

CHAPTER 2

The Constitution

▣ LEARNING OBJECTIVES

1. Why was a Bill of Rights adopted so soon after the ratification of the Constitution?
2. Why did so many authors of the Constitution fear factions?
3. Why did the Framers agree on the idea of a separation of powers?
4. What is the difference between a democracy and a republic?
5. How did Thomas Hobbes and John Locke differ about democracy, and which thinker did the Framers follow?
6. What branch of government has the greatest power?
7. Does the Constitution tell us what goals the government should serve?
8. Whose freedom does the Constitution protect?

▣ SUMMARY OVERVIEW

The U.S. Constitution was ratified by the Philadelphia convention in 1787. This meeting was called to remedy the defects of the Articles of Confederation; however, the convention wrote an entirely new constitution.

The goal of the American Revolution was liberty; this is perhaps the clearest case of a people altering the political order violently, simply in order to protect their liberties. The colonists were not asking for any liberties that they did not feel they were not already entitled to as British subjects. The original intent of the Revolution was not independence; many colonists felt that they could have their liberties while remaining part of the British Empire.

By 1775, when the war broke out, the colonists had lost faith in the English Constitution; which was not a single document, but a collection of laws, charters, and traditional understandings that proclaimed the liberties of British subjects. The colonists' initial concern was that English politicians tended to be corrupt and were, therefore, not concerned with the liberty of its citizens. The colonists felt that their liberties were not a gift from the king or of statutes, but were ordained by God, discoverable in nature and history, and essential to human progress.

The Revolution brought about many changes: government by royal prerogative was rejected, political power could not be exercised on the basis of tradition; human liberty existed before government was organized, and government must respect that liberty; the legislative branch of government, in which the people were directly represented, should be superior to the executive branch.

A first attempt at a governing document was established in 1781. The **Articles of Confederation** gave each state its sovereignty and independence, each state had one vote in Congress, nine (of 13) votes were required to pass any measure, and the delegates who cast these votes were picked

and paid for by the legislatures. Fifty-five delegates came to Philadelphia for the convention, but only 30 attended regularly and the Framers were mostly young.

The delegates' defense of liberty was derived from the writing of John Locke who defended a "state of nature": "All men cherish and seek to protect their life, liberty, and property." But in a state of nature; that is, a society without a government, the strong can use their liberty to deprive the weak of theirs.

The **Great Compromise** was written; it brought together the best practices of the **Virginia Plan** and the **New Jersey Plan** and established the structure of the national legislature. The Framers intended to establish a **republic** with representative democracy because they saw it as a way of minimizing the chances that power would be abused either by a tyrannical popular majority or by self-serving officeholders. The goal of the Framers was to create a republic that would protect freedom and private property, a moderate regime that would simultaneously safeguard people and leave them alone.

The American version of representative democracy was based on two major principles: the separation of powers and **federalism**. Political power is shared by three separate branches of government; political authority was divided between a national government and several state governments. The government operates under three categories of power: **enumerated, reserved, and concurrent**. However, the powers of the American government are known as **checks and balances** whereby separate institutions share powers. **Separation of powers** divides power between the states and the national government. This division of powers allows every **faction** an opportunity to gain some power.

Slavery during the Philadelphia convention was as sensitive a topic as it is today. As slavery was so prevalent, efforts to attempt an end to the practice would have meant alienating the southern states and ensure the failure of the Constitution.

Proponents of the Constitution called themselves the **Federalists**; the opponents came to be known as the **Antifederalists**. The **Bill of Rights** went into effect in 1791.

There are two groups of critics to the Constitution: the first takes issue with the separation of powers; the second thinks the government does too much.

It is important to note that the Constitution is a living document; it is constantly evolving as society evolves.

□ CHAPTER OUTLINE

- I. The Problem of Liberty
 - A. The Colonial Mind
 - B. The Real Revolution
 - C. Weaknesses of the Confederation
- II. The Constitutional Convention
 - A. The Lessons of Experience
 - 1. State Constitutions
 - 2. Shays's Rebellion
 - B. The Framers

III. The Challenge

- A. The Virginia Plan
- B. The New Jersey Plan
- C. The Compromise

IV. The Constitution and Democracy

- A. Key Principles
- B. Government and Human Nature

V. The Constitution and Liberty

- A. The Antifederalist View
- B. Need for a Bill of Rights
- C. The Constitution and Slavery

VI. The Motives of the Framers

- A. Economic Interests
- B. The Constitution and Equality

VII. Constitutional Reform: Modern Views

- A. Reducing the Separation of Powers
- B. Making the System Less Democratic
- C. Who Is Right?

▣ TEACHING TOOLS

LEARNING OBJECTIVE 1: WHY WAS A BILL OF RIGHTS ADOPTED SO SOON AFTER THE RATIFICATION OF THE CONSTITUTION?

Critical Thinking Question

Do you agree or disagree with the Founding Fathers thought that “they were creating a government with specific limited power. The Fathers believed that the government could do only what the Constitution gave it the power to do, and nowhere in that document was there permission to infringe on freedom of speech or of the press or to impose cruel and unusual punishments.” Would our rights, as stated in the Bill of Rights have been protected if they had not been ratified?

In-Class Activity

Identify your rights in this class. Where are they printed? Does this protect them, why or why not?

Lecture Launcher

What would happen if your rights were not guaranteed by the Constitution?

LEARNING OBJECTIVE 2: WHY DID SO MANY AUTHORS OF THE CONSTITUTION FEAR FACTIONS?

Critical Thinking Question

Describe factions and why the Founding Fathers feared their establishment within the government.

In-Class Activity

Divide the class into two groups and have them argue for or against the use of a syllabus in their courses. You can further expand the activity by asking them to form a compromise if one group seems to be dominating the discussion.

Lecture Launcher

Discuss the pros and cons of factionalism; then, discuss the effectiveness or lack thereof in government.

LEARNING OBJECTIVE 3: WHY DID THE FRAMERS AGREE ON THE IDEA OF A SEPARATION OF POWERS?

Critical Thinking Question

Describe the separation of powers and checks and balances. How do these two processes work together and enhance our government?

In-Class Activity

Apply checks and balances to our class; how does the process of checks and balances work in the class setting?

Lecture Launcher

Power is shared in a lot of our daily lives; think about what would happen if one person, or one institution, was given the authority to govern freely with no checks and balances. What do you think would happen?

LEARNING OBJECTIVE 4: WHAT IS THE DIFFERENCE BETWEEN A DEMOCRACY AND A REPUBLIC?

Critical Thinking Question

Discuss what made a republic more appealing to the Founding Fathers and how this system has come to be known as a representative democracy.

In-Class Activity

Discuss how our government would be different and/or the same if the Founding Fathers had chosen to pursue a true democracy.

Lecture Launcher

How do you feel about electing officials who make decisions for us?

LEARNING OBJECTIVE 5: HOW DID THOMAS HOBBS AND JOHN LOCKE DIFFER ABOUT DEMOCRACY, AND WHICH THINKER DID THE FRAMERS FOLLOW?

Critical Thinking Question

Describe Thomas Hobbes' and John Locke's views about democracy.

In-Class Activity

Discuss the decision of the Framers to follow Locke's views about democracy.

Lecture Launcher

The instructor will ask the class to identify the view of democracy that they feel our government follows today. Include in the discussion whether or not today's government still upholds the views of the Framers.

LEARNING OBJECTIVE 6: WHAT BRANCH OF GOVERNMENT HAS THE GREATEST POWER?

Critical Thinking Question

If one is concerned with protecting human liberty, why would one want to make the legislative branch of government dominant (rather than the executive or judicial)? Are there good reasons that someone concerned with liberty would distrust a strong executive? A powerful judiciary? Is liberty most often threatened by powerful political elites who escape public control or a majority intent on imposing its will on a minority? Which of these cases would lead one to favor a strong legislative branch?

In-Class Activity

Divide the class into three groups and have them debate which institution has the most power.

Lecture Launcher

How is power divided in this country? Is it fair to say that one has more power than the others given how the Founding Fathers established our government?

LEARNING OBJECTIVE 7: DOES THE CONSTITUTION TELL US WHAT GOALS THE GOVERNMENT SHOULD SERVE?

Critical Thinking Question

Is the Constitution limiting the government or protecting the people? Defend your response.

In-Class Activity

The text states, “The preface [of the Constitution] tells us what the Founders hoped the federal government would do ... By and large, the government has to set its own goals..” Identify these goals.

Lecture Launcher

What are the goals of the Federal government? Where are they printed? They aren’t, but see where students take the discussion.

LEARNING OBJECTIVE 8: WHOSE FREEDOM DOES THE CONSTITUTION PROTECT?

Critical Thinking Question

How are our freedoms protected by the Constitution? Are they currently being protected as the Founding Fathers intended?

In-Class Activity

If one of your rights as identified in the Constitution was infringed upon, what avenues are available to citizens to right this wrong?

Lecture Launcher

What were the Founding Fathers achieving by writing the Constitution?

▣ KEY TERMS

amendments	A new provision in the Constitution that has been ratified by the states.
Antifederalists	Those who favor a weaker national government.
Articles of Confederation	A weak constitution that governed America during the Revolutionary War.
bill of attainder	A law that declares a person, without a trial, to be guilty of a crime.
Bill of Rights	First ten amendments to the Constitution.
checks and balances	Authority shared by three branches of government.
coalition	An alliance of groups.

concurrent powers	Powers shared by the national and state governments.
Constitutional Convention	A meeting in Philadelphia in 1787 that produced a new constitution.
enumerated powers	Powers given to the national government alone.
ex post facto law	A law that makes an act criminal although the act was legal when it was committed.
faction	A group with a distinct political interest.
federalism	Government authority shared by national and local governments.
Federalists	Those who favor a stronger national government.
Great Compromise	Plan to have a popularly elected House based on state population and a state-selected Senate, with two members for each state.
habeas corpus	An order to produce an arrested person before a judge.
judicial review	The power of the courts to declare laws unconstitutional.
line-item veto	An executive's ability to block a particular provision in a bill passed by the legislature.
New Jersey Plan	Proposal to create a weak national government.
republic	A government in which elected representatives make the decisions.
reserved powers	Powers given to the state government alone.
separation of powers	Constitutional authority is shared by three different branches of government.
Shays's Rebellion	A 1787 rebellion in which ex-Revolutionary War soldiers attempted to prevent foreclosures of farms as a result of high interest rates and taxes.
unalienable	A human right based on nature or God.
Virginia Plan	Proposal to create a strong national government.

WEB LINKS

To find historical and legal documents: www.TeachingAmericanHistory.org

National Constitution Center: www.constitutioncenter.org

Congress: <http://thomas.loc.gov/home/thomas.php> (choose Historical Documents)

To look at court cases about the Constitution: Cornell University, www.law.cornell.edu/supct

▣ INSTRUCTOR RESOURCES

- Bailyn, Bernard. *The Ideological Origins of the American Revolution*. Cambridge: Harvard University Press, 1967. A brilliant account of how the American colonists formed and justified the idea of independence.
- Becker, Carl L. *The Declaration of Independence*. New York: Vintage, 1942. The classic account of the meaning of the Declaration.
- Federalist* papers. By Alexander Hamilton, James Madison, and John Jay. The definitive edition, edited by Jacob E. Cooke, was published in Middletown, CT, in 1961, by the Wesleyan University Press.
- Maier, Pauline. *Ratification: The People Debate the Constitution, 1787–1788*. New York: Simon and Schuster, 2010. Not only is this a marvelous study of ratification, but it also is virtually the only one in existence. A splendid, comprehensive account.
- McDonald, Forrest. *Novus Ordo Seclorum*. Lawrence: University of Kansas Press, 1985. A careful study of the intellectual origins of the Constitution. The Latin title means “New World Order,” which is what the Framers hoped they were creating.
- Sheldon, Garrett W. *The Political Philosophy of James Madison*. Baltimore: Johns Hopkins University Press, 2001. Masterful account of Madison’s political thought and its roots in classical republicanism and Christianity.
- Storing, Herbert J. *What the Anti-Federalists Were For*. Chicago: University of Chicago Press, 1981. Close analysis of the political views of those opposed to the ratification of the Constitution.
- Wood, Gordon S. *The Creation of the American Republic*. Chapel Hill: University of North Carolina Press, 1969. A detailed study of American political thought before the Philadelphia convention.
- _____. *The Radicalism of the American Revolution*. New York: Knopf, 1992. Magisterial study of the nature and effects of the American Revolution and the relationship between the socially radical Revolution and the Constitution.