“We the People of the United States . . . ”
Perhaps no seven words are as important in American 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 that
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—although they were not technically authorized to do so.

The delegates to what we now call 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 on 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 stories of 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.

After reading this chapter, you will be able to:

2.1 Explain how the historical context of post-Revolutionary America led to the proposal for a new, stronger national government

2.2 Describe how the Constitution was shaped by the strategic political choices of those involved in its drafting

2.3 Identify the ideas behind the structure of the government under the Constitution

2.4 Compare and contrast the arguments put forth by the Federalists and Antifederalists during the ratification debates

2.5 Consider the different perspectives on the effects of the Constitution in American life today

JAMES MADISON’S RESEARCH PROJECT

“The Fathers Were Practical Men”

In the spring of 1786, thirty-five-year-old James Madison Jr. settled into his home in Montpelier, Virginia, with two trunks full of books. They had been collected and sent over
from Europe by his good friend, Thomas Jefferson. Madison, for his part, kept detailed weather readings for Jefferson, looked after the education of his nephew, and occasionally sent him samples of plants and animals from the “New World” that Jefferson could use to enlighten and entertain his hosts and friends in Europe. Madison had successfully collected “Paccan [pecan] Nuts & the seed of the Sugar [Maple] Tree” but had less luck with his attempts to raise native animals. “I lately had on hand a female opossum, with 7 young ones,” he wrote to Jefferson, “which I intended to have reared, for the purpose of partly of experiments myself and partly of being able to forward some of them to you, in case of an oppority [opportunity] and your desiring it. Unfortunately they have all died.”

Madison was one of America’s first political scientists, as much an engineer as a philosopher, and an avid researcher of the most pressing political questions of his era. The subject of Madison’s studies that spring of 1786 was death, but of governments, not of opossums. Kingdoms and empires had endured, sometimes for centuries, under the rule of monarchs and emperors. But republics, governments ruled by representatives of the people, without exception had eventually died. Madison wanted to know how a people could create a republic that lasted—a republic that could avoid being taken over by a small group of men or descending into civil war or anarchy. Madison poured himself into this project systematically, scientifically, and with a great deal of energy.

To those who knew James Madison, or “Jemmy” as his friends called him, this would probably not have been a surprise. Though he was shy, often sick, and a quiet public speaker, he was smart, and he did his homework. Madison “persuaded others by having the facts and ideas, the knowledge and the thought, already worked out more deeply and thoroughly than anyone else present.” Madison had been a dedicated student at the College of New Jersey, which later became Princeton University. While there, he studied political thought from the Greeks to the Enlightenment. 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 proved to be more than a good character trait. It 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 tumultuous years that followed American independence, there was no shortage of voices arguing for change. Economic disruption, the threat of European powers, and the threat of rebellion within the thirteen states all gave ammunition to those who wanted change. The question, of course, was what kind of change. On that there was no consensus. Madison’s research played a critical role in designing a new American government, selling it to a skeptical public, and laying out the logic of the constitutional republic for subsequent generations of Americans.

Madison’s immediate concern that spring was to prepare for a conference set to take place in Annapolis, Maryland, later that 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.”

Madison’s lack of optimism turned out to be well founded. Participation at the convention was weak. Only five of the thirteen states sent representatives; the other states either did not appoint anyone or did not do so in time to make it to the meeting. Maryland itself did not send any delegates, even though the convention was in Annapolis and the state was directly involved in the disputes. Despite the poor attendance, 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, as always, showed up in Philadelphia in 1787 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 his compatriots 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 comrades 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.”

Ideas and ideals are certainly part of America’s constitutional heritage, but so are politics. Yet as we
AMERICAN GOVERNMENT BEFORE THE CONSTITUTION

The Articles of Confederation, Problems of National Authority, and Differences between the States

The government that James 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. Adopted by the Second Continental

Jennifer’s research, preparation, intellect, and understated political skill played perhaps the most important role 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 Jefferson and George Washington—the most respected person in America during this period—Madison owned slaves. Though his own writings show that Madison 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 a hundred slaves. Under Virginia’s laws of the time, Madison, or any other slave owner, could “correct” a slave for any offence. If that slave died under such a correction, the master would likely not be punished at all. He could take child from his or her family and sell the child into an unknown future for profit. As the delegates convened in Philadelphia, they had to struggle with these contradictions.

1. James Madison studied the history of past republics to better understand why they failed.
   a. True
   b. False

2. In a republic, citizens _____.
   a. Vote on most laws
   b. Select representatives to vote on laws
   c. Interpret the Constitution
   d. Are not allowed to vote

3. What was the main dilemma that James Madison faced in thinking about reforming American government?

Answer Key: 1. a; 2. b; 3. Answers should include a discussion of the need to have a republic that was strong enough to last but not so strong as to trample on individual rights and liberties.
Congress in 1777 and formally ratified in 1781, the articles created a union of sovereign states that depended on cooperation for its survival. While 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.

**Uniting Separate States While Preserving Their Authority**

When they created the Articles of Confederation, the delegates to the Second Continental Congress had to confront two related issues, both of which dominated the debates surrounding adoption of the articles as well as the debates surrounding the Constitution that eventually replaced them. Both of these issues 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 that of Great Britain before the war or of the new American nation after victory had been achieved. These two issues affected politics in the rebellious colonies, in the victorious but unsure confederation of American states, and in the creation of the American Republic in 1787.

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.” Since their inception as business enterprises, plantations, or religious communities, the British colonies were used to being self-sufficient and left alone. While France had a much more centralized approach to its colonies, Great Britain’s less coherent policy resulted in a firm tradition of self-governance in the American colonies. Colonists often viewed members of other colonies as foreigners. They also reacted strongly against Britain’s tardy attempt to create a more centralized colonial policy in the decades before the American Revolution.

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? “The most acrimonious disagreements,” according to one historian, “were over control of western lands.”

The views of the indigenous peoples on questions of ownership did not factor into these calculations.

**Representation and the Sovereignty of States**

Because of concerns over land rights, the Articles of Confederation provided states with protections against the possibility of any other state claiming disputed territory on its own, without the approval of the confederal government. In the face of the prospect of large,
populous, and ever-growing neighbors, smaller states demanded, and received, equal representation in the new government. Each state had one vote in the new Congress. This Confederal Congress was unicameral, meaning it had only one chamber. States selected their representatives to the legislature and could choose the number of representatives that they sent, though each state’s delegation had to agree on these decisions, and each state received only one vote. Finally, states and not the new union would be sovereign, a right that was firmly established in the document: “Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.”
Leading up to the Revolutionary War, the relationship between the colonies and Great Britain was one of a mutual lack of understanding and mistrust. 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—self-conscious and self-reliant political communities.” This did not, however, mean naturally united colonies or, later, naturally united states. Each state had its own interests and fears, 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—a government that might come to display the tyranny of Great Britain over time.

Limitations on the Power of the Confederal Government

The confederal government under the Articles of Confederation was intentionally made to be weak. Colonists were experiencing the tyranny of British rule, and they did not want to recreate 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. There was no independent judicial branch; one existed primarily to resolve differences between states but had no real way of enforcing these decisions. The president of the Confederal 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. Sometimes the states had good reason not to comply with these requests. During the war, colonies had been reluctant to send away scarce troops or supplies when they might be desperately needed close to home. Lack of money was a constant problem, and the Continental Army was continuously without adequate supplies and occasionally faced starvation. Due to the difficulties of collecting contributions from the states or getting loans from European governments, Congress made its own currency, called the continental, which was backed only by the promise of the government to make good on its debts, assuming it won and survived the war intact. The currency later collapsed, creating financial chaos, which only added to calls for reform.

Unrest and the Danger of Rebellion

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 themselves 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. Since the American Revolution the political landscape had altered: “The vital change which took place between 1776 and 1787 was not in ideas nor in attitudes, but in the balance of political power.”¹⁴ 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. The nationalists had won partly because of dissatisfaction with the behavior of the state legislators that were in office. Self-interested politicians had managed to use the democratic power of the new state legislatures to try to make themselves rich. Rapid turnover in the composition of some state legislatures had made for sudden and unpredictable changes in state policies.¹⁵ The nationalists had also won because of foreign policy and economic failures by the confederal government and because of the threat of rebellion within the United States—a threat that flared up just as states were preparing to choose and send delegates to Philadelphia.¹⁶

Shays’ Rebellion

Shays’ Rebellion, named after Daniel Shays, one of its military leaders, was a grassroots popular uprising against the government of Massachusetts. The rebellion took place in Massachusetts, but 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 tried to replace the structure of government under the articles. Some, like James Madison, wanted a stronger nation, a different kind of republic than had ever been tried before. Others sought a return to monarchy and the British Empire.

Debt and Economic Crisis in Post-Revolutionary America

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 demanded that their customers pay debts in hard currency. Cash-strapped state governments raised taxes and demanded hard money from their citizens to pay their own sizeable debts. 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 formed “Committees of Correspondence” to petition their governments to take action to help them. Some towns in Massachusetts called for a new state constitutional convention.
Much of the debt, however, was owed to wealthy elites, and those elites wanted to be paid back in real money, not paper promises created by state governments to help out indebted farmers and shopkeepers. Some states were sympathetic to the people’s demands. The government of Rhode Island issued paper money, and the state did not see widespread civil unrest, though many elites came to view the “paper money” politicians as dangerous and undependable. Rhode Islanders, for their part, refused to send delegates to the Constitutional Convention and continued to resist the push for a stronger national government.

The government of Massachusetts held the line, siding with the banking interests. Many of the state’s citizens began to feel that 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.

Civil Unrest and Military Conflict

To each other, the members of Shays’ Rebellion were “Regulators,” a label used by the American rebels in the struggle against Great Britain. They wore a sprig of hemlock as a badge, just as the revolutionaries had done. 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 were committed by rebels carrying weapons, some of these closures “were peaceful, even jocular, reaching a high point when debtors were turned out of jail.”

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 absolved sheriffs and other officials 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 property or hoping to reunite with Great Britain. 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 Confederal 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. Referring to the Massachusetts elites, General Baron von Stueben, who had helped train the Continental Army, publicly wondered why “would Congress dare to support such an abominable oligarchy?”

**Shays’ Rebellion: A Crisis and an Opportunity**

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’ regiment and two others moved on the state armory at Springfield. If they had been successful, according to one historian, “they would have been better armed than the state of Massachusetts.” 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 U.S. In reality, most of the Regulators only wanted to keep their farms and keep their family and friends out of foreclosure or debtors’ jail.

After the Revolutionary War, George Washington had, as promised, stayed away from public life and retired to his slave-holding plantation in Mount Vernon to focus on agriculture and breeding animals. But upon receiving what turned out to be exaggerated reports of the strength of Shays’ 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 of 1786, Washington wrote,

> What stronger evidence can be given of the want of energy in our government than these disorders? If there exists not a power to check them, what security has a man of life, liberty, or property? To you, I am sure I need not add aught on this subject, the consequences of a lax, or inefficient government, are too obvious to be dwelt on. Thirteen sovereignties pulling against each other, and all tugging at the foederal head will soon bring ruin to the whole; whereas a liberal, and energetic Constitution, well guarded & closely watched, to prevent incroachments, might restore us to that degree of respectability & consequence, to which we had fair claim; & the brightest prospect of attaining.

Madison may have sensed, or at least hoped, 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.

Rebellion was not the only worry among the new states. Great Britain had been defeated but hardly destroyed. The nation had merely been pushed back into Canada, and that was only due to the help of Great Britain’s other rivals, who themselves might not always be helpful to the young United States. According to political scientist Keith Dougherty, “By the summer of 1787, the federal government had no funds to protect American shipping from the Barbary [North African] states, it couldn’t dislodge the British from their garrisons along the Canadian border, and it could not breach the Spanish blockade of the Mississippi—let alone suppress a domestic insurrection.” As states sent their delegates to Philadelphia in the spring of 1787, the world powers were watching, expecting, and perhaps hoping for, failure.
Two Portrayals of Shays’ Rebellion

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.

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 with the most severe dangers facing the young nation. While these particular images were not used during the debates over amending or replacing the Articles, they do point to differences between the two groups.

WHAT DO YOU THINK?

What stories are these images telling? 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 that you have seen of modern-day controversial events that try to shape the viewer’s perception of those events?
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. By some reports, it was a hot, humid summer. It could not have been very comfortable in the Pennsylvania State House where they met. It probably did not smell very good either. Southern delegates, dressed in cotton, fared better than the New Englanders in their wool suits. The windows were shut to ensure secrecy. This secrecy was 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 Foederal 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 would have been thought of as a revolutionary act, which it was.

James Madison was the first delegate to arrive—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. 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. Once in Philadelphia, the tall and handsome Washington found no shortage of requests for his presence at tea with prominent ladies in the city. His first call, though, was to his friend Benjamin Franklin, possibly the second most famous person in America, “who had laid in a cask of porter against the occasion” of Washington’s visit. Because of poor health, four prisoners from a city jail carried Franklin through the streets of Philadelphia in a chair on his way to
and from the convention. He remained a shrewd politician, however, and used his many skills at important moments in the debate.

Other delegates, many of whom had done their own reading and study in preparation for the proceedings, also guided and shaped the debates and outcomes. Alexander Hamilton, who had served as Washington’s aide in the war, emerged as one of the leading proponents of a strong national government. James Wilson of Pennsylvania, who, like Madison, had been a student of the Scottish Enlightenment, made important, often unheralded, intellectual contributions to the convention. Wilson served as an intellectual ally of Madison’s during and after the convention. Also from Pennsylvania, Gouverneur Morris assembled the various resolutions passed by the convention into a whole document, adding his own literary style and crafting the declaration at its beginning, “We the People, of the United States.”

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. For his part, 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. 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.

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 slaves, former slaves, or Native Americans. Roughly one-third were slave owners. 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 that the delegates came up with were pragmatic, political, and strategic, for better and for worse.

America’s State Constitutions: Models, Good and Bad

In the time between the Declaration of Independence and the Philadelphia convention, individual states had drafted their own constitutions. They were often very different from each other. The Philadelphia delegates looked to the experiences of individual states under their own governments for lessons, sometimes with unease. 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, sometimes at the expense of religious minorities. Massachusetts’s constitution was much less democratic, with a much more powerful governor and property requirements to serve 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 they convened in Philadelphia, the delegates 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. Most worried about failure.
The Convention Begins:
Debates about Representation and Power

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 (or paid) 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. Much of what we know about what happened in Philadelphia comes from his notes.

The delegates adopted a set of rules to guide themselves. They called for absolute secrecy, “that nothing spoken in the House be printed, or otherwise published, or communicated without leave of the House.” They knew that the enormous task of coming to an agreement would only be made more difficult if the details of their discussions were leaked, either deliberately or unintentionally. 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. 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 they settled into the business at hand, the primary issues of contention were the same ones that had dominated the debates surrounding the creation and adoption of the Articles of Confederation: the representation of states in the national government and the powers of that national government. Most other issues, and many of the details that had to be worked out, were tied to these central questions. Most debates centered on practicalities. With some important exceptions, speeches and discussions about slavery in the convention focused not on its immorality but on how it would affect representation of states and the power of the national government over trade and commerce.
The Question of States’ Representation

As part of the formalities of the opening days of the convention, each state’s delegates introduced themselves. Making its presentation, the Delaware delegation stated to the group that its state legislature had forbade it from changing the provision of the Articles of Confederation that gave each state one equal vote in the national legislature. How states were to be represented in the new government—the most contentious issue of the convention and the one that determined so many other outcomes—had been put on the table. No other question so dominated the convention during the early weeks and months of deliberations or 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: A New Method for Determining Representation

On just the third day of the convention, the delegation from Virginia, led by the state’s most senior delegate, Edmund Randolph, presented a set of proposals for the rest of the members to consider. But 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.34 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.

In a typically Madisonian way, the Virginia Plan began by laying 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. Giving credit to the authors of the articles for doing the best job that they could “in then the infancy of the science, of constitutions, & of confederacies,”35 the plan laid out an answer to those defects: The national government would be strong. Its constitution would be “paramount to the state constitutions.”36 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 compose a “council of revision” that could 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 by the Council of Revision. 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: “Legislature ought to be proportioned to the Quotas of contribution, or to the number of
free inhabitants, as the one or the other rule may seem best in different cases.”37 “Quotas of contribution” referred to property or tax revenue. But by property, did this mean slaves? 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. Under the Virginia Plan, Virginia would have sixteen votes to South Carolina’s one, plus all there knew that Virginia’s boundaries were far from settled. They seemed limitless. New Jersey’s William Paterson flatly stated, according to Madison’s notes, that “N. Jersey will never confederate on the plan before the Committee. She would be swallowed up. He [Paterson] had rather submit to a monarch, to a despot, than to such a fate.”38

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: Less Populous States Respond

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 only be 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 idea of only making some changes to the articles was the original mandate of the convention. 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, coldly, logically, point by point, with each phrased as a question.”39 Madison argued the New Jersey Plan would leave the nation with all of the problems that motivated the convention in the first place: “Will the militia march from one State to another to collect the arrears of taxes from the delinquent members of the Republic?”40 Madison warned that rebellions such as the one Massachusetts had just barely put down would continue to plague the Republic under Paterson’s plan: “A certain point of military force is absolutely necessary in large communities. Massts. is now feeling this necessity & making provision for it.”41

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 were 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, and “find some foreign ally of more honor and good faith, who will take them [the small states] by the hand and do them justice.”\textsuperscript{42} 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 with which they were playing and the possible consequences should they fail to reach an agreement.

### The Great Compromise

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 if 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." 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 the possibility that small states might seek an alliance with a foreign power—insisted that he had been misunderstood.

On July 16, by a vote of 5–4, the delegates agreed to what would be called the Great Compromise. 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.

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 that he had proposed but now mistrusted due to the equal state representation in the Senate. 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.

**Great Compromise**

An agreement for a plan of government that drew upon both the Virginia and New Jersey Plans; it settled issues of state representation by calling for a bicameral legislature with a House of Representatives apportioned proportionately and a Senate apportioned equally.

**DETAILS OF THE NEW GOVERNMENT**

With the bicameral legislature having resolved the first and largest issue of the convention—the distribution of power between 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 Committee of Detail presented its recommendations on the structure of government and the relationships between the three branches. The Committee on Unfinished Parts took up issues that had not been resolved and generally tried to tie up loose ends in the structure of the new government.
The Legislative Branch

While representation in Congress had been settled, its powers still had to be worked out. To do so, delegates looked to the powers of the Confederal 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—or stand for—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 a 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.” This commerce clause has enabled Congress to become involved in large areas of the American economy, even within states. Debates over the power of and limits to the commerce clause continue today, especially between states and the federal government.

In order 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

Neither the Virginia 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 over how many chief executives the country should have, much less over 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” followed him for the rest of his political career. Most delegates expected 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 piece of legislation 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 had been suggested by James Wilson of Pennsylvania and 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. States would decide how these electors were to be chosen, and successful candidates would need to win 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

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 and laws.

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 if 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, if it is thus invalid. In the United States, that supreme law is the Constitution, and the power of judicial review rests ultimately with the United States Supreme Court. While 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.

The power of judicial review, combined with the supremacy clause, became crucial in later battles to protect civil liberties and secure civil rights, many of which were waged by citizens who because of their identity had been ignored by the original document or had their rights restricted by it. As with the other two branches, the judiciary was not to exist in isolation. Congress, not the Supreme Court, had the authority to create the lower federal courts. Congress would determine the number of Supreme Court justices, and the Senate had the power to confirm justices (with a majority vote), who first had to be nominated by the president.

**Separation of Powers**

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 powers” was created. 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 of the time (see Table 2.2). “Ambition,” wrote James Madison in defense of the Constitution “must be made to counteract ambition.” 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. While federalism may seem like a somewhat dry topic, as we will explore in the next chapter, many of the most important issues in America in the twenty-first century involve defining the boundaries between the authority of the nation and that of the states.

**“Unfinished Parts”: More Details to Work Out**

At the beginning of September 1787, the Committee on Unfinished Parts 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 between 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—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,

---

**TABLE 2.2 Separated Institutions Sharing Powers**

<table>
<thead>
<tr>
<th>INSTITUTIONS</th>
<th>Executive Branch</th>
<th>Legislative Branch</th>
<th>Judicial Branch</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lawmaking Authority</strong></td>
<td>• Executes laws</td>
<td>• Writes nation’s laws</td>
<td>• Interprets contested laws</td>
</tr>
<tr>
<td></td>
<td>• Veto power</td>
<td>• Veto override</td>
<td>• Can declare both federal and state laws unconstitutional</td>
</tr>
<tr>
<td></td>
<td>• Nominates judges to the federal judiciary and key executive branch officials</td>
<td>• Senate confirms judicial nominees and key executive branch officials</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Works to shape legislative agenda</td>
<td>• Determines number of Supreme Court justices</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Creates lower courts</td>
<td></td>
</tr>
<tr>
<td><strong>National Security and Foreign Policy Responsibilities</strong></td>
<td>• President acts as commander in chief of the military</td>
<td>• Declares war</td>
<td>• May declare laws or executive branch actions in conflict with the Constitution</td>
</tr>
<tr>
<td></td>
<td>• Sets foreign policy agenda</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Oversight Responsibilities</strong></td>
<td>• Oversees federal bureaucracy</td>
<td>• Power of impeachment (over president, executive branch officials, and federal judges)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Budget authority and oversight over executive branch agencies</td>
<td></td>
</tr>
<tr>
<td><strong>Sovereignty</strong></td>
<td><strong>Sovereignty rests with the people.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Constitution is the supreme law of the nation.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*amendment*  
a constitutional provision for a process by which changes may be made to the Constitution.
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, either 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 only been used 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—cancelled each other out. Since the passage of the Bill of Rights, therefore, the Constitution has only had fifteen lasting changes. 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.51

Slavery: A Fateful Compromise

At the time of the convention, nearly one out of every six individuals living in the thirteen states was a slave. 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 benefitted from slavery. The slave trade and the trade in goods made by slaves benefitted some powerful shipping interests as well, especially in the Northeast. About one-third of the delegates to the convention, including Madison and Washington, were slave owners. 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.

It was an issue that could have easily torn apart the convention—or the country—at the time. It spoke to the core values of a people who were trying to constitute themselves in a republic. 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 slaves count when it came time to tally a state’s population? In the end, the question of slavery was settled not according to high ideals but on practical, 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 a slave—called an “other person” in the Constitution—would count as three-fifths of a person for a state’s representation.52 Slaves could not vote or be represented, but their numbers would boost the influence of the slave states in which they were held because since slaves were counted among the population, slave-holding states would be allotted more members of Congress. In a second facet of the compromise, Congress would not be allowed to restrict the slave trade until 1808 at the earliest. Third, slaves who had successfully escaped would have to be “delivered up on a Claim of the Party to whom such Service or Labour may be due.” They would have to be returned to their owners, regardless of the laws of individual states.
Slavery, Population, and the Balance of Power between Southern and Northern States

One of the most important divisions between the states during the Constitutional Convention was on the issue of slavery. In addition to being a moral issue, how slavery was handled during the proceedings, as all delegates knew, would have serious implications for the balance of political power in the federal government, especially in the House of Representatives. While states would be equally represented in the Senate, their representation in the House would depend upon their population. Did that population include slaves?

Figure A shows the percentage of each state’s population that was enslaved in 1790, three years after the drafting of the Constitution. The divisions between northern and southern states are striking. What might this mean for representation in the House?

Figure B presents the same data, but it does so in a way that breaks down the population—free, slave, and total—of each state and the two regions. Note the light blue bars, which represent the total population of the states and regions. Looked
at this way, the balance of population between the northern and southern states is roughly equal, with just under two million individuals in each region. However, when one separates out the slave population (the green bars), the northern states have a population advantage of more than six hundred thousand people (the dark blue bars). It was this math that drove much of the bargaining over slavery and representation in the convention.

**WHAT DO YOU THINK?**

What information does Figure B convey that Figure A does not? Have you encountered different charts and tables that present the same or similar data in different ways, thus allowing you to draw different conclusions?

**Figure B: Free and Slave Population Totals by State**

![Bar chart showing population totals by state for free, slave, and total populations in the Northern and Southern states.](image)

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 probably several reasons, and they are not necessarily mutually exclusive. The first reason, perhaps obviously, is that slaves had not voted for their state legislators. Some delegates did oppose slavery, but slaves had no direct representation in the Constitutional Convention. While slaves were not represented, however, slave owners were, and their delegates used the threat of leaving the convention to secure their interests. William Richardson Davie from North Carolina had threatened that if slaves were not included in states’ representation, “the business [of the Convention] was at an end.” 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. Not surprisingly, Rutledge’s committee proposed to give the slave states everything that 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 slave states and the northeastern commercial states. Northeastern states received the strong commercial policy that 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, though probably through a deal made in private. On August 29, General Pinckney from South Carolina stated that although strong commercial policy was not in his state’s best interests, he would not oppose the eastern states’ proposals, given their “liberal conduct towards the views of South Carolina” on the issue of importing slaves. It appears from Madison’s notes that a deal had been struck, though the records offer no “smoking gun” evidence.

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 African Americans a reality, or at least more of a reality, on the ground rather than just in words. Even today, the question of whether Americans are all truly equal in the Republic endures.

James Madison on Slavery

Although his views on slavery evolved over time, James Madison was never able to completely resolve the contradictions inherent in a Constitution and government that, although based on natural rights and liberties, permitted slavery. In an essay published following the drafting of the Constitution, Madison acknowledges this contradiction, raising a hypothetical argument with which he later agrees:

But we must deny the fact, that slaves are considered merely as property, and in no respect whatsoever as persons. The true state of the case is, that they partake of both of these qualities; being considered by our laws, in some respects, as persons, and in other respects as property. In being compelled to labour, not for himself, but for a master; in being vendible [able to be sold] by one master to another master; and in being subject at all times to be restrained in his liberty, and chastised in his body, by the capricious will of another, the slave may appear to be degraded from the human rank, and classed with those irrational animals.
which fall under the legal denomination of property. In being protected, on the other hand, in his life and in his limbs, against the violence of all others, even the master of his labour and his liberty; and in being punishable himself for all violence committed against others; the slave is no less evidently regarded by the law as a member of society.55

In a letter to a colleague later in his life, Madison discussed a plan for ending slavery that involved a separate treatment for African Americans, whether in returning freed slaves to Africa or settling them in the Western territories:

Sir,—I have rec. [received] your letter of the 3d instant, requesting such hints as may have occurred to me on the subject of an eventual extinguishment of slavery in the U.S.

A general emancipation of slaves ought to be 1. gradual. 2. equitable & satisfactory for the individuals immediately concerned. 3. consistent with the existing & durable prejudices of the nation.

To be equitable & satisfactory, the consent of both the Master & the slave should be obtained. That of the Master will require a provision in the plan for compensating a loss of what he held as property guarantied by the laws, and recognized by the Constitution. That of the slave, requires that his condition in a state of freedom, be preferable in his own estimation, to his actual one in a state of bondage.

To be consistent with existing and probably unalterable prejudices in the U. S. the freed blacks ought to be permanently removed beyond the region occupied by or allotted to a White population.56

Madison never did free his own slaves or provide for their freedom upon his death, as his colleague George Washington would do.

A Document Finished, But Not the Law of the Land

By proposing a system of amendments, the framers ensured that the Constitution would always be unfinished so that it could adapt 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 states’ 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 required that amendments to the articles required the approval of all thirteen state delegations in Congress. This, members of the Constitutional Convention knew, was going to be very difficult. Rhode Island never sent any delegates, and many states were
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 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
the name taken by supporters of the proposed Constitution; the Federalists called for a strong national government.

Antifederalists
the name taken by those opposed to the proposed Constitution; the Antifederalists favored stronger state governments.

RATIFICATION

Federalists versus Antifederalists

It was America’s first national political campaign. It was also its first negative national political campaign. The fight between those in favor of the Constitution and those opposed to it was characterized by 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. Some wrote under their own names. Others adopted the names of Roman figures or used simple descriptors such as “landowner.” Both sides flooded the country with pamphlets and letters to newspapers. The campaign was sometimes personal, with attacks on the character of members of the other side.

Tactically, the first victory in the battle to lodge a favorable image in the minds of citizens went to the supporters of the proposed Constitution. They successfully claimed the name Federalists for their group. In fact, the proposed government was strongly national, whereas the term federalist generally meant more of a balance between the power of states and the national government. Those arguing against the document could more properly claim the title Federalist. Nonetheless, they would be tagged as Antifederalists for the next year’s political campaign.

For the Antifederalists, part of the negativity associated with their name and their political campaign was perhaps inevitable. They were, after all, forced to argue against a proposal, and 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 new—many would say 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, perhaps not immediately, but at some point in the nation’s future.

For their part, the Federalists also campaigned partly on fear. They pointed to the problems that plagued the government under the articles—the 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. A personal appeal by Washington in which he argued, “There is no Alternative between the Adoption of it [the Constitution] and Anarchy,” was reprinted fifty-one times during the campaign.57 The Antifederalists, with the exception of a few misguided attempts to counter the celebrity endorsements of Washington and Franklin, stayed away from the issue of famous endorsements in this, America’s first political campaign.

In some ways, the Federalists and Antifederalists split along distinctions of class. 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 Antifederalists came from rural areas and mistrusted powerful elites in their states’ capitals. To say that the Federalists were wealthy elites and the Antifederalists small farmers and shopkeepers is, however, too

<table>
<thead>
<tr>
<th>TABLE 2.3 Federalists and Antifederalists</th>
</tr>
</thead>
<tbody>
<tr>
<td>Both Federalists and Antifederalists were interested in a politically and economically secure nation, but they differed in how they thought that would best be achieved.</td>
</tr>
<tr>
<td><strong>Diff ered in Terms of . . .</strong></td>
</tr>
<tr>
<td><strong>View of proposed Constitution</strong></td>
</tr>
<tr>
<td><strong>Proponents of . . .</strong></td>
</tr>
<tr>
<td><strong>Concerned about . . .</strong></td>
</tr>
<tr>
<td><strong>Proposed . . .</strong></td>
</tr>
<tr>
<td><strong>Supporters included . . .</strong></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

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.

The Granger Collection, New York.
strong a simplification. Many Antifederalist leaders were educated elites; some of the most prominent had been heroes in the Revolutionary War, 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 Antifederalists were just as concerned as their opponents with securing a stable future for the country. Instead, the divisions between the two sides represented fundamentally different visions for how to do so. Three main issues divided the Antifederalists and the Federalists on a vision of this future: (1) the very possibility of creating a workable republic in such a large nation that would 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 which people possess and which governments cannot take away) in the Constitution. Each of these issues was closely related to the others.

**The Dangers of Power in a Large Republic**

As the debate over ratification got under way, the factions for and against the Constitution disagreed on the very possibility of a republic in a country as large as the United States. Many of the Enlightenment writers that Madison had drawn his ideas from had argued republics had to be small to work properly, and all expected this one to grow even larger over time, making the challenges even worse. The national government, the Antifederalists argued, 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. As the national government grew more powerful and more distant from the citizens, states would grow weaker and provide citizens with less and less of a check on the power of the national government. Therefore, the Antifederalists asserted, more restrictions needed to be placed on the national government now, while it was still possible. They proposed, for example, to narrow the set of cases that the Supreme Court could hear and to limit the power of the president and the nation in military affairs, preserving a larger role for state militias in the country’s defense.

These challenges required more than a tactical shift on the part of the Federalists. They spoke to the very viability of an effective republic in the United States and required the Federalists to also go positive in their campaign. They had to lay out for skeptical Americans 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. The Federalists made their strongest theoretical case for the new American Republic in a collection of eighty-five essays written for the New York papers from the fall of 1787 to the spring of 1788. Published under the collective name “Publius,” these Federalist Papers, which were actually written by Alexander Hamilton, James Madison, and John Jay, 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.

James Madison was not initially selected to be one of the authors; Alexander Hamilton chose to bring him onto the project as a replacement Federalist. Madison’s research allowed him to respond thoughtfully and quickly to the Antifederalist charges against the proposed Constitution. At the time, the Federalist Papers were intended to influence the ratification debate, especially in the contested state of New York. Hamilton had the “idea...
of laying down this propaganda barrage on the still undecided minds of New Yorkers.”58 The Federalist Papers were an example of political propaganda—the framing and discussion of a political issue in a way that tries to influence people’s views of that issue.

Though “Publius” managed to get wide coverage simply by producing so many essays, “nearly a thousand words a day,”59 individually the essays may not have been decisive in swaying public opinion in the debates at the time. They were complicated and intellectual, and this was, after all, a political campaign. Their importance to the theory of the American Constitution, however, is unmistakable. Many of Madison’s essays are now considered to be the most important in the collection. Two essays in particular, Federalist No. 10 and No. 51 (see Appendix), tackle the Antifederalist critiques by laying out the reasons behind the proposed constitutional republic. Though Madison was not entirely happy with the results of the Great Compromise, he now defended the proposed Constitution, seeing its adoption, even with its imperfections, as a far better outcome than failure to secure ratification.

From his research, Madison knew that those who would engineer a republic must not assume that people will always act in noble ways, putting their own needs behind what is best for the republic. Instead, he proposed that the American Republic must be constructed to account for self-interest and selfish motives. In Federalist No. 51 he wrote, “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable to the government to control the governed; and in the next place oblige it to control itself.”60

The Problem of Faction

The danger was not only that people would act according to their self-interest, it was that they might do so in concert 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 the rights of others in the process. Such a group of self-interested individuals would constitute what Madison called a faction, and it would present, and has always presented, the most dangerous challenge to a republic. In Federalist No. 10, he describes the problem of faction and offers his solution to it, which, he argues, is the basis on which the current Constitution is built. “By faction,” Madison wrote, “I understand a number
The most common and durable source of factions has been the various and unequal distribution of property. “Those who hold and those who are without property have ever formed distinct interests in society.”

Factions could be eliminated but, Madison argued, only through unacceptable means. A tyrannical government that suppressed the liberties of its citizens could prevent factions from organizing. “Liberty,” Madison argued, “is to faction, what air is to fire.” Suppress liberty, and factions cannot survive. Factions also cannot form or survive in societies where everyone has “the same opinions, the same passions, and the same interests.” This second preventative measure is as unrealistic as the first is unthinkable, especially in a large republic like the United States. Therefore, Madison concludes that a nation cannot avoid the problem of faction, only try to check its dangers. American history has proven Madison correct. The American Republic has had factions since its origin. Political parties can be thought of as factions, as can interest groups. The question is 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 of the others. Tactically, this was a clever argument. With it, Madison countered the Antifederalist charge that the American republic would be too large to govern effectively by arguing that the only solution to the dangers of faction was precisely to have such a large republic. Madison, however, was no populist; much of the structure of the government that he had helped design was there to place brakes on popular passions, to insulate representatives from the desires of their citizens.

Two Forms of Tyranny

The notion that there are many reasons to mistrust government is not one with which the Antifederalists would have disagreed. Rather, the debate between the Federalists and Antifederalists was over the forms that the danger of self-interest would take and the best solution to the imperfections of those who would hope to govern. Both sides acknowledged that tyranny could take two forms. In a tyranny of the minority, a small number of citizens tramples 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.

The Antifederalists focused more on the dangers of a tyranny of the minority. The Regulators had viewed the government of Massachusetts as becoming dangerously
disconnected from the people and controlled by wealthy elites; the Antifederalists 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 of 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 slaves outnumbered whites in many areas of the country. 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. Viewing democracies throughout history as “spectacles of turbulence and contention... incompatible with personal security or the rights of property,” Madison argued for the Republican remedy to the dangers of tyranny.65

Delegation of power to representatives of the people is central to the republican remedy, as is the way in which power is divided within this republican form of government. 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, between the three branches of the national government, and within each branch.

The Power of the National Government and the States

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 Antifederalists 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.

Federalist Arguments 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. In Federalist No. 9, Alexander Hamilton claimed that the principle of confederacy, in which smaller sovereign governments unite in a limited union, “has been the cause of incurable disorder and imbecility in the government.”66 In Federalist No. 16, Hamilton advocated for a national army, playing on the fears brought about by Shays’ Rebellion. He warned that if the national government in a confederacy were ever forced to use military might against one of its members, “The first war of this kind would probably terminate in a dissolution of the union [and end] in the violent death of the confederacy.”67

In his contributions to the Federalist Papers, Madison took a more moderate approach, emphasizing the balance between state and national power in the proposed Constitution. The difference between Hamilton’s and Madison’s views was more than...
a matter of words. In the coming years these two founders (along with their intellectual and political allies) would split into two different factions, giving rise to the nation’s first political parties along with some very personal and negative campaign tactics.

In Federalist No. 39, Madison argued that the Constitution divided the people’s sovereignty in such a way as to preserve the integrity of both states and nation. The House of Representatives, its members elected directly by Americans and its number determined in proportion to state population, “is national not federal.” The Senate, with its members elected by state legislatures and its numbers apportioned equally, “is federal, not national.” The office of the president, elected under the complicated system of the Electoral College, was similarly compound. Madison concluded that “the proposed constitution, therefore . . . is, in strictness, neither a national nor a federal constitution; but a composition of both.”

In Federalist No. 45, Madison reassured the states that the list of specific powers given to the national government and the reservation of all other powers to the states provided an important check on the power of the proposed national government: “The powers delegated by the proposed constitution to the federal government, are few and defined. Those which are to remain in the state governments, are numerous and indefinite.”

Finally, in Federalist No. 51, Madison argued that the separation of powers between the two levels of government would provide an important defense against the dangers of faction: “In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each subdivided among the distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself.”

Antifederalist Concerns

The Antifederalists 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. In American political history, there is no one work that encapsulates Antifederalist thought in the same way that the Federalist Papers did for Federalists. There are no Antifederalist Papers; rather, as scholars have pointed out, “the Antifederalist literature is immense and heterogeneous, encompassing speeches, pamphlets, essays and letters.”

Many Antifederalist 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. Being some distance away from the [congressional district] would alienate the representatives from their constituent’s wishes,” creating the possibility of a new, elected, American aristocracy. This “democratic” aristocracy, an Antifederalist essay warned, would be accompanied by an irresistible trend toward a large and complex national government, driven by the demands of a growing nation: “It would be difficult to prove, that anything short of despotism could not bind so great a country under one government; and that whatever plan you might at the first setting out establish, it would issue [end up] in a despotism.”

The economic power of the national government to tax and regulate interstate commerce was one of the Antifederalists’ greatest worries, and it was only made worse by the necessary and proper clause of the proposed constitution. The author of one Antifederalist essay,
writing under the name “Brutus,” argued that “this power, given [to] the federal legislature, directly annihilates all the powers of the state legislatures.” Over time, when individual states attempted to reassert their authority, “it will be found that the power retained by individual states, small as it is, will be a clog upon the wheels of government of the United States; the latter therefore will be naturally inclined to remove it out of the way.”

A Bill of Rights

Strategically, the most effective Antifederalist charge against the Constitution was that it lacked a bill of rights—a list of rights and liberties with which people are born and which governments cannot take away. Many state constitutions already had them, and the idea of inserting a statement protecting specific rights and liberties into the Constitution had come up during the convention. Motions to include these statements, however, did not pass, though the delegates did place some restrictions on government in scattered sections of the Constitution (see Chapter 4). 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. John Dickinson of Delaware asked other delegates rhetorically, “Do we want to be reminded that the sun enlightens, warms, and cheers?” In addition, according to the Federalists, bills of rights had traditionally been associated with agreements between kings and subjects, not constitutions of a free people. Finally, some questioned if 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 with what the government might become in the future, not just what it was in the present: “It is of the opinion of the greatest writers that a very extensive country cannot be governed on democratic principles . . . whatever plan you might at the first setting out establish, it would issue into despotism.” In addition, the Antifederalists argued that a bill of rights served an important educational function in a
The Constitution of the United States 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.

In the final days of the Constitutional Convention, two delegates proposed a clause that would guarantee liberty of the press. Their motion lost, but by only one vote, a potential harbinger of future political realities of which, according to one political scientist, the nationalists should have taken heed. As it turned out, the lack of a bill of rights proved to be the most effective argument that the Antifederalists would make in the ratification campaign. Many Americans were suspicious of centralized power and wanted specific protections against it.

In February 1788, the Federalists won a narrow victory in Massachusetts, the sixth of nine states needed for ratification, but only after the pro-constitutional 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. 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. It was not North Carolina’s reluctance or Rhode Island’s rejection that worried him. If Virginia and New York failed to ratify, it might lead to deep divisions within the new country. Virginia ratified in June, and New York followed in July. North Carolina and, finally, Rhode Island ratified within a year. During the campaign, sensing the realities of the political landscape, Madison had shifted course and promised to introduce a bill of rights as proposed amendments during the first session of the new Congress once the Constitution had been ratified. Madison kept his word, and in 1791 ten of the amendments that he proposed became part of the Constitution.

1. The Federalists were opposed to the Constitution as drafted in Philadelphia in 1787.
   a. True
   b. False

2. James Madison’s theory of the extended republic argued that _____.
   a. Members of a republic should be wary of the growth of national power
   b. The greatest safeguard against faction is a people with closely similar ideas and goals
   c. Competition between factions will serve as a safeguard against tyranny
   d. To guard against factions, significant restrictions will need to be placed on citizens’ liberties

3. What were some of the points of disagreement between Federalists and Antifederalists?

Answer Key: 1. b; 2. c; 3. Answers may include support for or opposition to the Constitution, differing opinions on the dangers of national power, and/or the need for a bill of rights.
Mercy Otis Warren on the Dangers of the Constitution and the Need for a Bill of Rights

Mercy Otis Warren was born in 1728 “into one of Massachusetts’ most prominent, wealthy families.” She displayed her strong support of colonial resistance to British rule before and during the American Revolution in her letters, plays, poems, and pamphlets. During the ratification debates, Warren wrote in opposition to the proposed form of government, arguing that it constituted “the abandonment of old republicanism and a betrayal of the revolution.” For a woman to engage in politics so publicly was itself a major act, as women during the time were excluded from political dialogue. Although she published anonymously (and, therefore, was assumed to be a man by most readers), she corresponded with many of the nation’s leaders, who were well aware of her intellectual contributions to the founding.

Like other Antifederalist writers, Warren warned against the creeping aristocracy among the young nation’s political leaders. According to her,

Man is not immediately corrupted, but power without limitation, or amenability, may endanger the brightest virtue—whereas frequent return to the bar of their Constituents is the strongest check against the corruptions to which men are liable. . . . There is no security in the preferred system, either for the rights of conscience or the liberty of the Press: Despotism usually while it is gaining ground, will suffer men to think, say, or write what they please: but when once established, if it is thought necessary to subserve the purposes of arbitrary power, the most unjust restrictions may take place.

Warren was one of the strongest advocates for the need to include a bill of rights in the Constitution, and her arguments contributed to its eventual inclusion. She claimed that “there is no provision by a bill of rights to guard against dangerous encroachments of power in too many instances to be named. . . . We are told by a gentleman of too much virtue and real probity to suspect he has a design to deceive—‘that the whole constitution is a declaration of rights,’—but mankind must think for themselves, and to many very judicious and discerning characters, the whole constitution with very few exceptions appears a perversion of the rights of particular states, and of private citizens.”


Warren believed the rights of individuals ought to be the primary object of all government and cannot be too securely guarded by the most explicit declarations in their favor.

WHAT DO YOU THINK?

What are Warren’s main critiques against the proposed Constitution? In what ways are her views of human nature similar to or different from those of James Madison?

2 Ibid., 261.
CONCLUSION

What Is the Constitution?

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. The stories surrounding the framers’ efforts have shifted over time and will probably continue to do so, and juries of generations have weighed in on the motives of the founders and on the consequences of those motives for Americans then and now.

The founders of the American Republic have been described as being guided by their own privilege and accused of crafting a government that preserved distinctions of wealth and class. According to this critique, wealthy elites supported the proposed Constitution because it would protect private property from attempts at redistribution and confiscation. These men certainly did consider their own financial futures, though the argument against them focuses more on protecting elite interests in general than enriching any one individual. If Madison or any of the other founders were motivated primarily by personal gain, however, they were not very good at it. Several of them died bankrupt, had to sell off property, or had to have property sold off upon their deaths.

Some scholars have argued that the founders were motivated not necessarily by their own economic motives but by those of their states. That the delegates would advance the interests of their states is not surprising. They had been chosen, after all, to attend the Constitutional Convention by their state legislatures. The founders were also motivated by a sense of the importance of what they were doing and of their place in history, becoming “fantastically concerned with posterity’s judgment of their behavior.”

The founders have also been accused of being antidemocratic. This was certainly true of most of the men at the convention. They saw pure democracy as dangerous. During the convention, Madison noted that Roger Sherman of Connecticut “opposed the election [of national legislators] by the people, insisting that it ought to be by the [state] Legislatures. The people, he said, should have as little to do as may be about the Government. They lack information and are constantly liable to be misled.” Elbridge Gerry of Massachusetts agreed, saying, “The evils we experience flow from the excess of democracy. The people do not want virtue; but are the dupes of pretended patriots.” The mistrust of pure democracy was not a controversial opinion at the time. The founders had watched democratic state legislatures with unease. These institutions had often trampled on the rights of minorities, especially members of religious minorities and former supporters of Great Britain, whose wealth they eyed. The framers intentionally placed obstacles in the path of those who would use the government to accede to popular demands.

No one of these explanations likely accounts for the motives of all of the framers as they sought to create a new government. Many probably had mixed motives. What did the founders create? What is the Constitution? Why do Americans follow this fading document, written by educated white men who might have as difficult a time relating to modern Americans as we have understanding their reality? These questions defy simple answers, partly because the Constitution is still evolving and partly because no one answer seems sufficient.

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. The Constitution creates a space for strategic action, a place of contestation. The Constitution drew from the religious traditions and individual constitutions of the colonies. It is a document that creates—or constitutes—a people. It sets out who those people are and why they are doing what they are doing.
To other scholars, the 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. Inequality in all of 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. That document did not ban slavery or the trade in slaves. It did not affirm or institutionalize the natural-born rights and liberties of women, Native Americans, slaves, former slaves, or many other outsiders, “dangerous” individuals, or invisible people. 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 would 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 men. Their compromises may have been necessary, but they 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, connect them to the stories presented in the chapter, think critically about these questions, and know these terms that are central to the topic.

2.1 Explain how the historical context of post-Revolutionary America led to the proposal for a new, stronger national government.

REMEMBER . . .

• 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.
Chapter 2 - The Constitution of the United States

**CONNECT**
- Madison was interested in, but not optimistic about, the possibility of making major changes to the government under the Articles of Confederation.
- Divisions between states, economic problems, and the danger of rebellion all played a role in the path to the Constitutional Convention.

**THINK**
- Why were some Americans worried about amending or replacing the Articles of Confederation?
- Why were some in favor of the idea?

**KNOW**
- Articles of Confederation and Perpetual Union (p. 44)
- constitution (p. 41)

---

2.2 Describe how the Constitution was shaped by the strategic political choices of those involved in its drafting.

**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.

**CONNECT**
- By placing what became known as the Virginia Plan on the agenda, James Madison forced the opposition to respond to his ideas.

**THINK**
- What issues dominated the early weeks of the convention?
- What other issues arose as the convention progressed?

**KNOW**
- Constitutional Convention (p. 52)
- Great Compromise (p. 58)
- New Jersey Plan (p. 56)
- Virginia Plan (p. 55)
- Shays’ Rebellion (p. 48)

---

2.3 Identify the ideas behind the structure of the government under the Constitution.

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

**THINK**
- What role did the issue of slavery play in the deliberations during the convention and in the document that finally emerged from it?

**KNOW**
- amendment (p. 62)
- executive branch (p. 59)
- judicial branch (p. 60)
- legislative branch (p. 59)
- separation of powers (p. 61)
- Three-fifths Compromise (p. 63)
2.4 Compare and contrast the arguments put forth by the Federalists and the Antifederalists during the ratification campaign.

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.

CONNECT . . .
- The ratification campaigns in the states played upon people’s fears, but they also sought to make convincing arguments about the proper structure of government.
- Uncertainty about how powerful the proposed federal government would eventually become informed many of the debates between Federalists and Antifederalists.

THINK . . .
- What were the primary points of disagreement between the Federalists and Antifederalists?
- Which side eventually prevailed?

KNOW . . .
- Antifederalists (p. 68)
- extended republic (p. 72)
- faction (p. 71)
- Federalists (p. 68)
- Federalist Papers (p. 70)
- tyranny (p. 70)
- tyranny of the majority (p. 72)
- tyranny of the minority (p. 72)

2.5 Consider the different perspectives on the effects of the Constitution in American life today.

REMEMBER . . .
- Americans still debate the degree to which the Constitution protects individual rights and liberties, the degree to which it preserves inequality, and how democratic the American Republic was and is.

THINK . . .
- What are the different functions that a constitution fulfills?