CHAPTER TWO

The Constitution: Rules of the Game

CHAPTER OVERVIEW

This chapter discusses the “official rules” of the political game in the United States Constitution. The Constitution outlines the government’s structure (the three branches of the federal government), restrictions on how the game can be played, legal protections for the losers, and the “arenas” in which play goes on (federalism). The chapter also explains the events surrounding the creation of the Constitution, the principles behind the document, how it evolved over time, and why constitutional rules continue to influence American political life down to the present.

LEARNING OBJECTIVES

After reading chapter 2, the student should be able to:

1. Describe the political events that led up to the ratification of the Articles of Confederation as well as the strengths/weaknesses of those Articles.

2. Explain why the Constitution was “a product of a series of compromises” and what specifically the contents of those compromises were.

3. Summarize the important motives (Beard’s thesis), and political ideas of the Framers.
4. Describe the ratification struggle, noting the differences between the Federalists and Anti-Federalists and the issue of adding a Bill of Rights.

5. List and explain the significance of the four major constitutional principles—separation of powers/checks and balances, federalism, limited government, and judicial review.

6. Explain the process of amending the Constitution.

7. Elaborate on the reasons for the Constitution’s durability, such as the stability of American society and the document’s vagueness.

8. Explain the political relevance and modern changes in federalism.


OUTLINE

I. The Constitution in the Game Analogy

   Introduction--A dialogue illustrating how students may detach the Constitution and the politicians who wrote that document from the current perception of our national leaders. The Framers are viewed as “patriots,” while today elected officials are “crooks.” The Constitution contains the official rules of the American political game and establishes three major players: the president, Congress, and the Supreme Court.
II. Background to the Constitution

A. Introduction--Three sources for the Framers:

1. The English legal heritage, which limited the authority of government, illustrated by the Magna Carta and the writings of John Locke.

2. American models of colonial and state governments, which contained elements of the ideas of limited government, the consent of the community (Mayflower Compact), the separation of powers, the dominance of the legislature, and regular elections.

3. The experience with the Articles of Confederation (ratified March of 1781), which by their failure underlined the need for a stronger central government that could impose taxes and have direct authority over individual citizens.

B. The Articles of Confederation (1781-1789)

1. Shortcomings of the Articles included a weak “league of friendship” among the states, unanimous approval by all thirteen states for amendments, no executive branch, no national system of courts, and no ability to impose taxes by the Continental Congress.

2. Strengths included the power to declare war, conduct foreign policy, coin money, manage a postal system, and oversee an army composed of state militias. A highly “democratic” feature was compulsory rotation in office. Other accomplishments included the start of a national bureaucracy and the passage of the Northwest Ordinance.

3. By 1787, the Confederation faced severe financial difficulty (devalued currency, trade wars among the states), foreign threats to American soil from the British, French, and Spanish, and the fear of mob rule and economic disruption (1786: Shays’ Rebellion).

C. The Constitutional Convention (May 25 to September 17, 1787)
1. The Constitutional Convention met in Philadelphia in strict secrecy. The delegates changed their original charge from a revision of the Articles to the creation of a new government (no press was permitted).

2. The Constitution was a product of compromises involving representation of the large and small states (the Great Compromise, whereby representation was determined by population in the House, but equal representation for all states in the Senate), regulation of commerce (no tax on exports), and slaves being counted as three-fifths of a person (the slave trade was not banned until 1808).

D. The Framers
1. The Framers were politically experienced, well-educated nationalists, and generally members of the conservative propertied elite. They were wealthy planters, merchants, and lawyers. And many of them owned slaves. Small farmers, common workers, and “liberals” in the elite were not represented. Also, leaders who represented the poorer majority, such as Thomas Jefferson and Patrick Henry, did not attend the convention.

2. Convention debates were not between the “haves” and the “have-nots,” but rather among the “haves” from different regions. Still, delegates were less tied to state loyalties (i.e., they were nationalists building a nation).

E. Motives Behind the Constitution
1. Charles Beard argued in 1913 that the delegates were mainly concerned with creating a central government committed to honoring previous debts and protecting their property holdings. Also, the delegates did not favor democracy.

2. Critics of Beard have asserted that the delegates had varied motives, such as promoting economic development and raising a federal army that could protect the states from foreign aggressors.
3. The Framers’ public interest of nation-building coincided with their private interest of protecting their property.

F. Federalists Versus Anti-Federalists—Ratification and the Bill of Rights
1. The Federalists favored a strong central government to curb the power of the common people and of the states. The Anti-Federalists favored a weaker central government in order to tip the balance of power toward the states. They desired a rigid system of separation of powers and effective checks and balances. The Constitution was the result of compromises between these two positions.
2. Conventions in nine states had to approve the Constitution. The Federalist Papers, authored by James Madison, Alexander Hamilton, and John Jay, stressed the advantages of national union and undoubtedly helped the ratification process, especially in the state of New York.
3. The Anti-Federalists insisted (successfully) on the addition of a Bill of Rights to the Constitution, arguing that these rights were sacred and universal for present and future generations of Americans.
4. Note Thurgood Marshall’s assertion that the Constitution’s Preamble did not include the majority of America’s citizens—women and minorities. Marshall praises those who created a new Constitution after the Civil War through the Fourteenth Amendment (see chapter insert).

III. Four Major Constitutional Principles

A. Introduction. The Constitution establishes the structure of government, distributes certain powers, and puts restraints on the government. In short, the Constitution both grants and limits governmental power.
B. Separation of Powers and Checks and Balances. These principles place the powers of government in the care of separate parts and then mix together some of the powers to
ensure the relative independence of the three branches (legislative, executive, judicial). Although never explicitly described in the Constitution, this philosophic principle was put into practice by the colonial governments. But while the branches of government are separate, in practice they share the overall power of government.

Examples of checks and balances include the presidential veto, Senate confirmation of presidential nominations, and the courts ruling a law unconstitutional. A “check” is a control one branch has over another’s functions, creating a “balance” of power. For example, Congress can refuse to appropriate funds for any executive agency. In conclusion, the elaborate scheme of separation of powers and checks and balances was established so that the government could control itself, or as historian Richard Hofstadter put it, “a harmonious system of mutual frustration.”

C. Federalism. This idea calls for authority to be distributed between a central government and the governments of the states. This leads to an inherent contradiction: Can the central government be supreme and state governments (reserved powers) also independent? This contradiction was resolved historically—by arms during the Civil War—in favor of the federal government. As the country grew in size and population, the need to solve problems (e.g., the environment and corporate regulation) moved beyond the capacities of the states. The nationalization of political issues led, in part, to the nationalization of solutions in areas like public education, a responsibility originally reserved to the states.

Modern federalism appears far different from the original concept. Most nonmilitary services provided by government are supplied by local and state governments, in complex overlapping relationships (the “marblecake”) with the federal government. The debate over modern federalism has resulted in
liberals and conservatives battling over whether programs administered on a local level are closer to people’s lives and more efficiently managed. Both the states and federal government are involved with education. Thus in 2001, President Bush proposed that the federal government set standards for student achievement while allowing the states to implement them. In other policy areas, arguments over which level of government should be emphasized (Bush favored local and state policymaking) continue (Clinton’s welfare reform legislation reflected more control by the states by giving them block grants). In addition, the 1990s saw a “devolution” trend, whereby power and funding shifted to states/localities. Still, federalism remains a flexible system for representing the varied interests of a large, diverse nation.

D. Limited Government. This incorporates both civil liberties and civil rights, and ensures citizens’ rights against the government as well as access to the government. Examples are the rights to vote, to dissent, and to an impartial jury. In short, there must be a political compact that rests upon the rule of law.

E. Judicial Review. A principle not specifically stated in the Constitution, but developed through judicial precedent beginning with Marbury v. Madison, 1803. Its most vital function has been to protect the union by allowing the Court to review state and local laws. Although few federal laws have been struck down by the Court, hundreds of state and local laws have been held to violate the Constitution. A very important example of judicial review was the Supreme Court action in 2000 ruling that Florida’s method of recounting votes was unconstitutional. Hence, the decision gave George W. Bush his presidential victory.
IV. How is the Constitution Changed?

A. Amendments. This is the least common method because of its difficulty. The usual procedure is proposal by two-thirds vote of each house and ratification by three-quarters of the state legislatures (normal deadline is seven years for passage). An exception is the Twenty-first Amendment (repealing Prohibition), ratified by state conventions. There are 27 Amendments to the Constitution, with the 27th Amendment (pay raises for Congress cannot be granted until an election has occurred) finally ratified in 1992.

B. Judicial Interpretation. This is the most common method. The Supreme Court has reshaped the original document by interpreting vague constitutional phrases and allowing or disallowing practices by various political players. Supreme Court decisions have impacted economic regulation, segregation of the races, obscenity laws, and voting rights. Indeed, the Supreme Court is often called “a permanent constitutional convention.”

C. Legislation. Congress has filled in the framework of the Constitution by establishing lower courts, the cabinet, executive boards and commissions, regulations, and services (e.g., Social Security).

D. Custom. One of the vaguest but most significant methods, custom has created the role of political parties, party leadership in government, the congressional committee system, and the breakdown of the Electoral College. Customary usage has even changed some clear intentions of the Framers, such as in the setting of excessive bail. Custom now allows a president to enter armed conflict (e.g., Korea or Vietnam) without a declaration of war. Also, FDR’s election to four terms led to the Twenty-second Amendment limiting presidents to two terms in office.
V. Why Has The Constitution Survived?

A. The stability of American society is the key reason. Social and political upheavals have all been handled within the same constitutional structure.

B. The shortness of the document (only 7,000 words) and the ambiguity of the constitutional language, thus allowing for different interpretations over time, have also assured survival.

VI. CASE STUDY: Federalism at 55 mph

The 1995 repeal by Congress of the national 55-mph speed limit would seem to be a clear victory for states rights and federalism. But a closer look at the Senate action reversing this unpopular measure reveals more ambiguity. The Senate also voted to keep federal limits on big trucks, to keep seat belt requirements, and to require tough new state laws against drinking and driving by minors. Politics and the popularity of certain safety measures were as important as any goals of federalism in the actions of Congress.

VII. Wrap-Up

The question is whether the flexibility and vagueness of the Constitution makes it meaningless for governing the nation. Does the document merely serve the interests of those in power? All great historical documents have been “differently applied by different people at different times.” The Constitution stands as a symbol of a people’s ideals. In the final analysis, the rules of the American political game are guidelines and goals that depend upon each political generation for their application.
KEY CHAPTER TERMS AND IDENTIFICATIONS

May, 1787--Philadelphia
Magna Carta (1215)
John Locke
Mayflower Compact (1620)
Declaration of Independence
Articles of Confederation (1781)
unicameral (one-house) legislature
a “form” of term limits
Continental Congress
Shays’ Rebellion (1786)
Great Compromise
Three-Fifths Compromise
Charles Beard’s An Economic Interpretation of the Constitution of the United States (1913)
public interests vs. private interests of the Framers
Thurgood Marshall
Federalists vs. Anti-Federalists (Patrick Henry, George Mason)
The Federalist Papers (James Madison, Alexander Hamilton, John Jay)
Bill of Rights
separation of powers/checks and balances
Federalism; the “marblecake” relationship
President Bush’s Education Reform legislation (2001)
the “devolution” revolution
exclusive powers
limited government
judicial review, Marbury v. Madison
reserved powers to the states--Tenth Amendment
States’ rights
exclusive powers to the national government
Constitutional amendments
Twenty-second Amendment and presidential term limits
Twenty-seventh Amendment or the “Madison pay raise amendment”
“7,000 words”
TEACHING SUGGESTIONS

1. Do students have an idealistic view of the Framers of the Constitution? Is their view of modern politicians equally unrealistic, in the other direction?

2. Specifically compare and contrast the U.S. Constitution and the Articles of Confederation. Ask members of the class to explain why the differences were so important.

3. Read excerpts from the writings of the Anti-Federalists so that students can better understand the precise nature of their objections to the proposed Constitution.

4. Ask the class to speculate on how American history might have been changed if the Constitution had not been ratified.

5. Debate the following assertion in class: “The Constitution was designed to be anti-democratic--to keep common people from having too much power.”

6. Imagine that the Constitution had been copied in another country. Compare the impact of America’s written Constitution on U.S. history with its impact on another country’s history.

7. Analyze the changing application of federalism since the election of the Republican Congress in 1994. Ask the students to discuss the role of federalism in light of current political circumstances.

8. Review the Supreme Court’s decision in December of 2000 regarding the unconstitutional recounting of ballots in Florida. What was the essence of the Court’s decision and how did it affect the presidential election?

9. Review President George W. Bush’s educational reforms that were proposed in 2001. Were they successful or not?
10. Explain why William Gladstone once asserted that the U.S. Constitution was “the most wonderful work ever struck off at a given time by the brain and purpose of man”?

SUGGESTED RESEARCH ASSIGNMENTS

1. Ask selected students to investigate why there have been calls for a new Constitutional Convention in recent years. What subjects would the new delegates consider? Also, what dangers might stem from a new convention? Finally, how would the modern media coverage change this event?

2. Is a written Constitution necessary for a democracy to exist? Great Britain does not have one, while some dictatorships have constitutions that promise individual rights against the state, but do nothing to allow them. Ask students to consider, in writing or orally, which specific historical and political factors make a Constitution’s rights relevant to a nation’s behavior.

MULTIPLE-CHOICE QUESTIONS

1. In the opening dialogue, the students considered the Framers of the Constitution to be
   a. above politics.
   b. politicians just like modern ones.
   c. dead White males.
   d. neanderthals.

2. The Magna Carta
   a. established the concept of a bicameral legislature.
   b. declared that the king’s power was unlimited.
   c. included the idea of natural rights for the individual.
   d. established the principle of judicial review.

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3. The Mayflower Compact
   a. established the first colony on Plymouth Rock.
   b. settled a territorial dispute between the colonists and Native Americans.
   c. was the earliest American example of written rules of law resting on the consent of the community.
   d. was the peace treaty that ended the War of 1812.

4. The Articles of Confederation
   a. established a “league of friendship” among the states.
   b. required nine states of the thirteen to approve new amendments.
   c. did give the power of taxation to the Continental Congress.
   d. all of the above are true statements about the Articles

5. The Great Compromise
   a. established representation based on population in the House of Representatives.
   b. created equal representation for all states in the Senate.
   c. solved a major disagreement between the large and small states.
   d. all of the above

6. The members of the Constitutional Convention were generally
   a. wealthy landowners and merchants.
   b. average farmers selected at rural meetings.
   c. textile workers displaced by the Industrial Revolution.
   d. advocates for the huddled masses yearning to breathe free.

7. Which of the following men did not attend the Constitutional Convention?
   a. Benjamin Franklin
   b. George Washington
   c. Patrick Henry
   d. Alexander Hamilton
8. According to economic historian Charles Beard, the delegates to the Constitutional Convention were believers in
   a. improving their own economic interests.
   b. democracy.
   c. government not honoring private debts incurred under the Articles of Confederation.
   d. all of the above

9. Which of the following is a true statement about the Federalists and/or Anti-Federalists?
   a. Both factions distrusted the power of state governments.
   b. Federalists were pessimistic about human nature; Anti-Federalists were more optimistic about human nature.
   c. The Anti-Federalists preferred a non-elected judiciary and indirectly elected president.
   d. All of the above are true statements.

10. The Federalist Papers
    a. argued that a stronger national government threatened liberty.
    b. supported redistributing wealth through the federal government.
    c. reassured the public that the proposed president would be more like a governor than a king.
    d. has an ironic title because it represented the thinking of the Anti-Federalists.

11. The following is not a major constitutional principle
    a. federalism
    b. separation of powers
    c. the principle of self-determination
    d. limited government
12. Which of the following is an example of checks and balances?
   a. a presidential veto
   b. the Senate confirmation of a presidential nomination
   c. the Congress refusing to appropriate money for an executive agency
   d. all of the above

13. Despite the principle of separation of powers, which of the following is an example of the president’s (the executive) legislative powers?
   a. the power to set tariffs on imported goods
   b. the power to recommend measures to Congress
   c. executive review of Supreme Court decisions
   d. the power to remove Cabinet Secretaries

14. The national government historically appeared more efficient than states because
   a. it was closer to the people.
   b. it had legitimacy.
   c. it responded to national challenges.
   d. all of the above

15. Why was the division of power among the three branches of government insufficient in itself to balance their powers?
   a. The Legislature, as the only initiator of laws, could dominate the other two.
   b. Congress has more members.
   c. Supreme Court judges are appointed for life.
   d. The President could become a dictator.

16. Under the system of federalism,
   a. only the federal government has exclusive powers.
   b. only the state government has exclusive powers.
   c. power is unlikely to be concentrated in one level of government.
   d. only state governments act directly upon the people.
17. The “marblecake” concept of federalism refers to
   a. overlapping responsibilities between the states and federal government.
   b. The federal government being the best advocate for the "little guy."
   c. a clear-cut division between state and federal responsibilities.
   d. a “layer-cake” concept of federalism.

18. Which of the following statements is true about judicial review?
   a. It was first established by the 1803 Marbury v. Madison Supreme Court ruling.
   b. It has been used more often in striking down federal laws rather than state and local laws.
   c. Both a and b are true.
   d. Both a and b are false.

19. Which of the following is a method of amending the Constitution?
   a. a two-thirds vote of each house of Congress and three-fourths of the state legislatures
   b. national referendum
   c. a majority of the Supreme Court and Congress with the president’s signature
   d. three-fourths of state legislatures and the president’s signature

20. All of the following are examples of how custom has changed the Constitution except
   a. courts setting high bail
   b. presidents entering foreign conflicts
   c. courts prohibiting legal segregation of the races
   d. the breakdown of the Electoral College
21. Which of the following is an example of custom becoming law?
   a. the First Amendment outlawing the abridgement of free speech
   b. the Twenty-first Amendment, which repealed the prohibition of alcohol
   c. the Twenty-second Amendment limiting a president to two terms
   d. the Nineteenth Amendment, which gave women the right to vote

22. The “permanent constitutional convention” refers to the
   a. Supreme Court.
   b. federal bureaucracy.
   c. fifty state legislatures.
   d. Congress.

23. The Twenty-seventh Amendment is concerned with
   a. changing the voting age to 18.
   b. the due process clause.
   c. pay raises for members of Congress.
   d. illegal search and seizure.

24. All of the following are sources of strength for the Constitution except
   a. its shortness
   b. the vagueness of its language
   c. its inflexibility
   d. the relative stability of American society

25. Realistic application of constitutional principles depends on
   a. the hypocrisy of politicians.
   b. the absolutist language of the document.
   c. an understanding of the motives of the Framers.
   d. current political relationships.
26. All the following are examples of the anti-democratic nature of the original Constitution, except
   a. the Electoral College
   b. the election of U.S. Senators
   c. the Tenth Amendment
   d. the presidential veto

27. Writing as a political scientist in 1908, Woodrow Wilson argued that
   a. federalism is an ever-changing situation depending on political and economic development.
   b. the president had gained too much power since the Lincoln administration.
   c. industrialization would lead to the elimination of the federal system.
   d. the League of Nations would secure peace throughout the century.

28. Public education involves the federal government in which way?
   a. aid programs help equalize state funding.
   b. forbidding racial discrimination.
   c. overseeing local school boards.
   d. choices a and b

29. Modern Federalism is
   a. contained in the Twenty-seventh Amendment.
   b. a political effort to reduce federal programs and shift responsibility to state and local governments.
   c. a bipartisan attempt to emphasize market solutions to crime problems.
   d. embodied in the presidential attempts to impose term limits on legislators.
30. Federal speed limits have been connected with all the following political concerns except
   a. highway safety
   b. federalism
   c. crime
   d. energy conservation

TRUE-FALSE

1. Most of the colonies were ruled by parliamentary systems, like the government in Great Britain, and mandated by the Magna Carta.

2. Since Thomas Jefferson and Patrick Henry missed the Constitutional Convention, there were few leaders in Philadelphia who advocated the interests of poor farmers and had been given authority by the Continental Congress to abolish the Articles and establish a new form of government.

3. The “Great Compromise” meant that states with large and small populations would be equally represented in the Senate.

4. The Anti-Federalists supported strong state governments because they believed that states would be close to the popular will.

5. The Bill of Rights basically limits governmental power.

6. A “block grant” is a wide group of civil rights that are granted to new citizens and immigrants.

7. Public education represents “marblecake federalism” because local, state, and federal levels of government are all involved in its operation.

8. The term “devolution” refers to greater federal control over public policy.
9. The practice of judicial review is not mentioned in the Constitution.

10. By removing federally mandated speed limits, the federal government devolved power regarding all highway safety issues.

**ESSAY QUESTIONS**

1. What were the factors convincing many propertied elite members in the 1780s that a stronger national government was necessary?

2. Explain what the author means when he asserts that the debates at the Constitutional Convention were between the “haves and the haves,” over their regional interests, not between the “haves and the have-nots.”

3. What are some of the drawbacks of checks and balances and separation of powers? As modernization and technology become more widespread, can the federal government still operate effectively?

4. Why did Thurgood Marshall argue that the Constitution was not democratic?

5. Using the amendment process and federalism as examples, explain how the Constitution influences current politics.