

# Unit 1

## The Constitution

### 导 读

美国宪法是资本主义世界的第一部成文宪法，是资产阶级革命的一个重要成果。宪法的内容既反映了西欧资产阶级思想家 John Locke、Charles Montesquieu 等人的政治理念，也反映了美国新兴资产阶级的利益和要求。美国宪法自 1789 年批准生效以来，除了 27 个修正案外，其基本原则迄今也仍在实践。为什么两百多年来，美国国内发生了翻天覆地的变化，从一个 13 个州的新生合众国变成 50 个州的世界超级大国，而宪法的基本原则却没有作重大修改呢？一个 18 世纪后期制定的宪法是否能适应 21 世纪的变化与需求呢？这样的宪法有何缺陷？为何难以改变？这是我们在学习和研究美国宪法时需要思考的问题。

必须记住，美国的宪法原则是在美国独立战争胜利后，为保护资产阶级政权及利益而制定的。它并非代表全民，其原则也不是普遍适用的。一个明显的例子就是妇女和黑人在当时的宪法中没有任何权利，只是经过漫长、艰苦的斗争，她/他们的权利才在宪法修正案中得到确认。即使是今天，这些权利的运用也没有得到彻底的保证。

本单元提供了四篇选文。第一篇详细介绍了美国宪法的制定过程。1787 年 5 月，在 George Washington 的主持下，12 个州（罗德岛州未派代表参加）的 55 名代表在费城召开了制宪会议。与会代表虽有某些共识，但也存在着诸多分歧，矛盾主要集中在代表制、贸易及税收等方面。经过激烈的辩论，大州与小州、北方与南方各州之间的矛盾逐步缩小，并最终在 1787 年 9 月 17 日通过了美利坚合众国宪法。第二篇介绍了美国宪法的主要特点：成文宪法、共和制、联邦制、权力分散和制衡。第三篇介绍了联邦党人和反联邦党人之争。前者主张加强联邦政府的权力，后者主张扩大各州的自治权力并保护个人权利。第四篇主要介绍了美国宪法制定所依据的理论。

### 1. The Constitutional Convention\*

*Susan Welch, et al.*

#### The Articles of Confederation

Even before the war ended, the Continental Congress passed a constitution, and in 1781 the states ratified it. This first constitution, the Articles of Confederation<sup>1</sup>, formed a “league of friendship” among the states. As a confederation, it allowed each state to retain its “sovereignty” and

\* Susan Welch, et al. *Understanding American Government*, 5th ed. Belmont, CA: Wadsworth Publishing Company, 1999.

“independence.” That is, it made the states supreme over the national government.

Under the Articles, however, Americans would face problems with both their national and state governments.

## National Government Problems

The Articles established a Congress, with one house in which each state had one vote. But the Articles strictly limited the powers that Congress could exercise, and they provided no executive or judicial branch.

The Articles reflected the colonial experience under the British government. The leaders feared a powerful central government with a powerful executive like a king. They thought such a government would be too strong and too distant to guarantee individual liberty. Additionally, the Articles reflected a lack of national identity among the people. Most did not view themselves as Americans yet. As Edmund Randolph<sup>2</sup> remarked, “I am not really an American, I am a Virginian.” Consequently, the leaders established a very decentralized government that left most authority to the states.

The Articles satisfied many people. Most people were small farmers, and although many of them sank into debt during the depression that followed the war, they felt they could influence the state governments to help them. They realized they could not influence a distant central government as readily.

But the Articles frustrated bankers, merchants, manufacturers, and others in the upper classes. They envisioned a great commercial empire replacing the agricultural society that existed in the late eighteenth century. More than local trade, they wanted national and even international trade. For this they needed uniform laws, stable money, sound credit, and enforceable debt collection. They needed a strong central government that could protect them against debtors and against state governments sympathetic to debtors. The Articles provided neither the foreign security nor the domestic climate necessary to nourish these requisites of a commercial empire.

After the war the army disbanded, leaving the country vulnerable to hostile forces surrounding it. Britain maintained outposts with troops in the Northwest Territory (now the Midwest), in violation of the peace treaty, and an army in Canada. Spain, which had occupied Florida and California for a long time and had claimed the Mississippi River valley as a result of a treaty before the war, posed a threat. Barbary pirates from North Africa seized American ships and sailors.

Congress could not raise an army, because it could not draft individuals directly, or finance an army, because it could not tax individuals directly. Instead, it had to ask the states for soldiers and money. The states, however, were not always sympathetic to the problems of the distant government. And although Congress could make treaties with foreign countries, the states made, or broke, treaties independently of Congress. Without the ability to establish a credible army or negotiate a binding treaty, the government could not get the British troops out of the country. Neither could it get the British government to ease restrictions on shipping or the Spanish government to permit navigation on the Mississippi River.

In addition to an inability to confront foreign threats, the Articles demonstrated an inability to cope with domestic crises. The country bore a heavy war debt that brought the government close

to bankruptcy. Since Congress could not tax individuals directly, it could not shore up the shaky government.

The states competed with each other for commercial advantage. As independent governments, they imposed tariffs on goods from other states. The tariffs slowed the growth of business.

In short, the government under the Articles seemed too decentralized to ensure either peace or prosperity. The Articles, one leader concluded, gave Congress the privilege of asking for everything, while reserving to each state the prerogative of granting nothing.

### State Government Problems

There were other conflicts closer to home. State constitutions adopted during the Revolution made the state legislatures more representative than the colonial legislatures had been. And most state legislatures began to hold elections every year. The result was heightened interest among candidates and turnover among legislators. In the eyes of national leaders...[t]he process seemed up for grabs. According to the Vermont Council of Censors, laws were “altered—realttered—made better—made worse; and kept in such a fluctuating position that persons in civil commission scarcely know what is law.” In short, state governments were experiencing more democracy than any other governments in the world at the time. National leaders, stunned by the changes in the few years since the Revolution, considered this development an “excess of democracy.”

Moreover, state constitutions made the legislative branch the most powerful. Some state legislatures began to dominate the other branches, and national leaders called them “tyrannical.”

The national leaders, most of whom were wealthy and many of whom were creditors, pointed to the laws passed in some states that relieved debtors of some of their obligations. The farmers who were in debt pressed the legislatures for relief that would slow or shrink the payments owed to their creditors. Some legislatures granted such relief.

While these laws worried the leaders, Shays’s Rebellion in western Massachusetts in 1786 and 1787 scared them. Boston merchants who had loaned Massachusetts money during the war insisted on being repaid in full so they could trade with foreign merchants. The state levied steep taxes that many farmers could not pay during the hard times. The law authorized foreclosure—sale of the farmers’ property for the taxes—and jail for the debtors. The law essentially transferred wealth from the farmers to the merchants. The farmers protested the legislature’s refusal to grant any relief from the law. Bands of farmers blocked entrances to courthouses where judges were scheduled to hear cases calling for foreclosure and jail. Led by Daniel Shays, some marched to the Springfield arsenal to seize weapons. Although they were defeated by the militia, their sympathizers were victorious in the next election, and the legislature did provide some relief from the law.

Both the revolt and the legislature’s change in policy frightened the wealthy. To them it raised the specter of “mob rule.” Nathaniel Gorham, the president of the Continental Congress and a prominent merchant, wrote Prince Henry of Prussia, announcing “the failure of our free institutions” and asking if the prince would agree to become king of America (the prince declined). Just months after the

uprising, Congress approved a convention for “the sole and express purpose of revising the Articles of Confederation.”

To a significant extent, then, the debate at the time reflected a conflict between two competing visions of the future American political economy—agricultural or commercial. Most leaders espoused the latter, and the combination of national problems and state problems prompted them to push for a new government.

## The Constitutional Convention

### 1. The Setting

The Constitutional Convention convened in Philadelphia, then the country’s largest city, in 1787. That year the Industrial Revolution was continuing to sweep Europe and beginning to reach this continent. The first American cotton mill opened in Massachusetts and the first American steamboat plied the Delaware River.

State legislatures chose 74 delegates to the convention; 55 attended. They met at the Pennsylvania State House—now Independence Hall—in the same room where some of them had signed the Declaration of Independence 11 years before.

Delegates came from every state except Rhode Island. That state was controlled by farmers and debtors who feared that the convention would weaken states’ powers to relieve debtors of their debts.

The delegates were distinguished by their education, experience, and enlightenment. Benjamin Franklin<sup>3</sup>, of Pennsylvania, was the best-known American in the world. He had been a printer, scientist, and diplomat. At 81 he was the oldest delegate. George Washington<sup>4</sup>, of Virginia, was the most respected American in the country. As the commander of the revolutionary army, he was a national hero. He was chosen to preside over the convention. The presence of men like Franklin and Washington gave the convention legitimacy.

The delegates quickly determined that the Articles were hopeless. Rather than revise them, as instructed by Congress, the delegates decided to start over and draft a new constitution. But what would they substitute for the Articles?

### 2. The Predicament

The delegates came to the convention because they suffered under a government that was too weak. Yet previously Americans had fought a revolution because they chafed under a government that was too strong. “The nation lived in a nearly constant alternation of fears that it would cease being a nation altogether or become too much of one.” People feared both anarchy and tyranny.

This predicament was made clear by the diversity of opinions among the leaders. At one extreme was Patrick Henry<sup>5</sup>, of Virginia, who had been a firebrand of the Revolution. He felt the government would become too strong, perhaps even become a monarchy, in reaction to the current problems with the Articles. He said he “smelt a rat” and did not attend the convention. At the other extreme was

Alexander Hamilton<sup>6</sup>, of New York, who had been an aide to General Washington during the war and had seen the government's inability to supply and pay its own troops. Since then he had called for a stronger national government. He wanted one that could veto the laws of the state governments. And he wanted one person to serve as chief executive for life and others to serve as senators for life. He did attend the convention but, finding little agreement with his proposals, participated infrequently.

In between were those like James Madison<sup>7</sup>, of Virginia. Small and frail, timid and self-conscious as a speaker, he was nonetheless intelligent and savvy as a politician. He had operated behind the scenes to convene the convention and to secure George Washington's attendance. (He publicized that Washington would attend without asking Washington first. Washington, who was in retirement, did not plan to attend and only reluctantly agreed to do so because of the expectation that he would.) Madison had secretly drafted a plan for a new government, one that was a total departure from the government under the Articles, and this plan set the agenda for the convention. During the convention and the ratification process, Madison was "up to his ears in politics, advising, persuading, softening the harsh word, playing down this difficulty and exaggerating that, engaging in debate, harsh controversy, polemics, and sly maneuver." In the end, his views, more than anyone else's, would prevail, and he would be called the Father of the Constitution.

### 3. Consensus

Despite disagreements, the delegates did see eye to eye on the most fundamental issues. They agreed that the government should be a republic—an indirect democracy—in which people could vote for at least some of the officials who would represent them. This was the only form of government they seriously considered. They also agreed that the national government should be supreme over the state governments. At the same time, they thought the government should be limited, with checks to prevent it from exercising too much power.

They agreed that the national government should have three separate branches—legislative, executive, and judicial—to exercise separate powers. They thought both the legislative and executive branches should be strong.

### 4. Conflict

Although there was considerable agreement over the fundamental principles and elemental structure of the new government, the delegates quarreled about the specific provisions concerning representation, slavery, and trade.

**Representation** There was sharp conflict between delegates from large states and those from small states over representations. Large states sought a strong central government that they could control; small states feared a government that would control them.

When the convention began, Edmund Randolph introduced the Virginia Plan drafted by Madison. According to this plan, the central government would be strong. The legislature would have more power than under the Articles, and a national executive and national judiciary also would have

considerable power. The legislature would be divided into two houses, with representation based on population in each.

But delegates from the small states calculated that the three largest states—Pennsylvania, Virginia, and Massachusetts—would have a majority of the representatives and could control the legislature. These delegates countered with the New Jersey Plan, introduced by William Paterson<sup>8</sup>. According to this plan, the central government would be relatively strong, although not as strong as under the Virginia Plan. But the primary difference was that the legislature would be one house, with representation by states, which would have one vote each. This was exactly the same as the structure of Congress under the Articles, also designed to prevent the large states from controlling the legislature.

The convention deadlocked. George Washington wrote that he almost despaired of reaching agreement. To ease tensions Benjamin Franklin suggested that the delegates begin each day with a prayer, but they could not agree on this either.

Faced with the possibility that the convention would disband without a constitution, the delegates compromised. Delegates from Connecticut and other states proposed a plan in which the legislature would have two houses. In one, representation would be based on population, and members would be elected by voters. In the other, representation would be by states, and members would be selected by state legislatures. Presumably, the large states would dominate the former, the small states the latter. The delegates narrowly approved this Great Compromise, or Connecticut Compromise. Delegates from the large states still objected, but those from the small states made it clear that such a compromise was necessary for their agreement and, in turn, their states' ratification. The large states, though, did extract a concession that all taxing and spending bills must originate in the house in which representation was based on population. This provision would allow the large states to take the initiative on these important measures.

The compromise was “great” in that it not only resolved this critical issue but paved the way for resolution of other issues.

**Slavery** In addition to conflict between large states and small states over representation, there was conflict between northern states and southern states over slavery, trade, and taxation.

With representation in one house based on population, the delegates had to decide how to apportion the seats. They agreed that Indians would not count as part of the population but differed about slaves. Delegates from the South, where slaves were one-third of the population, wanted slaves to count fully in order to boost the number of their representatives. They argued that their use of slaves produced wealth that benefited the entire nation. Delegates from the North, where most states had outlawed slavery or at least the slave trade after the Revolution, did not want slaves to count at all. Gouverneur Morris<sup>9</sup>, of Pennsylvania, said the southerners' position “comes to this: that the inhabitant of Georgia and South Carolina who goes to the coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections and damns them to the most cruel bondages, shall have more votes in a government instituted for the protection of the rights of mankind than the citizen of Pennsylvania or New Jersey who views with a laudable horror so nefarious a practice.” Others pointed out that slaves were not considered persons when it came to

rights such as voting. Nevertheless, southerners asserted that they would not support a constitution if slaves were not counted at least partially. In the Three-fifths Compromise, the delegates agreed that three-fifths of the slaves would be counted in apportioning the seats.

As a result, the votes of southern whites would be worth more than those of northerners in electing members to the House of Representatives and presidents (because the Electoral College<sup>10</sup> would be based on membership in Congress). Between 1788 and 1860, nine of the 15 presidents, including all five who served two terms, were slaveowners.

Although northerners had to accept this compromise in order to win southerners' support for the Constitution, northerners apparently did not contest two other provisions addressing slavery. Southerners pushed through one provision forbidding Congress to ban the importation of slaves before 1808 and another requiring free states to return any escaped slaves to their owners in slave states. In these provisions southerners won most of what they wanted; even the provision permitting Congress to ban the slave trade in 1808 was hardly a limitation because by then planters would have enough slaves to fulfill their needs by natural population increases rather than importation. In return, northerners, representing most shippers, got authority for Congress to regulate commerce by a simple majority rather than a two-thirds majority. Thus, northerners conceded two provisions reinforcing slavery in order to benefit shippers.

Yet the framers were embarrassed by the hypocrisy of claiming to have been enslaved by the British while allowing enslavement of blacks. The framers' embarrassment is reflected in their language. The three provisions reinforcing slavery never mention "slavery" or "slaves"; one gingerly refers to "free persons" and "other persons."

The unwillingness to tackle the slavery issue more directly has been called the "Greatest Compromise" by one political scientist. But an attempt to abolish slavery would have caused the five southern states to refuse to ratify the Constitution.

**Trade and Taxation** Slavery also underlay a compromise on trade and taxation. With a manufacturing economy, northerners sought protection for their businesses. In particular, they wanted a tax on manufactured goods imported from Britain. Without a tax, these goods would be cheaper than northern goods; but with a tax, northern goods would be more competitive—and prices for southern consumers more expensive. With an agricultural economy, southerners sought free trade for their plantations. They wanted a guarantee that there would be no tax on agricultural products exported to Britain. Such a tax would make their products less competitive abroad and, they worried, amount to an indirect tax on slavery—the labor responsible for the products. The delegates compromised by allowing Congress to tax imported goods but not exported ones. Tariffs on imported goods would become a point of controversy between the North and South in the years leading up to the Civil War.

With all issues resolved, a committee was appointed to write the final draft. Gouverneur Morris was the member of the committee most responsible for the polished style of the document. He was also largely responsible for the stirring preamble. In earlier drafts the preamble had not referred to "the people" but had listed the states. Morris's change signaled a shift in emphasis from the states to the people directly.

After 17 weeks of debate, the Constitution was ready. On September 17, 1787, 39 of the original 55

delegates signed it. Some delegates had left when they saw the direction the convention was taking, and three others refused to sign, feeling that the Constitution gave too much authority to the national government. Most of the rest were not entirely happy with the result—even Madison, who was most responsible for the content of the document, was despondent that his plan for a national legislature was compromised by having one house with representation by states—but they thought it was the best they could do. Benjamin Franklin had some qualms, but he was more optimistic. Referring to the sun painted on the back of George Washington’s chair, he remarked that throughout the proceedings he had wondered whether it was a rising or a setting sun. “But now I have the happiness to know that it is a rising and not a setting sun.”

## 2. Features of the Constitution \*

*Susan Welch, et al.*

### A Written Constitution

The Founders established the idea of a written constitution, first in the Articles of Confederation and then more prominently in the Constitution itself. Other Western countries had constitutions that served as their supreme law, but these constitutions were not written or, if written, not as a single document. For example, the British constitution, which consisted of various customs, declarations, acts of Parliament, and precedents of courts, was partly unwritten and partly written. To Americans this was no constitution at all. They felt that a constitution should be a fundamental law above all other laws—not a mixture of customs and laws.

This belief is reflected in Americans’ use of social contract theory<sup>11</sup>. A social contract, not a literal contract like a business contract, is an implied agreement between the people and their government. The people give up part of their liberty to the government, which in exchange protects the remainder of their liberty. The Mayflower Compact was a very general form of social contract, whereas the written Constitution, stipulating the powers and limits of government, was a more specific form of social contract.

### A Republic

The Founders distinguished between a democracy and a republic. For them a “democracy” meant a direct democracy, which permits citizens to vote on most issues; and a “republic” meant an indirect democracy, which allows citizens to vote for their representatives who make governmental policies.

The Founders opposed a direct democracy for the whole country. Many individual towns in New England had a direct democracy (and some still do), but these communities were small and manageable. Some city-states of ancient Greece and medieval Europe had a direct democracy, but they could not sustain it. The Founders thought a large country would have even less ability to do so

\* Susan Welch, et al. *Understanding American Government*, 5th ed. Belmont, CA: Wadsworth Publishing Company, 1999.

because people could not be brought together in one place in order to act. The Founders also believed human nature was such that people could not withstand the passions of the moment and would be swayed by a demagogue to take unwise action. Eventually, democracy would collapse into tyranny. “Remember,” John Adams wrote, “democracy never lasts long. It soon wastes, exhausts, and murders itself. There never was a democracy yet that did not commit suicide.”

The Founders favored an indirect democracy—a republic—because they firmly believed the people should have some voice in government for it to be based on the consent of the governed. So the Founders provided that the people could elect representatives to the House and that the state legislators, themselves elected by the people, could select senators and members of the Electoral College, who would choose the president. In this way the people would have a voice but one filtered through their presumably wiser representatives.

The Founders considered a democracy radical and a republic only slightly less radical. Because they believed the country could not maintain a democracy, they worried that it might not be able to maintain a republic either. When the Constitutional Convention closed, Benjamin Franklin was approached by a woman who asked, “Well, Doctor, what have we got, a republic or a monarchy?” Franklin responded, “A republic, madam, if you can keep it.”

## Fragmentation of Power

Other countries assumed that government must have a concentration of power to be strong enough to govern. However, when the Founders made our national government more powerful than it had been under the Articles, they feared they also had made it more capable of oppression, and therefore they fragmented its power.

The Founders believed people were selfish, coveting more and more property, and that leaders lusted after more and more power. They assumed such human nature was unchangeable. Madison speculated, “If men were angels, no government would be necessary.” But, alas, Madison said, men are not angels. Therefore, “In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself.” The Founders decided the way to oblige government to control itself was to structure it to prevent any one leader, group of leaders, or factions of people from exercising power over more than a small part of it. Thus, the Founders fragmented government’s power. This is reflected in three concepts they built into the structure of government—federalism, separation of powers, and checks and balances.

### 1. Federalism

The first division of power was between the national government and the state governments. This division of power is called federalism. Foreign governments had been “unitary”; that is, the central government wielded all authority. At the other extreme, the U.S. government under the Articles had been “confederal,” which meant that although there was some division of power, the state

governments wielded almost all authority. The Founders wanted a strong national government, but they also wanted, or at least realized they would have to accept, reasonably strong state governments as well. They invented a federal system as a compromise between the unitary and confederal systems.

## 2. Separation of Powers

The second division of power was within the national government. The power to make, administer, and judge the laws was split into three branches—legislative, executive, and judicial (See Table 1). In the legislative branch, the power was split further into two houses. This separation of powers contrasts with the British parliamentary system in which the legislature, Parliament, is supreme. Both executive and judicial officials are drawn from it and responsible to it. Madison expressed the American view of such an arrangement when he said that “the accumulation of all powers, legislative, executive, and judiciary, in the same hands may justly be pronounced the very definition of tyranny.”

**Table 1** Separation of Powers

Branch	Legislative Congress		Executive Presidency	Judicial Federal Courts
	House	Senate	President	Judges
Officials chosen by	People	People, (originally, state legislatures)	Electoral College, whose members are chosen by the people (originally, by state legislatures)	President, with advice and consent of Senate
For Term of	2 years	6 years	4 years	Life
To represent primarily	Common People (Large states)	Wealthy People (Small states)	All people	Constitution

\* Separation of powers, as envisioned by the Founders, means not only that government functions are to be performed by different branches, but also that officials of these branches are to be chosen by different people, for different terms, and to represent different constituencies.

To reinforce the separation of powers, officials of the three branches were chosen by different means. Representatives were elected by the people (at that time mostly white men who owned property), senators were selected by the state legislatures, and the president by the Electoral College, whose members were selected by the states. Only federal judges were chosen by officials in the other branches. They were nominated by the president and confirmed by the Senate. Once appointed, however, they were allowed to serve for “good behavior”—essentially life—so they had much independence. (Since the Constitution was written, the Seventeenth Amendment has provided for elections of senators by the people, and the state legislatures have provided for election of members of the Electoral College by the people.)

Officials of the branches were also chosen at different times. Representatives were given a two-year term, senators a six-year term (with one-third of them up for reelection every two years), and the

president a four-year term. These staggered terms would make it less likely that temporary passions in society would bring about a massive switch of officials or policies.

The Senate was designed to act as a conservative brake on the House, due to senators' selection by state legislatures and their longer terms. After returning from France, Thomas Jefferson<sup>12</sup> met with George Washington over breakfast. Jefferson protested the establishment of a legislature with two houses. Washington supposedly asked, "Why did you pour that coffee into your saucer?" "To cool it," Jefferson replied. Similarly, Washington explained, "We pour legislation into the senatorial saucer to cool it."

### 3. Checks and Balances

To guarantee separation of power, the Founders built in overlapping powers called checks and balances. Madison suggested that "The great security against a gradual concentration of the several powers in the same department consists in giving those who administer each department the necessary constitutional means and personal motives to resist encroachments by the others. Ambition must be made to counteract ambition." To that end, each branch was given some authority over the others. If one branch abused its power, the others could use their checks to thwart it.

With federalism, separation of powers, and checks and balances, the Founders expected conflict. They invited the parts of government to struggle against each other in order to limit each other's ability to dominate all. At the same time, the Founders hoped for "balanced government." The national and state governments would represent different interests, and the branches within the national government would represent different interests. The House would represent the "common" people and the large states; the Senate, the wealthy people and the small states; the president, all the people; and the Supreme Court, the Constitution. The parts of government would have to compromise to get anything accomplished. Although each part would struggle for more power, it could not accumulate enough to dominate the others. Eventually, its leaders would have to compromise and adopt policies in the interest of all of the parts and their constituencies. Paradoxically, then, the Founders expected narrow conflict to produce broader harmony.

## 3. The Fight for Ratification\*

*Samuel Kernell and Gary C. Jacobson*

The last sentence of the Constitution spells out an important procedure endorsed by delegates in the final days of the convention: "The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same." Everyone knew that this deceptively straightforward provision was critical for the success of their enterprise. It replaced the unanimous assent rule of the Articles of Confederation which had thwarted any attempt at reform. And it withdrew ratification authority from the state legislatures, which might have misgivings

\* Samuel Kernell and Gary C. Jacobson. *The Logic of American Politics*. Washington, D.C.: CQ Press, 2000.

about surrendering autonomy, and gave it instead to elective special conventions. In the end, the only way to escape the confederation's bind was to ignore it.

## The Federalist and Anti-Federalist Debate

Only three of the delegates still in Philadelphia in September 1787 at the close of the convention refused to sign the Constitution. This consensus, however, is misleading others who probably would have objected left early, and many prominent political leaders such as Patrick Henry and Richard Henry Lee of Virginia had refused even to participate.

Over the next year every state but Rhode Island (it held out until 1790) elected delegates to state conventions which proceeded to dissect the Constitution and ponder its individual provisions. This was truly a time of national debate over the future of the country. As one observer noted, "Almost every American pen...[and] peasants and their wives in every part of the land" had begun "to dispute on politics and positively to determine upon our liberties." On a lighter note, the *Boston Daily Advertiser*, responding to General Washington's call for public debate, admonished its readers: "Come on brother scribblers, 'tis idle to lag! The Convention has let the cat out of the bag."

Delegates to the state conventions concentrated, predictably, on the concerns of their states and communities. Southern states carefully inspected each article for a northern avenue of attack on their "peculiar institution." Finding none, all of the southern states except South Carolina lined up behind the Constitution. Constituencies and their delegates similarly aligned themselves for or against the Constitution according to its perceived impact on their pocketbooks. Small farmers, struck hard by declining markets and high property taxes after the war, had succeeded in gaining sympathetic majorities in many of the state legislatures. Thus they looked suspiciously on this attempt to shift fiscal policy to the national government.

In the public campaign for ratification these issues tended to be reduced to the rhetoric of nationalism, voiced by the Federalists, versus the rhetoric of states' rights, voiced by the Anti-Federalists. The divisiveness characterizing the Philadelphia convention thus continued. But the labels given the two sides were confusing. While they consistently distinguished the Constitution's supporters and opponents, the labels confused the positions of these camps on the issue of federalism. Many of those who opposed ratification were more protective of state prerogatives, as the term *Federalist* implies, than were many of the prominent "Federalists." Appreciating the depth of state loyalties, Madison and his colleagues early on tactically maneuvered to neutralize this issue by claiming that the Constitution provided a true federal system, making them Federalists. Their success in expropriating this label put their opponents at a disadvantage in the public relations campaign. One disgruntled Anti-Federalist proposed that the labels be changed so that Madison and his crowd would be called the "Rats" (for pro-ratification) and his side the "Antirats."

Although in the end the Federalists prevailed and are today revered as the nation's "Founders," the Anti-Federalists included a comparable number and quality of proven patriots. Foremost among them was Patrick Henry, who led his side's counterattack. With him were fellow Virginians Richard

Henry Lee, George Mason, and a young James Monroe, who would become the nation's fifth president under the Constitution he opposed. Other famous outspoken opponents included Boston's Revolutionary War hero Samuel Adams and New York governor George Clinton.

In their opposition to the Constitution, the Anti-Federalists raised serious theoretical objections—objections that can still be heard two hundred years later. They argued that only local democracy, the kind found in small homogeneous communities, could approach true democracy. The United States, they asserted, already was too large and too diverse to be well ruled by a single set of laws. Turning their sights to the Constitution itself, the Anti-Federalists argued that a stronger national government must be accompanied by explicit safeguards against tyranny. Specifically, the Constitution needed a bill of rights—a familiar feature of most state constitutions. Some delegates to the convention proposed a bill of rights, but Madison and others had argued that it was unnecessary because the Constitution did not give the national government any powers that could be construed as invading the citizenry's rights. This argument, however, worked better at the convention than it did in the public campaign. The Anti-Federalists quickly realized they had identified a chink in the Constitution's armor and began pounding the issue hard. Even Madison's ally Jefferson wrote him from France insisting that individual rights were too important to be “left to inference.” Suddenly on the defensive, Madison made a strategic capitulation and announced that at the convening of the First Congress under the new Constitution, he would introduce constitutional amendments providing a bill of rights. His strategy worked; the issue receded. In a sense, though, the Anti-Federalist strategy had worked as well. Madison kept his promise, and by 1791 the Constitution contained the Bill of Rights (See Table 1).

**Table 1** The First Ten Amendments to the Constitution: Bill of Rights

Amendment	Purpose
I	Guarantees freedom of religion, speech, assembly, and press, and the right of people to petition the government for redress of grievances
II	Protects the right of states to maintain a militia
III	Restricts quartering of troops in private homes
IV	Protects against “unreasonable searches and seizures”
V	Assures the right not to be deprived of “life, liberty, or property, without due process of law,” including protections against double jeopardy, self-incrimination, and government seizure of property without just compensation
VI	Guarantees the right to a speedy and public trial by an impartial jury
VII	Assures the right to a jury trial in cases involving the common law (judge-made law originating in England)
VIII	Protects against excessive bail or cruel and unusual punishment
IX	Provides that people's rights are not restricted to those specified in Amendments I-VIII
X	Reiterates the Constitution's principle of federalism by providing that powers not granted to the national government are reserved to the states, or to the people

In June 1788 New Hampshire became the ninth and technically decisive state to ratify the Constitution. But Virginia and New York had still not voted, and until these two large, centrally located states became a part of the Union, no one gave the new government much chance of getting off the ground. But by the end of July both states had narrowly ratified the Constitution, and the new Union was a reality.

## The Federalist Argument

Aside from eventually yielding a new constitution, the ratification debates fostered another national resource: eighty-five essays that were collected under the title *The Federalist*. Published under the shared pseudonym Publius in 1787–1788, the essays were written by Alexander Hamilton (who wrote the majority), James Madison (who wrote the best ones), and John Jay (who wrote five). It was only years later, after Madison's death in 1836, that the original manuscripts were found and the authors identified.

T H E  
F E D E R A L I S T:  
A D D R E S S E D T O T H E  
P E O P L E O F T H E S T A T E O F  
N E W - Y O R K

N U M B E R I.  
*Introduction*

AFTER an unequivocal experience of the inefficacy of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked, that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force. If there be any truth in the remark, the crisis at which we are arrived, may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.

Because their immediate purpose was to influence the delegates to the New York convention, where ratification was in trouble, the *Federalist* essays first appeared in New York City newspapers. At one point Hamilton and Madison were cranking out four essays a week, prompting the Anti-Federalists to complain that by the time they rebutted one argument in print, several others had appeared. Reprinted widely, the essays provided rhetorical ammunition to those supporting ratification.

Whatever their role in the Constitution's ratification, *The Federalist Papers*, as they also are called, have had a profound effect on the way Americans then and now have understood their government. A few years after their publication, Thomas Jefferson, describing the curriculum of the University of Virginia to its board of overseers, declared *The Federalist Papers* to be indispensable reading for all undergraduates. It is "agreed by all," he explained, that these essays convey "the genuine meaning" of the Constitution.

## 4. The Theory Underlying the Constitution \*

*Samuel Kernell and Gary C. Jacobson*

Two of Madison's essays, *Federalist* No.10 and *Federalist* No.51, offer special insights into the theory underlying the Constitution. In different ways, each essay tackles the fundamental problem of self-governance, which Madison poses in a famous passage from *Federalist* No.51:

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 the government to control the governed; and in the next place oblige it to control itself.

The last goal is tricky. *Federalist* No.10 tackles the problem by both exploring the likelihood that tyranny by the majority would arise within a democracy and identifying a solution. It is a powerful, cogent argument grounded in logic. *Federalist* No.51 deals with the delegation problem of keeping agents honest. The solution lies in pitting politicians against one another through the Constitution's principles of separation of powers and checks and balances. This way, politicians are able to counteract each other's temptation to engage in mischief. Whatever their differences, these two essays can be read as following parallel paths—one at the societal level, the other at the governmental—toward the same destination of a polity free from tyranny.

### ***Federalist* No.10**

Madison's first and most celebrated essay appeared in the November 24, 1787, issue of the *New York Daily Advertiser*. *Federalist* No.10 responds to the strongest argument the Anti-Federalists

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\* Samuel Kernell and Gary C. Jacobson. *The Logic of American Politics*. Washington, D.C.: CQ Press, 2000.

could muster—that a “large Republic” cannot long survive. This essay borrows from the writings of David Hume, but over the course of a decade of legislative debate and correspondence Madison had honed his argument to fit the American case. Indeed, Madison had made the argument before—at the Constitutional Convention when defending the Virginia Plan in a floor debate.

The major task Madison sets out for himself in *Federalist* No.10 is to devise a republic in which a majority of citizens will be unable to tyrannize the minority. Madison wastes no time identifying the rotten apple. It is factions, which he describes as “mortal diseases under which popular governments have everywhere perished.” He defines a faction as “a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community” (emphasis added). Madison’s factions have many of the attributes of modern-day interest groups and even political parties.

Madison then identifies two ways to eliminate factions, authoritarianism or conformism, neither of which he finds acceptable. Authoritarianism, a form of government that actively suppresses factions, is a remedy that would be worse than the disease. In a famous passage of *Federalist* No.10 Madison offers an analogy: “Liberty is to action what air is to fire, an aliment without which it instantly expires.”

Conformism, the second solution, is, as Madison notes, “as impracticable as the first would be unwise.” People cannot somehow be made to have the same goals, for “the latent causes of faction are...sown in the nature of man.” Thus two persons who are precisely alike in wealth, education, and other characteristics will nonetheless have different views on many issues. Even the “most frivolous and fanciful distinction” can “kindle their unfriendly passions,” Madison observes, but most of the important political cleavages that divide a citizenry are predictably rooted in their life circumstances. In another famous passage the author anticipates the German political philosopher Karl Marx and his analysis of class in capitalism by nearly a century:

But 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... A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views.

If the causes of faction cannot be removed without snuffing out liberty, then one must control their effects. Madison identifies two kinds of factions—minority factions and majority factions—that have to be controlled in different ways. During the late eighteenth century, the ubiquitous problem of factional tyranny occurred at the hands of the monarchy and aristocracy, a “minority” faction. Democracy remedies this: A minority faction “may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution.” Democracy, however, introduces its own special brand of factional tyranny—that emanating from a

majority. In Madison's era many people equated majority rule with mob rule. Thus supporters of the new constitutional plan had to explain how a society could give government authority to a majority without fear it would trample on minority rights. Madison explained: "To secure the public good and private rights against the danger of...a [majority] faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed."

Parting ways with some of the leading political philosophers of his era, Madison dismisses direct democracy as the solution:

[T]here is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths.

So much for town meetings.

Madison contends that the republican form of government, in which elected representatives are delegated responsibility for making governmental decisions, addresses the majority tyranny problem in two ways. First, representation dilutes the factious spirit. Madison does not trust politicians to be more virtuous than their constituents, but he recognizes that, to get elected, they will tend to moderate their views to appeal to a diverse constituency. Here, Madison subtly introduces his *size principle* on which the rest of the argument hinges: Up to a point, the larger and more diverse the constituency, the more diluted is the influence of any particular faction on the preferences of the representative.

A legislature composed of representatives elected from districts containing diverse factional interests is unlikely to allow a faction or a small coalition of them to so dominate the institution that it can deny rights to factions in the minority. This line of reasoning allows Madison to introduce a second distinct virtue of a republic. Unlike a direct democracy, it can advantageously encompass a large population and a large territory. As Madison argues,

Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other.

In other words, their differences will pose a collective action problem, which tends to prevent them from colluding to do mischief.

What has Madison accomplished here? He has turned the Anti-Federalists' "small is beautiful" mantra on its head by pointing out that an encompassing national government would be less susceptible to the influence of factions than state governments: "A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, would be less apt to pervade the whole body of the Union than a particular member of it..." A geographically large republic would encompass diverse interests, thereby minimizing the prospect of majority tyranny. Madison concludes: "In the extent and proper structure of the Union, therefore, we

behold a republican remedy for the disease most incident to republican government.”

Until the twentieth century, *Federalist* No.10 attracted less attention than did some of its companion essays. Yet as the nation has grown in size and diversity, the essay has won new prominence for the prescience with which Madison explained how such growth strengthens the republic. This Madisonian view of democracy often is referred to as pluralism. It welcomes society’s numerous diverse and generally endorses the idea that diverse interests and generally endorses the idea that those competing interests most affected by a public policy will have the greatest say in what the policy will be.

### ***Federalist* No.51**

By giving free expression to all of society’s diversity, *Federalist* No.10 offers an essentially organic solution to the danger of majority tyranny. *Federalist* No.51, by contrast, takes a more mechanistic approach of separating government officers into different branches and giving them the authority to interfere with each other’s actions. The authority of each branch must “be made commensurate to the danger of attack,” Madison asserts. As for incentive: “Ambition must be made to counteract ambition. The interest of the mall must be connected with the constitutional rights of the place.” In other words, the Framers’ efforts will have failed if future generations of politicians do not jealously defend the integrity of their offices. Here, then, is the rationale for separating govern mental authority among several branches with each having the authority to check the other.

Since popular election is the supreme basis for legitimacy and independence in a democracy, no constitutional contrivances can place appointive offices on an equal footing with elective offices. Madison explains:

In republican government, the legislative authority necessarily predominates. The remedy for this inconvenience is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit.

Bicameralism is intended to weaken the legislature’s capacity to act too quickly and impulsively, but even so it may not prevent the legislature from encroaching on the other branches. Madison offers the president’s veto as a strong countervailing force and speculates that, by refusing to override the president’s veto, the Senate might team up with the executive to keep the popularly elected House of Representatives in check. Madison even finds virtue in the considerable prerogatives reserved to the states: “In a compound republic of America, the power surrendered by the people is first divided between two distinct governments... 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.”

Could this be the same James Madison who wanted to abandon the convention rather than agree to a Senate elected by the state legislatures, the same man who had wanted Congress to have an absolute veto over state actions? Madison’s Virginia Plan had vested ultimate authority in a popularly

elected, national legislature, and this model of a legislature became the House of Representatives. So why is he commending a Constitution that severely constrains this institution's influence over policy?

Madison probably was playing to his audience. *Federalist* No.51 seeks to reassure those fence sitters who were listening to Anti-Federalist propaganda that the Constitution would take a giant step down the short path to tyranny. After all, the Anti-Federalists were presenting the specter of a powerful and remote national government and, within it, the possible emergence of a junta comprised of unelected senators and an indirectly elected president bent on usurping the authority of the states, undermining the one popularly elected branch of government (the House of Representatives), and ultimately subjugating the citizenry. Madison is countering with a portrait of a weak, fragmented system that appears virtually incapable of purposive action, much less of hatching plots. He must have grimaced as he (anonymously) drafted the passage extolling the Constitution's checks on his House of Representatives.

In summary, *Federalist* No.10 conveys the theory that guided the Constitution's chief architect; *Federalist* No.51 explores how the governmental system that emerged from the political process in Philadelphia might actually work. Since these essays were written, Madison's insight into the operation of the Constitution has been largely borne out. Civil Rights, government policy sometimes fails to implement the preferences of national majorities for reasons he identifies in this famous essay.

Both the pluralism of competing interests and separated institutions have been judged less favorably by many modern students of American politics. With authority so fragmented, they argue, government cannot function effectively. And by adding a layer of institutional fragmentation on top of pluralism, the Framers simply overdid it. The result is an inherently conservative political process in which legitimate majorities are frequently frustrated by some minority faction that happens to control a critical level of government. Furthermore, if the logic of *Federalist* No.10 is correct, Americans do not need all of this constitutional architecture of checks and balances to get the job done. Critics also point to the many other stable democracies throughout the world that function well with institutions designed to allow majorities to govern effectively. Would Madison have privately agreed with this critique? Probably so—after all, his Virginia Plan incorporated those checks and balances necessary to foster the healthy competition of factions and no more.

## Notes

1. **Articles of Confederation:** The first constitution of the United States. The Articles were in force from March 1, 1781 to March 4, 1789. They were written by a committee of the Second Continental Congress. The greatest weakness of the federal government under the Articles of Confederation was its inability to regulate trade and levy taxes. In addition, the new nation was unable to defend its borders from British and Spanish invasion because it could not pay for an army when the states would not contribute the necessary funds.
2. **Edmund Randolph:** Edmund Randolph (1753–1813) was an American Revolutionary leader

and public official. A member of the Constitutional Convention (1787), he later served as U.S. Attorney General (1789–1794) and Secretary of State (1794–1795).

3. **Benjamin Franklin:** Benjamin Franklin (1706–1790) was an American public official, writer, scientist, and printer. After the success of his *Poor Richard's Almanac*, he entered politics and played a major part in the American Revolution. Franklin negotiated French support for the colonists, signed the Peace of Paris (1783), and helped draft the Articles of Confederation (1781–1789). His numerous scientific and practical innovations include the lightning rod, bifocal glasses, and a stove.
4. **George Washington:** George Washington (1732–1799) was an American military leader and the first President of the United States (1789–1797). Commander of the American forces in the American Revolution (1775–1783), he presided over the Constitutional Convention and was elected President of the new nation (1789).
5. **Patrick Henry:** Patrick Henry (1736–1799) was an orator and a major figure of the American Revolution. A member of the Continental Congress (1774–1775), he spurred the anti-British sentiment with his words “Give me liberty or give me death” (1775).
6. **Alexander Hamilton:** Alexander Hamilton (1757–1804) established the national bank as the first U.S. Secretary of the Treasury (1789–1795). He was best-known for his fiscal policies after the American Revolution, his authorship of many of *The Federalist* papers, and his consistent advocacy of a strong central government.
7. **James Madison:** James Madison (1751–1836) was the fourth President of the United States (1809–1817). A member of the Continental Congress (1780–1783) and the Constitutional Convention (1787), he strongly supported ratification of the Constitution and was a contributor to *The Federalist* papers.
8. **William Paterson:** William Paterson (1745–1806) was an American Revolutionary leader and jurist. A member of the Constitutional Convention, he later served as an associate justice of the U.S. Supreme Court (1793–1806).
9. **Gouverneur Morris:** Gouverneur Morris (1752–1816) was an American statesman, diplomat, and financial expert who helped plan the U.S. decimal coinage system. During the Constitutional Convention, Morris advocated a strong central government. He was also largely responsible for the final wording of the Constitution.
10. **Electoral College:** It is the system by which the president and vice-president of the United States are chosen.
11. **social contract theory:** The theory is associated with such names as the Englishmen Thomas Hobbes and John Locke and the Frenchman Jean-Jacques Rousseau. The theory attempts to justify political authority on grounds of individual self-interest and rational consent and the theme is against the divine right of kings.
12. **Thomas Jefferson:** Thomas Jefferson (1743–1826) was the third President of the United States

(1801–1809) and was responsible for the purchase of the Louisiana Territory from France (1803). A member of the second Continental Congress, he drafted the Declaration of Independence.

### Questions for Consideration

1. What were the problems with the national government under the Articles of Confederation?
2. What were the problems with the state governments under the Articles of Confederation?
3. Why didn't Rhode Island send delegates to the Constitutional Convention?
4. What were the consensus and disagreements among the delegates to the Convention?
5. How were the major differences resolved?
6. Who was James Madison? What role did he play at the Convention?
7. What is meant by “social contract theory”?
8. What are the main features of the Constitution?
9. Why did the delegates to the Convention build two concepts—separation of powers and checks and balances—into the structure of government? How do the concepts work?
10. Who were the Federalists and the Anti-Federalists? What was their major difference?
11. What are the fundamental problems of “self-governance”? What are the problems of a large republic?
12. What may cause problems in a large republic and how did James Madison propose to solve them in *Federalist* No. 10 and No. 51?

### Suggested Readings

1. James M. Burns, J.W. Peltason, Thomas E. Cronin and David B. Magleby. *Government by the People*, 17th ed. Upper Saddle River, NJ: Prentice Hall, 1998.
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3. Richard C. Schroeder (revised by Nathan Glick). *An Outline of American Government*. Washington, D.C.: United States Information Agency, 1994.
4. Samuel Kernell and Gary C. Jacobson. *The Logic of American Politics*. Washington, D.C.: CQ Press, 2000.
5. 李道揆. 《美国政府与美国政治》. 北京: 商务印书馆, 1999.