

2

The Constitution

□ Chapter Overview

A country's constitution is its basic law; it establishes political institutions, allocates power between them, and often provides basic guarantees of the rights of its citizens. Constitutions thus usually establish how political power is distributed and exercised in a given country. In this chapter, we begin by exploring the historical development and foundational philosophies of the U.S.

Constitution. We consider the specific compromises reached at the Constitutional Convention. Next, we examine the debates over ratification. We conclude by considering the basic tenets of the government established by the new constitution, and consider the mechanisms whereby it might be changed. By the end of the chapter, students should have a good understanding of how the U.S. Constitution sets the stage for how politics in the United States works today.

□ Study Outline

2.1 Learning Objective 2.1: Describe the ideas behind the American Revolution and their role in shaping the Constitution. (p. 35)

The Origins of the Constitution

Declaration of Independence (1776)

- The document lists grievances against the king of England.
- The document justifies revolution.
- The document is based on the idea of **natural rights**.

Philosophy of John Locke

- Rights that are derived from people's basic moral sense supersede the authority of a government.
- **Consent of the governed:** A government is legitimate only if the people approve of it (social contract).
- **Limited government:** Because natural rights are superior to a government, governments should have limited power.
- Government should protect people's property.

The American Revolution ends in 1783.

2.2

Learning Objective 2.2: Analyze how the weaknesses of the Articles of Confederation led to its failure. (p. 40)

The Government That Failed: 1776–1787

The Articles of Confederation

- The Articles established the first government of the United States (enacted in 1781).
- The Articles was designed to preserve the independence of the states.
- The Articles created a national government without any centralized power; proves to be ineffectual.

Key Provisions of the Articles of Confederation

- **Unicameral** national legislature
- No executive or judicial institutions
- Most power rests with state legislatures
- No power to tax
- No regulation of foreign or interstate trade
- No national currency
- No national defense

Weaknesses of the Articles

- Without the power to collect taxes, the national government had few financial resources with which to repay its war debts.
- The development of a national economy was inhibited also by the government's inability to establish and regulate trade.
- The Articles prevented the formation of a unified nation out of a collection of states with different political, economic, and social concerns.
- States retained full sovereignty.

Consequences of the Weaknesses of the Articles

- Shays' Rebellion was not easily quelled, because the government had no power to raise a militia. The incident provided the final proof that the Articles were not a sufficient plan of government.
- Annapolis Convention in 1786 attempted to suggest reforms of the Articles, but it was determined instead to ask Congress to schedule a convention for 1787.

2.3

Learning Objective 2.3: Describe the delegates to the Constitutional Convention and the core ideas they shared.
(p. 44)

Making a Constitution: The Philadelphia Convention

- Many issues were hotly debated during the writing of the Constitution. In effect, the framers faced the momentous task of defining the nature of government. They did, however, agree on some basic principles:
 - The government should check the self-interest of the people yet protect their individual liberties and advance natural rights such as equality.
 - Factions should not be allowed to create political conflict and thereby undermine the government.
 - No one faction should have the opportunity to prevail upon the others.

Gentlemen in Philadelphia

- Although the 55 founders at the Constitutional Convention were almost all wealthy and well-educated, they had divergent views about major issues, including:
 - Human nature
 - Political conflict and the nature of **factions**
 - Purposes of government
 - Nature of government

2.4

Learning Objective 2.4: Categorize the issues at the Constitutional Convention and outline the resolutions reached on each type of issue. (p. 45)

Critical Issues at the Convention

The Equality Issues

- Two plans were proposed to ensure **equal representation** of the people in the legislature: the Virginia Plan (representation in the national Congress should be determined by the **population** of each state) and the New Jersey Plan (each state should be allowed the same number of representatives in the national Congress).
- The **Connecticut Compromise**, or Great Compromise, established a **bicameral legislature**. The **Senate** would include two representatives from each state as per the New Jersey Plan, and representation in the **House** would be determined by the population of each state.
- The **Three-Fifths Compromise** mandated that only three-fifths of slaves be counted in determining state representation (this was repealed by the **Fourteenth Amendment** in 1868).

The Economic Issues

- The authors identified interstate tariffs, worthless paper money, and economic recession as serious problems of the American economy.
- These concerns led the Philadelphia delegates to strengthen the economic powers of the new national government to address these problems.

The Individual Rights Issues

- The writ of habeas corpus cannot be suspended.
- Bills of attainder, which punish people without a trial, cannot be passed.
- Ex post facto laws, which are retroactive criminal laws, are prohibited.
- Religious qualifications cannot be used as a prerequisite for public office.
- All citizens are entitled to a trial by jury in a criminal case.

2.5

Learning Objective 2.5: Analyze how the components of the Madisonian system addressed the dilemma of reconciling majority rule with the protection of minority interests. (p. 50)

The Madisonian System

- James Madison warned that both the majority (poorer and less-educated Americans) and minority (the wealthy elite) factions could pose a threat to the stability of a government.
- To protect government from the will of the majority, the president would be chosen by the **Electoral College** and, until the Seventeenth Amendment in 1913, senators would be chosen by states' legislatures, not directly by the people.
- Madison proposed that the national government be divided into three branches: the **executive, legislative, and judicial**. Each branch would have its own powers and responsibilities.
- A system of **checks and balances** would ensure that no branch could become more powerful than the others. The majority or the minority might be able to take control of any one branch but not necessarily the whole political system.
- Establishing a **federal** system of government allowed power to be shared between the national and state levels of government.

Checks and Balances

Legislative Branch

- The House and the Senate can veto a bill of the other house.
- The Senate approves presidential nominations for judges and other officials.

- The legislative branch can impeach the president (House impeaches, Senate removes).
- The legislative branch controls the budget.
- The legislative branch can pass laws over a president's veto with a two-thirds majority.

Executive Branch

- The president can veto bills passed by Congress.
- The president can nominate judges and other government officials.

Judicial Branch

- The judicial branch can declare laws passed by Congress to be unconstitutional.
- The judicial branch can declare acts of the president to be unconstitutional.
- The Constitution did not grant to the courts the power to check the other branches.
- The Supreme Court did not assert its authority to declare laws **unconstitutional** until the case of *Marbury v. Madison* in 1803.

The Constitutional Republic

- The Constitution established that the government would be one of elected representatives.

2.6

Learning Objective 2.6: Compare and contrast the Federalists and Anti-Federalists in terms of their background and their positions regarding government. (p. 54)

Ratifying the Constitution

- The approval of at least nine states was needed to ratify the Constitution, and it did not come easily.

Anti-Federalists

- Anti-Federalists feared that the Constitution favored an elite minority.

- Anti-Federalists believed that the Constitution failed to protect too many individual freedoms.
- Anti-Federalists believed that a strong central government would limit the power of the states.
- Anti-Federalists published scathing articles and political cartoons denouncing the Constitution as a tool of the aristocracy.

Federalists

- Federalists published a series of articles called the *Federalist Papers* to defend the Constitution.
- Federalists asserted that the Constitution would benefit the growing middle class of tradesmen as well as the wealthy plantation owners.
- Federalists promised to add a **bill of rights** to guarantee individual liberties.
- The Constitution was ratified in 1787, largely because the authors promised to add a bill of rights.
- The Constitution established the United States as a **federal republic** in which power would be divided among levels of government.
- The Constitution is considered a “**living document**” because it can be amended as the United States grows and changes.

2.7

Learning Objective 2.7: Explain how the Constitution can be formally amended and how it changes informally. (p. 57)

Changing the Constitution

Formal Amendment Process

- Amendments can be proposed by Congress with a 2/3 vote in each House or by National Convention called by 2/3 of states.
- Amendments can be ratified by 3/4 of state legislatures or by Conventions in 3/4 of the states.

Informal Amendment Process

- The Constitution can be informally amended through judicial interpretation (established in *Marbury v. Madison*).
- The Constitution can be informally amended by changing political practice, technology, and increased demands on policymakers.
- Over the years, the Constitution has become more democratic than the authors intended.

2.8

Learning Objective 2.8: Assess whether the Constitution establishes a majoritarian democracy and how it limits the scope of government. (p. 64)

Understanding the Constitution

- The Constitution did not establish a majoritarian democracy because majorities do not always rule in America.
- There has, however, been a gradual democratization of the Constitution.
- The Constitution limits the scope of government by protecting individual rights and by dispersing power among institutions.

For Additional Review

Create a “story board” to trace the events leading up to the establishment of the Constitution through the ratification process. List all events/ideas from the Declaration of Independence through the ratification of the Bill of Rights. For each event, write a brief statement describing the importance of the event/idea. Use this story board when reviewing and studying for the unit test.

Make a chart comparing and contrasting the Articles of Confederation and the Constitution. How did they organize government differently? In what ways did the Constitution amend the failures of the Articles? Use this chart when reviewing and studying for the unit test.