidence they possessed; and assuming the pretext of some public motive, have not scrupled to sacrifice the national tranquility to personal advantage or personal gratification.

(Credit: Alexander Hamilton, Federalist 6, The Federalist Papers; complete text at the National Archives at usa.gov <https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-6>)

Chart 2.10 Excerpt from Federalist Paper No. 6

Hamilton goes on to support his position with numerous historical examples of the weakness of confederations. Hamilton speaks eloquently of “dissensions between the States,” which is evidenced in the controversy over representation.^[1] Ultimately, compromise was achieved. The **Connecticut** or **Great Compromise** (suggested by Roger Sherman of Connecticut) effectively combined the New Jersey and Virginia Plans—a **bicameral** (two chambered) legislative body with a Senate where each state, regardless of size or population, received **equal representation** (2 senators for each state) and a House of Representatives where each state's population was counted to ensure **population-based representation** (total number of representatives divided by portion between the states based on total population and the total number of seats in the House).



Image 2.9 Painting of Roger Sherman

The Great Compromise that determined the structure of Congress soon led to another debate. When states took a census of their population for the purpose of allotting House representatives, should slaves be counted? Southern states were adamant that they should be, while delegates from northern states were vehemently opposed, arguing that representatives from southern states would not represent the interests of enslaved people. If slaves were not counted, however, southern states would have far fewer representatives in the House than northern states did. For example, if South Carolina were allotted representatives based solely on its free population, it would

receive only half the number it would have received if slaves, who made up approximately 43 percent of the population, were included.^[2]

How do we reconcile slavery and unalienable rights?

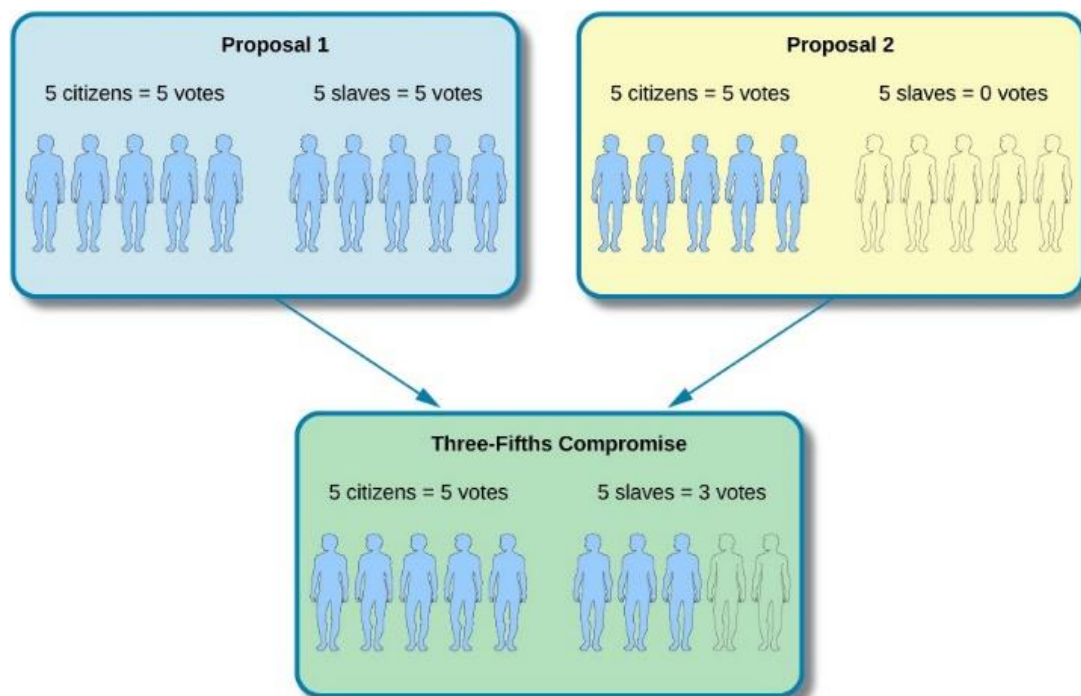


Chart 2.11 Example of the 3/5th Compromise Solution

Slavery was another fundamental division separating states. Many delegates believed slavery contradicted the ideals of the *Declaration of Independence*. How can you reconcile the idea of **unalienable rights** with the notion that some human beings are property? None of the southern states had abolished slavery and none wanted the new *Constitution* to interfere. Southern states developed

their economy with dependence on slavery—the cheapest possible labor. Other states hoped to abolish slavery entirely. Again, pragmatic compromise effectively maintained the institution of slavery and pushed the controversy off to a future reckoning. The **three-fifths compromise** allowed slaves to be taxed as property and counted as population for purposes of a state’s representation in the government.

This compromise resolved the impasse without truly satisfying anyone. For purposes of congressional representation, slave-holding states could count all their free population, including free African Americans and 60 percent (three-fifths) of their enslaved population. To mollify the north, the compromise allowed counting 60 percent of a state’s slave population for federal taxation, although no such taxes were ever collected.

Another compromise granted Congress the right to impose taxes on imports in exchange for a twenty-year prohibition on laws attempting to ban the importation of slaves to the United States, which would hurt the economy of southern states more than that of northern states. Because the southern states, especially South Carolina, had made it clear they would leave the convention if abolition were attempted, no serious effort was made by the framers to abolish slavery in the new nation, even though many delegates disapproved of the institution.

Consider the Original

The Library of Congress in *Creating the United States: Convention and Ratification* notes,

On August 21 the debate over the issue of commerce became very closely linked to another explosive issue—slavery. When Luther Martin of Maryland proposed a tax on slave importation, the convention was thrust into a strident discussion of the institution of slavery and its moral and economic relationship to the new government. John Rutledge of South Carolina, asserting that slavery had nothing at all to do with morality, declared, “Interest alone is the governing principle with nations.” Roger Sherman of Connecticut was for dropping the tender issue altogether before it jeopardized the convention.

George Mason of Virginia expressed concern over unlimited importation of slaves but later indicated that he also favored federal protection of slave property already held. This nagging issue of possible federal intervention in slave traffic, which Sherman and others feared could irrevocably split northern and southern delegates, was settled by, in Mason’s words, “a bargain.” Mason later wrote that delegates from South Carolina and Georgia, who most feared federal meddling in the slave trade, made a deal with delegates from the New England states. In exchange for the New Englanders’ support for continuing slave importation for 20 years, the southerners accepted a clause that required only a simple majority vote on navigation laws, a crippling blow to southern economic interests.

The bargain was also a crippling blow to those working to abolish slavery. Congregationalist minister and abolitionist Samuel Hopkins of Connecticut charged that the convention had sold out: “How does it appear . . . that these States, who have been fighting for liberty and consider themselves as the highest and most noble example of zeal for it, cannot agree in any political *Constitution*, unless it indulge and authorize them to enslave their fellow men . . . Ah! these unclean spirits, like frogs, they, like the Furies of the poets are spreading discord, and exciting men to contention and war.” Hopkins considered the *Constitution* a document fit for the flames.

On August 31 a weary George Mason, who had 3 months earlier written so expectantly to his son about the “great Business now before us,” bitterly exclaimed that he “would sooner chop off his right hand than put it to the **Constitution** as it now stands.” (Credit: <https://www.loc.gov/exhibits/creating-the-united-states/convention-and-ratification.html>)

The *Constitution* contained protections for slavery. Article I postponed the abolition of the foreign slave trade until 1808 (the **importation clause**); and, in the interim, those in slaveholding states were allowed to import as many slaves as they wished. (Credit: U.S. Const. art. I, § 9.)

Furthermore, the *Constitution* placed no restrictions on the domestic slave trade, so residents of one state could still sell enslaved people to other states. Article IV of the *Constitution*—which, among other things, required states to return fugitives to the states where they had been charged with crimes—also prevented slaves from gaining their freedom by escaping to states where slavery had been abolished—clause 3 of Article IV (known as the **fugitive slave clause**) allowed slave owners to reclaim their human property in the states where slaves had fled. (Credit: U.S. Const. art. IV, § 2.)

Chart 2.12 Notes from the Constitutional Convention

The *Constitution* also gave the federal government control over all “Territory or other Property belonging to the United States.” This would prove problematic when, as the United States expanded westward and population growth led to an increase in the power of the northern states in Congress, the federal government sought to restrict the expansion of slavery into newly acquired territories. Realizing that flaws in the *Articles of Confederation* could harm the new country and recognizing that the *Articles* could not easily be revised as originally intended, delegates from the states who met in Philadelphia from May

through September 1787 set about drafting a new governing contract. The United States that emerged from the Constitutional Convention in September was not a confederation. It was a federal republic with a strengthened national government. Congress had been transformed into a bicameral legislature with additional powers, and a national judicial system had been created. A distinct single executive was created. Moreover, each of these functions, the law-making function, the law-implementing function, and the law-interpreting function were assigned to separate branches of government—**separation of powers**. To satisfy the concerns of those fearing a strong central government, the framers of the Constitution created a system with separation of powers and checks and balances. Although such measures satisfied many, concerns still lingered that the federal government remained too powerful.

Separation of Powers and Checks and Balances

Although debates over slavery and representation in Congress occupied many at the convention, the chief concern was the challenge of increasing the authority of the national government while ensuring that it did not become too powerful. The framers resolved this problem through a **separation of powers**, dividing the national government into three separate branches and assigning different responsibilities to each one, as shown in the figure below. They also created a system of **checks and balances** by giving each of three branches of government the power to restrict the actions of the others, thus requiring them to work together. In adopting this separation of powers concept, the framers drew upon the theories of the political philosophy of Montesquieu who had warned: “When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty.”^[3] To satisfy the concerns of those fearing a strong central government, the framers of the Constitution created a system with separation of powers and checks and balances. Although such measures satisfied many, concerns still lingered that the federal government remained too powerful.

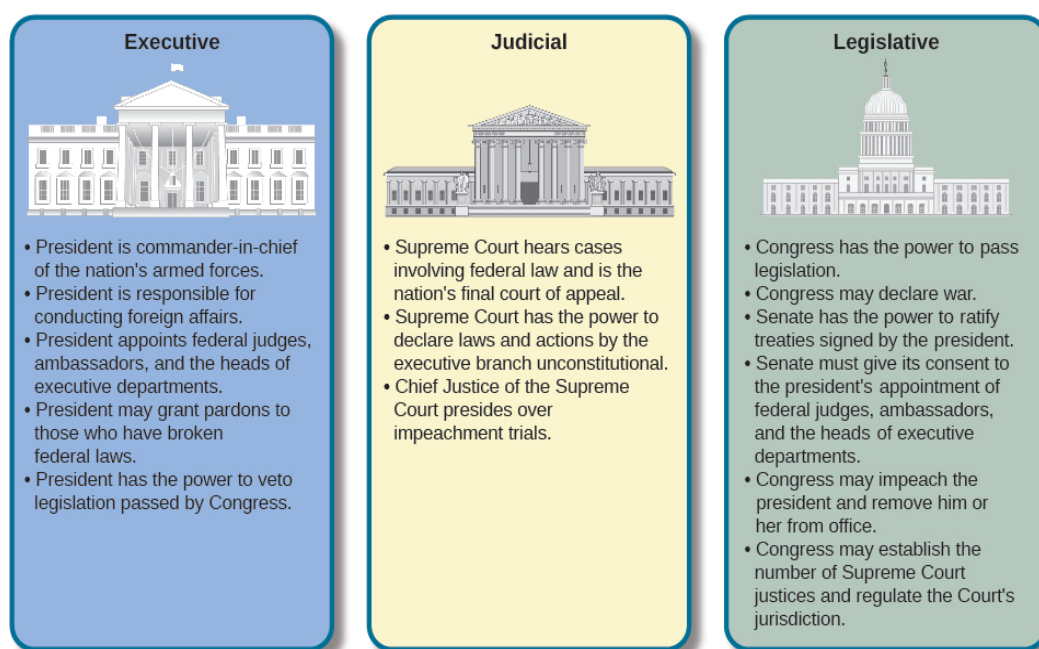


Chart 2.14 Visual of the Three Branches of Government

Congress was given the power to make laws, but the executive branch, consisting of the president and the vice president, and the federal judiciary, notably the Supreme Court, were created to, respectively, enforce laws and try cases arising under federal law. Neither of these branches had existed under the Articles of Confederation.

Thus, Congress can pass laws, but its power to do so can be checked by the president, who can **veto** potential legislation so that it cannot become a law. Later, in the 1803 case of *Marbury v. Madison*, the U.S. Supreme Court established its own authority to rule on the constitutionality of laws, a process called judicial review.



A growing number of institutes and study centers focus on the *Constitution* and the founding of the republic. Examples such as the [Institute for the American Constitutional Heritage](#) and the [Bill of Rights Institute](#) have informative public websites with documents and videos. Another example is the [National Constitution Center](#) that also holds programs related to aspects of the enduring U.S. Constitution. You can also access a free-online course offered by Hillsdale College at [Constitution 101: The Meaning and History of the Constitution](#).

Constitutional Convention Decisions				
Congress	President	Judiciary	Federalism	Slavery
2 chambers to check on each other; House of Representatives (based on population; elected to short 2-year terms) Senate (based on equal representation; longer 6-year terms for stability)	Separate election system; Not selected by Congress; Fixed 4-year terms	Independent from Congress and the executive; to make judgements under the law; interpreting the Constitution	Create new relationship between states and national government; preserve significant level of autonomy for states subject to future interpretation	Compromise on this issue; postponement of settlement; 3/5ths Clause; Importation Clause; Fugitive Slave Clause

Chart 2.14 Image of the Decisions Made at the Constitutional Convention

Congress is also able to limit the president's power as commander-in-chief of the armed forces by refusing to declare war or provide funds for the military. To date, the Congress has never refused a president's request for a declaration of war, but they have withdrawn funds for the military to impact presidential discretion in use of military. The president must also seek the advice and consent of the Senate before appointing members of the Supreme Court and ambassadors, key Executive Department officials and the Senate must approve the ratification of all treaties signed by the president.

Congress may even remove the president from office. To do this, both chambers of Congress must work together. The House of Representatives impeaches the president by bringing formal charges against him or her, and the Senate tries the case in a proceeding overseen by the Chief Justice of the Supreme Court. The president is removed from office if found guilty.

Consider the Original

From Federalist 51: The Structure of Government Must Furnish the Proper Checks and Balances Between the Departments,

Author: James Madison

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power The only answer that can be given is, that....., by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the *necessary constitutional means* and *personal motives* to resist encroachments of the others..... Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights...

Credit: Library of Congress at <https://guides.loc.gov/federalist-papers/text-51-60>

Chart 2.15 Excerpt from Federalist Paper No. 51

Constitutions: Questions to Consider

1. How was the controversy over representation resolved?
2. Why was slavery not abolished with the *Constitution*?
3. What does separation of powers mean?
 1. *bicameralism; two chambers in the national legislature; one population based and the other with equal representation for each state*
 2. *open for discussion; but southern states made it clear they would not agree to the constitution if it contained the full abolition of slavery; the potential for slave trade abolition was put into the constitution and southern representation in the House of Representatives was weakened by the 3/5ths Compromise*
 3. *executive, legislative, and judicial powers were divided into separate branches of government with each branch acting as a check on the other in the hope of making abuse of power by one branch more difficult*

Terms to Remember

bicameral legislature—a legislature with two houses, such as the U.S. Congress

equal representation—legislative representatives for each state to be exactly equal regardless of population

federal—a structure of government in which power is divided between state governments and a national government

Great Compromise—a compromise between the Virginia Plan and the New Jersey Plan that created a two-house Congress; representation based on population in the House of Representatives and equal representation of states in the Senate

New Jersey Plan—a plan that called for a one-house national legislature; each state would receive one vote

Population-based representation—legislative representatives for each state based upon the state's population rather than geographical size or any other factor

separation of powers—the sharing of powers among three separate branches of government

Three-Fifths Compromise—a compromise between northern and southern states that called for counting of all a state's free population and 60 percent of its slave population for both federal taxation and representation in Congress

unicameral—a legislature with only one house, like the Confederation Congress or the legislature proposed by the New Jersey Plan

Virginia Plan—a plan for a two-house legislature; representatives would be elected to the lower house based on each state's population; representatives for the upper house would be chosen by the lower house

Constitutions: Works Consulted

1. Hamilton, Alexander, Federalist 6, The Federalist Papers; National Archives at USA.gov.
2. U.S. Department of Commerce; Bureau of the Census, 1790. Statistical Abstract of the United States;; Washington, D.C.; Department of Commerce.
3. Baron de Montesquieu, Charles de Secondat; The Spirit of the Laws, Book XI, 1748.

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PUBLIC DOMAIN CONTENT

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2.4 The U.S. Constitution: Ratification

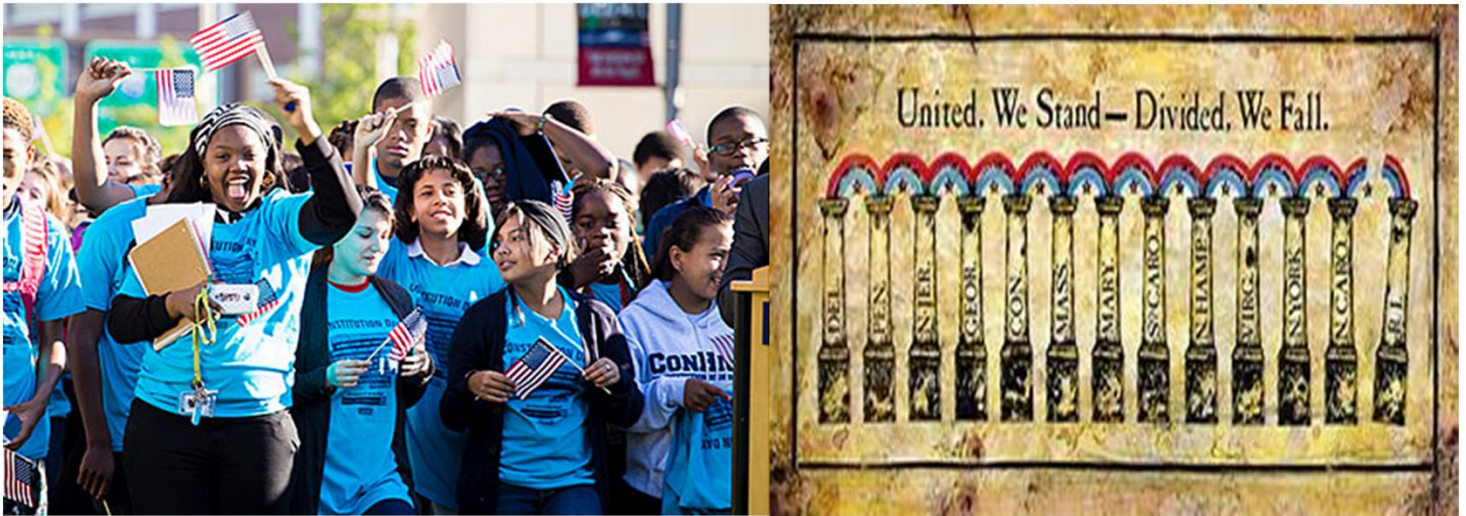


Image 2.10 Photo of Children Celebrating Constitution Day and Drawing of Motto "United. We Stand. Divided. We Fall.

Students celebrate Constitution Day. The original constitution day was September 17, 1787, when the ratification process began. The process took over 10 months to achieve the objective of establishing a new system of national government for the United States of America. The ratification process was hotly debated in state ratifying conventions (pictured below as individual pillars). (Credit: The Constitution Center at <https://www.constitutioncenter.org/constitution-day/>) and Credit: Library of Congress; Prints and Photographs Online Catalog (PPOC) at loc.gov.

Learning Objectives

- Identify the steps required to ratify the *Constitution*.
- Describe arguments the framers raised in support of a strong national government.
- Discuss counterpoints raised by the Anti-Federalists.

Chart 2.16 Learning Objectives on the Anti-Federalists

On September 17, 1787, the delegates to the Constitutional Convention in Philadelphia voted to approve the document they had drafted over the course of many months. Before it could become the law of the land, the *Constitution* faced another hurdle. It had to be **ratified** by the states.

What is the process of approval?

Article VII, the final article of the *Constitution*, required that before the *Constitution* could become law and a new government could form, the document had to be **ratified** by nine of the thirteen states. Eleven days after the delegates at the Philadelphia convention approved it, copies of the *Constitution* were sent to each of the states, which were to hold **ratifying conventions** to either accept or reject. This approach to **ratification** was unusual. Authority under the *Articles of Confederation* and the Confederation Congress had rested on the consent of the states; changes to the nation's government should also have

been ratified by the state legislatures. *Instead, by calling upon state legislatures to hold ratification conventions to approve the Constitution, the framers avoided asking the legislators to approve a document that would require them to give up a degree of their own power.* The men attending ratification conventions would be delegates elected by their neighbors. Delegates were not being asked to relinquish their own power; in fact, they were being asked to place limits upon the power of their state legislators.

Consider the Original

John Adams and Thomas Jefferson carried on a lively correspondence regarding the ratification of the *Constitution*. In the following excerpt (reproduced as written) from a letter dated March 15, 1789, after the *Constitution* had been ratified by nine states but before it had been approved by all thirteen, Jefferson reiterates his previously expressed concerns that a bill of rights to protect citizens' freedoms was necessary and should be added to the *Constitution*:

"In the arguments in favor of a declaration of rights, . . . I am happy to find that on the whole you are a friend to this amendment. The Declaration of rights is like all other human blessings alloyed with some inconveniences, and not accomplishing fully its object. But the good in this instance vastly overweighs the evil. . . . This instrument [the *Constitution*] forms us into one state as to certain objects, and gives us a legislative & executive body for these objects. It should therefore guard us against their abuses of power. . . . Experience proves the inefficacy of a bill of rights. True. But tho it is not absolutely efficacious under all circumstances, it is of great potency always, and rarely inefficacious. . . . There is a remarkable difference between the . . . Inconveniences which attend a Declaration of rights, & those which attend the want of it. . . . The inconveniences of the want of a Declaration are permanent, afflicting & irreparable: they are in constant progression from bad to worse."

(Credit: Letter from Thomas Jefferson to James Madison, March 15, 1789, https://www.gwu.edu/~ffcp/exhibit/p7/p7_1text.html)

Chart 2.17 Excerpt from Letter Between Thomas Jefferson and James Madison

Because the new nation was a republic with power held by the people through elected representatives, it was appropriate to leave the ultimate acceptance or rejection of the *Constitution* to the nation's citizens. If convention delegates, who were chosen by popular vote, approved it, then the new government could rightly claim that it ruled with the **consent** of the people. The greatest sticking point when it came to ratification, as it had been at the Constitutional Convention itself, was the relative power of the state and federal governments. The framers believed the central government needed power to maintain and command an army and a navy, to impose taxes, and to force the states to comply with laws passed by Congress. Many people resisted increasing the powers of the national government at the expense of the states. Edmund Randolph of Virginia disapproved of the *Constitution* because it created a new national judicial system. The fear was that the federal courts were too far away. State courts were located closer to the homes of both plaintiffs and defendants, and it was believed that judges and juries in state courts could better understand the actions of those who appeared before them. In response to these fears, federal courts were created in each of the states.¹⁴ Perhaps the greatest source of dissatisfaction with the *Constitution* was that it did not guarantee protection of individual liberties. State governments

had given jury trials to residents charged with violating the law and allowed their residents to possess weapons for their protection. Some had practiced religious tolerance. The *Constitution* did not contain reassurances that the national government would do so. This led opponents to call for a bill of rights and the refusal to ratify the document without one. The lack of a bill of rights was especially problematic in Virginia, as the *Virginia Declaration of Rights* was the most extensive rights-granting document among the states. The promise that a bill of rights would be drafted for the *Constitution* persuaded delegates in many states to support ratification.^[2]

Citizens quickly separated into two groups: **federalists** and **anti-federalists**. The **federalists** believed a strong government was essential for both national defense and economic growth. A national currency would ease business transactions. The central authority to regulate trade and place tariffs on imports would protect merchants from foreign competition. Furthermore, the power to collect taxes would allow the national government to fund internal improvements like roads, which would also help commerce.

Opponents of ratification were called **anti-federalists**. Anti-federalists feared the power of the national government and believed more accessible state legislatures could better protect freedoms. Some anti-federalists, like Patrick Henry, feared that the centralization of power would lead to the creation of a political aristocracy, to the detriment of state sovereignty and individual liberty. Many distrusted the formation of an elite and believed a strong national government would favor the rich over those of “the middling sort.”^[3]

Related to these concerns were fears that the strong central government would levy taxes on farmers and planters, who lacked the hard currency needed to pay them. Many also believed Congress would impose tariffs on imports making American agricultural products less welcome in Europe and in European colonies in the western hemisphere. Some anti-federalists believed that a large federal republic could not work as intended. Americans had long held that virtue was necessary in a nation where people governed themselves (i.e., putting self-interest and petty concerns aside for the good of the larger community). In small republics, similarities among community members would naturally lead them to the same positions and enable those in power to understand the needs of their neighbors. In a larger republic, encompassing nearly the entire Eastern Seaboard and running west to the Appalachian Mountains, people would lack such a strong commonality of interests.^[4]

Concern	Description of a Few Concerns of Anti-Federalists
protecting liberties	no Bill of Rights—no written guarantee that national government will protect individual liberties
large republic	no real common interests in such a large republic; people’s interests overlooked
states v. national	state power will be eroded by Constitution; supremacy clause; etc.
national government	too powerful; congressional power to levy taxes and tariffs may hurt general public; citizens might be harassed by a standing army; elected officials had no term limits
slavery	some argued the <i>Constitution</i> gave too much power to slave states

Chart 2.18 Concerns of the Anti-Federalists

For obvious reasons, smaller and less populous states favored the *Constitution* and the protection of a strong central government. Delaware and New Jersey ratified the document within a few months after it was sent to them for approval in 1787. Connecticut ratified it early in 1788. Some of the larger states like Pennsylvania and Massachusetts also voted for the new government. New Hampshire became the ninth state to ratify the Constitution in the summer of 1788.



(a)



(b)

Image 2.11 Pillars of the Republic Political Drawings

This *Massachusetts Sentinel* cartoon (a) encourages the state's voters to join Georgia and neighboring Connecticut in ratifying the Constitution. Less than a month later, on February 6, 1788, Massachusetts became the sixth member of the newly formed federal union (b). (Credit: Library of Congress)

Although the *Constitution* went into effect following ratification by New Hampshire, four states remained outside the newly formed union.

Two were the wealthy and populous states of Virginia and New York. In Virginia, James Madison's active support and the intercession of George Washington, who wrote letters to the convention, changed the minds of many. Some who had initially opposed the *Constitution*, such as Edmund Randolph, were persuaded that the creation of a strong union was necessary for the country's survival and changed their position. Other Virginia delegates were swayed by the promise that a bill of rights like the *Virginia Declaration of Rights* would be added after the *Constitution* was ratified.

On June 25, 1788, Virginia became the tenth state to grant its approval. Although arguments of the Federalists were persuasive, it is unclear whether they succeeded in changing the minds of New Yorkers.

Once Virginia ratified the *Constitution* on June 25, 1788, New York realized that it had little choice but to do so as well. If it did not ratify the *Constitution*, it would be the last large state that had not joined the union. A year later, North Carolina became the twelfth state to approve. Alone and realizing it could not hope to survive on its own, Rhode Island became the last state to ratify, nearly two years after New York.

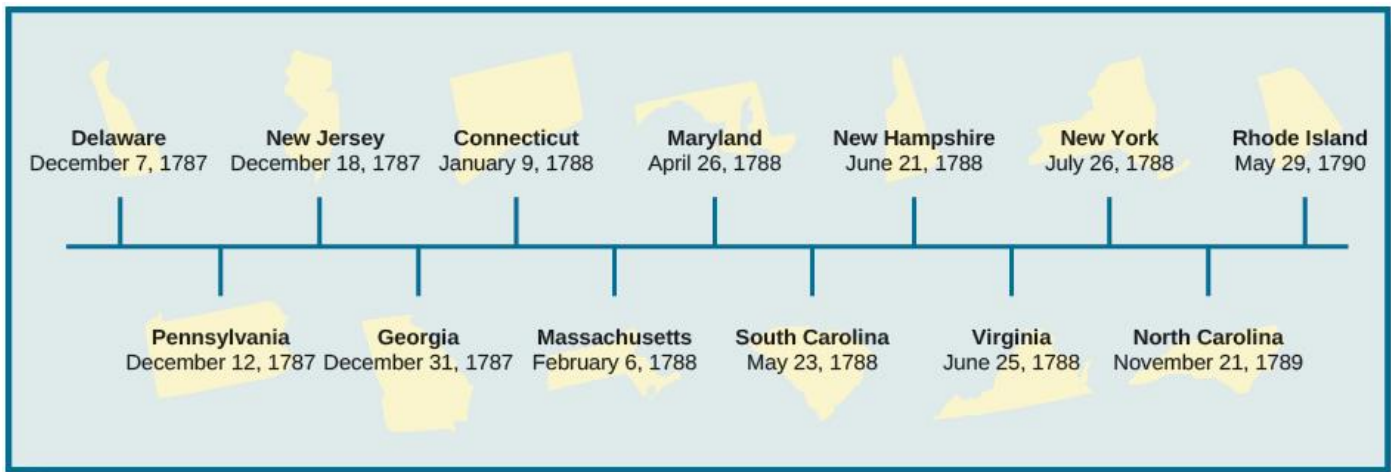


Chart 2.19 Timeline for Ratification of the U.S. Constitution

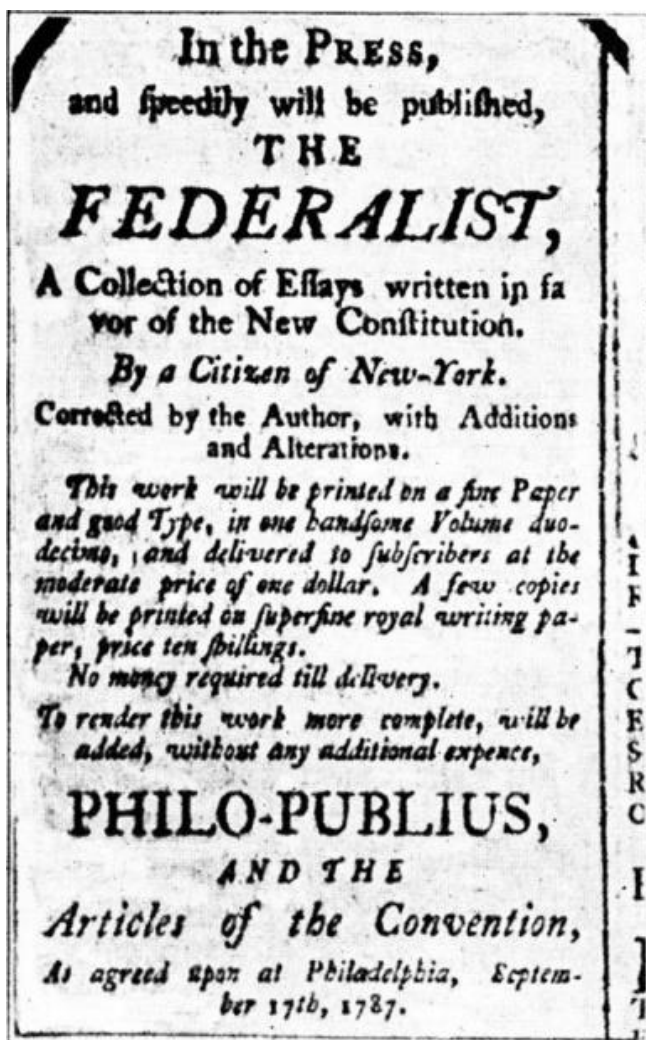


Image 2.12 Photo of Newspaper and Federalist Paper

From 1787 to 1788, Alexander Hamilton, James Madison, and John Jay authored a series of essays intended to convince Americans, especially New Yorkers, to support the new *Constitution*. These essays, which originally appeared in newspapers, were collected and published together under the title *The Federalist* in 1788. They are now known as *The Federalist Papers*. (Credit: Library of Congress)

The last major hurdle was New York's approval. Facing considerable opposition, Alexander Hamilton, James Madison, and John Jay wrote a series of essays, beginning in 1787, arguing for a strong national government and support of the *Constitution*. Later compiled as *The Federalist* and now known as *The Federalist Papers*, these eighty-five essays were originally published in newspapers in New York and other states under the name of Publius, a supporter of the Roman Republic.

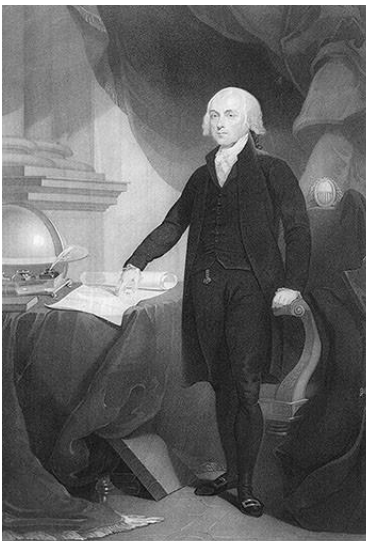
The essays addressed a variety of issues that troubled citizens. In *Federalist* No. 51, attributed to James Madison, the author assured readers they did not need to fear that the national government would grow too powerful. The federal system, in which power was divided between the national and state governments and the division of authority within the federal government into separate branches, would prevent any one part of the government from becoming too strong.

Furthermore, tyranny could not arise in a government in which "the legislature necessarily predominates." Finally, the desire of office holders in each branch of government to exercise the powers given to them, described as "personal motives," would encourage them to limit any attempt by the other branches to overstep their authority.

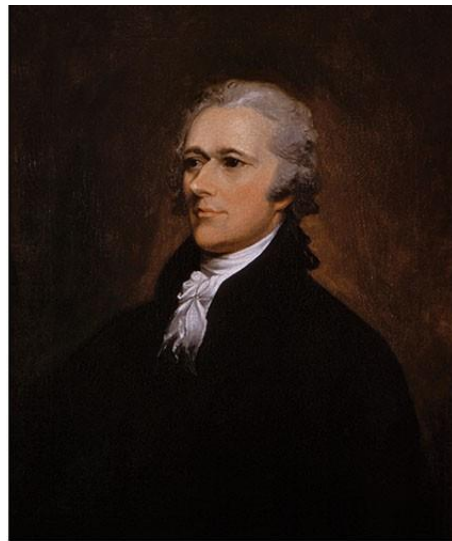
According to Madison, “Ambition must be made to counteract ambition.” This goal was to be achieved with the separation of powers between various levels of government (local to national) and by the checks and balances between the branches of government (legislative, executive, and judicial) at each level.

In *Federalist* No. 35, Hamilton argued that people’s interests *could* be represented by men who were not their neighbors. Hamilton asked rhetorically, would American citizens best be served by a representative “whose observation does not travel beyond the circle of his neighbors and his acquaintances” or by someone with more extensive knowledge of the world?

To those who argued that merchant and land-owning elite would come to dominate Congress, Hamilton countered that the majority of men currently sitting in New York’s state senate and assembly were landowners of moderate wealth and that artisans usually chose merchants, “their natural patron[s] and friend[s],” to represent them.



(a)



(b)

Image 2.13 Portraits of James Madison and Alexander Hamilton

James Madison (a) and Alexander Hamilton (b) who played a vital role in the formation of the *Constitution*. Madison was an important participant in the Constitutional Convention and authored many of *The Federalist Papers*.

(Credit: Library of Congress; National Archives and Records Administration)

An aristocracy would not arise, and if it did, its members would have been chosen by lesser men.

Similarly, Jay reminded New Yorkers in *Federalist* No. 2 that union had been the goal of Americans since the time of the Revolution.

A desire for union was natural among people of such “similar sentiments” who “were united to each other by the strongest ties,” and the government proposed by the *Constitution* was the best means of achieving that union.

Madison also addressed fears of elite dominance in *Federalist* No. 10.

Americans need not fear the power of

factions or special interests, he argued, for the republic was too big and the interests of its people too diverse to allow the development of large, powerful political parties. Likewise, elected representatives, who were expected to “possess the most attractive merit,” would protect the government from being controlled by “an unjust and interested [biased in favor of their own interests] majority.” For those who worried that the president might indeed grow too ambitious or king-like, Hamilton, in *Federalist* No. 68, assured placing the leadership of the country in the hands of one person was not dangerous. Electors from each state would select the president. Because these men would be members of a “transient” body called together only for the purpose of choosing the president and would meet in separate deliberations in each state, they would be free of corruption and beyond the influence of the “heats and ferments” of the voters. Indeed, Hamilton argued in *Federalist* No. 70, instead of fearing a tyrannical president,

Americans should realize that it was easier to control one person than it was to control many. Furthermore, one person could also act with an “energy” that Congress did not possess. Making decisions alone, the president could decide what actions should be taken faster than could Congress, whose deliberations, because of its size, were necessarily slow. At times, the “decision, activity, secrecy, and dispatch” of the chief executive might be necessary.



The Library of Congress has [*The Federalist Papers*](#) on their website. The Anti-Federalists also produced a body of writings, less extensive than *The Federalists Papers*, which argued against the ratification of the *Constitution*. However, these were not written by one small group of men as *The Federalist Papers* had been. A collection of the writings that are unofficially called [*The Anti-Federalist Papers*](#) is also available online.

Although arguments of the Federalists were persuasive, it is unclear whether they succeeded in changing the minds of New Yorkers. Once Virginia ratified the *Constitution* on June 25, 1788, New York realized that it had little choice but to do so as well. If it did not ratify the *Constitution*, it would be the last large state that had not joined the union. A year later, North Carolina became the twelfth state to approve. Alone and realizing it could not hope to survive on its own, Rhode Island became the last state to ratify, nearly two years after New York.

Interesting Information

One of the objections raised to the *Constitution*’s new government was that it did not set term limits for members of Congress or the president. Those who opposed a strong central government argued that this failure could allow a handful of powerful men to gain control of the nation and rule it for as long as they wished. Although the framers did not anticipate the idea of career politicians, those who supported the *Constitution* argued that reelecting the president and reappointing senators by state legislatures would create a body of experienced men who could better guide the country through crises. A president who did not prove to be a good leader would be voted out of office instead of being reelected. In fact, presidents long followed George Washington’s example and limited themselves to two terms. Only in 1951, after Franklin Roosevelt had been elected four times, was the Twenty-Second Amendment passed to restrict the presidency to two terms.

Chart 2.20 The Issue of Term Limits

Constitutions: Questions to Consider	
1. What were the steps required to ratify the 1787 Constitution after the convention ended?	
2. Why did so many people oppose ratification of the <i>Constitution</i> , and how was their opposition partly overcome?	
3. Are term limits a good idea and should we extend term limits to members of the U.S. Congress? Why or why not?	
4. Should term limits be added to the <i>Constitution</i> ? Why or why not?	
1. each state had to ratify the constitution through a separate ratifying convention elected by the people of each state and nine states were required to ratify by this method before the U.S. Constitution went into effect; the ratification process differs from the amendment process in that state legislatures may take the final step of approval	
2. the anti-federalists made many arguments against what they considered a far too powerful central government, but the promise to pass a bill of rights partly overcame this strong opposition	
3. open to opinion	
4. open for debate	

Constitution: Terms to Remember

Anti-federalists—those who did not support ratification of the *Constitution*

Federalists—those who supported ratification of the *Constitution*

Federalist Papers—a collection of eighty-five essays written by Alexander Hamilton, James Madison, and John Jay in support of ratification of the *Constitution*

ratification—method of formal acceptance of the U.S. *Constitution*; gaining the consent of the citizens

Term Limits—limiting the president and members of Congress to a specified number of terms of office; no

Constitutions: Works Consulted

1. Pauline Maier. 2010. *Ratification: The People Debate the Constitution, 1787-1788*. New York: Simon & Schuster, 464. [\[1\]](#)
2. Maier, *Ratification*, 431. [\[2\]](#)
3. Isaac Krannick. 1999. "The Great National Discussion: The Discourse of Politics in 1787." In *What Did the Constitution Mean to Early Americans?* ed. Edward Countryman. Boston: Bedford/St. Martins, 52. [\[3\]](#)
4. Krannick, *Great National Discussion*, 42-43. [\[4\]](#)

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2.5 Constitutions: Amending the U.S. Constitution

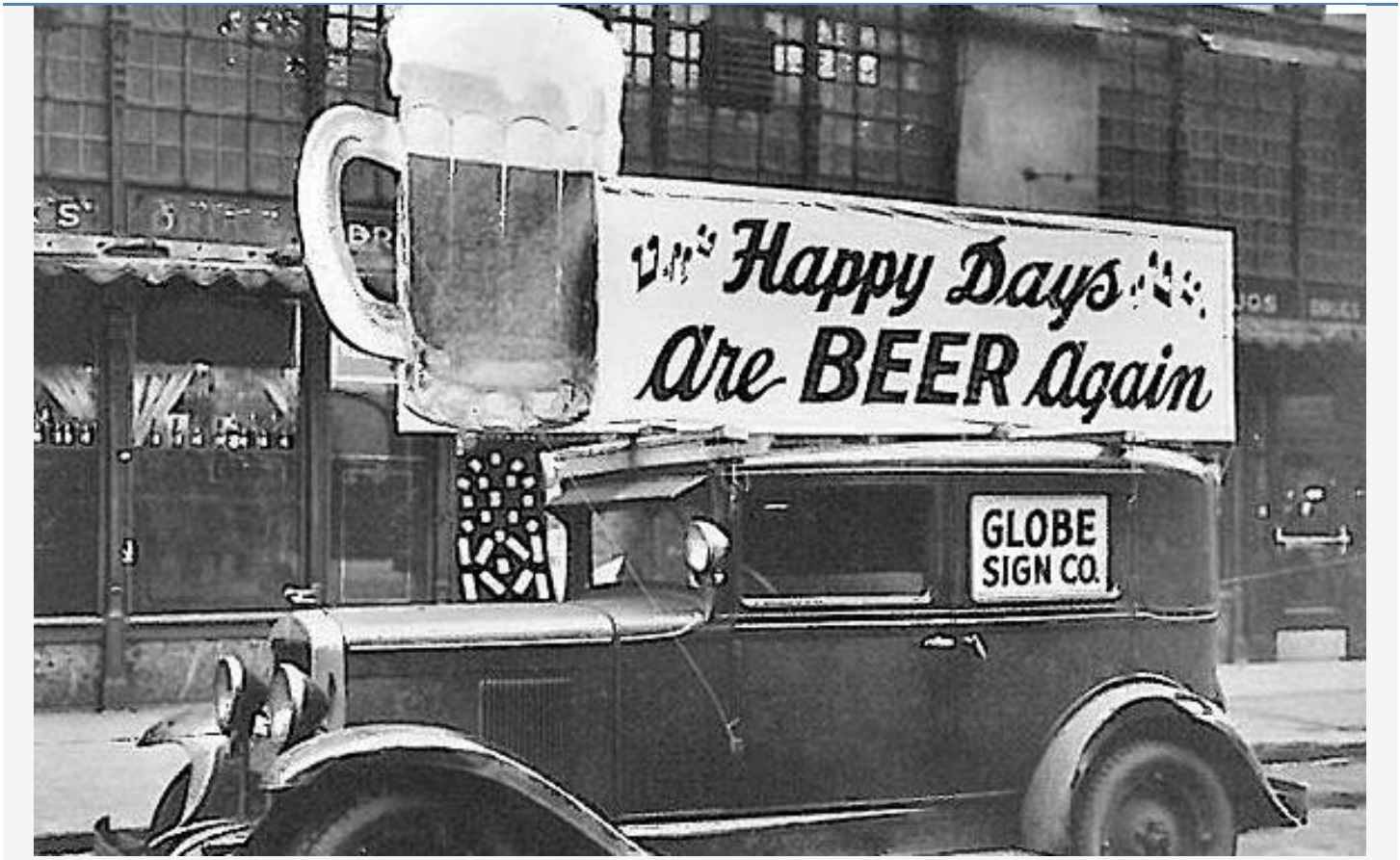


Image 2.14 Photo of Beer Truck at the End of Prohibition

The Twenty-First Amendment overturned prohibition, the [18th Amendment](#), thus ending Prohibition. (Credit: The National Constitution Center at <https://constitutioncenter.org/blog/happy-birthday-21st-amendment>)

Learning Objectives

- Describe how the *Constitution* may be formally amended/changed.
- Explain the contents and significance of the Bill of Rights.
- Discuss the importance of amendments.

Chart 2.21 Learning Objectives on Amending the Constitution

A major problem with the *Articles of Confederation* was the inability to adapt and change without unanimous consent. The framers learned this lesson well. One of the strengths they built into the *Constitution* was the ability to **amend** it to meet the nation's needs and address concerns or structural elements they had not anticipated.

Since ratification in 1789, the *Constitution* has changed only 27 times. The first 10 amendments were added in 1791. Responding to charges by anti-federalists that the *Constitution* made the national

government too powerful and provided no protections for the rights of individuals, the newly elected federal government tackled the issue of guaranteeing liberties for American citizens. James Madison, a member of Congress from Virginia, took the lead in drafting nineteen potential changes to the *Constitution*.

Madison followed the procedure outlined in Article V that says **amendments** can originate from one of two sources. First, they can be proposed by Congress and approved by a two-thirds majority in both the House and the Senate before being sent to the legislatures in all the states. If three-quarters of state legislatures vote to approve an amendment, it becomes part of the *Constitution*. A second method allows for the petitioning of Congress by the states: Upon receiving such petitions from two-thirds of the states, Congress must call a convention for the purpose of proposing amendments, which would then be forwarded to the states for ratification by the required three-quarters. All the current constitutional amendments were created using the first method.

Article V: Procedures for Amending the <i>Constitution</i>	
Origination	Origination
Proposed by Congress	Petitioned by 2/3 of States
Approval	Approval
2/3 majority in the House	Congress calls convention to propose amendment
2/3 majority in the Senate	forwarded to states for ratification
3/4 vote of all state legislatures required	3/4 vote of all state legislatures required

Chart 2.22 Methods for Amending the U.S. Constitution

Having drafted nineteen proposed amendments, Madison submitted them to Congress. Only twelve were approved by two-thirds of both the Senate and the House of Representatives and sent to the states for ratification. Of these, only ten were accepted by three-quarters of the state legislatures. In 1791, these first ten amendments were added to the *Constitution* and became known as the **Bill of Rights**. As ratified, the Bill of Rights only applied to actions of the national government. Only after the ratification of the 14th amendment could the Bill of Rights potentially be applied to actions of state and local government.

The ability to change the *Constitution* has made it a flexible document. Framers made amending the document sufficiently difficult that it has not been changed repeatedly; only seventeen amendments have been added since the ratification of the first ten (one of these, the Twenty-Seventh Amendment, was among Madison’s original 12 proposals sent to the states for ratification).

 Learn more about the formal [process of amending the Constitution](#) and view exhibits related to the passage of specific amendments at the National Archives website.

Consider the Original

The Bill of Rights: A Transcription

The Preamble to *The Bill of Rights*

Congress of the United States begun and held at the City of New-York, on Wednesday the fourth of March, one thousand seven hundred and eighty nine.

THE Conventions of a number of the States, having at the time of their adopting the *Constitution*, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution. RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the *Constitution* of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said *Constitution*; viz.

Note: The capitalization and punctuation in this version is from the enrolled original of the Joint Resolution of Congress proposing the Bill of Rights, which is on permanent display in the Rotunda of the National Archives Building, Washington, D.C. Page URL: http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html U.S. National Archives & Records Administration 8601 Adelphi Road, College Park, MD, 20740-6001 • 1-86-NARA-NARA • 1-866-272-6272 USA.gov, National Archives, America's Founding Documents> The Bill of Rights: A Transcription at <https://www.archives.gov/founding-docs/bill-of-rights-transcript>

Chart 2.23 Excerpt from the Bill of Rights

Defining Civil Liberties

For language precision, political scientists and legal experts distinguish between civil liberties and civil rights, even though the *Constitution* has been interpreted to protect both. We often envision **civil liberties** as limitations on government power, intended to protect freedoms from illegal government intrusion. For example, the First Amendment denies the government the power to prohibit “the free exercise” of religion; the states and the national government cannot forbid people to follow a religion of their choice, even if politicians and judges think the religion is misguided, blasphemous, or otherwise inappropriate. You are free to create your own religion and recruit followers to it (subject to the U.S. Supreme Court deeming it a religion), even if both society and government disapprove of its tenets. That said, the way you practice your religion may be regulated if it impinges on the rights of others. Similarly, the Eighth Amendment says the government cannot impose “cruel and unusual punishments” on individuals for their criminal acts. Although the definitions of cruel and unusual have expanded over the years, the courts have generally and consistently interpreted this provision as making it unconstitutional for government officials to torture suspects.

Civil rights are guarantees that government officials will treat people equally and base decisions on the law rather than race, gender, or other personal characteristics. The *Constitution*’s civil rights guarantee makes it unlawful for a school or university run by a state government to treat students differently based on their race, ethnicity, age, sex, or national origin. In the 1960s and 1970s, many states had separate schools where only students of a certain race or gender were able to study. The courts determined that these policies violated the civil rights of students refused admission because of those rules.^[2] The idea that Americans—indeed, people in general—have fundamental rights and liberties was a core argument for independence. Writing the *Declaration of Independence* in 1776, Thomas Jefferson drew on the ideas

of John Locke to express the colonists’ belief in certain inalienable or natural rights that no ruler had the power or authority to deny them. It was a scathing legal indictment of King George III for violating the colonists’ liberties.



Although the *Declaration of Independence* does not guarantee specific freedoms, its language fundamentally inspired many states to adopt protections for civil liberties and rights in their own constitutions. It also expressed principles of the founding era that have resonated in the United States since its independence. Jefferson’s words “all men are created equal” became the centerpiece of struggles for the rights of women and minorities.

Actors and civil rights activists Sidney Poitier (left), Harry Belafonte (center), and Charlton Heston (right) on the steps of the Lincoln Memorial on August 28, 1963, during the March on Washington. (Credit: National Archives and Records Administration)

Image 2.15 Photo of Sidney Poitier, Harry Belafonte and Charlton Heston

How has the 1787 Constitution changed via amendment?

The Bill of Rights, the first ten amendments, was intended to quiet the fears of anti-federalists that the *Constitution* did not adequately protect individual liberties from actions of the national government and thus encourage their support of the new national government.

Bill of Rights	
1st Amendment	protected right to free speech, press, assembly, religion, and petition of government
2nd Amendment	protected right to bear arms
3rd Amendment	no quartering of soldiers during peace time in private homes without consent
4th Amendment	right to be secure in your property & person against unreasonable search or seizure
5th Amendment	grand jury, against double jeopardy & self incrimination, due process, eminent domain
6th Amendment	criminal procedure—speedy & public trial, impartial jury, counsel, etc.
7th Amendment	civil procedure—jury trial according to rules of common law
8th Amendment	no excessive bail or fine, no cruel and unusual punishment
9th Amendment	rights not enumerated still exist and belong to the people
10th Amendment	powers not delegated to US belong to the states & the people

Chart 2.24 First 10 Amendments to the U.S. Constitution

Protections for religion, speech, press, and assembly did not exist under English law—the right to petition the government did, however. The prohibition in the First Amendment against the establishment of an official church differed significantly from both English precedent and the practice of several states. The Fourth Amendment, protecting Americans from unwarranted search and seizure of their property, was also new.

GUARANTEEING YOUR FIRST AMENDMENT RIGHTS



The liberties of U.S. citizens are protected by the Bill of Rights, but potential or perceived threats to these freedoms arise constantly. This is especially true regarding First Amendment rights. Read about some of these threats at the [American Civil Liberties Union \(ACLU\)](http://aclu.org) website and let people know how you feel about these issues or check out American Center for Law and Justice (ACLJ) at <http://aclj.org/news>.

The Ninth and Tenth Amendments were intended to provide yet another assurance that people's rights would be protected, and the national government would not become too powerful. The Ninth Amendment guarantees that liberties and rights extend beyond those described in the preceding eight amendments of the Bill of Rights. This was an important acknowledgment that the protected rights were extensive, and the government should not attempt to interfere with them. The Supreme Court, for example, has held that the Ninth Amendment protects the right to privacy even though none of the preceding amendments explicitly mentions this right. The Tenth Amendment, one of the first submitted to the states for ratification, ensures that states possess all powers not assigned to the national government by the *Constitution*. This guarantee protected states' reserved powers. While covering the state regulation of areas such as marriage, divorce, intrastate transportation, education, public health and safety, Supreme Court decisions have concluded that these areas are not exclusive areas of state regulation. The Thirteenth Amendment abolished slavery in the United States. The Fourteenth Amendment granted citizenship and equal protection under the law regardless of race. It also prohibited states from depriving their residents of life, liberty, or property without a fair legal proceeding, known as "due process." Over the years, the Fourteenth Amendment has been used to require states to protect most of the same freedoms granted by the Bill of Rights. The Fifteenth Amendment was intended to guarantee the right to vote to the newly freed male slaves immediately after the Civil War, but this was undermined for decades by various state restrictive laws.

13th Amendment	abolition of the institution of slavery
14th Amendment	citizenship rights/responsibilities; equal protection; due process of law; protections
15th Amendment	extends voting rights to male citizens regardless of race; Native Americans not included

Chart 2.25 13th, 14th, 15, Amendments

After many years of campaigns for suffrage, the Nineteenth Amendment finally gave women the right to vote in 1920 after a tie vote in Tennessee. A 24-year old representative (Harry Burn, a Republican) cast the tie-breaking vote after a little push from his mother.¹⁴¹



Image 2.16 Photo of Women Working for the Vote

Suffragists encourage Ohio men to support votes for women. Before the Nineteenth Amendment was added to the Constitution in 1920, only a few western states such as Wyoming gave women the right to vote. These women seem to be attracting a primarily female audience to hear their cause. (Credit: The Library of Congress)

Subsequent amendments further extended suffrage. The Twenty-Third Amendment (1961) allowed residents of Washington, DC to vote for the president. The Twenty-Fourth Amendment (1964) abolished the use of poll taxes. Many southern states had used a poll tax, a tax placed on voting, to prevent poor persons from voting. The last extension of the suffrage occurred in 1971 during the Vietnam War. The Twenty-Sixth Amendment reduced the voting age from twenty-one to eighteen.

Many people complained that the young people who were serving in Vietnam should have the right to vote for or against those making decisions that might literally meant life or death. Other amendments have been proposed, including an amendment to guarantee equal rights to women, but all have failed.

19th Amendment	women guaranteed the right to vote
23rd Amendment	residents of the District of Columbia (Washington, D. C.) may vote for president of US
24th Amendment	poll taxes abolished; no poll tax stopping citizens from exercising right to vote
26th Amendment	all citizens over the age of eighteen years old may register and cast their vote

Chart 2.26 of 19th, 23rd, 24th, and 26th Amendments

Of the later amendments only one, the Twenty-First, repealed another amendment, the Eighteenth, which had prohibited the manufacture, import, export, distribution, transportation, and sale of alcoholic beverages.

Other amendments rectify problems that have arisen over the years or that reflect changing times.

For example, the Twelfth Amendment supersedes clause 3 of § 1 of Article II of the *Constitution*. According to the Article II, Section 1 of the *Constitution*, if two candidates each received a majority of the electoral votes but are tied, the House of Representatives would determine which one would be President. This amendment was enacted after the Election of 1800 when both the intended presidential candidate, Thomas Jefferson, was tied with the vice-presidential candidate, Aaron Burr. The amendment created our current system of electing the U.S. president, which now precludes this possibility.

The Seventeenth Amendment, ratified in 1913, gave voters the right to directly elect U.S. senators. The Twentieth Amendment, which was ratified in 1933 during the Great Depression, moved the date of the presidential inauguration from March to January. In a time of crisis, like a severe economic depression,

the president needed to take office almost immediately after being elected. The Twenty-Second Amendment, added in 1955, limits the president to two terms in office, and the Twenty-Seventh Amendment, first submitted for ratification in 1789, regulates the implementation of laws regarding salary increases or decreases for members of Congress.

The Eleventh Amendment, the first amendment adopted after the Bill of Rights, is extremely complicated from the judicial perspective, with federal courts taking multiple paths for interpretation of the language. Essentially, it deals with the issue of sovereign immunity (Is the government immune from prosecution?). Most attorneys understand that suits in the federal court system are more likely to achieve impartial results rather than suits filed against a state within the state's system.

In 1909 progressives in Congress attached a provision for an income tax to a tariff bill. Conservatives, hoping to kill the idea for good, proposed a constitutional amendment enacting such a tax; they believed an amendment would never receive ratification by three-fourths of the states. Much to their surprise, the amendment was ratified by one state legislature after another, and on February 25, 1913, with the certification by Secretary of State Philander C. Knox, the Sixteenth Amendment took effect. Yet in 1913, due to generous exemptions and deductions, less than 1 percent of the population paid income taxes at the rate of only 1 percent of net income. This document settled the constitutional question of how to tax income and, by so doing, effected dramatic changes in the American way of life.^[2]

11th Amendment	regarding lawsuits against states; may states be sued in court
12th Amendment	presidential election procedures
16th Amendment	individual income tax
17th Amendment	voters may directly elect United States Senators
18th Amendment	prohibition of alcohol manufacture, sales, and distribution
20th Amendment	inauguration day moved from March to January after election of previous year
21st Amendment	repeal of 18th Amendment prohibiting alcohol manufacture, sales, and distribution
22nd Amendment	president is limited to two (2) terms of office
25th Amendment	presidential succession; vice presidential succession; unable to serve
27th Amendment	regulation of congressional salaries

Chart 2.27 11th, 12th, 16th, 17th, 18th, 20th, 21st, 22nd, 25th, and 27th Amendments

The possibility of amending the *Constitution* helped ensure its ratification, although many feared the powerful federal government it created would deprive them of their rights. To allay their anxieties, the Framers promised that a Bill of Rights safeguarding individual liberties would be added following

ratification. These ten amendments were formally added to the document in 1791 and other amendments followed over the years. One of the problems with the *Articles of Confederation* was the difficulty of change. To prevent this difficulty from recurring, the Framers provided a method for amending the *Constitution* that required a two-thirds majority in both houses of Congress and in three-quarters of the state legislatures to approve a change.

Constitutions: Questions to Consider

1. Briefly explain the difference between civil liberties and civil rights.
 2. Was the Bill of Rights a necessary addition to the Constitution? Defend your answer.
 3. What new amendments should be added to the Constitution? Why?
 4. What issue regarding First Amendment protections causes you the most concern?
-
1. *liberties are personal freedoms; rights are guarantees the government will not treat individuals unequally with respect to liberties*
 2. *Written contracts that are specific are typically better than implied language or verbal promises*
 3. *personal opinion*
 4. *personal opinion*

Terms to Remember

amendment—ability to change or add to the U.S. *Constitution*; formal method of changing or adapting the rules for governing

Bill of Rights—the first ten amendments to the U.S. *Constitution*; most were designed to protect fundamental rights and liberties

civil liberties—limitations on the power of government, designed to ensure personal freedoms

civil rights—guarantees of equal treatment by government authorities

due process clause—provisions of the Fifth and Fourteenth Amendments that limit government power to deny people “life, liberty, or property” on an unfair basis; procedural rules designed to ensure equal treatment of all individuals

habeas corpus—present the body; government may not suspend due process protections; government may not hold an individual indefinitely without acknowledging charges against the individual

Constitutions: Works Consulted

1. National Archives, <https://www.archives.gov>
2. <https://www.ourdocuments.gov/doc.php?doc=57>

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