

Chapter 2 – Establishing a Constitutional Democracy

SPECIAL NOTE: *Much of this chapter involves more history than political science – the AP U.S. Government Exam does NOT focus on U.S. History. For that reason, I have omitted sections of the chapter from the outline.*

OVERVIEW

- The Constitution was written to rectify difficulties the country experienced under the Articles of Confederation. It granted Congress greater powers, established an independent executive, and created the Supreme Court.
- Incorporated into the Constitution were the ideas of Thomas Hobbes and John Locke: consent of the governed and separation of powers.
- The Connecticut Compromise resolved the issue of representation through bicameralism in Congress.
- When disputes arose over the process of selecting the president, the delegates in attendance settled for the Electoral College system.

- Ratification of the Constitution was done in special state conventions. Those arguing for ratification were called Federalists. Those opposed to ratification, Anti-Federalists, demanded a Bill of Rights, which they were promised would be incorporated into the Constitution after it went into effect.
- Anticipating the need for changes, the Framers included an amending procedure in Article 5.

OUTLINE

I. The First National Election

- The Framers stipulated that the Constitution would not go into effect until it was ratified in nine states in special ratifying conventions.
- As outlined in Article VII, the Constitution was approved by the necessary nine states in 1788.

II. The Colonial and Revolutionary Era

A. Theory of Rights and Representation

- The Declaration of Independence expressed a strong belief in government by consent and the protection of God-given rights. The Declaration included the following three principles, which would shape the writing of the Constitution: 1. Consent of the governed; 2. Separated powers; 3. Citizen rights and representation.

1. Consent of the Governed → Writing in 1651, Thomas Hobbes provided a philosophical justification for government by consent in his classic text, *Leviathan*.

2. Separated Power → Forty years later, John Locke, in his classic piece, "Two Treatises of Civil Government," provided a justification for separation of powers: legislative, executive, and judicial.

- a. legislative power - to make law-composed of two chambers
- b. executive power - to enforce the law
- c. judicial power - to apply the law (exercised by independent judges)

3. Citizen Rights and Representation →

- A group of British citizens who opposed British patronage and corruption were called Whigs. One of the more prominent was James Harrington, who wrote about the importance of representation and the rights of qualified voters.
- Harrington's ideas found acceptance in America and were articulated in Thomas Paine's very popular pamphlet called *Common Sense*.
- In Paine's view the colonies all had the right to revolt against a government that imposed taxes on them but which did not give them the right of representation in the Parliament at Westminster. But he went even further. For him there was no reason for the colonies to stay dependent on England. On January 10, 1776, Paine formulated his ideas on American independence in his pamphlet *Common Sense*.

III. Government after Independence

A. The Articles of Confederation (1781-1789)

1. Provisions of the Articles

- The national government created by the Articles was weak, principally because states remained sovereign and Congress had very few significant powers to deal with the new nation's many internal concerns, especially those that dealt with fiscal issues.
- What powers it did have the states also possessed. The Articles created only one national institution, a Congress, in which each state had one vote.

2. Government under the Articles

- Problems caused by different state currencies, state disputes over trade, incidents of domestic unrest like Shays's Rebellion, and threats from foreign countries emboldened men like James Madison to call for a meeting to amend and revise the Articles, and if necessary, create a new national constitution.

IV. Drafting and Adopting a New Constitution

A. The Constitutional Convention

- Two major factors, size and location, divided the delegates into small states versus large states and northern states versus southern states.

1. The Virginia Plan

- The delegates chose as the basis for their initial discussions the Virginia Plan, the constitutional proposal supported by delegates from large states.
- It called for a Congress composed of a House elected by voters and a Senate elected by state legislatures. Representatives in both houses would vary from state to state based on a state's population. It also called for Congress to elect an independent executive and the creation of an independent Supreme Court.

2. The New Jersey Plan

- The smaller states countered with their own proposal: the New Jersey Plan. Like the Virginia Plan, it called for three independent branches (Congress, Executive, and Judiciary), but it would retain the single house in the Congress with each state having one vote.

3. The Connecticut Compromise (Great Compromise) → Congress would be composed of two houses. In the House of Representatives, state representation would be based on population. In the Senate, every state would have an equal vote.

B. Government of Separated Powers

1. Congress

- The delegates granted several significant powers to Congress. Voters would elect representatives to the House for two-year terms, and state legislatures would elect Senators to six-year terms. Though it was later proposed, the Framers refused to place any term limits on either Representatives or Senators.

2. The Executive

- The delegates created a position for a president who must frequently act in concert with Congress (both the House and the Senate) in order to exercise powers.
- With a two-thirds vote, the House can impeach the president for committing high crimes and misdemeanors, and the Senate can acquit or convict and remove an impeached president.

3. The Electoral College

- When large and small states differed over how to elect the president, the delegates compromised and created the Electoral College. The number of electoral votes a state has is based on its total representation in Congress. Each state can decide how electors are chosen.

4. The Judicial Compromise

- The delegates created a Supreme Court, appointed by the president with the consent of the Senate for an unspecified term ("good behavior"). Refusing to create lower federal courts, the delegates gave this power to Congress. Congress created lower federal courts in 1789.
- The delegates also specified that the Constitution was the supreme law of the land, which all judges - federal and state - are bound by oath to uphold.

5. Compromising on the Issue of Slavery

- The delegates refused to ban slavery but did put a 20-year limit on continuing the slave trade. A compromise was reached on the subject of how to count slaves for purposes of representation in the House of Representatives: Each slave would count as three-fifths of a non-slave (the three-fifths compromise). In exchange for this, southern states agreed to grant Congress the authority to tax imports.
- They also included the Fugitive Slave clause (Article 4, Section 2) and the 1808 Slave Trade Clause (Article I) to appease any southern dissent.

C. The Bill of Rights

- Thinking that protection of rights would be a state responsibility, the delegates did not include a Bill of Rights. To alleviate criticism for this, the Federalists promised to add a Bill of Rights to the Constitution if states ratified it.

D. The Anti-Federalist/Federalist Debate

- Anti-Federalists were also theoretically opposed to the Constitution. They thought it gave too much authority to the national government, leaned toward monarchy, and would create an aristocracy.
- The Federalists answered these concerns in a series of newspaper articles, now known as The Federalist Papers.
- The authors of those essays thought the threat of tyranny could come from outside or from within the country. This threat explained why the Framers instituted a set of checks and balances, dividing power between the nations and states, and agreed upon a bicameral Congress.

VIII. Amendments to the Constitution

Realizing the Constitution would need to be changed, the Framers provided for a method of formal amendment of the Constitution. Of the four different methods, the most frequently used is for Congress to propose with a two-thirds vote and state legislatures to ratify by three-fourths of the states.

This procedure is so difficult that only 27 amendments have been ratified, with the Bill of Rights containing 10 amendments added in 1791. The most common type of amendment is that expanding the right to vote.

IX. The Constitution: An Assessment

A. A Step Backward?

- From a democratic perspective, certain parts of the 1787 Constitution could be criticized: continuation of the slave trade until 1808, failure to extend the right to vote, and failure to list the rights of citizens.
- In defense of the Framers, some of the failures were designed to help guarantee ratification.

B. Achievements

- The Framers did draft a document that contributed to the solution of two of the immediate problems facing the United States. First, it created a unified nation capable of defending its member states and citizens. Second, it facilitated the country's economic development by outlawing individual state currencies and eliminating state tariffs.
- They also created a presidency, filled first by George Washington, which provided strength to the new national government.

C. The Constitution Today

- The Constitution created a framework that facilitates a popular democratic experiment. In doing so, different interests could compete so that majority tyranny would be prevented, whether the old interests of the Framers or the newer interests of today.

1. Constitutional Ambiguity: A Virtue

- By relying on ambiguous language in drafting the Constitution, the Framers were able to allow the document to adapt to modern problems and concerns. This has prevented the need for constant revision of the document.