Chapter 2
The Constitution

In This Chapter

- The enduring legacies of the American Revolution and the Declaration of Independence
- Our first constitution: The Articles of Confederation
- The Constitutional Convention
- What kind of constitution the framers created
- How the Constitution structures the rules of American politics
Shay's Rebellion

Artemas Ward, commander of American forces at Bunker Hill, a Revolutionary War hero, and a state judge, could not convince the crowd of several hundred armed farmers to allow him to enter the Worcester, Massachusetts, courthouse. For nearly two hours, he pleaded and threatened, but to no avail. Although most admired him for his achievements, they were determined that he not hold court that day in September 1786, when he was to begin legal proceedings to seize farms for nonpayment of taxes. He left Worcester in a fury, unable to convince the local militia to come to his assistance, and carried word of the rebellion to Boston. Other judges trying to hold court in western Massachusetts in the summer and fall of 1786 had no better luck.

The farmers of western Massachusetts were probably not a rebellious lot by nature, but desperate times pushed many of them to desperate actions. All over the new nation, the end of the Revolutionary War in 1783 brought the collapse of prices for agricultural products and widespread economic distress among farmers. Poor farmers sought relief from their troubles from state governments, and for the most part, political leaders responded. Several states lent money (in the form of scrip, or paper money) to farmers to pay their taxes and debts. Other states passed stay laws, which postponed tax and mortgage payments for hardpressed farmers.

In Massachusetts, however, the state legislature refused to help. Worse yet, the legislature and the governor decided that all state debts were to be paid off in full to establish the creditworthiness of the state. The state's debt, accumulated to pay the state's share of the costs of the Revolutionary War, was owed primarily to a handful of the wealthiest citizens of the state, who had bought up outstanding notes for pennies on the dollar. To make good on this debt, the legislature levied heavy taxes that fell disproportionately on farmers, especially those in the western part of the state. When taxes could not be paid—a distressingly common circumstance—money could be raised by the state only through foreclosure: the public sale of farmers' lands, buildings, and livestock. Tax foreclosures and imprisonment under harsh conditions for those who could not pay their debts became frequent occurrences. Responding to these dire circumstances, many western Massachusetts farmers took up arms to prevent courts from sitting.

By September 1786, Governor James Bowdoin had seen enough. He issued a proclamation against unlawful assembly and called out the militia to enforce it. Six hundred soldiers were sent to Springfield to ensure that the state supreme court could meet and issue the expected indictments against the leaders of the insurrection. The soldiers were met there by 500 or 600 armed farmers led by a former Revolutionary War officer, Captain Daniel Shays. After a long standoff, the militia withdrew, leaving the rebels in charge and the court unable to meet.

These events only hardened the resolve of the governor to break the rebellion. The armed forces he sent from Boston proved too much for the hastily organized and ill-equipped force under Shays. By the spring of 1787, the Boston militia had defeated the rebels in two pitched battles, one at Springfield and the other at Petersham, and Shay's Rebellion (as it was soon called) ended.

Although the insurrection was put down, most of the new nation’s leading citizens were alarmed by the apparent inability of state governments under the Articles of Confederation to maintain public order. Under the Articles,
our first constitution (in effect from 1781 to 1788), the national government in Philadelphia was virtually powerless. Responsibility for civil order was mainly in the hands of the states. Shays’s Rebellion realized the worst fears of national leaders about the dangers of ineffective state governments and popular democracy out of control, unchecked by a strong national government. George Washington worried, “If government cannot check these disorders, what security has a man?” It was in this climate of crisis that a call was issued for a constitutional convention to meet in Philadelphia to correct the flaws in our first constitution. Rather than amend the Articles of Confederation, however, the men who met in Philadelphia in the summer of 1787 wrote an entirely new constitution.

**Thinking Critically About This Chapter**

This chapter is about the founding of the United States (see Figure 2.1) and the formulation of the constitutional rules that structure American politics to this day.

**Using the Framework** You will see in this chapter how structural factors such as the American political culture, economic developments, and the composition of the Constitutional Convention shaped the substance of our Constitution. You will also see how the Constitution is itself an important structural factor that helps us understand how American government and politics work today.

**Using the Democracy Standard** Using the conception of democracy you learned about in Chapter 1, you will be able to see how and why the Framers were uneasy about democracy and created a republican form of government that, although based on popular consent, placed a number of roadblocks in the path of popular rule.

**FIGURE 2.1 Time Line of the Founding of the United States, 1774–1791**
The Political Theory of the Revolutionary Era

Initially, the American Revolution (1775–1783) was waged more to preserve an existing way of life than to create something new. By and large, American colonists in the 1760s and 1770s were proud to be affiliated with Great Britain and satisfied with the general prosperity that came with participation in the British commercial empire. When the revolution broke out, the colonists at first wanted only to preserve the English constitution and their own rights as British subjects. These traditional rights of life, liberty, and property seemed to be threatened by British policies on trade and taxation. Rather than allowing the American colonists to trade freely with whomever they pleased and to produce whatever goods they wanted, for instance, England was restricting the colonists’ freedom to do either in order to protect its own manufacturers. To pay for the military protection of the colonies against raids by Native Americans and their French allies, England imposed taxes on a number of items, including sugar, tea, and stamps (required for legal documents, pamphlets, and newspapers). The imposition of these taxes without the consent of the colonists seemed an act of tyranny to many English subjects in America.

Although the initial aims of the Revolution were quite modest, the American Revolution, like most revolutions, did not stay on the track planned by its leaders. Although it was sparked by a concern for liberty—understood as the preservation of traditional rights against the intrusions of a distant government—it also stimulated the development of sentiments for popular sovereignty and political equality. As these sentiments grew, so did the likelihood that the American colonies would split from their British parent and form a system of government more to the liking of the colonists.
American leaders were reluctant at first to declare independence from Great Britain. One of the things that helped change their minds was Thomas Paine's wildly popular and incendiary pamphlet *Common Sense*, which mercilessly mocked the institution of monarchy.

The Declaration of Independence

When the Second Continental Congress began its session on May 10, 1775—the First had met only briefly in 1774 to formulate a list of grievances to submit to the British Parliament—the delegates did not have independence in mind, even though armed conflict with Britain had already begun with the battles of Lexington and Concord. Pushed by the logic of armed conflict, an unyielding British government, and Thomas Paine's incendiary call for American independence in his wildly popular pamphlet *Common Sense*, however, the delegates concluded by the spring of 1776 that separation and independence were inescapable. In early June, the Continental Congress appointed a special committee, composed of Thomas Jefferson, John Adams, and Benjamin Franklin, to draft a declaration of independence. The document, mostly Jefferson's handiwork, was adopted unanimously by the Second Continental Congress on July 4, 1776.

Key Ideas in the Declaration of Independence

The ideas in Jefferson's Declaration of Independence are so familiar to us that we may easily miss their revolutionary importance. In the late eighteenth century, most societies in the world were ruled by kings with authority purportedly derived from God, subject to little or no control by their subjects. Closely following John Locke's ideas in *The Second Treatise on Government*, Jefferson's argument that legitimate government can be established only by the people and can govern only with their consent seemed outrageous at the time. However, these ideas sparked a responsive chord in people everywhere when they were first presented, and they remain extremely popular all over the world today. Ideas articulated in the Declaration influenced the French Revolution of 1789, the 1991
“velvet revolution” in Czechoslovakia, and many revolutions in between. The argument as presented in the Declaration of Independence goes as follows:

- Human beings possess rights that cannot be legitimately given away or taken from them. “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.”

- People create government to protect these rights. “That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.”

- If government fails to protect people’s rights or itself becomes a threat to them, people can withdraw their consent from that government and create a new one. “That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

**Omissions in the Declaration** The Declaration of Independence carefully avoided several controversial subjects, including what to do about slavery. Jefferson’s initial draft denounced the Crown for violating human rights.
by “captivating and carrying Africans into slavery,” but this was considered too controversial and was dropped from subsequent versions. The contradiction between the institution of slavery and the Declaration’s sweeping claims for self-government, “unalienable” individual rights, and equality (“all men are created equal”) was obvious to many observers at the time and is glaringly apparent to us today. The Declaration was also silent about the political status of women, Native Americans, and African-Americans who were not slaves. Indeed, it is safe to assume that neither Jefferson, the main author of the Declaration, nor the other signers of the document had women, Native Americans, free blacks, or slaves in mind when they were fomenting revolution and calling for a different kind of political society. Interestingly, free blacks and women would go on to play important roles in waging the Revolutionary War against Britain.5

The Articles of Confederation: The First Constitution

The leaders of the American Revolution almost certainly did not envision the creation of a single, unified nation. At most, they had in mind a loose confederation among the states. This should not be surprising. Most Americans in the late eighteenth century believed that a government based on popular consent and committed to the protection of individual rights was possible only in small, homogeneous republics, where government was close to the people and where fundamental conflicts of interest among the people did not exist. Given the great geographic expanse of the colonies, as well as their varied ways of life and economic interests, the formation of a single unified republic seemed unworkable.

Provisions of the Articles

Our first constitution, passed by the Second Continental Congress in the midst of the Revolutionary War in 1777 but not ratified by the requisite number of states until 1781, created a nation that was hardly a nation at all. The Articles of Confederation created in law what had existed in practice from the time of the Declaration of Independence: a loose confederation of independent states with little power in the central government, much like the United Nations today. Under the Articles, most important decisions were made in state legislatures.

The Articles provided for a central government of sorts, but it had few responsibilities and virtually no power. It could make war or peace, but it had no power to levy taxes (even customs duties) to pursue either goal. It could not regulate commerce among the states, nor could it deny the states the right to collect customs duties. It had no independent chief executive to ensure that the laws passed by Congress would be enforced, nor had it a national court system to settle disputes between the states. There were no means to provide a sound national money system. The rule requiring that all national laws be approved by 9 of the 13 states made lawmaking almost impossible. And, defects in the new constitution were difficult to remedy because amending the Articles required the unanimous approval of the states.
Shortcomings of the Articles

The Articles of Confederation did what most of its authors intended: to preserve the power, independence, and sovereignty of the states and ensure that the central government would not encroach on the liberty of the people. Unfortunately, there were also many problems that the confederation was ill-equipped to handle.

Most important, the new central government could not finance its activities. The government was forced to rely on each state’s willingness to pay its annual tax assessment. Few states were eager to cooperate. As a result, the bonds and notes of the confederate government became almost worthless, and the government’s attempts to borrow were stymied.

The central government was also unable to defend American interests in foreign affairs. Without a chief executive or a standing army, and with the states holding a veto power over actions of the central government, the confederation lacked the capacity to reach binding agreements with other nations or to deal with a wide range of foreign policy problems. These included the continuing presence of British troops in western lands ceded to the new nation by Britain at the end of the Revolutionary War, violent clashes with Native Americans on the western frontier, and piracy on the high seas.

The government was also unable to prevent the outbreak of commercial warfare between the states. As virtually independent nations with the power to levy customs duties, many states became intense commercial rivals of their neighbors and sought to gain every possible advantage against the products of other states. New York and New Jersey, for instance, imposed high tariffs on goods that crossed their borders from other states.

Factors Leading to the Constitutional Convention

Historians now generally agree that the failings of the Articles of Confederation led most of the leading citizens of the confederation to believe that a new constitution was desperately needed for the fledgling nation. What is left out of many accounts of the convening of the Constitutional Convention in Philadelphia, however, is the story of the growing concern among many of the most influential men in the confederation that the passions for democracy and equality among the common people set loose by the American Revolution were getting out of hand. During the American Revolution, appeals to the people for the defense of freedom and for the spread of the blessings of liberty were often translated by the people to mean their right to better access to the means of government and to the means of livelihood. The common people were convinced that success would bring substantial improvements in their lives.

The Republican Beliefs of the Founders

This fever for popular participation and greater equality is not what most of the leaders of the American Revolution had in mind. The Founders were believers in a theory of government known as republicanism. Like other eighteenth-century republicans, they were interested in discovering a form of government that would be based on the consent of the governed but which
would also prevent tyranny, defined as the abuse of power by rulers and the destruction of the liberty of their subjects. Tyranny, they believed, could flow from any one of three places—from the misrule of the one (a king), the few (an aristocratic class), or the many (the common people)—and that a properly designed constitution must protect against all three possibilities. Their solution to the problem of simultaneously gaining the consent of the governed and preventing tyranny was two-fold: to elect government leaders and limit the power of government. The election of representatives would serve to keep potentially tyrannical kings and aristocratic factions from power while ensuring popular consent. Limiting the power of government, either by stating what government could and could not do in a written constitution or by fragmenting governmental power in the very way government is organized, would prevent tyranny no matter who eventually won control of government.

Although eighteenth-century republicans believed in representative government—a government whose political leaders are elected by the people—they were quite unsympathetic to what we might today call popular democracy. For the most part, they thought that public affairs ought to be left to men from the “better” parts of society; the conduct of the public business was, in their view, the province of individuals with wisdom and experience, capacities associated mainly with people of social standing, substantial financial resources, and high levels of education.

Nor did eighteenth-century republicans believe that elected representatives should be too responsive to public opinion. Once in office, representatives were to exercise independent judgment, taking into account the needs and interests of society rather than the moods and opinions of the people.

Eighteenth-century republicans, then, did not believe in democracy as defined in Chapter 1. Most importantly, while republican doctrine allowed the common people a larger role in public life than existed in other political systems of the day, the role of the people was to be far more limited than we expect today (the differences between republican and democratic doctrines are highlighted in Table 2.1). They worried that too much participation by the people could only have a bad outcome. As James Madison put it in The Federalist Papers, “[D]emocracies] have ever been spectacles of turbulence and con-
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Table 2.1 Comparing Eighteenth-Century Republicanism and the Democratic Ideal

<table>
<thead>
<tr>
<th>Republicanism</th>
<th>Democracy</th>
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<tbody>
<tr>
<td>Government is based on popular consent.</td>
<td>Government is based on popular consent.</td>
</tr>
<tr>
<td>Rule by the people is indirect, through representatives.</td>
<td>Rule by the people may be direct or indirect.</td>
</tr>
<tr>
<td>The term people is narrowly defined (by education, property holding, and social standing).</td>
<td>The term people is broadly defined.</td>
</tr>
<tr>
<td>Elected representatives act as “trustees” (act on their own to discover the public good).</td>
<td>Elected representatives act as “delegates” (act as instructed by the people; accurately reflect their wishes).</td>
</tr>
<tr>
<td>Barriers to majority rule exist.</td>
<td>Majority rule prevails.</td>
</tr>
<tr>
<td>Government is strictly limited in function.</td>
<td>Government does what the people want it to do.</td>
</tr>
<tr>
<td>Government safeguards rights and liberties, with a special emphasis on property rights.</td>
<td>Government safeguards rights and liberties, with no special emphasis on property rights.</td>
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Why the Founders Were Worried

An Excess of Democracy in the States

Worries that untamed democracy was on the rise were not unfounded. In the mid-1780s, popular assemblies (called conventions) were created in several states to keep tabs on state legislatures and to issue instructions to legislatures concerning what bills to pass. Both conventions and instructions struck directly at the heart of the republican conception of the legislature as a deliberative body shielded from popular opinion.

The constitution of the state of Pennsylvania was also an affront to republican principles. Benjamin Rush, a signatory to the Declaration of Independence, described it as “too much upon the democratic order.” This constitution replaced the property qualification to vote with a very small tax (thus allowing many more people to vote), created a unicameral (single-house) legislative body whose members were to be elected in annual elections, mandated that legislative deliberations be open to the public, and required that proposed legislation be widely publicized and voted on only after a general election had been held (making the canvassing of public opinion easier).

To many advocates of popular democracy, including Tom Paine, the Pennsylvania constitution was the most perfect instrument of popular sovereignty. To others, like James Madison, the Pennsylvania case was a perfect example of popular tyranny exercised through the legislative branch of government.
The Threat to Property Rights in the States  One of the freedoms that republicans wanted to protect against the intrusions of a tyrannical government was the right of the people to acquire and enjoy private property. Developments toward the end of the 1770s and the beginning of the 1780s seemed to put this freedom in jeopardy. For one thing, the popular culture was growing increasingly hostile to privilege of any kind, whether of social standing, education, or wealth. Writers derided aristocratic airs; expressed their preference for unlettered, plain-speaking leaders; and pointed out how wealth undermined equal rights. Legislatures were increasingly inclined, moreover, to pass laws protecting debtors. For example, Rhode Island and North Carolina issued cheap paper money, which note holders were forced to accept in payment of debts. Other states enacted stay acts, which forbade farm foreclosures for nonpayment of debts. Popular opinion, while strongly in favor of property rights (most of the debtors in question were owners of small farms), also sympathized with farmers, who were hard-pressed to pay their debts with increasingly tight money, and believed—with some reason—that many creditors had accumulated notes speculatively or unfairly and were not entitled to full repayment. Finally, Shays’s Rebellion in western Massachusetts, where armed rebels tried to prevent the state courts from seizing farms for the non-payment of debts, greatly alarmed American notables.

The Constitutional Convention

Concerned about these developments and shortcomings in the design of government under the Articles, most of America’s economic, social, and political leaders were convinced by 1787 that the new nation and the experiment in self-government were in great peril. These concerns helped convince leaders in the states to select 73 delegates to attend the Constitutional Convention in Philadelphia (only 55 actually showed up for its deliberations). The goal was to create a new government capable of providing both energy and stability.

The convention officially convened in Philadelphia on May 25, 1787, with George Washington presiding. It met in secret for a period of almost four months. By the end of their deliberations, the delegates had hammered out a constitutional framework that has served as one of the structural foundations of American government and politics to the present day.

Who Were the Framers?

The delegates were not common folk. There were no common laborers, skilled craftspeople, small farmers, women, or racial minorities in attendance. Most delegates were wealthy men: holders of government bonds, real estate investors, successful merchants, bankers, lawyers, and owners of large plantations worked by slaves. They were, for the most part, far better educated than the average American and solidly steeped in the classics. The journal of the convention debates kept by James Madison of Virginia shows that the delegates were conversant with the great works of Western philosophy and political science; with great facility and frequency, they quoted Aristotle, Plato, Locke, Montesquieu, and scores of other thinkers. They were also a surprisingly young group, averaging barely over 40 years of age. Finally, they were a group with broad experience in American politics, and many were veterans of the Revolutionary War.

Judgments about the framers, their intentions, and what they produced vary widely. Historian Melvin Urofsky wrote that “few gatherings in the hi-
Supreme Court Justice Thurgood Marshall, on the other hand, once claimed that the Constitution was “defective from the start” because the convention at which it was written did not include women or blacks.16

The most influential criticism of the framers and what they created was mounted in 1913 by the Progressive historian Charles Beard in his book An Economic Interpretation of the Constitution.17 Beard boldly claimed that the framers were engaged in a conspiracy to protect their immediate and personal economic interests. Those who controlled the convention and the ratification process after the convention, he suggested, were owners of public securities who were interested in a government that could pay its debts, merchants interested in protections of commerce, and land speculators interested in the protection of property rights.

Beard has had legions of defenders and detractors.18 Historians today generally agree that Beard overemphasized the degree to which the framers were driven by the immediate need to “line their own pockets,” failed to give credit to their more noble motivations, and even got many of his facts wrong. So a simple self-interest analysis is not supportable. But Beard was probably on the mark when he suggested that broad economic and social-class motives were at work in shaping the actions of the framers. This is not to suggest that they were not concerned about the national interest, economic stability, or the preservation of liberty. It does suggest, however, that the ways in which they understood these concepts were fully compatible with their own positions of economic and social eminence. It is fair to say that the Constitutional Convention was the work of American notables authentically worried about the instability and the economic chaos of the confederation.

**Consensus and Conflict at the Convention**

The delegates to the convention were of one mind on many fundamental points. Most importantly, they agreed that the Articles of Confederation had to be scrapped and replaced with a new constitution.
Most of the delegates also agreed about the need for a substantially strengthened national government to protect American interests in the world, provide for social order, and regulate interstate commerce. Such a government would diminish the power and sovereignty of the states. Supporters of the idea of a strong, centralized national government, such as Alexander Hamilton, had long argued this position. By the time of the convention, even such traditional opponents of centralized governmental power as James Madison had changed their minds. As Madison put it, some way must be found “which will at once support a due supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful.”

But the delegates also believed that a strong national government was potentially tyrannical and should not be allowed to fall into the hands of any particular interest or set of interests, particularly the majority of the people, referred to by Madison as the “majority faction.” The delegates’ most important task became that of finding a formula for creating a republican government based on popular consent but a government not unduly swayed by public opinion and popular democracy. As Benjamin Franklin put it, “We have been guarding against an evil that old states are most liable to, excess of power in the rulers, but our present danger seems to be a defect of obedience in the subjects.”

The Great Compromise  By far the most intense disagreements at the convention concerned the issue of representation in Congress, especially whether large or small states would wield the most power in the legislative branch. The Virginia Plan, drafted by James Madison, proposed the creation of a strong central government controlled by the most populous states: Virginia, Massachusetts, and Pennsylvania. The Virginians wanted a national legislature with seats apportioned to the states on the basis of population and with the power to appoint the executive and the judiciary and to veto state laws. The smaller states countered with a set of proposals drafted by William Paterson of New Jersey (thereafter known as the New Jersey Plan), whose central feature was a unicameral national legislature whose seats were apportioned to the states on the basis of equal representation.

Web Exploration

Delegates to the Convention

Issue: The Constitution was made by people who were not much like the average inhabitant of the United States in 1787.

Site: Find out more about the delegates to the Convention by going to the National Archives on our Website at www.ablongman.com/greenberg. In the “Web Explorations” section for Chapter 2, open “delegates to the convention,” then “delegates.” Select a state and read the biographies of the delegates.

What You’ve Learned: How would you describe the average delegate? How representative do you believe them to have been of the American people of the time?
apportioned equally among the states. The New Jersey Plan envisioned a slightly more powerful national government than the one that existed under the Articles of Confederation, but one that was to be organized on representational lines not unlike those in the Articles, in which each of the states remained sovereign. The Virginia Plan, by contrast, with its strong national government run by a popularly elected legislature, represented a fundamentally different kind of national union, one in which national sovereignty was superior to state sovereignty.

Debate over this issue was so intense that no decision could be reached on the floor of the convention. As a way out of this impasse, the convention appointed a committee to hammer out a compromise. The so-called Committee of Eleven met over the Fourth of July holiday while the convention was adjourned. It presented its report, sometimes called the Great Compromise and sometimes the Connecticut Compromise (because it was drafted by Roger Sherman of that state), on July 5, 1787. Its key feature was a bicameral (two-house) national legislature in which each state’s representation in the House of Representatives was to be based on population (thus favoring the large states), while representation in the Senate was to be equal for each of the states (thus favoring the small states). The compromise, adopted on July 16, broke the deadlock at the convention and allowed the delegates to turn their attention to other matters.

Slavery

Despite great distaste for the institution of slavery among many delegates—it is said that Benjamin Franklin wanted to insert a provision in the Constitution condemning slavery and the slave trade but was talked out of it for fear of splintering the convention—slavery was ultimately condoned in the Constitution, although only indirectly; the word “slavery,” in fact, does not appear in the Constitution at all. Rather, the legal standing of “involuntary servitude” is affirmed in three places. First, the delegates agreed, after much heated debate, to count three-fifths of a state’s slave population (referred to as “three-fifths of all other Persons”) in the calculation of how many representatives a state was entitled to in the House of Representatives (Article I, Section 2, paragraph 3). Much harm was done by this; counting noncitizen slaves for purposes

One of the great shortcomings of the framers was their inability or unwillingness to abolish slavery in the Constitution. It would take a great and terrible civil war to rectify their mistake.
of representation in the House increased the power of the slave states in Congress as well as the number of their electoral votes in presidential elections. This imbalance would continue until 1865, when the Civil War and the Thirteenth Amendment, ratified after the war, ended slavery in the United States. Second, it forbade enactments against the slave trade until the year 1808 (Article I, Section 9). Third, it required nonslave states to return runaway slaves to their owners in slave states (Article IV, Section 2, paragraph 3).

Many Americans today are no doubt bothered by the fact that a significant number of the delegates to a convention whose goal was to build a nontyrannical republic were themselves slaveholders (although a few, including George Washington, had provisions in their wills freeing their slaves upon their death). To understand more fully why the delegates did not abolish slavery, see the “Using the Framework” feature on the next page.

It would finally take a terrible civil war to abolish slavery in the United States. At the convention, Virginia delegate George Mason had a foreboding of such an outcome when he observed about slavery that “providence punishes national sins by national calamities.”

The Presidency  
The Virginia Plan called for a single executive, while the New Jersey Plan called for a plural executive. In the spirit of cooperation that pervaded the convention after the Great Compromise, the delegates quickly settled on the idea of a single executive. They could not agree, however, on how this executive should be selected. Both sides rejected direct election by the people of the chief executive, of course, because this would be “too much upon the democratic order,” but they locked horns over and could not agree to the Virginia Plan's method of selection: by the vote of state legislatures. The compromise that was eventually struck involved a provision for an electoral college that would select the president. In the electoral college, each state would have a total of votes equal to its total number of representatives and senators in Congress. Members of the electoral college would then cast their votes for president. Should the electoral college fail to give a majority to any person, which most framers assumed would usually happen, the House of Representatives would choose the president, with each state having one vote (Article II, Section 1, paragraphs 2 and 3).

What the Framers Created

What kind of government did the framers create? Let us examine the fundamental design for government laid out in the Constitution.

A Republican Form of Government  
Recall that republican doctrine advocated a form of government that, while based on popular consent and some popular participation, places obstacles in the path of majoritarian democracy and limits the purposes and powers of the government in order to prevent tyranny.

Election of Government Leaders  
Republican government is based on the principle of representation, meaning that public policies are made not by the people directly but by the people's elected representatives acting in their stead. Under the rules created by the Constitution, the president and members of Congress are elected by the people, though in the case of the presidency and the Senate, to be sure, they are elected only indirectly (through the electoral college and the state legislatures, respectively). The upshot, then, is that government policies at the national level are mostly made by either directly or
Background: Slavery was allowed in the Constitution until passage, after the Civil War, of the Thirteenth Amendment, which ended involuntary servitude in the United States. Although the words “slave” or “involuntary servitude” never appear in the document, slavery is given constitutional standing in the original document in Article I, Section 2, paragraph 3; Article 2, Section 9; and Article IV, Section 2, paragraph 3. For Americans today, it seems almost inconceivable that such a thing could have happened. Taking a broader and more historical view makes the story clearer, though hardly more acceptable.

- The slave trade was a profitable business.
- For the most part, individuals of European descent in America during the time of the constitutional convention did not believe that people of African descent were equal to whites in any respect, nor did they believe that they were beings who possessed basic human rights.
- Slaves and free blacks played no significant political role in America during the Articles of Confederation period. Their concerns about slavery had no political weight.
- Few private organizations—interest groups, churches, or newspapers—were actively pressing for an end to slavery at the time of the constitutional convention.
- Many other delegates, although personally opposed to slavery as an institution, feared that the introduction of a provision to end slavery would cause those states with high numbers of slaves to leave the convention and doom the effort to create a United States of America.
- Slaveholders and merchants involved in the slave trade were well represented among the convention delegates.
indirectly elected officials. This guarantees a degree of popular consent and some protection against the possibilities of tyrannical government arising from misrule by the one or by the few, given the electoral power of the many.

Federalism The Articles of Confederation envisioned a nation structured as a loose union of politically independent units with little power in the hands of the central government. The Constitution fashioned a federal system in which some powers are left to the states, some powers are shared by the component units and the central government, and some powers are granted to the central government alone.

The powers in the Constitution tilt slightly toward the center, however. This recasting of the union from a loose confederation to a more centralized federal system is boldly stated in Article VI, Section 2, commonly called the supremacy clause:

This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The tilt toward national power is also enhanced by assigning important powers and responsibilities to the national government: to regulate commerce, to provide a uniform currency, to provide uniform laws on bankruptcy, to raise and support an army and a navy, to declare war, to collect taxes and customs duties, to provide for the common defense of the United States, and more. (See Article I, Section 8.) Especially important for later constitutional history is the last of the clauses in Section 8, which states that Congress has the power to “make all laws which shall be necessary and proper” to carry out its specific powers and responsibilities. We shall see later how this elastic clause became one of the foundations for the growth of the federal government in the twentieth century.

The Constitution left it up to each of the states, however, to determine qualifications for voting within their borders. This left rules in place in all the states that denied the right to vote to women, slaves, and Native Americans; it left rules untouched in many states that denied the vote to free blacks and to white males without substantial property. Most states removed property qualifications by the 1830s, establishing universal white male suffrage in the United States. It would take many years and constitutional amendments to remove state restrictions on the voting rights of women and racial minorities.

Limited Government The basic purpose of the U.S. Constitution, like any written constitution, is to define the purposes and powers of the government. Such a definition of purposes and powers automatically places a boundary between what is permissible and what is impermissible. By listing the specific powers (as in Article I, Section 8) of the national government and specifically denying others to the national government (as in Article I, Section 9, and in the first ten amendments to the Constitution, known as the Bill of Rights), the Constitution carefully limited what government may legitimately do.

Checks on Majority Rule Afraid of unbridled democracy, the framers created a constitution by which the people rule only indirectly, barriers are placed in the path of majorities (see Figure 2.2), and deliberation is prized over confor-
The framers of the Constitution were concerned that the unreflective and unstable opinions of the majority might overwhelm the considered judgments of government leaders and lead to tyranny. One antidote was to create mechanisms in the Constitution that, while preserving “the consent of the governed,” ensured that the voice of the people would be muted in the councils of government.

Of the three branches of government, only a part of one of them is selected by the direct vote of the people: the House of Representatives (Article I, Section 2, paragraph 1). As for the rest of the national government, the president is elected by the electoral college; the members of the Senate are elected by the state legislatures; and judges are appointed by the president and confirmed by the Senate. Representatives, senators, and presidents are elected, moreover, for different terms (two years for representatives, four years for presidents, and six years for senators), from different constituencies, and (often) at different times. These noncongruencies in elections were intended to ensure that popular majorities, at least in the short run, would be unlikely to overwhelm those who govern. Finally, the framers rejected the advice of radical democrats, such as Thomas Paine, Samuel Adams, and Thomas Jefferson, to allow the Constitution to be easily amended. Instead, they created an amending process that is exceedingly cumbersome and difficult (see Figure 2.3).

Thus, the framers designed a system in which the popular will, though given some play (more than anywhere in the world at the time), was largely deflected and slowed, allowing somewhat insulated political leaders to deliberate at their pleasure.
PART TWO Structure

Separation of Powers; Checks and Balances

During the American Revolution, American leaders worried mainly about the misrule of executives (kings and governors) and judges. As an antidote, they substituted legislative supremacy in state constitutions and in the Articles of Confederation, thinking that placing power in an elected representative body would make government effective and nontyrannical. The men who drafted the Constitution, however, though still leery of executive and judicial power, were more concerned by 1787 about the danger of legislative tyranny. To deal with this problem, the framers turned to the ancient notion of balanced government, popularized by the French philosopher Montesquieu. The central idea of balanced government is that concentrated power of any kind is dangerous and that the way to prevent tyranny is first to fragment governmental power into its constituent parts—executive, legislative, and judicial—then place each into a separate and independent branch. In the U.S. Constitution, Article I (on the legislative power), Article II (on the executive power), and Article III (on the judicial power) designate separate spheres of responsibility and enumerate specific powers for each branch. We call this the separation of powers.

To further ensure that power would not be exercised tyrannically, the framers arranged for the legislative, executive, and judicial powers to check one another in such a way that “ambition... be made to counteract ambition.” They did this by ensuring that no branch of the national government would be able to act entirely on its own without the cooperation of the others. To put it another way, each branch has ways of blocking the actions of the others. For instance, Congress is given the chief lawmaking power under the Constitution, but a bill can become a law only if the president signs it. The
Supreme Court, moreover, has the power (though it is not specifically mentioned) to reject a law formulated by Congress and signed by the president if it is contrary to the Constitution. What is at work here was described nicely by Thomas Jefferson: “The powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and constrained by the others.”26 We call the provisions that accomplish this objective \textit{checks and balances}.

The framers believed that the right to accumulate, use, and transfer property was one of the fundamental and inalienable rights that governments were instituted to defend, so they looked for ways to protect property. They also believed that the obstacles to trade allowed under the Articles of Confederation were threatening to block the emergence of a vibrant national economy in which most of them were involved.
Property rights are protected in several places in the Constitution. Article I, Section 10, forbids the states to impair the obligation of contracts, to coin money, or to make anything but gold and silver coin a tender in payment of debts. In other words, the states could no longer help debtors by printing inflated money, forgiving debts, or otherwise infringing on the property of creditors, as had happened in such places as Rhode Island and North Carolina under the Articles of Confederation. Article IV, Section 1, further guarantees contracts by establishing that the states must give “full faith and credit” to the public acts, records, and judicial proceedings of every other state, which means that one could no longer escape legal and financial obligations in one state by moving to another. In addition, the Constitution guaranteed that the U.S. government would pay all debts contracted under the Articles of Confederation (Article VI, Section 1). Article IV, Section 2, paragraph 3, even protected private property in slaves by requiring states to deliver escaped slaves back to their owners.

Besides protecting private property, the framers took additional steps to encourage the emergence of a national free enterprise economy. Article I, Section 8, grants Congress the power to regulate interstate commerce (thus ending the chaos of individual states’ regulations), to coin money and regulate its value (thus establishing a uniform national currency), to establish uniform laws of bankruptcy, and to protect the financial fruits of invention by establishing patent and copyright laws. At the same time, Article I, Sections 9 and 10, broke down barriers to trade by forbidding the states to impose taxes or duties on other states’ exports, to enter into foreign treaties, to coin money, or to lay any imposts or duties on imports or exports.

The Struggle to Ratify the Constitution

Congress had instructed the delegates to the convention to propose changes to the Articles of Confederation. Under the provisions of the Articles of Confederation, such alterations would have required the unanimous consent of the 13 states. To follow such a course would have meant instant rejection of the new constitution, because Rhode Island, never friendly to the deliberations in Philadelphia, surely would have voted against it, and one or two additional states may well have joined Rhode Island. Acting boldly, the framers simply stated that ratification would be based on guidelines specified in Article VII of the unratified document they had just written, namely, approval by nine states meeting in special constitutional conventions. Congress agreed to this procedure, voting on September 28, 1787, to transmit the Constitution to the states for their consideration.

The battle over ratification was heated, and the outcome was far from certain. That the Constitution eventually carried the day may be partly attributed to the fact that the Federalists (those who supported the Constitution) did a better job of making their case than the Anti-Federalists (those who opposed the Constitution). Their intellectual advantages were nowhere more obvious than in the 85 articles written in defense of the Constitution for New York newspapers, under the name “Publius,” by Alexander Hamilton (who wrote the most), James Madison (who wrote the best), and John Jay (who wrote only three). Collected later and published as The Federalist Papers, these articles strongly influenced the debate over ratification and remain the most impressive commentaries ever written about the U.S. Constitution. (Numbers 10 and 51, written by Madison, are reprinted in the Appendix, as is number 78, written by Hamilton.)
Anti-Federalist opposition to the Constitution was based on fear of centralized power and concern about the absence of a bill of rights. Although the Federalists firmly believed that a bill of rights was unnecessary because of the protection of rights in the state constitutions and the many safeguards against tyranny in the federal Constitution, they promised to add one during the first session of Congress. Without this promise, ratification would probably not have happened. The Federalists kept their word. The 1st Congress passed a bill of rights in the form of ten amendments to the Constitution (see Table 2.2 and the Appendix), and the amendments were eventually ratified by the required number of states by 1791.

Ratification of the Constitution was a close call. Most of the small states quickly approved, attracted by the formula of equal representation in the Senate. Federalists organized a victory in Pennsylvania before the Anti-Federalists realized what had happened. After that, ratification became a struggle. Rhode Island voted no. North Carolina abstained because of the absence of a bill of rights and did not vote its approval until 1790. In the largest and most important states, the vote was exceedingly close. Massachusetts approved by a vote of 187–168; Virginia, by 89–79; and New York, by 30–27. The struggle was especially intense in Virginia, where prominent, articulate, and influential men were involved on both sides. The Federalists could call on George Washington, James Madison, John Marshall, and Edmund Randolph. The Anti-Federalists countered with George Mason, Richard Henry Lee, and Patrick Henry. Patrick Henry was particularly passionate, saying that the Constitution “squints towards monarchy.” Although New Hampshire technically put the Constitution over the top, being the ninth state to vote approval, the proponents did not rest easily until approval was narrowly voted by Virginia and New York.
The Changing Constitution, Democracy, and American Politics

The Constitution is the basic rule book for the game of American politics. Constitutional rules apportion power and responsibility among governmental branches, define the fundamental nature of the relationships among governmental institutions, specify how individuals are to be selected for office, and tell how the rules themselves may be changed. Every aspiring politician who wants to attain office, every citizen who wants to influence what government does, and every group that wants to advance its interests in the political arena must know the rules and how to use them to their best advantage. Because the Constitution has this character, we understand it to be a fundamental structural factor influencing all of American political life.

Constitutional rules, however, like all rules, can and do change over time. Their tendency to change with the times is why we sometimes speak of the “living Constitution.” Constitutional changes come about in three specific ways: formal amendment, judicial interpretation, and political practices.

The Constitution may be formally amended by use of the procedures outlined in Article V of the Constitution (again, refer to Figure 2.3). This method has resulted in the addition of 27 amendments since the founding, the first ten of which (the Bill of Rights) were added within three years of ratification. That only 17 have been added in the roughly 200 years since suggests that this method of changing the Constitution is extremely difficult. Nevertheless, formal amendments have played an important role in expanding democracy in

The Constitution has evolved over the years in three ways: through the amendment process, through evolving political practices, and through the Supreme Court’s changing interpretation of the Constitution’s meaning. Here antiabortion protesters demonstrate in front of the Supreme Court building on the anniversary of the Court’s Roe v. Wade decision to demand a reversal of that landmark decision.
the United States by ending slavery; extending voting rights to African-Americans, women, and young people ages 18 to 20; and making the Senate subject to popular vote.

The Constitution is also changed by decisions and interpretations of the U.S. Supreme Court. For instance, in *Marbury v. Madison* (1803), the Court claimed the power of **judicial review**—the right to declare the actions of the other branches of government null and void if they are contrary to the Constitution—even though such a power is not specifically mentioned in the Constitution. In *Griswold v. Connecticut* (1965), and later in *Roe v. Wade* (1973), to take another example, the Court supported a claim for the existence of a fundamental right of privacy even though such a right is not explicitly mentioned in the Constitution.

The meaning of the Constitution also changes through changing political practices, which end up serving as precedents for political actors. Political
parties and nominating conventions are not cited in the Constitution, for example, but it would be hard to think about American politics today without them. It is also fair to say that the framers would not recognize the modern presidency, which is now a far more important office than they envisioned, a change that has been brought about largely by the political and military involvement of the United States in world affairs.

The story of how formal amendment, judicial interpretations, and political practices have changed the constitutional rules in the United States will be told in more detail throughout this text.

Summary

The first constitution joining the American states was the Articles of Confederation. Under its terms, the states were organized into a loose confederation in which the states retained full sovereignty and the central government had little power. Because of a wide range of defects in the Articles of Confederation and fears among many American leaders that democratic and egalitarian tendencies were beginning to spin out of control, a gathering was called in Philadelphia to amend the Articles of Confederation. The delegates chose instead to formulate an entirely new constitution, based on the principles of republicanism (federalism, limited government, the separation of powers, checks and balances, and limitations on majority rule).

The Constitution was ratified in an extremely close vote of the states after a hard-fought struggle between the Federalists and the Anti-Federalists. The Federalists were supported primarily by those who believed in a more centralized republicanism; the Anti-Federalists were supported primarily by those who believed in small-scale republicanism. Despite its “close shave,” the Constitution became very popular among the American people within only a few years of the ratification fight. Because of the continuing struggle for democracy by the American people, the Constitution has become far more democratic over the years than was originally intended by the framers.

Suggestions for Further Reading


An entertaining and accessible look at the intertwined lives of the men who wrote the Declaration of Independence, fought the Revolutionary War, fashioned the Constitution, and launched the new American government.


A detailed account of the writing of the Declaration of Independence and its gradual transformation into a revered icon of American democracy.


The most complete collection available on the published views of the Anti-Federalists. Includes convincing commentary by Storing.


A fresh look at the writing of the Constitution by one of America’s most provocative intellectuals.
*The most exhaustive and respected source on America’s changing ideas during the period 1776–1787, or from the start of the American Revolution to the writing of the Constitution.*

*Examines and rejects the argument that the American Revolution was merely a political and not a social and economic revolution.*

**Internet Sources**

Annotated Constitution  [www.access.gpo.gov/congress/senate/constitution](http://www.access.gpo.gov/congress/senate/constitution)  
An annotation of the Constitution in which each clause is tied to Supreme Court decisions concerning its meaning; done by the Library of Congress.

Profiles of the delegates to the Constitutional Convention.

Cornell University Law School  [http://www.law.cornell.edu/](http://www.law.cornell.edu/)  
Pathways to the full text of U.S. Supreme Court decisions and opinions, articles on constitutional issues, and much more.

Political Science Resources: Political Thought  [http://www.psr.keele.ac.uk/](http://www.psr.keele.ac.uk/)  
A vast collection of documents on democracy, liberty, and constitutionalism.

The U.S. Constitution On-Line  [www.usconstitution.net](http://www.usconstitution.net)  
A very rich site that presents material on every aspect of the history and development of the Constitution.

**Notes**


12. Ibid., ch. 8.


20. Ibid., p. 432.


