CHAPTER 3 The Constitution

Learning Objectives

After reading this chapter, you should be able to

* Define the key terms at the end of the chapter.
* Analyze the conflict between Britain and the colonies.
* Explain how the colonial and revolutionary experiences shaped America’s first attempt at self-government under the Articles of Confederation.
* Account for the failure of the Articles of Confederation.
* Outline the main features of the Virginia and New Jersey Plans and describe the major compromises made by the delegates at the Constitutional Convention.
* Explain the four basic principles underlying the Constitution and show how they reflected the Americans’ revolutionary values.
* Discuss the way the issue of slavery arose at the Constitutional Convention.
* Summarize the provisions of each article of the Constitution.
* Describe the formal and informal processes of constitutional change.
* Explain how the promise of a bill of rights was used to ensure ratification of the Constitution.

# The Constitution and the Challenge of Democracy

Contemporary efforts to craft a constitution for the European Union raise the types of questions and challenges that Americans had to confront in the 1780s. The U.S. Constitution was designed to reconcile order with freedom, a problem the text calls the original dilemma. The founders recognized the need for government to protect life, liberty, and property, but they had just won their freedom from Britain and they feared that a new, remote national government might threaten the very freedoms it was established to protect. In their first attempt to create a government under the Articles of Confederation, they gave too little power to the national government. As a result, that government was unable to maintain order in the society or economy. In drawing up the Constitution, the founders looked for ways to maintain order through the national government while still safeguarding freedom. To achieve this end, they designed four principal tools: the separation of powers, checks and balances, republicanism, and federalism.

Although the founders paid a great deal of attention to the conflict between order and freedom, they were not particularly concerned with the tension between freedom and equality; after all, as the authors of the text point out, that is a modern dilemma. The eighteenth-century document accepted slavery and left the qualifications for voting up to the states. As a result, African Americans, women, and poor people were all excluded from the political process. Only later did these matters of social and political equality become issues.

With respect to the text’s second theme—the conflict between pluralist and majoritarian models—this chapter points out that the constitutional order was designed to be pluralist. The founders were afraid of majority rule and relied on factions counteracting one another—a mechanism characteristic of pluralism.

Chapter Overview

Creating a government and establishing the rule of law has challenged numerous philosophers and politicians. Securing liberty, establishing order, and creating equality all need to be balanced, and then future change has to be anticipated and a mechanism to deal with it created. Although the U.S. Constitution is very brief, old, and durable, it has provided a remarkably stable political framework. At only 4300 words, the U.S. Constitution is one of the world’s best. It has outlasted most other constitutions, which have had to be replaced every seventeen years, on average. Our Constitution has survived numerous challenges to its authority, including a Civil War, but it also accommodated the United States’ growth and development from a collection of eighteenth-century agrarian states to a twentieth-century superpower. The document’s own historical roots grew out of three experiences: colonialism, revolution, and the failure of the Articles of Confederation.

## The Revolutionary Roots of the Constitution

Although short, only 4300 words, the U.S. Constitution has remained flexible and durable. While most other constitutions have lasted 17 years on average, the U.S. Constitution has lasted much longer, over 225 years. In order to last, constitutions must be specific, yet flexible, and allow for citizen participation.

The British colonists in America enjoyed the rights of Englishmen and the freedoms of being in America. These rights included not being taxed without representation in the government. The colonists had their own colonial legislatures, which legislated for them on domestic matters, but Britain controlled overseas trade and foreign affairs. When Britain decided to tax the colonists to pay administrative (including defense) costs, the colonists viewed it as a violation of their right not to be taxed without having representation.

## Remembering Watergate and the Constitution

The Watergate scandal of the 1970s is still our most serious constitutional crisis since the Civil War. The arrest of the five burglars and the two men with White House connections forced an investigation. This Watergate investigation later brought down President Nixon, who was found to be involved in the cover-up. This case brought up many questions as to the power of the executive and how much power it had compared to that of the legislature and the judiciary. Although Nixon resigned on August 9, 1972, there were no lasting political repercussions as have occurred in other nations.

In 1776 the colonies began to unite in their opposition to British policies, and colonial delegates to the Second Continental Congress declared America’s independence from Britain. The Declaration of Independence set out the philosophical justification for the break. Following arguments developed by the English philosopher John Locke nearly a century earlier, Thomas Jefferson asserted that the colonists had unalienable rights to life, liberty, and the pursuit of happiness; that people created governments to protect those rights; and that when a government threatened those rights, the people had the right to alter or abolish it. The declaration then listed a long series of charges against the king to show how he had violated the colonists’ rights, thus justifying their revolution.

## From Revolution to Confederation

The Declaration of Independence and the Revolutionary War established that the American colonies would not be governed by England, but they did not determine how the new nation would be governed. In their first effort to structure a system of government, the new American government established a republic under the Articles of Confederation. This system created a loose confederation that protected the sovereignty of the individual states. The Articles had several major failings: The central government had no power to tax or to regulate interstate or foreign commerce, there was no real executive to direct the government, and any new laws or amendment to the Articles required unanimous consent of the state legislatures. These flaws crippled America’s new government, society, and economic prosperity. Events such as Shays’ Rebellion soon underscored the need for a new form of government better equipped to maintain order. Delegates met in Annapolis, Maryland, in 1786 to discuss revising the Articles of Confederation. From the meeting in Annapolis, delegates formally arranged for a Constitutional Convention in Philadelphia the next year to propose changes to the Articles.

## From Confederation to Constitution

The delegates who met in Philadelphia quickly agreed that more than minor changes were required. They debated James Madison’s Virginia Plan, which included among its provisions a strong central government with three branches (legislative, executive, and judicial); a two-chamber legislature, which could negate state laws (with representation in proportion to taxes paid or in proportion to the free population); and an executive selected by the legislature and limited to one term. Much of the Virginia Plan was adopted, but only after challenges and amendments. In particular, small states believed that the Virginia Plan did not represent their interests. One small-state challenge came in the form of the New Jersey Plan, which gave less power to the central government and proposed a one-chamber legislature in which states would have equal representation.

To solve the conflict between the big and small states over representation, the delegates fashioned the Great (or Connecticut) Compromise. Under this compromise, there would be a two-chamber legislature, and each state would have equal representation in the Senate and representation according to its population in the House of Representatives. Revenue bills would have to originate in the House.

Additional compromises resulted in a one-person executive who would serve a four-year term and be eligible for reelection. This executive (the president) would be selected by an electoral college, in which states would have the same number of votes as they had in the two chambers of the legislature (Congress) combined.

## The Final Product

The Constitution begins with a preamble that creates a people, explains the reasons for the Constitution, articulates the goals of the government, and fashions that government. The Constitution is based on four major principles: republicanism, in which power resides in the people and is exercised by their representatives; federalism, which divides power between the national and state governments; separation of powers, which is the assignment of the lawmaking, law-enforcing, and law-interpreting functions of government to independent legislative, executive, and judicial branches in order to prevent a monopoly of power by one branch; and checks and balances, which give each branch some power to limit the actions of the other branches. The first of the seven articles of the Constitution establishes a bicameral (two-chambered) legislature endowed with eighteen enumerated powers, including the powers to tax and spend and to regulate interstate commerce. The elastic clause (Article I, Section 8) gives Congress the powers necessary to effect its enumerated powers.

The office of the executive is created in Article II, which describes the qualifications required for the presidency and specifies the process for selecting the president by the electoral college. Article II also lists procedures for removing the president by impeachment and describes the powers of the presidency.

Article III establishes a Supreme Court and specifies the method of appointing and removing judges. Most of the details regarding the judiciary were left up to Congress.

The remaining articles provide that each state must give full faith and credit to the actions of the other states. They also outline the procedure for admitting new states, establish the procedure for amending the Constitution, and specify that the Constitution is the supreme law of the land.

Some authors argue that the framers of the Constitution may have been motivated in part by economic issues, but their most important source of motivation was the inability of the national and state governments under the Articles of Confederation to maintain order. Their desire to create a system that would maintain order was so strong that the framers readily compromised to allow the institution of slavery to continue.

## Selling the Constitution

The Constitution had to be approved by nine states before it could take effect. The campaigns for and against ratification were intense, and the votes taken in several states were quite close. For people to accept the Constitution, its supporters had to allay fears of government threats to freedom. The *Federalist* papers explained and defended the principles of the Constitution. Their authors argued that factions (pluralism), the mechanism of representation, and the application of checks and balances could be used to prevent tyranny. Finally, the promise to add a bill of rights placing certain fundamental rights beyond the bounds of government interference helped win support.

## Constitutional Change

The Constitution provides a mechanism for amending it, including two means of proposing amendments (by a convention or by a two-thirds vote in each house of Congress) and two means of ratifying proposed amendments (by three-fourths of the states, either through their legislatures or through state conventions). The amendment process requires extraordinary majorities and makes formal constitutional change fairly difficult.

The Constitution changes in other ways, however. Through judicial interpretation, the courts often give new meaning to constitutional provisions and thus make the Constitution adaptable to a changing world. Changing political practice has also altered the way the Constitution is applied.

## An Evaluation of the Constitution

The Constitution was successfully designed to provide the order lacking under the Articles of Confederation while at the same time protecting the freedom of individuals. Although our Constitution is one of the oldest and shortest constitutions in the world, it is considered one of the most successful. When first created, our Constitution was not concerned with social or political inequality—the issues that give rise to what is referred to in Chapter 1 of the text as the modern dilemma. These issues began to be addressed only after the Civil War, when amendments were added that dealt with the issue of inequality.

## Politics of Global Change

The U.S. Constitution incorporates many of the lessons learned from the Articles of Confederation and many of the early state constitutions. Many nations have emphasized certain rights and privileges that they admire in the U.S. Constitution. Others have been more lenient with their rules and restrictions. The U.S. Constitution established a republican structure of government, in which the government rests on the consent of the governed. It was not the intent of the framers to create a democracy that rested on majority rule, however. Thus, from the outset, the Constitution was more pluralist than majoritarian.

Key Terms

Declaration of Independence

social contract theory

republic

confederation

Articles of Confederation

Virginia Plan

legislative branch

executive branch

judicial branch

New Jersey Plan

Great Compromise

electoral college

extraordinary majority

republicanism

federalism

separation of powers

checks and balances

enumerated powers

necessary and proper clause

implied powers

judicial review

supremacy clause

Bill of Rights

# Research and Resources

The framers of the Constitution produced a remarkably durable government framework. The system they designed combined strength and flexibility. Over the years, it has evolved and been adapted to fit the needs of the times. As circumstances change, decision makers fashion responses to new situations. The Constitution itself may be silent on a particular matter at issue. Yet, often policymakers will look to the founders for guidance. What exactly did they have in mind when they established a certain constitutional provision? Can a new course of action be justified by showing that it accords with the spirit of the Constitution?

What sources help reveal the intentions of the framers? Generally, good researchers try to rely on primary material—that is, on firsthand accounts, written by the participants themselves, or on official records of the debates—rather than on secondary material such as interpretations offered by analysts not party to the Constitutional Convention. You have already encountered one important primary source of information about the intentions of the founders. The *Federalist* papers, written by Publius, were in fact coauthored by James Madison, the father of the Constitution. (They are available online at <http://www.law.ou.edu/hist/federalist>; a searchable version can be found at <http://www.yale.edu/lawweb/avalon/federal/fed.htm>.) The papers were written for a polemical purpose, namely, to put the best face possible on the Constitution in order to sell it to New Yorkers. Still, they have proved a valuable guide to understanding how Madison, at least, expected the Constitution to operate.

Another important primary source of information on the Constitution and the framers’ ideas about it is Max Farrand, ed., *The Records of the Federal Convention of 1787* (New Haven, CT: Yale University Press, 1937). In this work, Farrand has compiled the *Journal* (essentially the minutes of the meetings) as well as the notes made by many of the participants, including Madison, Alexander Hamilton, Rufus King, James McHenry, George Mason, and others. There is an extensive index at the end of the fourth volume. Online, see the website of the Constitution Society at <http://www.constitution.org>, which carries an extensive collection of documents about the founding, including James Madison’s “Notes on the Debates of the Federal Convention.” (See <http://www.constitution.org/cs\_found.htm>. This site also contains a selection of constitutions from around the world. Information about the lives of the framers may be found on the website of the National Archives and Records Administration at <http://www.archives.gov/national\_archives\_experience/charters/
constitution\_founding\_fathers.html>.

For an in-depth modern source on the Constitution and its development, consult Leonard W. Levy, *Encyclopedia of the American Constitution with Supplement* (New York: Macmillan, 1997).

# Using Your Knowledge

1. Using the *Records of the Federal Convention of 1787* or the National Archives and Records Administration website mentioned above, select a delegate to the convention and imagine yourself in his position. What were his main concerns? What interests does he seem to have represented? Why? What role did he play in the Convention? What do you know about his subsequent career?

2. Chapter 3 emphasizes the ways in which the original dilemma of freedom versus order influenced the design of the Constitution. What if a constitutional convention were called today, and as the one in 1787 did, simply decided to start anew? Speculate on what such a meeting might produce by outlining your own version of a modern constitution tailored for the United States today. Explain how your constitution would deal with both the original dilemma of freedom versus order and the modern dilemma of freedom versus equality.

3. The United States’ two most important political documents, the Constitution and the Declaration of Independence, both deal with the dilemma of freedom versus order. Read both documents and compare the ways they address that issue.

4. Obtain a copy of the constitution of a foreign nation and a copy of the constitution of one of the states of the United States (try <http://www.constitution.org/cons/natlcons.htm>). Compare these to the U.S. Constitution. What similarities or differences do you find?

Sample Exam Questions

Multiple-Choice Questions

1. How was the 2002 European attempt at making a constitution similar to that of America in 1787?

a. Both attempts had to deal with the question of slavery.

b. Both had to deal with monetary issues as their main obstacle.

c. Both felt it necessary to work in secrecy.

d. Both were asking the same questions about balance and power.

e. Both had to develop a new method for electing an executive.

2. Approximately how many words does the U.S. Constitution contain?

a. 1200

b. 1900

c. 2600

d. 3400

e. 4300

3. After the Boston Tea Party, what acts did the British Parliament pass to try and reassert power over the colonies in 1774?

a. Stamp Acts

b. Coercive Acts

c. Power Acts

d. Proprietary Acts

e. Navigation Acts

4. What political philosophy presents the idea that all legitimate political authority is derived from the consent of the governed?

a. social contract theory

b. monarchy

c. federalism

d. independence theory

e. economic theory of laissez faire

5. Which of the following is *not* one of the reasons that the Articles of Confederation failed?

a. inability to regulate interstate commerce

b. no independent leadership

c. lack of a national currency

d. need for unanimous consent to act

e. lack of the power to tax by the national government

6. What was the plan developed at the Constitutional Convention to allow equal representation?

a. New Jersey Plan

b. Connecticut Plan

c. Virginia Plan

d. New York Plan

e. Delaware Plan

7. What is the political organization of federalism?

a. the division of power between national and state governments

b. the separation of power across the branches of the federal government

c. government by elected representatives

d. mechanisms by which one branch of government may restrict another

e. a strong central government at the expense of state or local governments

8. Which founding father is thought of as the father of the U.S. Constitution?

a. John Adams

b. Ben Franklin

c. Thomas Jefferson

d. James Madison

e. George Washington

9. What did Shays’ Rebellion show the need for?

a. stronger judiciary to ensure equality

b. stronger national government to preserve order and protect property

c. weaker national government to preserve liberty

d. weaker executive to enhance the application of order

e. stronger state governments to preserve liberty and autonomy

10. The fact that Congress has two chambers, one in which states have equal representation and one in which state representation is based on population, is a result of

a. the Virginia Plan.

b. British influence over the federal convention.

c. the New Jersey Plan.

d. the Connecticut Compromise.

e. the Federalist Plan.

11. What do the first three articles of the U.S. Constitution concern?

a. taxing and spending

b. addition of new states and territories

c. methods of amending the Constitution

d. ratification process

e. operation and powers of the three branches of government

12. What did the Virginia Plan accomplish?

a. allowed the national legislature to nullify state laws

b. provided for the president to be chosen by an electoral college

c. was supported by small states

d. severely limited the scope of national government

e. promoted political equality by giving the poor access to political power

13. Which famous historian came up with the argument that the Constitution was crafted to protect the economic interests of the founding fathers?

a. Joyce Appleby

b. W. E. B. Du Bois

c. William McCluskey

d. Charles Beard

e. Samuel Tilden

14. What term is used to describe the principle of assigning lawmaking, law enforcing, and law interpreting to different branches of government?

a. republicanism

b. federalism

c. confederation

d. checks and balances

e. separation of powers

15. What are the enumerated powers?

a. powers assigned to Congress through the Constitution

b. the numerical listing of powers from most important to least important

c. powers that Congress creates for itself in order to function properly

d. the most important powers of Congress listed under the superiority clause

e. powers assigned to the executive branch by congressional laws

16. The principle that gives each branch of government some scrutiny and control over the other branches is

a. republicanism.

b. federalism.

c. separation of powers.

d. implied powers.

e. checks and balances.

17. The *Federalist* papers did all of the following *except*

a. provide a rationale for pluralism.

b. outline the benefits of a large republic.

c. argue for the necessity of a bill of rights.

d. support a strong central government.

e. point out how checks and balances would limit tyranny.

18. What did Madison believe would prevent a “tyranny of the majority” (mob rule)?

a. congressional override

b. presidential veto

c. judicial review

d. supremacy clause

e. representation

19. What do amendments to the U.S. Constitution require?

a. simple majorities

b. extraordinary majorities

c. approval only by the branches of the federal government

d. approval by the major political parties

e. unanimous approval by the states

20. The ninth state to ratify the Constitution in 1788, which officially empowered the new government, was

a. Vermont.

b. Delaware.

c. New York.

d. Virginia.

e. New Hampshire.

21. What was the major premise of the Declaration of Independence?

a. A government’s responsibility is to preserve order.

b. Great Britain never had a legitimate claim over the people in the colonies.

c. People have a right to revolt when they determine that the government is destructive to their rights.

d. Only direct democracy is consistent with government for the American colonies.

e. A strong central government must organize the various colonies.

22. What Supreme Court case of 1803 created the power of judicial review?

a. *Marbury* v. *Madison*

b. *McCulloch* v. *Maryland*

c. *Gibbons* v. *Ogden*

d. *Plessy* v. *Ferguson*

e. *Knight* v*. United States*

23. In 1992, a long-forgotten amendment originally submitted to the states in 1789 was ratified. What does this amendment, the twenty-seventh, do?

a. prohibits flag burning

b. establishes equal rights for women

c. guarantees the right to privacy

d. prohibits legislators from voting themselves immediate pay raises

e. requires the government to balance the budget

24. The only constitutional amendment to be repealed was the Eighteenth Amendment, which dealt with

a. abortion and birth control.

b. the death penalty.

c. alcoholic beverages.

d. due process.

e. the electoral college.

25. What does the power of judicial review permit?

a. elected representatives to revise decisions made by judges

b. voters to overturn decisions made by judges

c. the president to freely select members of the Supreme Court

d. courts to nullify acts of government that conflict with the Constitution

e. courts to formally amend the Constitution

Essay Questions

1. The Declaration of Independence was used to sever our relationship with British. What were the justifications used in the document, and why are parts of it still relevant today?

2. What is the significance of the *Federalist* papers? Justify your answer.

3. Describe the campaign to have the Constitution ratified. How did the Bill of Rights fit into that campaign?

4. Compared to the other constitutions of the world, the U.S. Constitution is one of the shortest and one of the oldest. What characteristics of the U.S. Constitution have allowed it to last so long and work so well? Justify your answer.

5. How did the delegates to the Constitutional Convention balance the interests of large states and small states? Are these solutions or compromises practical in the contemporary United States? Do small states possess disproportionate influence over legislation or election outcomes?

Answers to Multiple-Choice Questions

1. d

2. e

3. b

4. a

5. c

6. a

7. a

8. d

9. b

10. d

11. e

12. a

13. d

14. e

15. a

16. e

17. c

18. e

19. b

20. e

21. c

22. a

23. d

24. c

25. d