



Paulina Perez signs a giant banner printed with the preamble to the U.S. Constitution during a demonstration against a ruling by the Supreme Court in 2010 that allowed unlimited, though uncoordinated, campaign contributions by associations of individuals and corporations.

Chip Somodevilla / Getty Images

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THE CONSTITUTION OF THE UNITED STATES

A New Vision of Representative Government

LEARNING OBJECTIVES

After reading this chapter, you will be able to do the following:

- 2.1 Describe the ideas and contradictions that shaped James Madison's thinking about republics and the Constitution.
- 2.2 Explain the challenges faced by the nation following the American Revolution in trying to form a government strong enough to rule effectively but not so strong as to oppress the rights of Americans.
- 2.3 Describe the role that compromise over states' interests played in shaping the government during the Constitutional Convention.
- 2.4 Identify the institutions of government established by the Constitution and the distribution of political power among them.
- 2.5 Compare and contrast the arguments put forth by the Federalists and Anti-Federalists during the ratification debates.

“We the People of the United States . . .” Perhaps no seven words are as important in U.S. political history as these. Penned by Gouverneur Morris in Philadelphia, Pennsylvania, during the fateful summer of 1787, these words did more than begin a document. They sought to *constitute*, to create, a new nation. In the Declaration of Independence, Thomas Jefferson and the other members of the Second Continental Congress had announced to the colonies and to the world why they felt that separation from Great Britain was justified and necessary. Following the American Revolution, that goal was achieved . . . but then what?

In the years following the Revolution, the American states and the government they had collectively agreed to form struggled against the realities of financial crises, the possibility of foreign invasion, and the threat of internal discord and even revolution. Against this backdrop, a group of delegates convened in Philadelphia in 1787 to create a new government—a new *kind* of government.

The delegates to the Constitutional Convention drafted and then tried to sell to skeptical individuals in the thirteen American states a blueprint for a new government, though the delegates themselves were often divided about what this government should be, how it should be structured, and how much power it should have. In spite of all of these divisions and challenges, they produced a **constitution**: a document that simultaneously creates a people, sets out fundamental principles by which these people agree to be governed, and establishes the rules and institutions through which this governing will take place.

In this chapter, we will explore the events leading up to the Constitutional Convention, the political debates within the convention, and the debates surrounding the ratification process. We will focus primarily on one person: James Madison of Virginia. Though he was hardly the most powerful political figure of the time, Madison's efforts were instrumental in shaping the Constitution of the United States.

JAMES MADISON PLANS FOR A REPUBLIC THAT WILL LAST

In the spring of 1786, James Madison Jr. settled into his home in Montpelier, Virginia, with two trunks full of books. As one of America's first political scientists, Madison aimed to apply science to the study of government. The subject of his studies that spring was the unspring-like topic of death, specifically the death of governments. Kingdoms and empires had endured, sometimes for centuries, under the rule of monarchs and emperors. But **republics**, governments ruled by representatives of the people, had without exception eventually died. Madison wanted to know how a people could create a republic that lasted: one that could avoid being taken over by a small group of men or descending into civil war or anarchy; one that was strong enough to govern effectively but yet would not trample on the rights of its citizens.

In 1786, America was in a precarious position. In the tumultuous years that followed independence, the young nation had been plagued by economic disruption, European military and economic powers, and the dangers of rebellion within the thirteen states. The country needed a clear path forward if it was to survive. To Madison, that meant a plan for a new kind of government. It needed someone who could sell such a plan to a skeptical public, too.¹ Madison poured himself into these projects systematically, scientifically, and with a great deal of energy.

Though he was shy, often sick, and a quiet public speaker, Madison was well educated, and he did his homework. In 1786, as the American government of the time came under increasingly harsh criticism and calls to fix or replace it grew louder, Madison's years of preparation allowed him to help shape the agenda of the debates taking place in his newly independent country and to get others to talk about his ideas, whether they agreed with him or not. In the spring of 1787, Madison, true to form, showed up in Philadelphia having done his homework. Together with a group of similarly practical men, he attempted to create a republic that would last, one that would be strong enough to govern but not so strong as to trample on the rights and liberties of its citizens. Madison and others sought practical, institutional solutions for the seemingly timeless tendency of political leaders to pursue power, prestige, and riches, even when this meant the downfall of their own republics. That Madison and his colleagues were pragmatic politicians was no surprise; most of them had already been involved in the real-world politics of their own colonies and, later, states. Writing in 1923, Robert Livingston Schuyler captured this essential fact about those who shaped the new American Republic better than anyone since. "The Fathers," he declared, "were practical men."² Ideas and ideals are certainly part of America's constitutional heritage, but so are politics.

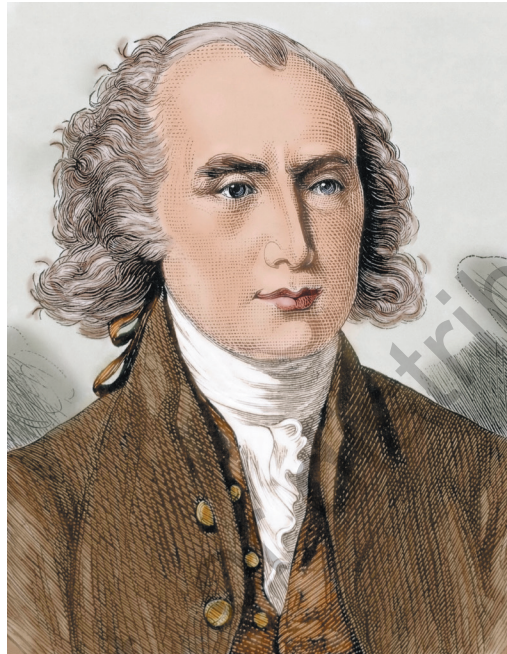
Madison's immediate concern in 1786 was to prepare for a conference set to take place in Annapolis, Maryland, in the fall. Officially, the Annapolis Convention had been called to address trade and navigation disputes between states. Unofficially, at least in the minds of Madison and those who shared his views, the hope was that the outcome of the convention might lead to significant changes in the fundamental structure of the government of the United States. Though Madison wanted to see major reforms, he was not optimistic about the prospect for real change. "Tho' my wishes are in favor of such an event," he wrote to Thomas Jefferson in August, "yet I despair so much of its accomplishment at the present crisis that I do not extend my views beyond a Commercial Reform. To speak the truth I almost despair even of this."³

His lack of optimism turned out to be well founded. Only five of the thirteen states sent representatives to the convention; the other states either did not appoint anyone or did not do so in time to make it to the meeting. Despite the poor attendance, however, delegates to the convention kept the dialogue of reform moving by calling for a convention in Philadelphia the following spring to discuss how to make the American government more effective in dealing with issues of trade and other pressing needs of the nation.

Madison's research, preparation, intellect, and understated political skill were an important factor in the creation of the Constitution of the United States. The American Republic that he helped shape was based on the premise that liberty is something with which people are born, something that cannot be given or taken away by governments. This concept was expressed powerfully in the Declaration of Independence in its timeless affirmation "We hold these truths to be self-evident, that all men are created equal." As we have explored in Chapter 1, however, this American liberty was not originally meant for all.

Like Thomas Jefferson, George Washington, and Benjamin Franklin, James Madison claimed a right to enslave other human beings. Each acted upon the claim, keeping individuals in enslavement. The white power structure—through its legal systems, violence, and threats of violence—allowed and supported these fundamental violations of natural rights. Though his own writings show that Madison at times struggled personally against the institution of slavery and that he realized how the practice had corrupted past republics, Madison's Virginia plantation had more than one hundred enslaved people. James Madison never relinquished his claims to own others during his lifetime, holding individuals in enslavement for the rest of his life. Nor did he provide for their legal freedom upon his death. Later in his life, Madison had written out a plan for ending slavery that involved a "gradual" emancipation. Compensation would be made to the enslaver for his "loss," the enslaved person would explicitly acknowledge preferring freedom to bondage, and all former enslaved peoples would be relocated to a region not "occupied by or allotted to a White population."⁴

The contradiction inherent in Madison and others' statements, writings, and actions is not fundamentally resolvable. In their daily lives—in the structures of white power from which they benefitted and which they helped hold up—these individuals argued for liberty while practicing



An engraving of James Madison, American politician and scholar. His study of republics led him to investigate how to create a form of government led by people that was capable of enduring.

Ipsumpix / Corbis / Getty Images

enslavement, backed by the full legal and social power of state-sponsored violence and oppression. Under Virginia's laws of the time, Madison, or any other enslaver, could "correct" an enslaved person for any offense. If that person died under such a correction, the enslaver would likely not be punished at all. He could take a child from their family and sell the child for profit.⁵ As the delegates convened in Philadelphia, they, too, would struggle with or perpetuate these contradictions.

THE CONFEDERAL SYSTEM MADE COORDINATION BETWEEN THE STATES DIFFICULT

The government that Madison and his like-minded colleagues hoped to change was the first government of the United States. It was a confederation: a union of thirteen sovereign states in which the states, not the union, were supreme. It had been created by the **Articles of Confederation and Perpetual Union**, which had been adopted by the Second Continental Congress in 1777 and formally ratified in 1781. Although they had successfully guided the country through war and the accompanying economic and material devastation, the Articles had few carrots or sticks to make member states work together to make and carry out national policy. By 1786, the American confederation was showing its limitations, at least in the minds of those who wanted a stronger union.

The Articles of Confederation Attempt to Unite the States While Preserving Their Authority

When the delegates to the Second Continental Congress created the Articles of Confederation, they had debated two related issues. Both involved mistrust. Colonists in one state did not always trust the motives of the governments of the other states. They also did not trust any government that would rule over them from far away, whether it be Great Britain before the war or the new American nation after victory had been achieved.

Though it may be difficult now to imagine a United States in which states were strong and the nation was weak, the idea that the states were the real centers of power was not at all unnatural for Americans at the time. Long after the Constitution was ratified, many Americans still referred to "these United States" instead of "the United States." The British colonies, since their inception as business enterprises, plantations, or religious communities, had been self-sufficient and left alone to govern themselves. Colonists often viewed members of other colonies with distrust. They also reacted strongly against Britain's tardy attempt to create a more centralized colonial policy in the decades before the American Revolution.⁶

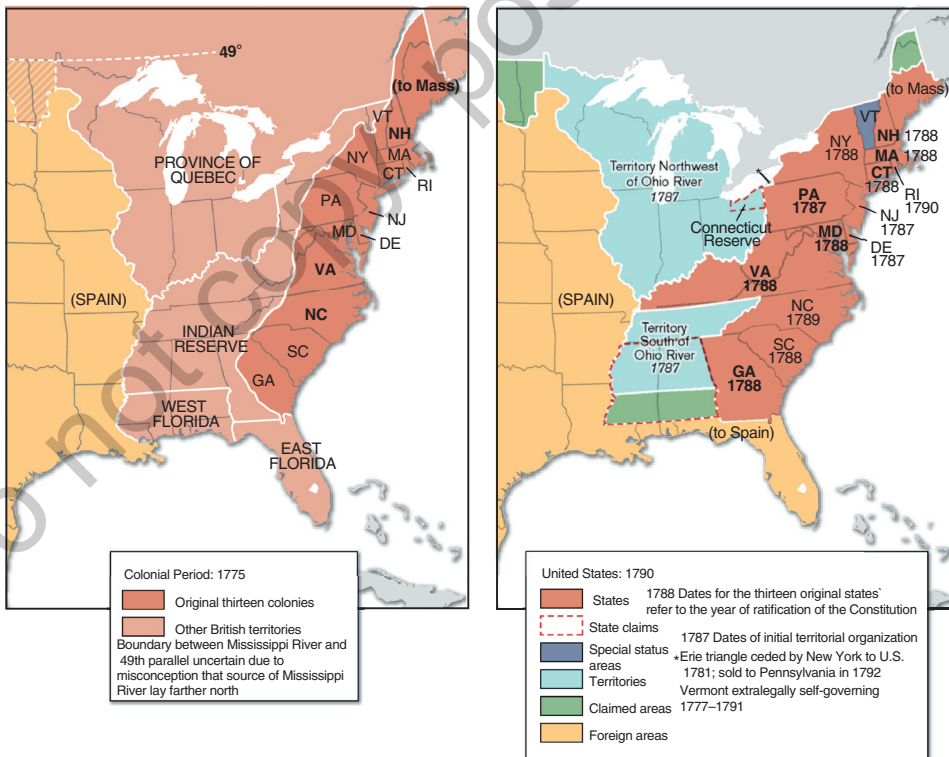
During the debates over the Articles of Confederation, mistrust of other colonies crystallized in conflicts over land, representation, and sovereignty. Some colonies had land claims on parts of other colonies. Small coastal colonies, such as Delaware and Rhode Island, whose size was fixed by their location, viewed the western states' claims on Native American land with worry and suspicion. How big would Virginia, whose charter had land claims extending to the "South Sea," eventually become?⁷ "The most acrimonious disagreements," according to one historian, "were over control of western lands."⁸ The views of the indigenous peoples on questions of ownership did not factor into these calculations.

Under the Confederal System, States Have Sovereignty and Equal Representation

Leading up to the Revolutionary War, the relationship between the colonies and Great Britain was one of mutual lack of understanding and lack of trust. The colonies failed to see how they played a part in Britain's role in global politics and struggles against other empires. For its part, Great Britain failed to understand that what had been plantations, business enterprises, and religious outposts “had grown up and become states in the making.”⁹ This did not, however, mean naturally united colonies or, later, naturally united states. Each state had its own interests, and each worried that it might lose control over its future to other states or to a national government with its own agendas and desires.

In the face of the prospect of large, populous, and ever-growing neighbors, smaller states demanded, and received, equal representation in the new government. (See Figure 2.1.) Each state had one vote in the new Congress. This Confederation Congress was unicameral, meaning it had only one chamber. States selected their representatives to the legislature and could choose the number of representatives they sent, though each state's delegation had to agree on these decisions, and each state received only one vote. Finally, states—not the new union—would be sovereign, possessing ultimate political authority in almost all areas of policy, a right that was firmly established in the document.¹⁰

FIGURE 2.1 ■ The Original Thirteen Colonies and the Western Territories



The Confederal Government Is Designed to Be Weak

The confederal government under the Articles of Confederation was intentionally made to be weak. With the Revolutionary War ongoing, colonists were still experiencing the tyranny of British rule, and they did not want to re-create it in a new American version. The confederal government could not tax its citizens, and it could not force states to carry out its policies. States could recall their representatives at will, and limits were placed on how long a representative could serve.¹¹ There was no independent judicial branch; a national court existed primarily to resolve differences between states but had no real way of enforcing these decisions. The president of the Confederation Congress was even less powerful than the delegates and was there mostly to keep order and count votes.

The confederal government did have certain powers. Only it could declare war and conduct foreign policy, though it had to rely on states to pay for these activities. In practice, the confederal government continually faced the challenge of getting states to contribute to the national effort. Lack of money was a constant problem, and the Continental Army was continually without adequate supplies and occasionally faced starvation.

The Prospect of Changes to Systems of Slavery and Representation Sows Unrest

To ensure that the agreements made during their creation would hold, the Articles of Confederation placed a tall hurdle in the path of potential reformers: changing or amending the Articles required the approval of all thirteen of the states. In spite of what many saw as problems with the Articles, many Americans did not want to amend, much less replace, them.

Some in the southern states feared that slavery, which was allowed and unregulated under the confederal government, might be restricted or outlawed. Citizens of smaller states feared losing their equal representation in Congress and seeing it replaced by representation based on population, a change that would drastically weaken their position. And many worried that something worse than the problems with the Articles might come out of a process of revising them. When a small group of people takes it upon itself to overturn a political order, there is no guarantee that what they create will not be worse, maybe much worse, than what came before.

Politicians in many states were still mistrustful of the actions and motives of their counterparts in other states. Many were also still nervous about the idea of a strong national government. But in the years since the American Revolution, the political landscape had altered and the balance of political power had shifted.¹² State legislative elections in 1786 and 1787 handed strong victories to nationalist candidates, who were in favor of a stronger national government. These nationalist-controlled legislatures would be selecting the delegates to the Philadelphia convention.

Fears of Unrest and Rebellion Worry State Governments

Shays' Rebellion, named after Daniel Shays, one of its military leaders, was a grassroots popular uprising against the Massachusetts state government, one that, in the minds of many of its citizens, had grown too powerful, too distant, too much like that of Great Britain. Though

the rebellion took place in Massachusetts, the conditions that caused it and the popular anger that fueled it were also present in other states. This crisis added to the sense of urgency in the American confederation, and it provided ammunition to those who wanted to replace the structure of government under the Articles.

The roots of Shays' Rebellion were both economic and political. In the difficult economic times that followed the Revolutionary War, there was a shortage of "hard money," of gold and silver and money backed by gold and silver. What there was no shortage of was debt. Citizens and governments throughout the confederation found themselves unable to pay debts that had been incurred during the war or during the tough economic times that followed. Shopkeepers and cash-strapped state governments alike demanded that their customers and citizens pay debts and taxes in hard currency. Foreclosures—the taking of property to pay outstanding debts backed by that property—were widespread.

The first responses of citizens in Massachusetts and other states were political. Towns asked state governments to issue paper money to help citizens settle their debts. Local citizens petitioned their governments to take action to help them. Some towns in Massachusetts called for a new state constitutional convention. The government of Massachusetts held the line, siding with the banking interests. Many of the state's citizens began to feel they had successfully broken with an oppressive government in London only to replace it with one nearly as bad in Boston. When their attempts at political solutions failed, citizens—especially in the western part of the state—began to take the kind of action they had against King George III and the British Parliament. They rebelled.

Rebellion Begins

To each other, the members of Shays' Rebellion were "Regulators," a label used by the American rebels in the struggle against Great Britain.¹³ Many were Revolutionary War veterans with sufficient military skills and popular support to provide a genuine challenge to the Massachusetts government. The Regulators organized themselves by town and family, and they made a point of trying not to antagonize the local population. Instead, they focused on the courts, as had been done before the Revolution, closing them down in the hopes of stalling the foreclosure process until a solution to the debt crisis could be achieved in the state legislature. Although many closures were committed by rebels carrying weapons, some of them "were peaceful, even jocular."¹⁴

The rebellion and Massachusetts's response to it began to follow a script similar to that of the American Revolution. Citizens took action. The government (this time of Massachusetts, not Great Britain) clamped down, which only made the population more radical. In October 1786, the Massachusetts legislature passed the Riot Act, which granted sheriffs and other officials immunity from prosecution for killing rioters. With fears of standing armies fresh in the minds of its members, the resistance grew and became more radical, though never as radical as it was portrayed in the Boston newspapers, which accused the Regulators of wanting to redistribute private property¹⁵ or hoping to reunite with Great Britain.¹⁶ Both claims were untrue but served to increase the level of fear and concern within and beyond the state's borders.

The Massachusetts state militia was unable to put down the rebellion. Many militia members, themselves Revolutionary War veterans, sided with the rebels. The government of the United States, the Confederation Congress, could not raise an army; its requests to the states for money were refused by every state except Virginia. The wealthy elites in Boston ultimately paid for an army on their own, loaning money to Massachusetts for the purposes of suppressing the rebellion.

Daniel Shays, a former captain in the Revolutionary War, joined the Regulators later than many but became a commander of its largest regiment, partly due to his notable service in the war. In January 1787, Shays's regiment and two others moved on the state armory at Springfield. Major General William Shepard, commanding the newly raised state militia and in possession of artillery that the Regulators lacked, defeated Shays and the rebels, who were forced to withdraw. Two rebel leaders were hanged, and most of the other rebels eventually returned to their farms and towns. Shays escaped to Vermont and was later pardoned, though he never returned to Massachusetts. With the help of the Boston newspapers, Daniel Shays became the personification of anarchy in the United States. In reality, most of the Regulators wanted only to keep their farms and keep their family and friends out of foreclosure or debtors' jail.



An engraving depicts the British colonial governor of North Carolina [center] suppressing a Regulators' revolt in 1771. Daniel Shays and other members of the rebellion in Massachusetts patterned their protests against the state government on the actions of the Revolutionary War Regulators.

Sarin Images / GRANGER

From Shays' Rebellion Came New Opportunity

After the Revolutionary War, George Washington had, as promised, stayed away from public life and retired to his slaveholding plantation in Mount Vernon. But upon receiving what turned out to be exaggerated reports of the strength of Shays's militia from one of his most trusted former generals, Washington grew fearful of what would become of the country. In a

letter to James Madison in November 1786, Washington identified precisely what was needed to “check . . . these disorders”: a strong and “energetic Constitution.”¹⁷

PRACTICING POLITICAL SCIENCE

Image as a Political Tool

One skill that political actors develop is the ability to *use* images for a political purpose—to highlight an issue, to advance an argument, or to challenge arguments that others are making. For consumers of these images, a related skill is to *interpret* images so used—to understand what the creator is trying to accomplish, to look for cues in the images or ways in which they are presented, and to critique the creators’ intent and arguments.

Consider these two depictions of Shays’ Rebellion. Though they aim to depict the same broad set of events, they do so in very different ways. In the top image, the Regulators are seen calmly assembled on the steps of a Massachusetts courthouse.



Sarin Images / GRANGER

The bottom image depicts violence and discord.

Recall the ways in which advocates for a stronger national government, such as James Madison, and those in favor of maintaining the Articles of Confederation disagreed about the most severe dangers facing the young nation. Although these particular images were not used during the debates over amending or replacing the Articles, they do point to differences between the two groups.



Sarin Images / GRANGER

What Do You Think?

Which of these images corresponds better with the view of Shays' Rebellion held by those who wanted a stronger national government? Which might correspond better with the view of those who were wary of a strong national government? Can you think of images you have seen of modern-day controversial events that try to shape the viewer's perception of those events?

Madison may have sensed that Shays' Rebellion would be enough to lure Washington out of retirement and place his unequalled status among Americans behind the effort to create a new political order. Though initially reluctant to attend the Philadelphia conference, Washington eventually agreed; the Philadelphia convention would have the most famous and respected American there to give it legitimacy.

DELEGATES REACH A COMPROMISE AT THE CONSTITUTIONAL CONVENTION

In May 1787, fifty-five delegates from twelve of the thirteen states began to arrive in Philadelphia. Rhode Island and its paper money men had refused to participate. Though it was by some reports a hot, humid summer, the windows of the Pennsylvania State House where delegates met were shut to ensure secrecy. This secrecy was maintained partly to allow the delegates to say what they wanted, partly because none were sure how citizens in the various states would react to their deliberations. At the time, the meeting was called the Grand Convention or the Federal Convention, not the **Constitutional Convention** as it is called today. The delegates had not been sent to Philadelphia to write a new constitution, only to fix the Articles of Confederation as necessary. Writing a new constitution might have been thought of as a revolutionary act, which it was.

James Madison arrived eleven days early with his research in hand. Though he would become perhaps the most influential person at the convention, Madison was not the only delegate who shaped the final document. And he was certainly not the most famous person there. George Washington served as the president of the proceedings. Most delegates expected that he would be the leader of whatever government emerged, if the convention could agree on one. Benjamin Franklin, possibly the second-most famous person in America, was also present, but because of poor health, four prisoners from a city jail carried him through the streets of Philadelphia in a chair on his way to and from the convention.

Many important leaders from the Revolution could not or would not attend. Thomas Jefferson and John Adams, both future presidents and supporters of the Constitution, were out of the country in service of the American government. Others, like Samuel Adams and Patrick Henry, both vocal revolutionaries and opponents of a national constitution, were not selected as delegates or refused to go, sensing that the delegates planned to do much more than merely revise the Articles of Confederation. Their suspicions were correct. Samuel Adams was skeptical of what might emerge from the convention, wary of the dangers to liberty that a strong central government might pose and concerned that such a government could not adequately address the diverse needs of the states.¹⁸ Patrick Henry became one of the most effective opponents to the document once it had been submitted to the states. “Here is a revolution as radical as that which separated us from Great Britain,” he wrote.¹⁹

The delegates who assembled in Philadelphia certainly did not represent a snapshot of the people living in the thirteen states. All were men. Most were well educated. None were enslaved people, former enslaved people, or Indigenous Americans. Roughly one-third were enslavers. Not all were wealthy, but they were all elites. Unlike the revolutionaries who would soon lead France into chaos in the name of democracy, however, most of the Founders of the American Republic had previous practical political experience to guide them and temper their revolutionary ideals—Madison included. The solutions the delegates came up with were pragmatic, political, and strategic, for better and for worse.

Pennsylvania’s state constitution was the most democratic. All real power rested in a unicameral legislature whose legislators served one-year terms. To many elites, the Pennsylvania constitution represented nothing more than institutionalized mob rule,²⁰ sometimes at the expense of religious minorities. Massachusetts’s constitution was much less democratic, with

a much more powerful governor and property requirements for serving in the government. To the Regulators and those who sympathized with them, Massachusetts had replaced Great Britain's royal aristocracy with Boston's constitutional aristocracy. As the delegates convened in Philadelphia, they drew from the experiences of the various states as they tried to fashion a new form of government. Some worried about democracy, others about aristocracy. The solutions that the delegates came up with were pragmatic, political, and strategic, for better and for worse.

Delegates Debate Forms of Representation and the Powers of the National Government

By Friday, May 25, 1787, enough delegates had made it over the muddy Pennsylvania roads to begin the deliberations. Their first order of business was to unanimously select Washington as president of the convention. Madison, though not selected as the official reporter for the convention, took a seat up front and assumed the role informally. The other delegates were agreeable to this and made sure he got copies of their speeches to be entered into this unofficial record.²¹ Much of what we know about what happened in Philadelphia comes from his notes.

The delegates adopted a set of rules to guide themselves, calling for absolute secrecy about their deliberations.²² They knew that the enormous task of coming to an agreement would be made more difficult if the details of their discussions were leaked. It was said that a member of the convention was assigned to attend dinners with Franklin, who was fond of alcoholic beverages, to change the conversation if Franklin began to talk too loosely.²³ The delegates agreed not to record their individual votes so that they would not feel bound by previous votes if the same issues came up again, giving themselves the ability to compromise and change their positions as needed.

As the proceedings began, the Delaware delegation put the issue of how states were to be represented in the new government on the table—the most contentious issue of the convention and the one that determined so many other outcomes. No other question so dominated the convention during the early weeks and months of deliberations or so threatened to tear it apart. How would states be represented in a new government? Would it be the same one state, one vote formula as under the Articles of Confederation? Or would states be represented on the basis of their population or wealth?

The Virginia Plan Outlines a System of Proportional Representation for the States

On the third day of the convention, the delegation from Virginia presented a set of proposals for the rest of the members to consider. The ideas behind what came to be known as the **Virginia Plan** were James Madison's. Madison had been building their foundations for more than a year and had coached the rest of the Virginia delegation in the days before their presentation. The Virginia Plan was much more than a modification of the Articles of Confederation. Its proposals described a new, national form of government, although Madison and his allies used the less controversial word *federal* when presenting and defending it.



George Washington presiding at the Constitutional Convention at Philadelphia in 1787. Considerable measures were taken to ensure the secrecy of the proceedings at the convention.

Sarin Images / GRANGER

The Virginia Plan laid out the failures of the American confederation—weakness in national defense and the conduct of foreign policy, conflicts between states, and the failure to suppress internal rebellion—and presented an answer to those defects: The national government would be strong. Its constitution would be “paramount to the state constitutions.”²⁴ It would consist of three branches: a legislative branch to make laws, an executive branch to carry the laws out, and a judicial branch to resolve disputes between the states and between the national government and the states. The national legislature would be bicameral, consisting of two houses. Members of the lower house would be elected directly by the people. The upper house would consist of representatives nominated by state legislatures and chosen by members of the lower house. The executive and some members of the judiciary would have the power to veto—or overturn—acts of the legislature, which could, in turn, override that veto. The supremacy of the national government would be unmistakable. It could make laws as needed to govern the country as a whole and use military force against states if necessary.

Many details were vague or literally left blank, such as the length of terms of members of Congress, the frequency of elections, and the number of votes needed to override a veto. The change in representation of states, however, was clear. The Virginia Plan proposed to overturn the one state, one vote structure of the Articles of Confederation. Instead there would be a system of proportional representation in which more populous states would have more members in both houses of the legislature. The answer to the question “Proportional to what?” was left somewhat vague, however: Would population counts include enslaved individuals? The Virginia Plan was not clear.

Delegates from smaller states reacted immediately and strongly to the Virginia Plan’s suggestion of proportional representation. They had successfully fought it off in the Second

Continental Congress, when the Articles were drafted, and they continued to fight against it. If state representation were to be based on population totals, a delegate from New Jersey warned, Virginia would have sixteen votes to South Carolina's one, plus all there knew that Virginia's boundaries were far from settled.²⁵ They seemed limitless. New Jersey's William Paterson vowed never to approve the plan, saying that New Jersey "would be swallowed up."²⁶

For the next two weeks, however, the convention discussed the Virginia Plan and little else. Within days of its introduction, several provisions of the plan—a government of three branches and a bicameral legislature—had already been approved. Madison and his fellow nationalists had won the first victory in the strategic political struggle over the Constitution. They had set the agenda. They had forced the opposition to respond to their ideas.

The New Jersey Plan Maintains Equal Votes in the Legislature

Two weeks later, Paterson presented the small states' response to the Virginia Plan. Known as the **New Jersey Plan**, it proposed to strengthen the power of the confederal government but make relatively few changes to the Articles of Confederation. There would be only one house in the legislature, just as under the Articles. Each state delegation (chosen by state legislatures) would still get one equal vote in that legislature. That legislature would get new powers, mostly over taxation and the economy, though it would still depend on the states for some revenue. The executive and judicial branches were much less well envisioned than under the Virginia Plan. Paterson correctly argued that his state's plan was consistent with the purpose of the meeting in Philadelphia; the original mandate of the convention had included only making some changes to the Articles. However, delegates had already been debating almost nothing except the Virginia Plan, the framework of which centered on a strong national government and provisions that would essentially replace the current form of government.

After Paterson had presented his plan, Madison proceeded to "tear the New Jersey plan to pieces."²⁷ Madison argued that the New Jersey Plan would leave the nation with all the problems that had motivated the convention in the first place: tax collection across state borders would remain a disaster; rebellions such as the one Massachusetts had just barely put down would continue to plague the Republic.²⁸

Madison and James Wilson grew frustrated over the less populous states' objections to the Virginia Plan. To these two men, neither the states nor the national government was or should be supreme; the people were supreme to both. How their numbers were apportioned was beside the point. To allow equal representation in Congress for states would allow the political divisions between and within states to infect national politics. Delegates from smaller states did not see it this way. To them, equal representation was not open for negotiation; it was essential to their sovereignty. At one point, Gunning Bedford from Delaware threatened that the small states might have to break off, form their own union, possibly even ally with a foreign power.²⁹ This was, in modern political terms, the "nuclear option" for the small states. There would be no going back if it were used. All knew it was a possibility, even if unlikely, but to have the idea raised so boldly and so publicly shocked the convention and highlighted for all present the stakes for which they were playing and the possible consequences should they fail to reach an agreement.

The Great Compromise Calls for a Bicameral Legislature with Different Methods of Representation in Each Chamber

With the issue of how states would be represented threatening to break apart the convention, the question was sent to a committee. While the young nation celebrated the Fourth of July, delegates to the convention were unsure whether their work would succeed, or even continue. The stakes were very high. Elbridge Gerry of Massachusetts warned, “If we do nothing, it appears we must have war and confusion.”³⁰ On July 5, the committee responded with a proposal to give something to each side. The new national legislature would be bicameral; it would have two chambers. Representation in the lower house would follow the Virginia Plan and representation in the upper house, the New Jersey Plan. Compromise having been put on the table, the mood of the convention began to shift. Bedford of Delaware—who had threatened that small states might seek an alliance with a foreign power—insisted that he had been misunderstood.³¹

On July 16, by a vote of 5–4, the delegates agreed to what would be called the **Great Compromise**.³² Under this agreement, much like the committee’s recommendations, the national legislature would be bicameral. States would be represented in the House of Representatives according to their populations. The people would directly elect these representatives. States would be represented equally in the upper chamber, the Senate. Two senators would be chosen from each state by their state legislatures. Not all of the small-state delegates were satisfied with the agreement; two left in protest. But the rest felt that having the Senate was protection enough, and they became much more cooperative in the weeks that followed. Delaware, for all its threats and opposition early in the convention, was the first state to later ratify the Constitution that was being hammered out in Philadelphia. (See Table 2.1.)

TABLE 2.1 ■ Legislative Structures under the Virginia Plan, New Jersey Plan, and Great Compromise

	Virginia Plan	New Jersey Plan	Great Compromise
Structure of Legislature	Bicameral (two chambers)	Unicameral (single chamber)	Bicameral (two chambers)
Apportionment	Lower House <ul style="list-style-type: none"> • Number of seats apportioned by state population • Members directly elected by citizens 	Legislature <ul style="list-style-type: none"> • Equal representation for states regardless of state population • Members appointed by the states 	House of Representatives <ul style="list-style-type: none"> • States represented according to population • Members directly elected by citizens
	Upper House <ul style="list-style-type: none"> • Number of seats apportioned by state population • Members elected by lower house (from list supplied by state legislatures) 		Senate <ul style="list-style-type: none"> • States represented equally (two senators per state) • Members appointed by state legislatures

	Virginia Plan	New Jersey Plan	Great Compromise
Structure of Legislature	Bicameral (two chambers)	Unicameral (single chamber)	Bicameral (two chambers)
Powers	<ul style="list-style-type: none"> Legislature has strong powers to enforce national policy 	<ul style="list-style-type: none"> Legislature has similar power as under the Articles of Confederation but can also levy taxes and regulate commerce 	<ul style="list-style-type: none"> Legislature has broad powers over commerce and the ability to make laws as necessary House of Representatives has power to levy taxes

That the question of representation in Congress was settled first is important, as this shaped the political strategies of the delegates going forward. Having secured equal representation in the Senate, small states offered less opposition to a strong national government. They were now less afraid of Congress, even seeing it as a defense against the power of their larger neighbors. Madison, who had wanted popular representation in both houses, began to push to strengthen the other two branches to act as a counter to the Congress he had proposed but now mistrusted due to the equal state representation in the Senate.³³ The Constitution did not fall out of the sky. It was the result of compromise. But it was also the result of adaptation to earlier compromises and to changes in the political landscape in which the delegates pursued their goals and those of the states that they had been chosen to represent.

DELEGATES WORK OUT DETAILS OF THE NEW GOVERNMENT

With the bicameral legislature having resolved the first and largest issue of the convention—the distribution of representation among the states—the convention moved on to the structure of the rest of the government and the specific powers of each branch. In doing so, it confronted the second major issue of the convention: the question of national power. Many of the details of the new government were worked out in two committees over the rest of the summer and then presented to the full convention for approval.

The Legislative Branch Is Made the Most Powerful

Although representation in Congress had been settled, its powers still had to be worked out. To do so, delegates looked to the powers of the Confederation Congress under the Articles of Confederation as well as to state legislatures under the various state constitutions. As the **legislative branch** of government, Congress's purpose was to legislate—to make laws. Both houses had to work together to pass laws, but because of how congressional members were chosen, each house had a slightly different purpose. Members of the House of Representatives, who were elected directly by the people and had to run for reelection every two years, were meant to be more responsive to the people, to directly represent their constituents. Senators, who were chosen by state legislatures and served six-year terms, were

there to check the passions of the people. Senators' terms were staggered in two-year shifts so that only about one-third of senators would be up for reelection in any given election year, making it more difficult for any swift change in mood among citizens to quickly affect national policy.

Congress, as expected, was made more powerful than the unicameral legislature under the Articles of Confederation, especially with regard to issues of money and the economy. Congress was given the power to borrow money, collect taxes, and “regulate Commerce with foreign Nations, and among the several states.” To preserve its flexibility, Congress was also given the ability “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all the other Powers vested by this Constitution in the Government of the United States.” The necessary and proper clause, combined with the commerce clause, paved the way for a dramatic expansion in Congress's power over national policy in the centuries following ratification.

The Executive Branch Puts the Laws into Effect

Neither the Virginia Plan nor the New Jersey Plan had been very specific about the **executive branch** of government. Madison had not given it as much thought as he had Congress—at least until he decided he needed to build in more protections against equal state representation in the Senate. Initially there was not even a consensus on how many chief executives the country should have, much less on how powerful the branch should be. Alexander Hamilton, young, ambitious, self-made, and not trusted by many delegates, proposed a powerful president who would be elected for life. His plan made the Virginia Plan look moderate. Though it was not voted on, Hamilton's suggestion of an “American king”³⁴ followed him for the rest of his political career. Most delegates expected that Washington would serve as an, if not *the*, executive of the country. Some wrote that confidence in Washington reduced anxiety about how powerful the executive would become.

In the end, the delegates settled on a single executive—a president—who would serve for four-year terms. As head of the executive branch, the president was there to “execute,” or carry out, the laws that had been passed by Congress. The president was given some, but not unlimited, power over Congress, with the ability to veto a law that Congress had passed. Congress could, however, override the veto with a two-thirds vote in each of the two houses. The president was named commander in chief of the army and navy. Again, though, power was to be shared. Congress, not the president, was given the power to declare (and raise money for) war. Presidents were given power to oversee the people working in the executive branch and to obtain from them the information needed to govern the country, which has led to the growth of a large and influential federal bureaucracy. Finally, the president was given the power to make foreign policy, though again, this responsibility was to be shared with the Senate.

More controversial than what powers the executive would have was how the president would be elected, raising once again the question of how states would be represented in the new government. In the end, delegates settled on a complicated compromise for electing the president,

one that is still not fully understood by many Americans. Citizens would not vote directly for the president. Instead, an Electoral College consisting of electors awarded to states based on their representation in Congress would select the president. Each state received two electors (for their senators) plus one each for their members of the House of Representatives. Each state would decide how its electors were to be chosen, and successful candidates would need to win the votes of a majority of electors to become president. The system of the Electoral College continues to incite criticism and suggestions for reform. In the minds of the delegates, however, the complicated structure managed to avoid reigniting the disagreements between small and large states over representation.

The Judiciary Is Designed to Interpret Constitutional Conflicts

The Virginia and New Jersey Plans were even less specific about the **judicial branch** of the government, the system of federal courts. Delegates decided on one Supreme Court to be the highest in the land and a system of lower federal courts whose structure and composition would be determined by Congress. Unlike the judiciary under the Articles, the federal courts would have jurisdiction—the authority to hear and decide cases—over all disputes between states and the national government, between two or more states, and between citizens of different states. Combined with the supremacy clause of the Constitution, which declared that national treaties and laws “shall be the supreme law of the Land,” the federal court emerged as superior to state courts.

Not included in the Constitution was an explicit description of the power of judicial review, which gives the judicial branch of government the authority to determine whether a law, part of a law, or an act of government is or is not in violation of the highest law of the land and, if it *is* in conflict, declare it thus invalid. In the United States, that supreme law is the Constitution, and the power of judicial review rests ultimately with the U.S. Supreme Court. Though state supreme courts may exercise judicial review on state laws and actions, the supremacy clause of the Constitution ensures that the exercise of judicial review by the Supreme Court includes the authority to use that power over both national and state laws and actions.

In exercising this power, the Supreme Court does not claim to be above the executive or legislative branch. Instead, the Constitution and the people are above all three branches, and it is the role of the Court to act as the interpreter of conflict between the Constitution and governmental action. This power has been retained throughout history by shrewd political action and the conscious preservation of it by Supreme Court justices. We will examine the concept of judicial review, its foundations, and controversies surrounding its use in much more detail in our chapter on the judiciary.

Separation of Powers Allows for Checks and Balances on Government

In drawing up the powers of each of the three branches, the delegates tried to make sure that no one branch could become too powerful on its own. The idea of **separation of powers** was widely supported by delegates at the convention and well known to those who had studied the writings

of Baron de Montesquieu. Under this system, branches are not meant to preside over their own spheres. Rather, a system of “separated institutions sharing power” was created.³⁵ Each branch, whose members tended to represent a different group of people, has to work with the other branches to make things happen, though not on every issue all the time (see Table 2.2). This was the central blueprint around which the national government was structured. Popularly known as the system of checks and balances, the idea of overlapping (but not perfectly overlapping) spheres of influence also applies to relations between the states and the federal government. Federalism, or the sharing of power over some aspects of governance between the states and the nation, is as central to American government as checks and balances, and it has been the source of much conflict and controversy throughout its history.

TABLE 2.2 ■ Separated Institutions Sharing Powers

	INSTITUTIONS		
	Executive Branch	Legislative Branch	Judicial Branch
Lawmaking Authority	<ul style="list-style-type: none"> Executes laws Has veto power Nominates judges to the federal judiciary and key executive branch officials Shapes legislative agenda 	<ul style="list-style-type: none"> Writes nation’s laws Has veto override Senate confirms judicial nominees and key executive branch officials Determines number of Supreme Court justices Creates lower courts 	<ul style="list-style-type: none"> Interprets contested laws Can declare both federal and state laws unconstitutional*
National Security and Foreign Policy Responsibilities	<ul style="list-style-type: none"> President acts as commander in chief of the military Sets foreign policy agenda 	<ul style="list-style-type: none"> Declares war Senate ratifies treaties with other nations 	
Oversight Responsibilities	<ul style="list-style-type: none"> Oversees federal bureaucracy 	<ul style="list-style-type: none"> Holds power of impeachment Holds budgetary authority and power of oversight over executive branch agencies 	<ul style="list-style-type: none"> May declare laws or executive branch actions in conflict with the Constitution*
Sovereignty	Sovereignty rests with the people. The Constitution is the supreme law of the nation.		

*Formally established in later Supreme Court decisions.

Delegates Address the “Unfinished Parts” but Preserve Enslavement

At the beginning of September 1787, the Committee on Unfinished Parts³⁶ reported back to the convention on its efforts to address issues that had been left unresolved. Not all of these issues were ironed out, and the question of slavery threatened to break up the proceedings.

In an attempt to clear up commercial relationships among states, the delegates decided that “full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” The full faith and credit clause was designed to ensure that each state recognized contracts and other legal proceedings from other states. It has become an important constitutional element in the question of same-sex marriage and marriage equality in the United States (see Chapter 4). The structure of the Electoral College was finalized, as was the office of vice president of the United States, whose constitutional powers are quite limited but who plays an important role in presidential elections.

In important ways, however, the Constitution remained unfinished even after the delegates completed their deliberations in September. This was partly by design, partly due to political compromises made during the convention itself. By making provisions for changing the Constitution through a process of **amendment**, the Framers acknowledged that it would always be unfinished, that it would need to be adaptable if it were to endure. By *adaptable*, however, the delegates did not mean easily changed. They purposefully designed a system for amending the Constitution that made this very difficult to achieve. Once again, divisions over representation of states emerged, with small states arguing that states should have the power to approve amendments and the nationalists arguing that it should be left to the people to decide.

In the end, another complicated compromise emerged, with both the people—through official proposal in Congress—and the states—through the process of final ratification—being necessary to alter the Constitution. Amending the document is a two-stage process, with two possible routes to completion of each of the two stages needed for amendment. First, the amendment has to be officially proposed, which involves much more than someone just suggesting an idea. Proposal can happen in one of two ways, only the first of which has ever been used: (1) passage by a two-thirds vote in both the House and the Senate or (2) passage in a national convention called at the request of two-thirds of the states. After formal proposal, the proposed amendment must be ratified in one of two ways: by (1) a majority vote in three-fourths of the state legislatures or (2) acceptance by ratifying conventions in three-fourths of the states. The second method for ratification has been used only once.

Of the thousands of suggestions for amending the Constitution presented in Congress since its founding, only twenty-seven amendments have been formally ratified. The first ten of these, which make up the Bill of Rights, became part of the debate over ratification itself and are often thought of as part of the “original” Constitution. Two others—an amendment prohibiting the sale and consumption of alcoholic beverages and one repealing that prohibition—canceled each other out. Though the Constitution has rarely been amended, some scholars argue that important decisions by the Supreme Court and major changes in how the American people view themselves have at critical times in history led to changes in government just as significant as formal amendments.³⁷

The Founders Reach a Fateful Compromise on Slavery

At the time of the convention, nearly one out of every six individuals living in the thirteen states was enslaved. Most, but not all, lived in the southern states. Southern plantation owners, many of whom were politically powerful in their state legislatures and some of whom were delegates to the Philadelphia convention, had no intention of seeing their institution outlawed or heavily regulated. Plantation owners were not the only interests who benefited from slavery. The slave trade and the trade in goods they produced benefited some powerful shipping interests as well, especially in the Northeast. About one-third of the delegates to the convention, including Madison and Washington, held enslaved people. A few others, however, saw the preservation of slavery as a moral failure and spoke out at the convention about the hypocrisy of trying to preserve liberty in a document that allowed slavery.

In spite of a few speeches on the floor of the convention, however, the question of slavery was not generally debated in terms of morality or of liberty but rather in terms of states' representation, the same issue that affected so many others at the convention: Would enslaved peoples count when it came time to tally a state's population? In the end, the question of slavery was settled on political considerations.

The final document dealt with slavery in three ways. The word *slavery* never appears—a minor tactical victory for those who did not want the Constitution to appear to approve of it. On the question of slavery and representation in Congress, the **Three-Fifths Compromise** ensured that an enslaved person—called an “other person” in the Constitution—would count as three-fifths of a person for a state's representation.³⁸ Enslaved persons could not vote or be represented, but their numbers would boost the influence of the states with enslaved peoples; because enslaved individuals were counted among the population, those states would be allotted more members of Congress. In a second facet of the compromise, Congress would not be allowed to restrict the trade in enslaved peoples until 1808 at the earliest. Third, enslaved peoples who had successfully escaped would have to be returned to their enslavers, regardless of the laws of individual states.

Historians and political scientists have debated how the delegates could have agreed to preserve slavery when some observed that it went against the very idea of natural rights upon which the Constitution is based and at a time when some states were beginning to restrict or outlaw it on their own. There are several reasons, and they are not mutually exclusive.

The first reason is that enslaved peoples had not voted for their state legislators. Some delegates did oppose slavery, but enslaved peoples had no direct representation in the Constitutional Convention. Although enslaved peoples were not represented, enslavers were, and their delegates used the threat of leaving the convention to secure their interests. Had the southern states pulled out, the Articles of Confederation, which contained no restrictions on slavery, would have remained the law of the land. Politics during the convention also played a large role. The question of slavery had been handed to the Committee of Detail, chaired by John Rutledge of South Carolina. Rutledge's committee proposed to give the slave states everything they demanded. In his notes, Madison commented on the political implications of this slave-state delegate being in charge of the committee that would set the agenda for debate on the issue of slavery.

Others have argued that the preservation of slavery was the result of a **logroll**, or a trading of votes, between the Southern slave states and the northeastern commercial states (in which enslavement was or had also been in practice). Northeastern states received the strong commercial policy they wanted in return for protections on slavery for the southern states. Evidence from the records of the convention supports the idea of a logroll.

Regardless of the reasons, the question of slavery was temporarily handled but fundamentally unsettled. Not until the country was literally torn apart in the Civil War eighty years later would the issue of slavery be ultimately decided. It would take nearly another century and a great deal of sacrifice and strategic political activity to make equality for Black Americans a reality, or at least more of a reality, on the ground rather than just in words. As we will explore throughout this book, today, injustices and inequalities continue to impact the lives of Americans of color, and the question of whether Americans are all truly equal in the Republic endures.

The Constitution Is Finished but Not Yet Made the Law of the Land

By proposing a system for amending the Constitution, the Framers ensured that it would always be unfinished so that it could be adapted over time. More immediately, however, the Constitution was unfinished because the states had yet to approve it. The document that emerged from Philadelphia was just a proposal. It carried no force until the states chose to adopt it. That would be determined by the battle over ratification.

A skillful move by Benjamin Franklin at the convention's conclusion required only that delegates sign their names as witnesses to their state's endorsement, which allowed some delegates to sign the Constitution even knowing that they would soon speak out against it. Franklin's move, and the departure over the summer of delegates who did not approve of the outcomes, made the delegates appear to be in greater agreement than they really were. In fact, many did have strong reservations, and three refused to sign.

The delegates also used a bit of trickery to get around another issue. The Articles of Confederation stipulated that amendments to the Articles required the approval of the Confederation Congress and all thirteen state legislatures. This, members of the Constitutional Convention knew, was going to be very difficult. Rhode Island had refused to participate in the Convention, and public opinion in many states was closely divided. So, the delegates declared that the Constitution would become the law of the land if ratifying conventions in nine out of thirteen states approved it, bypassing the Confederation Congress as well as the requirement for unanimous approval by the state legislatures. Even with this somewhat unconventional ploy—breaking the spirit if not the law of the Articles—it was still far from certain that the Constitution would be adopted.

FEDERALISTS AND ANTI-FEDERALISTS ARGUE OVER RATIFICATION

The fight between those in favor of the Constitution and those opposed to it was America's first national—and first *negative*—political campaign. Both sides issued dire premonitions of what might happen if the Constitution was or was not ratified. The debate was carried out through the printing presses, which had become widespread enough to allow both sides to carry their

messages to the people. The supporters of the proposed Constitution scored the first tactical victory by claiming the name **Federalists** for their group. That was ironic, because the proposed government was actually strongly national, whereas the term *federalist* generally meant more of a balance between the power of states and the national government. That forced those arguing against the document to be tagged as **Anti-Federalists** despite the fact that their position was in reality more federalist.

The Anti-Federalists were in the difficult position of having to argue against a proposal, since basing their argument only on what was good about the Articles of Confederation was a tough sell. So they turned negative. They raised fears in the minds of Americans about what this potentially radical change in the government would bring. Mostly, they argued, it would trample on the rights of the people and the states in which they lived.



The fate of the Constitution was decided in the state ratifying conventions (nine states had to ratify for the Constitution to take effect), but it was the subject of intense debates everywhere—in homes, taverns, coffeehouses, and newspapers.

Sarin Images / GRANGER

For their part, the Federalists pointed to the problems that plagued the government under the Articles—inability to deal with foreign powers, economic challenges, and especially the threat of anarchy—and warned citizens that the only way to avoid these dangers was through the new Constitution. The Federalists had celebrity on their side in the figures of Washington and Franklin. The Anti-Federalists, with the exception of a few misguided attempts to counter the celebrity endorsements of Washington and Franklin, stayed away from the issue of famous supporters.

In some ways, the Federalists and Anti-Federalists split along distinctions of class (see Table 2.3). Many wealthy merchants favored the strong economic policy that the Constitution would allow, and many wealthy southern plantation owners supported the agreements that

had been struck. On the other side, a large number of Anti-Federalists came from rural areas and mistrusted powerful elites in their states' capitals. To say that the Federalists were wealthy elites and the Anti-Federalists small farmers and shopkeepers is, however, an oversimplification. Many Anti-Federalist leaders were educated elites; some of the most prominent were Revolutionary War heroes, delegates to the convention itself, or important members in state politics.

Though the Federalists tried to associate the threat of anarchy and Shays' Rebellion with their opponents, the Anti-Federalists were just as concerned as their opponents about securing a stable future for the country. The divisions between the two sides represented fundamentally different visions for how to accomplish this.

Three main issues divided the Anti-Federalists and the Federalists on a vision of this future: (1) how to best protect individual liberties against **tyranny** (the suppression of the rights of a people by those holding power), (2) the relative power of states and the nation, and (3) the lack of a bill of rights (a list of rights and liberties that people possess and that governments cannot take away) in the Constitution. Each of these issues was closely related to the others.

TABLE 2.3 ■ Federalists and Anti-Federalists

Both Federalists and Anti-Federalists were interested in a politically and economically secure nation, but they differed in how they thought that would best be achieved.

	Federalists	Anti-Federalists
<i>View of proposed Constitution</i>	Supporters	Opponents
<i>Proponents of:</i>	A strong national government	Stronger state government
<i>Concerned about:</i>	Tyranny of the majority	Tyranny of the minority
<i>Proposed:</i>	An extended republic to limit faction and help to resolve the tyranny of the majority	Strong restrictions on branches of government to help solve the problem of too-strong national government
<i>Supporters included:</i>	Wealthy merchants and southern plantation owners George Washington, Benjamin Franklin, Alexander Hamilton, James Madison, John Jay	People in rural areas, farmers, and shopkeepers Fewer well-known supporters, but leadership included educated elites, Revolutionary War heroes, and convention delegates

Will This Experiment Work? Federalists and Anti-Federalists Debate the Dangers of Tyranny

The Federalists made their case for the Constitution in a collection of eighty-five essays written primarily for the New York papers from the fall of 1787 to the spring of 1788. **The Federalist Papers** were written under the collective name Publius but were actually written by Alexander Hamilton, James Madison, and John Jay. They are now considered some of the most important

writings in American political history. They laid out the theory behind the Constitution (which itself does not directly speak to the reasons behind its own provisions), showing how a large republic could be constructed in a way that would prevent it from growing so self-interested and powerful that it would trample on the rights of states and their citizens.

Many of Madison's essays are now considered to be among the most important in the collection. Two essays in particular, *Federalist* No. 10 and No. 51 (see Appendixes 4 and 5), tackle Anti-Federalist critiques by laying out the reasons behind the proposed constitutional republic. From his research, Madison knew that in a republic one must *not* assume that people will always act in noble ways, putting their own needs behind what is best for the republic. Instead, a republic must be constructed to account for self-interest and selfish motives.³⁹

In American political history, there is no one work that encapsulates Anti-Federalist thought in the same way that *The Federalist Papers* did for Federalists. There are no *Anti-Federalist Papers*; rather, as scholars have pointed out, “the Antifederalist literature is immense and heterogeneous, encompassing speeches, pamphlets, essays and letters.”⁴⁰ Publishing under pseudonyms—often chosen from ancient Roman politicians and thinkers such as “Cato” and “Brutus”—the Anti-Federalists agreed that a nation cannot rely on enlightened self-interest to protect the people from tyranny; however, they disagreed with the Federalists over *how* best to do that.

A Republic Must Be Able to Handle the Problem of Faction

The danger in the view of both sides was not only that people would act according to their self-interest but also that they might join forces with others who had the same motives. Collectively, this group of people, however large or small, could try to use the government to get what it wanted, trampling on the rights of others in the process. Such a group of self-interested individuals would constitute what Madison called a **faction**, the most dangerous challenge to a republic.

Long before Karl Marx wrote about the inevitability of class conflict in capitalist societies, Madison made it clear in *Federalist* No. 10 that inequality of wealth is the primary driver of factionalization, asserting that “those who hold and those who are without property have ever formed distinct interests in society.”⁴¹ Madison included enslavement of others as a source of faction, as enslaved persons were considered a form of property during the discussions in the Constitutional Convention. However, this issue was not addressed in *Federalist* No. 10.

Madison saw several ways to solve the problem of faction. The first was tyranny—factions emerge under conditions of liberty, not tyranny—but tyranny was an unacceptable option. The second was to create a totally unified, factionless society where everyone has “the same opinions, the same passions, and the same interests.”⁴² This second solution was unrealistic, especially in a large republic like the United States. Indeed, the American Republic has had factions since its origin. Political parties can be thought of as factions, as can interest groups and social movements. Madison concluded that factions were inevitable, so he turned to the question of how a republic can keep them in check.

The superior way to check their power, Madison argued in *Federalist* No. 10, is through an **extended republic**: a republic so large and diverse, with so many factions vying for power, that

no one faction is able to assert its will over all the others. Tactically, this was a clever argument. The Anti-Federalists had claimed that the American Republic would be too large to govern effectively, whereas Madison argued that the only solution to the dangers of faction was precisely to have such a large republic. Madison, however, was no populist; his design for government placed brakes on popular passions, insulating representatives from the desires of their citizens.

Anti-Federalists argued that the national government would grow more distant from the people over time and would eventually begin to oppress them. Congress having the power to tax would only make this danger greater, they claimed. Therefore, the Anti-Federalists asserted, more restrictions needed to be placed on the national government and more power reserved for the states. To the Anti-Federalists, those in power in a too-strong national government would eventually, inevitably, come to form their own faction. They noted that many of the Enlightenment writers that Madison had drawn his ideas from had argued that republics had to be small to work properly, and all expected this one to grow even larger over time, making the challenges even worse.

Federalists and Anti-Federalists Fear Different Forms of Tyranny

Federalists and Anti-Federalists did not disagree in their mistrust of government and the harm that could be inflicted by a self-interested few. Rather, both sides acknowledged that tyranny could take two forms. In a **tyranny of the minority**, a small number of citizens trample on the rights of the rest of the larger population. In a **tyranny of the majority**, a large number of citizens use the power of their majority to trample on the rights of a smaller group. The two sides disagreed on which was the greater danger and, therefore, on how a republic should be structured.

Given Madison's earlier observations about property and the panic associated with Shays' Rebellion, one of the dangers the Federalists saw was a majority of poorer people using their power to redistribute wealth in a more equal way. In *Federalist* No. 10, Madison did not argue for direct democracy, in which citizens vote directly on policies, because he saw that form of government as too instable, with too few protections for personal security or private property.⁴³ Instead he argued for the delegation of power to representatives by the people and for power to be divided across government institutions. In *Federalist* No. 51, Madison laid out the blueprints of such a structure. Separation of powers is the guiding principle, with power divided and parsed between the states and nation, among the three branches of the national government, and within each branch.

The Anti-Federalists focused more on the dangers of a tyranny of the minority. Shays and the Regulators had viewed the government of Massachusetts as becoming dangerously disconnected from the people and controlled by wealthy elites. The Anti-Federalists feared the government of the United States would follow a similar path. While acknowledging the dangers of minority tyranny, Madison and the Federalists focused more on the dangers of majority rule and its necessary counters. A majority of people, if in control of all the levers of power, might use that power to oppress a minority of citizens. Slavery could be thought of as a tyranny of the majority, though in fact the number of enslaved persons outnumbered whites in many areas of the country.

Federalists and Anti-Federalists Debate Where Power Should Be Concentrated

Debates over the relative power of the states and the nation were central to the political battles over ratification of the Constitution. The Federalists tried to convince American citizens that the proposed form of government was necessary to preserve their rights and liberties. The Anti-Federalists argued against the proposed increase in national power and warned Americans of what might come to pass over time as the advantages given to the national government in the Constitution might allow it to infringe more and more on the authority of the states.

Federalists Argue for a Strong National Government

In their campaign to defend the proposed Constitution, the Federalists highlighted the problems and dangers of a government in which the states were strong and the nation was weak, pointing out failures of past republics as well as the problems experienced under the Articles of Confederation.⁴⁴ In *Federalist* No. 16, Hamilton argued that, for instance, if the national government in a confederacy were ever forced to use military might against one of its members, it would surely result in the “violent death of the confederacy.”⁴⁵

Madison took a more moderate approach in his contributions to *The Federalist Papers*, emphasizing the balance between state and national power in the proposed Constitution. Across numerous papers, Madison argued that the Constitution divided the people’s sovereignty in such a way as to preserve the integrity of both states and nation and to guard against the dangers of faction, with checks and balances built into both the legislative and executive branches.

Anti-Federalists Fear Losing Representation at the National Level

The Anti-Federalists were not convinced by the arguments in *The Federalist Papers*. They feared what they saw as a radical increase in national power, not only in the proposed Constitution but in how the government might evolve over time. They feared the distant future as much as the immediate present. They were, in many ways, conservative, trying to preserve the power of the states as enjoyed under the Articles of Confederation.

Many Anti-Federalist concerns centered on how representation of the people’s interests could be maintained as the country grew in size, population, and power. They “feared that, once elected and comfortable in their jobs, the representatives would not relinquish power,” creating the possibility of a new, elected, American aristocracy.⁴⁶ This “democratic” aristocracy, an Anti-Federalist essay warned, would be accompanied by an irresistible trend toward a large and complex national government, driven by the demands of a growing nation, ending in “despotism.”⁴⁷

The economic power of the national government to tax and regulate interstate commerce was one of the Anti-Federalists’ greatest worries, and it was only made worse by the necessary and proper clause of the proposed Constitution. In one Anti-Federalist essay, the author argued that “this power, given [to] the federal legislature, directly annihilates all the powers of the state legislatures.”⁴⁸

A Bill of Rights Is a Key Issue in the Ratification Debates

Strategically, the most effective Anti-Federalist charge against the Constitution was that it lacked a bill of rights—a list of rights and liberties with which people are born and that governments cannot take away. Many state constitutions already had them. Motions to include these statements were raised during the convention, but they did not pass; a proposed clause guaranteeing the freedom of the press failed by just one vote. To Madison and other opponents of a bill of rights, such a statement was simply not necessary. In the republic that the delegates had fashioned, the people were already sovereign, and the government was already limited. There was no need to limit Congress's power over things that the Constitution gave it no control over in the first place. Some questioned whether it was possible or even desirable to try to make a complete list of rights and liberties. What about the ones that were left out? Would Congress respect rights if they were not part of the official list?

Some, however, both during the convention and after, remained strongly in favor of a bill of rights. A bill of rights, they argued, was necessary to check the tendency of government to infringe on the rights and liberties of citizens over time. They pointed out that one should be concerned about what the government might become in the future, not just what it was in the present, as the prospect of tyranny loomed large in their minds. In addition, the Anti-Federalists argued that a bill of rights served an important educational function in a republic.⁴⁹ It would serve to remind citizens of their natural rights and remind them to assert those rights when governments might, often slowly, try to take them away.

As the state ratification conventions took up the debate, the lack of a bill of rights in the document became a powerful political tool for the Anti-Federalists, and the Federalists shifted gears in response. During the ratification campaign, sensing the realities of the political landscape, Madison promised to introduce a bill of rights as proposed amendments during the first session of the new Congress after the Constitution had been ratified.



A nineteenth-century steel engraving depicting Mercy Otis Warren. Publishing anonymously, and often assumed to be a man, Warren warned against the omission of a bill of rights in the proposed Constitution.

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In February 1788, the Federalists won a narrow victory in Massachusetts, the sixth of nine states needed for ratification, but only after the proconstitutional forces agreed to propose a bill of rights once the original document had itself been ratified. Three months later, South Carolina also ratified, also contingent on a set of amendments that would be offered in the first national Congress. On June 21, 1788, with the help of some shrewd procedural tactics on the part of Federalists in the state convention, New Hampshire became the ninth state to ratify.⁵⁰ The Constitution of the United States would become the supreme law of the land the following year.

Even after New Hampshire, James Madison continued to worry about the four states that had not yet ratified. It was not North Carolina or Rhode Island that worried him most, but if Virginia and New York continued to hold out, it might lead to deep divisions within the new country. To Madison's relief, Virginia ratified in June, and New York followed in July. North Carolina and, finally, Rhode Island ratified within a year. Madison kept his word, and in 1791, ten of the amendments that he proposed in the new federal Congress became part of the Constitution. We will examine the Bill of Rights in detail in Chapter 4.

CONCLUSION: THE MOTIVES OF THE FRAMERS AND THE EFFECTS OF THE CONSTITUTION ARE STILL BEING DEBATED

While the delegates to the Constitutional Convention were debating and negotiating behind the closed windows of the Pennsylvania State House, many Americans wondered what they were really up to. And we still do.

To some scholars, constitutions give order to disorder. They make progress in a society possible, but only if the people place in them credible, enforceable restrictions on the power of those who would abuse such power.⁵¹ The Constitution drew from the religious traditions and individual constitutions of the colonies. It is a document that creates—or constitutes—a people.⁵² It sets out who those people are and why they are doing what they are doing.

To other scholars, American reverence for the Constitution is a dangerous thing. Faith in the Constitution as a symbol of liberty misdirects citizens from the fact that some persons, past and present, have been able to enrich themselves under its protections at the expense of others.⁵³ Inequality in all its forms has survived, and at times thrived, in the American Republic. Is the Constitution antidemocratic? Does it go against or restrain the will of the majority of the people? Yes, sometimes it is, and sometimes it does. The Constitution was intentionally designed to put brakes on popular desire to change public policy quickly. The result—incrementalism in public policy development whereby policy changes tend to be small and come slowly—has important implications for the United States.

James Madison's studies of the untimely deaths of republics helped to shape the longest-lived written national constitution in the history of human experience. It is also a document written during a time of state-sanctioned violence against enslaved individuals and, to a significant degree, by individuals who benefitted from these violations. It did not ban enslavement or the

trade in enslaved peoples. It did not affirm or institutionalize the natural-born rights and liberties of women, Indigenous Americans, enslaved or formerly enslaved peoples, and many others. It did, however, affirm the rights of citizens to worship as they saw fit, to speak out and organize against tyranny, and to expect that their government will exist to protect and promote their rights and liberties. It created mechanisms to enforce these expectations, should those in power forget whom they were there to represent. And, intentionally or not, it provided a platform and a path for those ignored or oppressed by the original document to change it, to make it acknowledge their natural rights and liberties as well.

The Founders of the American Republic were practical, tactical, strategic individuals. Their compromises had enormous consequences for people's lives. The document that emerged from the Pennsylvania State House was unfinished and imperfect. Would it allow for a remedy of its defects? Would it create, as Madison had hoped, a republic that would last? The answers to these questions cannot be found in studies of the motives of the Founders or even of the document itself. The answers have come not from words penned in quill and ink but from the efforts of political actors—sometimes generations later—using their own skills in strategic politics, developing their own ideas, and making their own compromises and mistakes. And having done their own homework.

CHAPTER REVIEW

This chapter's main ideas are reflected in the Learning Objectives below. By reviewing them here, you should be able to **remember** the key points and **know** these terms that are central to the topic.

2.1 Describe the ideas and contradictions that shaped James Madison's thinking about republics and the Constitution.			
Remember	<ul style="list-style-type: none"> James Madison wanted to form a republic that would last. He and other delegates to the Constitutional Convention met and debated how best to strengthen their union and avoid significant political and economic problems. 		
Know	<ul style="list-style-type: none"> constitution 	<ul style="list-style-type: none"> republics 	
2.2 Explain the challenges faced by the nation following the American Revolution in trying to form a government strong enough to rule effectively but not so strong as to oppress the rights of Americans.			
Remember	<ul style="list-style-type: none"> The Articles of Confederation seemed insufficient to hold together the new country, but delegates understood that amending them posed significant challenges. Economic and political crises precipitated Shays' Rebellion, which in turn sparked the call for a stronger national constitution. 		
Know	<ul style="list-style-type: none"> Articles of Confederation and Perpetual Union 	<ul style="list-style-type: none"> Shays' Rebellion 	

(Continued)

2.3 Describe the role that compromise over states' interests played in shaping the government during the Constitutional Convention.

Remember

- The delegates to the Constitutional Convention were not charged with drafting a new Constitution but only with proposing possible changes to the Articles of Confederation.

Know

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|-----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|-------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Constitutional Convention • Great Compromise | <ul style="list-style-type: none"> • New Jersey Plan | <ul style="list-style-type: none"> • Virginia Plan |
|-----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|-------------------------------------------------------------------|

2.4 Identify the institutions of government established by the Constitution and the distribution of political power among them.

Remember

- The idea of separation of powers influenced the decision to create three separate but connected branches of the federal government.

Know

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|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • amendment • executive branch • judicial branch | <ul style="list-style-type: none"> • legislative branch • logroll | <ul style="list-style-type: none"> • separation of powers • Three-Fifths Compromise |
|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|

2.5 Compare and contrast the arguments put forth by the Federalists and Anti-Federalists during the ratification debates.

Remember

- The proposed Constitution had to be ratified by nine of the thirteen states in order to replace the Articles of Confederation.
- Proponents and opponents of the Constitution tried to rally others to their side and convince individuals of their position.

Know

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|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Anti-Federalists • extended republic • faction | <ul style="list-style-type: none"> • <i>The Federalist Papers</i> • Federalists • tyranny | <ul style="list-style-type: none"> • tyranny of the majority • tyranny of the minority |
|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|

KEY TERMS

amendment (p. 53)

Anti-Federalists (p. 56)

Articles of Confederation and Perpetual Union (p. 37)

constitution (p. 34)

Constitutional Convention (p. 44)

executive branch (p. 50)

extended republic (p. 58)

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tyranny (p. 57)

tyranny of the majority (p. 59)

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Virginia Plan (p. 45)