

INTRODUCTION TO THE UNITED STATES CONSTITUTION



It was 11 years after the Declaration of Independence — and four years after American victory in the Revolutionary War — when a small group of delegates convened in Philadelphia to create a new charter for governing the young nation. The result was the longest lasting, most successful, most enviable, and most imitated constitution man has ever known. The United States Constitution has secured an unprecedented degree of human freedom, upholding the rule of law, securing the blessings of liberty, and providing the framework for the people of America to build a great, prosperous, and just nation unlike any other in the world.

The United States had established an earlier constitution in 1781, called the Articles of Confederation, the result of Richard Henry Lee's 1776 motion in Congress that also led to the Declaration of Independence. Each state governed itself through elected representatives, and the state representatives in turn elected a weak central government. But the national government was so feeble and its powers so limited, that this system proved unworkable. There was no independent executive and Congress could not impose taxes to cover national expenses, which meant the Confederation was ineffectual. And because all 13 colonies had to ratify amendments, one state's refusal prevented any reform. By the end of the war, in 1783, it was increasingly clear that the Confederation was, as

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George Washington observed, “a shadow without the substance.” Alexander Hamilton argued that it was bringing the country “to the last stage of national humiliation.”

Beyond this dilemma, the Americans faced a larger problem. Absolutely committed to the idea of popular government, they were also aware that previous attempts to establish such a government had almost always failed. Popular governments usually led to “majority tyranny,” an overbearing many disregarding the rights of a minority. This was the problem in the individual states which, dominated by their popular legislatures, routinely violated rights of property and contract. In the *Federalist Papers*, James Madison famously described this as the problem of faction, the latent causes of which are “sown in the nature of man.” (See sidebar, p. 99) The challenge was to create stable institutional arrangements that would secure the rights promised in the Declaration of Independence, while preserving a republican form of government that reflected the consent of the governed and avoided majority tyranny. Previous solutions usually rendered government powerless, and thus susceptible to all the problems with which the Founders were most concerned. The American solution would be to create a strong government of limited powers, all carefully enumerated in a written constitution.

In 1785, representatives from Maryland and Virginia met at Mount Vernon to discuss interstate trade. Then, in 1786, delegates from several states gathered at a conference in Annapolis, Maryland, to discuss commercial matters and issued a report calling for a general convention of all the states “to render the constitution of government adequate to the exigencies of the Union.” The next year, from May 25 to September 17, 1787, delegates from 12 states met in what is now Independence Hall at Philadelphia to “form a more perfect Union” and establish a government that would “secure the Blessings of Liberty to ourselves and our posterity.”

The Constitutional Convention was one of the most remarkable bodies ever assembled. Not only were there leaders in the fight for independence, such as Roger Sherman and John Dickinson, and leading

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thinkers just coming into prominence, such as James Madison, Alexander Hamilton and Gouverneur Morris, but also legendary figures, such as Benjamin Franklin and George Washington, who was chosen as president of the Convention. Every state was represented, except for one: Rhode Island, fearful that a strong national government would injure its lucrative trade, opposed revising the Articles of Confederation and sent no delegates. Patrick Henry and Samuel Adams, both of whom opposed the creation of a strong central government, also did not attend the convention. Notably absent were John Jay, who was U.S. secretary of foreign affairs, and John Adams and Thomas Jefferson, who were out of the country on government missions. Nevertheless, John Adams declared the three-and-a-half month convention “the greatest single effort of national deliberation that the world has ever seen.” Jefferson described it as “an assembly of demigods.”

From the beginning, the convention discarded the Articles of Confederation and focused on a set of resolutions known as the Virginia Plan. Largely the work of James Madison, the Virginia Plan proposed the creation of a supreme national government with separate legislative, executive, and judicial branches. The delegates generally agreed on the powers that should be lodged in a national legislature, but disagreed on how the states and popular opinion should be reflected in it. Under the Virginia Plan, population would determine representation in both houses of Congress. To protect the principle of state equality, small state delegates rallied around William Paterson’s alternative New Jersey Plan to amend the Articles of Confederation, which would preserve each state’s equal vote in a one-house Congress with slightly augmented powers. Although the delegates rejected the New Jersey Plan, they eventually adopted what is called the Great Compromise, under which the House of Representatives would be apportioned based on population and each state would have two votes in the Senate. As a precaution against having to assume the financial burdens of the smaller states, the larger states exacted an agreement that revenue bills could originate only in the House,

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where the more populous states would have greater representation.

All of the legislative powers “herein granted” by the new Constitution to Congress are meticulously listed, mostly in Article I, Section 8. The powers do not seem very extensive: apart from some relatively minor matters, the Constitution added to the authority already granted in the Articles only the powers to regulate commerce and to apportion “direct” taxes among the states according to population. But the point is clear: Congress only has the powers delegated to it in the Constitution. If Congress could do whatever it wanted, Madison noted, then the government was “no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular exceptions.”

By contrast, in Article II, the “executive Power [is] vested in a President of the United States of America.” The President is the commander in chief of the armed forces and, with the consent of the Senate, appoints judges and other federal officers and makes treaties with other nations. The President plays an important role in legislation through the veto power granted in Article I, Section 7, and is also charged to “take care that the laws be faithfully executed” — a responsibility that is itself restricted by Congress’s limited powers. Nevertheless, the implication is that there is an executive power inherent in the office itself. The delegates devoted less attention to the executive branch, largely because of the widespread assumption that General George Washington would be the first to hold — and by his precedents define — the newly created office. They did create the Electoral College system to encourage the election of chief executives with broad, national appeal.

Even less attention was given to the structure of the judiciary in Article III: the judicial power was placed in “one supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.” The judiciary’s most important function is to decide “cases” and “controversies” — that is, lawsuits. By the Judiciary Act of 1789 Congress approved a Supreme Court with a Chief Justice and five associates, and created 13 district courts, three circuit courts, and the office of the Attorney General.

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There have been federal trial courts (United States District Courts) in every state since 1789, and intermediate Courts of Appeal since 1891. Although it is not mentioned in the Constitution, it was generally recognized that the Supreme Court would also exercise a judicial review role — deciding whether state or federal laws at issue were constitutional — in the new government. “The judiciary,” Hamilton promised, “is beyond comparison the weakest of the three departments of power.”

Article IV provided that every state would give its “Full Faith and Credit” to the laws and decisions of every other state, and that all citizens would enjoy the privileges and immunities of citizenship in every state. It also provided for the admission of new states as *states*, not *colonies*, on an equal footing with the original 13.

The process for amending the Constitution is provided for in Article V, and Article VI makes the United States Constitution the “supreme Law of the Land” and binds federal and state officials by oath to its support. It also contains a significant expression of religious liberty in its ban on religious tests for public office.

Auxiliary Precautions

THREE IMPORTANT INSTITUTIONAL MECHANISMS are at work in the structure of the Constitution: the extended republic, the separation of powers, and federalism. The Founders believed that citizen virtue was crucial for the success of republican government and thought that limited government would allow for and even encourage the flourishing of civil society. Nevertheless, they knew that passion and interest were a permanent part of human nature and could not be controlled by parchment barriers alone. “A dependence on the people is, no doubt, the primary control on the government,” Madison explained in the *Federalist Papers*, “but experience has taught mankind the necessity of auxiliary precautions.” Rather than hoping for the best, the Founders designed a system that would harness these opposite and rival interests to supply “the defect of better motives.”

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The effect of representation — of individual citizens being represented in the government rather than ruling through direct participatory democracy — is to refine and moderate public opinion through a deliberative process. Extending the Republic — literally increasing the size of the nation — would take in a greater number and variety of opinions, making it harder for a majority to form on narrow interests contrary to the common good. The majority that did develop would be more settled, and, by necessity, would encompass (and represent) a wider diversity of opinion. This idea that bigger is better reversed the prevailing assumption that republican government could work only in small states.

The Founders also knew, again as Madison explained, that “the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.” In order to distribute power and prevent its accumulation, they created three separate branches of government, each performing its own functions and duties. Each branch also would share a few powers — as when the President shares the legislative power through the veto — so that they would have an incentive to check each other. Jefferson called the “republican form and principles of our Constitution” and “the salutary distribution of powers,” which the Constitution established, the “two sheet anchors of our Union.” “If driven from either,” he predicted, “we shall be in danger of foundering.”

And although national powers were clearly enhanced by the Constitution, the federal government was to exercise only delegated powers, the remainder being reserved to the states or to the people. Despite the need for additional national authority, the framers remained distrustful of government in general and of a centralized federal government in particular. “The powers delegated by the proposed Constitution to the federal government are few and defined,” Madison wrote in Federalist No. 45, “Those which are to remain in the State governments are numerous and indefinite.” And to give the states more leverage against the national gov-

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ernment, equal state representation in the Senate was blended into the national legislature (and guaranteed in Article V). “This balance between the National and State governments ought to be dwelt on with peculiar attention, as it is of the utmost importance,” Hamilton argued at the New York State ratifying convention. “It forms a double security to the people. If one encroaches on their rights they will find a powerful protection in the other. Indeed, they will both be prevented from overpassing their constitutional limits by a certain rivalry, which will ever subsist between them.”

In early August a “Committee of Detail” reworked the resolutions of the expanded Virginia Plan into a draft Constitution. In mid September, the convention concluded the work of writing the Constitution and gave this draft to a “Committee of Style” to polish the language. (The notable literary quality of the Constitution, an unusual feature in documents of state, is due principally to Gouverneur Morris of Pennsylvania.) The delegates continued revising the draft until September 17 — now celebrated as Constitution Day — when 39 delegates representing 12 states signed the Constitution and sent it to the Congress of the Confederation, and the Convention officially adjourned.

Many of the original 55 delegates had returned home over the course of the long Convention and were not present at the end. Of those that were, only three delegates — Edmund Randolph and George Mason of Virginia and Elbridge Gerry of Massachusetts — opposed the Constitution and chose not to sign. Randolph thought the Constitution was not sufficiently republican, and was wary of creating a single executive. Mason and Gerry (who later supported the Constitution and served in the First Congress) were concerned about the lack of a declaration of rights. Despite these objections, George Washington thought that it was “little short of a miracle” that the delegates could agree on the Constitution. Thomas Jefferson, who was also concerned about the lack of a bill of rights, nevertheless wrote that the Constitution “is unquestionably the wisest ever yet presented to men.”

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On September 28, Congress sent the Constitution to the states, which in turn referred it to ratifying conventions chosen by the people. Delaware was the first state to ratify the Constitution on December 7, 1787; the last of the 13 original colonies was Rhode Island, on May 29, 1790, two-and-a-half years later. In accordance with Article VII of the Constitution, the new government was approved with the ratification of the ninth state — New Hampshire on June 21, 1788.

Amendments to the Constitution

THERE HAD BEEN SOME DISCUSSION among the delegates of the need for a bill of rights, a proposal that was rejected by the Convention. The lack of a bill of rights like that found in most state constitutions, however, became a rallying cry for the Anti-Federalists during the ratification debate. The advocates of the Constitution (led by James Madison) agreed to add one in the first session of Congress. Ratified on December 15, 1791, the first ten amendments — the Bill of Rights — include sweeping restrictions on the federal government and its ability to limit certain fundamental rights and procedural matters. (See sidebar, p. 114) The Ninth and 10th Amendments briefly encapsulate the twofold theory of the Constitution: the purpose of the Constitution is to protect *rights* which stem not from the government but from the people themselves, and the *powers* of the national government are limited to only those delegated to it by the Constitution on behalf of the people.

The monumental exception to the Constitution's securing of fundamental rights, of course, was slavery. Although the words "slave" or "slavery" were kept out of the Constitution (Madison recorded in his notes that the delegates "thought it wrong to admit in the Constitution the idea that there could be property in men"), the framers made three concessions to the institution for the sake of unanimity: apportionment for Representatives and taxation purposes would be determined by the number of free persons and three-fifths "of all other Persons" (Art. I, Sec. 2);

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Congress was prohibited until 1808 from blocking the migration and importation “of such Persons as any of the states now existing shall think proper to admit” (Art. I, Sec. 9); and the privileges and immunities clause (Art. IV, Sec. 2) guaranteed the return of any “Person held to service of labour” in one state who had escaped to another state. (See Note on Slavery, p. 281)

In the end, it required a Civil War to reconcile the protections of the Constitution with the principles expressed in the Declaration of Independence. The U. S. Civil War was followed by the enactment of the 13th, 14th, and 15th Amendments (ratified in 1865, 1868, and 1870, respectively) that abolished slavery; conferred citizenship on all persons born or naturalized in the United States and established the principle that a state cannot “deprive any person of life, liberty, or property, without due process of law”; and made clear that the right of citizens to vote cannot be denied or abridged on account of race, color or previous condition of servitude.

In addition to the Bill of Rights and the Civil War amendments, there have been several other amendments to the Constitution. The *Chisholm v. Georgia* case led to the enactment of the 11th Amendment (1795), limiting the jurisdiction of the federal judiciary with regard to suits against states. The dispute over the election of 1800 led to the enactment of the 12th Amendment (1804), changing the method of electing the president and vice president.

There were four amendments during the Progressive Era, at the beginning of the 20th century. The 16th Amendment (1913) gave Congress the power to levy taxes on incomes, from whatever source derived, without apportionment among the several states. The 17th Amendment (1913) provided for the direct election of senators by popular vote. The 18th Amendment (1919), the so-called Prohibition Amendment, prohibited the manufacture, sale, or transportation of intoxicating liquors. (It was repealed by the 21st Amendment in 1933.) And the 19th Amendment (1920) extended to women the right to vote.

The most recent change was the 27th Amendment, which provided

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that any pay raise Congress votes itself will not take effect until after an intervening congressional election. It was ratified in 1992, 203 years after James Madison wrote and proposed it as part of the original Bill of Rights.

A Momentous Work

WHEN THE CONSTITUTIONAL CONVENTION assembled for the last time on the morning of September 17, 1787, Major William Jackson, the secretary of the Convention, read the completed document aloud to the delegates for one last time. Thereupon Benjamin Franklin, the 81-year-old patriarch of the group, immediately rose to speak. Unable to complete the address, he gave his speech to James Wilson to read, who later gave it to James Madison to record in his notes. Franklin declared that he supported the new Constitution — “with all its faults, if they are such” — because he thought a new government was necessary for the young nation. He continued:

I doubt too whether any other convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an Assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies.... Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. On the whole, Sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.

As the delegates came forward, one at a time, to sign their names to the final document, James Madison recorded Franklin’s final comment,

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just before the Constitutional Convention was dissolved. Franklin had noted the sun painted on the back of President Washington's chair. "I have often, and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting. But now at length I have the happiness to know that it is a rising and not a setting Sun."

"The business being thus closed," George Washington recorded in his private diary, the delegates proceeded to City Tavern on Second Street near Walnut, "dined together and took a cordial leave of each other."

After which I returned to my lodgings, did some business with and received the papers from the secretary of the Convention, and retired to meditate on the momentous work which had been executed.

— MATTHEW SPALDING