

2.1: The Constitution

Objectives

1. Explain the ideas behind the American Revolution and how these ideas shaped the Constitution.
2. Identify the causes of the failure of the Articles of Confederation.
3. Describe the delegates to the Constitutional Convention and the core ideas they shared.
4. Identify three types of issues the delegates to the Constitutional Convention confronted and how the Constitution resolved these issues.
5. Explain the Madisonian system and how it addressed the dilemma of reconciling majority rule with the protection of minority interests.
6. Contrast the Federalists and Anti-Federalists in terms of their background and their positions regarding government.
7. Explain the various routes to formal amendment of the Constitution and how the Constitution changes informally.
8. Explain whether the Constitution establishes a majoritarian democracy and how it limits the scope of government

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Read

- [American Government Chapter 2](#)
- Supplemental Reading: [US Constitution Preamble](#)
- Supplemental Reading: [AZ Constitution Preamble](#)

Chapter Summary

A Constitution is a nation's basic law. It creates political institutions, allocates power within government, and often provides guarantees to citizens. Constitutions thus establish who has power in society, and how that power is exercised. This chapter examines the background of the Constitution, and shows that the main principle guiding the writing of the Constitution was a concern for limited government and self-determination.

The Origins of the Constitution

The British king and Parliament originally left almost everything except foreign policy and trade to the discretion of individual colonial governments. However, Britain acquired a vast new territory in North America after the French and Indian War (1763). Parliament passed a series of taxes to raise revenue for colonial administration and defense of the new territory, and imposed the taxes on the colonists without their having direct representation in Parliament. The colonists protested, boycotted the taxed goods, and threw 342 chests of tea into Boston Harbor as a symbolic act of disobedience. Britain reacted by applying economic pressure through a naval blockade of the harbor, and the colonists responded by forming the First Continental Congress in September, 1774.

In May and June of 1776, the Continental Congress began debating resolutions about independence. Richard Henry Lee moved that, "these United States are and of right ought to be free and independent states". On July 2, Lee's motion was formally approved. The Declaration of Independence—written primarily by Thomas Jefferson—was adopted two days later. The Declaration was a political polemic, announcing and justifying a revolution. Today, it is studied more as a statement of philosophy.

American political leaders were profoundly influenced by the writings of John Locke, especially *The Second Treatise of Civil Government* (1689). The foundation of Locke's philosophy was a belief in natural rights: before governments arise, people exist in a state of nature where they are governed only by the laws of nature. Natural law brings natural rights, including life, liberty, and property. According to Locke, the sole purpose of government was to protect natural rights. Government must be built on the consent of the governed, and it should be a limited government. In particular, governments must provide laws so that people know, in advance, whether or not their acts will be acceptable; government cannot take any person's property without his or her consent.

There are some remarkable parallels between Locke's thoughts and Jefferson's language in the Declaration of Independence. The sanctity of property was one of the few ideas absent in Jefferson's draft of the Declaration: he altered Locke's phrase "life, liberty, and property" to read "life, liberty, and the pursuit of happiness." Nevertheless, Locke's views on the importance of property figured prominently at the Constitutional Convention.

The American Revolution itself was essentially a conservative movement that did not drastically alter the colonists' way of life. Its primary goal was to restore rights that the colonists felt were already theirs as British subjects. They did not feel a need for great

social, economic, or political changes. As a result, the Revolution did not create class conflicts that would cause cleavages in society.

The Government That Failed: 1776–1787

In 1776, the Congress appointed a committee to draw up a plan for a permanent union of the states. That plan was the Articles of Confederation, which became the new nation's first governing document. The Articles established a government dominated by the states because the new nation's leaders feared that a strong central government would become as tyrannical as British rule. In general, the weak and ineffective national government could take little independent action. The Continental Congress had few powers outside of maintaining an army and navy, and had no power to tax or even to raise revenue to carry out that function. The weakness of the national government prevented it from dealing with the problems that faced the new nation.

Significant changes were occurring in the states—most significantly, a dramatic increase in democracy and liberty, at least for White males. Expanded political participation brought a new middle class to power. With expanded voting privileges, farmers and craftworkers became a decisive majority, and the old colonial elite saw its power shrink.

A postwar depression had left many small farmers unable to pay their debts and threatened with mortgage foreclosures. With some state legislatures now under the control of people more sympathetic to debtors, a few states adopted policies to help debtors (favoring them over creditors). In western Massachusetts, a small band of farmers led by Captain Daniel Shays undertook a series of armed attacks on courthouses to prevent judges from foreclosing on farms. Shays's Rebellion spurred the birth of the Constitution and reaffirmed the belief of the Philadelphia delegates that the new federal government needed to be a strong one.

Making a Constitution: The Philadelphia Convention

The delegates who were sent to Philadelphia were instructed to meet, “for the sole and express purpose of revising the Articles of Confederation.” However, amendment of the Articles required unanimous consent of the states, so the delegates ignored their instructions and began writing a new constitution. Although the men held very different views, they agreed on questions of human nature, the causes of political conflict, and the object and nature of a republican government. James Madison of Virginia (who is often called “the father of the Constitution”) was perhaps the most influential member of the convention in translating political philosophy into governmental architecture.

Pennsylvania delegate Gouverneur Governor Morris was responsible for the style and wording of the U.S. Constitution. Written in 1787 and ratified in 1788, the Constitution sets forth the institutional structure of the U.S. government and the tasks these institutions perform. It replaced the Articles of Confederation.

The 55 delegates at the Constitutional Convention were the postcolonial economic elite. They were mostly wealthy planters, successful lawyers and merchants, and men of independent wealth. Many were creditors whose loans were being wiped out by cheap paper money. Many were college graduates. As a result, it is not surprising that they would seek to strengthen the economic powers of the new national government. As property holders, these leaders could not imagine a government that did not make its principal objective the preservation of individual rights to acquire and hold wealth. A few (like Gouverneur Morris) were even intent on shutting out the propertyless altogether.

James Madison claimed that factions arise from the unequal distribution of wealth. One faction is the majority, composed of the many who have little or no property. The other is the minority, composed of the few who hold much wealth. The delegates thought that, if left unchecked, either a majority or minority faction would become tyrannical. The founders believed that the secret of good government is “balanced” government. A limited government would have to contain checks on its own power. As long as no faction could seize the whole of government at once, tyranny could be avoided. In Madison's words, “ambition must be made to counteract ambition.”

Critical Issues at the Convention

Although the Constitution is silent on the issue of equality, some of the most important issues on the policy agenda at Philadelphia concerned the issue of equality. Three issues occupied more attention than almost any others: whether or not the states were to be equally represented, what to do about slavery, and whether or not to ensure political equality.

The delegates resolved the conflict over representation for the states with the Connecticut Compromise, under which a bicameral legislature would have equal representation for the states in the Senate and representation based on population in the House of Representatives. Although the Connecticut Compromise was intended to maximize equality among the states, it actually gives

more power to states with small populations since it is the Senate that ratifies treaties, confirms presidential nominations, and hears trials of impeachment.

The delegates were bitterly divided over the issue of slavery. In the end, they agreed that Congress could limit future importing of slaves but did not forbid slavery itself in the Constitution. In fact, the Constitution stated that persons legally “held to service or labour” who escaped to free states must be returned to their owners. Northern and southern delegates also divided over the issue of how to count slaves. Under the three-fifths compromise, both representation and taxation were to be based upon the “number of free persons” plus three-fifths of the number of “all other persons.”

The delegates dodged the issue of political equality. A few delegates favored universal manhood suffrage, while others wanted to place property qualifications on the right to vote. Ultimately, they left the issue to the states. Economic issues were high on the policy agenda. The writers of the Constitution charged that the economy was in disarray. Virtually all of them thought a strong national government was needed to bring economic stability to the chaotic union of states that existed under the Articles of Confederation. The delegates made sure that the Constitution clearly spelled out the economic powers of the legislature. Consistent with the general allocation of power in the Constitution, Congress was to be the primary economic policymaker.

The delegates felt that they were constructing a limited government that could not threaten personal freedoms, and most believed that the various states were already doing an adequate job of protecting individual rights. As a result, the Constitution says little about personal freedoms. (It does prohibit suspension of the writ of habeas corpus, prohibits bills of attainder and ex post facto laws, prohibits the imposition of religious qualifications for holding office in the national government, narrowly defines treason and outlines strict rules of evidence for conviction of treason, and upholds the right to trial by jury in criminal cases.) The absence of specific protections for individual rights led to widespread criticism during the debates over ratification.

The Madisonian System

The founders believed that human nature was self-interested and that inequalities of wealth were the principal source of political conflict. They also believed that protecting private property was a key purpose of government. Their experience with state governments under the Articles of Confederation reinforced their view that democracy was a threat to property. Thus, the delegates were faced with the dilemma of reconciling economic inequality with political freedom.

Madison and his colleagues feared both majority and minority factions. To thwart tyranny by the majority, Madison believed it was essential to keep most of the government beyond their power. Under Madison’s plan, voters’ electoral influence was limited and mostly indirect. Only the House of Representatives was to be directly elected. Senators were to be elected by state legislatures (modified by the 17th Amendment in 1913), presidents were to be indirectly elected by an electoral college, and judges were to be nominated by the president.

The Madisonian plan also provided for a system of separation of powers in which each of the three branches of government would be relatively independent so that no single branch could control the others. However, the powers were not completely separate: A system of checks and balances was established that reflected Madison’s goal of setting power against power to constrain government actions.

The Framers of the Constitution did not favor a direct democracy. They chose a republic, a system based on the consent of the governed in which power is exercised by representatives of the public.

Ratifying the Constitution

In the battle over ratification, the Federalists supported the Constitution and the Anti-Federalists opposed it. John Marshall (later chief justice) suggested, “It is scarcely to be doubted that in some of the adopting states, a majority of the people were in opposition.”

The position of the Federalists was strengthened by the Federalist Papers, written by James Madison, Alexander Hamilton, and John Jay as an explication and defense of the Constitution. Today, the Federalist Papers remains second only to the Constitution itself in symbolizing the ideas of the Framers. The Anti-Federalists considered the Constitution to be a class-based document intended to ensure that a particular economic elite controlled the new government, and they believed that the Constitution would weaken the power of the states. They also feared that the new government would erode fundamental liberties. To allay fears that the Constitution would restrict personal freedoms, the Federalists promised to add amendments to the document specifically protecting individual liberties. James Madison did, indeed, introduce 12 constitutional amendments during the First Congress (1789); ten were ratified and have come to be known as the Bill of Rights.

The Constitution itself provided for ratification by special state conventions and required that nine states approve the document before it could be implemented. Delaware, the first of the nine states, approved the Constitution on December 7, 1787. The ninth state (New Hampshire) approved only six months later.

Changing the Constitution

The Constitution may be modified either by formal amendment or by a number of informal processes. Formal amendments change the language of the Constitution in accordance with the procedures outlined in Article V. The Constitution may be informally amended in a variety of ways, such as through judicial interpretation or through custom and political practice. Political scientists often refer to the unwritten constitution—an unwritten body of tradition, practice, and procedure that, when altered, may change the spirit of the Constitution. For example, political parties and national conventions are not mentioned in the written document, but they are important parts of the unwritten constitution.

The Constitution was not intended to be static and unchanging. The founders created a flexible system of government, one that could adapt to the needs of the times without sacrificing personal freedom. The brevity of the Constitution also contributes to its flexibility: it is a very short document that does not attempt to prescribe the structure and functions of the national government in great detail. This flexibility has enabled the Constitution to survive for more than 200 years. Although the United States is young compared to other Western nations, it has the oldest functioning Constitution.

Unquestionably, formal amendments have made the Constitution more egalitarian and democratic. Some amendments have been proposed but not ratified. The best known of these in recent years is the Equal Rights Amendment, or ERA.

The Constitution continues to change due to judicial interpretation, changing political practice, technology, and the increasing demands on policymakers. Due to the recent “War on Terror,” power has informally shifted marginally to the executive, as is often the case when the country focuses on national security concerns. This represents informal constitutional change, and may be eventually reversed by Congress, as is often the case.

Understanding the Constitution

The theme of the role of government runs throughout this chapter. This section examines the Constitution in terms of the theme of democracy, and looks at the impact of the Constitution on policymaking. The Constitution created a republic, or a representative form of democracy modeled after the Lockean tradition of limited government.

One of the central themes of American history is the gradual democratization of the Constitution. While eighteenth-century upper-class society feared and despised democratic government, today few people would share the founders’ fear of democracy.

The systems of separation of powers and checks and balances established by the Constitution allow almost all groups some place in the political system where their demands for public policy can be heard. Because many institutions share power, a group can usually find at least one sympathetic ear. These systems also promote the politics of bargaining, compromise, and playing one institution against another—to such an extent that some scholars even suggest there is so much “checking” that effective government is almost impossible.

Assignments

Discussion

While there are great benefits to a written constitution, there are also significant problems. The words and ideas in the Constitution must have relevance and meaning for generations and realities that are difficult to imagine. The evolution of technologies and new knowledge make this challenge even more complex.

We only have to look at our U.S. Constitution to see where language has two forms of relevance: The first is what is specifically stated. This is the *Constructionist* point of view. The second approach is to intelligently determine what was on their minds as it would be applied to an unforeseen circumstance. This is the *Activist* point of view.

Our history is full of political turmoil as people rarely agree on the correct point of view one should take. After the events of September 11th, 2001, for example, new challenges emerged that were not envisioned by the writers of our constitution. While war was not recently invented, the Web as a battlefield is. Consequently, the U.S. Department of Homeland Security has identified the Web as a genuine area of concern and has needed to use an Activist Approach, to gain authority to secure the Internet.

Outline how technological developments have informally changed the Constitution up until now. In the future, what further changes do you anticipate and why?

Select the **Module 2 Discussion** link to post your response to the topic.

Quiz

- Module 2 Quiz

Written Assignments

Begin working on:

- Constitutional Design Assignment
- Research Paper Assignment

See **Course Information** in the Syllabus module or the Assignments tool for descriptions and requirements of these assignments.

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