

## CHAPTER 2

# The American Constitution

### ▣ LEARNING OBJECTIVES

After reading this chapter, you should be able to:

- Describe the lessons the early Americans learned about establishing effective democratic government during the first decade of independence.
- Explain the key controversies that divided the delegates at the Constitutional Convention.
- Contrast the political views of the Federalists and Anti-Federalists.
- Assess the extent to which the addition of the Bill of Rights to the Constitution served the goals of both Anti-Federalists and Federalists.
- Evaluate whether the original Constitution was pro-slavery or anti-slavery.

### ▣ SUMMARY OVERVIEW

After independence from Britain, Americans wrote constitutions for eleven of the thirteen states and for the country as a whole. The Articles of Confederation, with a single government branch (Congress), very limited powers, and equal state representation, proved too weak to govern successfully. In the new states, powerful legislatures exceeded their constitutional powers and often passed unwise or unjust measures. By 1787, the central government was effectively bankrupt and unable to conduct an effective foreign policy; the states were immersed in commercial and territorial conflicts; and economic and social distress was spreading throughout the nation.

The Constitutional Convention, originally called to amend the Articles of Confederation, met from late May through mid-September of 1787. Early in the deliberations, the most serious conflict divided the large and small states over the scope of national power and the issue of state representation in the new national legislature. Most large state delegates supported the Virginia Plan, which proposed a bicameral legislature based on state population, an independent executive and judiciary, and substantial new powers. In response, small state delegates lined up behind the New Jersey Plan, which provided for equal state representation and allowed the Congress to appoint a national executive and judiciary. The Great Compromise kept the essentials of the Virginia Plan but gave the states equal representation in the new Senate.

In addition to a bicameral Congress, the proposed Constitution also featured independent executive and judicial branches. It also gave the federal government substantial new powers—such as the power to raise its own revenues, to regulate interstate and foreign commerce, to raise an army and navy, to coin money, to borrow money, to establish lower federal courts—and would no longer act through the state governments, but deal directly with the citizens. The Constitution also imposed numerous restrictions on state power.

The debate over ratification between Federalists and Anti-Federalists focused on the absence of a bill of rights in the new Constitution, whether the new national government was too powerful,

whether national leaders would be sufficiently accountable to the citizenry, whether the government would degenerate into an aristocracy or monarchy, whether a republic could succeed in such a large country, and whether the new arrangements did enough to promote civic virtue. Despite the extensive debate, nine states ratified the Constitution by 1788, and the new government convened in the spring of 1789. Leaders in the First Congress moved quickly to add a bill of rights. Although some Anti-Federalists remained unsatisfied with the amendments, the adoption of the Bill of Rights ended organized opposition to the Constitution.

When the Constitutional Convention met, there were about 700,000 slaves in the United States, 18 percent of the total population. At the Convention, southern delegates insisted that slaves be counted toward representation in the House of Representatives, that no federal limits be placed on the importation of slaves, and that escaped slaves be returned to their masters. After heated debates, the delegates struck compromises that satisfied the pro-slavery delegates but also did not count slaves as equal to free persons when computing representation in the House, allowed the federal government to prohibit the importation of slaves by 1808, and avoided any suggestion in the Constitution that slavery was moral or just. As Madison said about the absence of the words “slave” and “slavery” from the Constitution, “it [was] wrong to admit in the Constitution the idea that there could be property in men.”

## ▣ CHAPTER OUTLINE

### I. INTRODUCTION

- After declaring Independence, a new governmental structure was needed.
  - Continental Congress lacked specific authority.
  - Former colonies needed new constitutions.
- Constitution represents a charter for effective national government.
  - Constitution is oldest national charter still in force.
  - Constitution was adopted peacefully.
  - Content of Constitution reflects lessons learned during “critical period.”
- Adoption of the Constitution is an example of deliberative democracy in action.

### II. THE LESSONS OF THE FIRST DECADE

#### A. State Constitutions

- Between 1776 and 1784, 11 of 13 states adopted new constitutions.
  - Early state constitutions shared common features, such as separation of legislative, executive, and judicial powers into separate institutions.
  - All except Pennsylvania had **bicameral legislature** with elections for lower house typically every year and elections for the upper house every two to five years.
  - Most created weak governors that were subject to one-year terms, strict term limits, no veto power, election by the legislature, and a salary that could be altered at any time.
  - All had property qualifications for voting and holding office, although requirements were usually lower for voting than for holding office.

## B. Articles of Confederation

- After declaring independence, delegates to the Second Continental Congress proposed the **Articles of Confederation**.
- The Articles created a weak central authority.
  - *State sovereignty*: states retained all powers not “expressly delegated” to the national Congress.
  - *Single governing institution*: There was no separate executive or judicial branch.
  - *State equality*: Each state legislature selected between two and seven delegates to serve one-year terms in Congress, but each state had only one vote.
  - *Limited powers*: Congress had limited powers.
  - *Supermajority requirement*: On important matters, 9 of 13 states had to agree.
  - *Amendments*: Changes to the Articles required unanimous consent.
  - States retained sovereignty in this **confederation**: A system of government in which a weak central authority acts on behalf of powerful independent states.
- The purpose of the central government was to secure liberty, common defense, and the “mutual and general welfare.”
- Agreement was in force from 1781–1789.

## C. Weaknesses of the National Government

- National government was dependent on states for revenues and an army.
  - National government was perennially short of cash.
  - National army was undermanned and underequipped.
- States refused to yield foreign policy to the **Confederation Congress**: The name sometimes given to the Congress established by the Articles of Confederation in 1781 to distinguish it from the Continental Congress, which it replaced.
  - Nation could not speak with one voice overseas.
  - States struck their own commercial deals with foreign countries.
  - Some states ignored treaties approved by Congress.

## D. Conflicts between the States

- Commercial conflicts exacerbated existing tensions among the citizenry.
  - States with natural harbors (e.g., MA, RI, NY, MD, VA, and SC) made residents in other states pay duties on foreign goods that came through their ports.
  - Other states enacted regulations that favored their own citizens.
- Territorial conflicts created more tension.
  - Many of the states had conflicting claims to western lands.
  - In some cases, there were arguments and fighting over borders between states.

## E. Problems within the States

### 1. Shays's Rebellion.

- Mobs of debt-ridden farmers organized a force of 3,000 men to take up arms against lawful authority.

- Governor asked Congress to help, but national government was essentially bankrupt.
- Rebellion put down after governor borrowed money from private individuals.
- The rebellion helped to reveal weakness of state and national governments.

### 2. Deficiencies of State Laws.

- Prolific lawmaking caused confusion and instability.
- Laws were often unjust.

### 3. Rage for Paper Money.

- Public pressure for paper money increased as economic conditions worsened.
- Increased circulation of paper money caused value to quickly depreciate.
- In Rhode Island, businesses closed when state law required merchants to accept paper money at its face value.

## F. Questions about Majority Rule

- Rhode Island's **paper money laws** were enacted constitutionally and reflected majority desires, but property rights were violated.
- Events in Rhode Island highlighted potential tension between two principles stated in the Declaration of Independence:
  - Purpose of government is to secure natural rights.
  - Just powers of government come from popular consent.

## G. The Road to Philadelphia

- Amendments to impose 5 percent duty on imported goods to pay off public debt were twice rejected.
- Confederation Congress sought greater authority to regulate foreign commerce, but only two states agreed.
- **Annapolis Convention:** A gathering of delegates from five states that met in Annapolis, Maryland, in September of 1786 to address commercial problems. It called on Congress to convene a Constitutional Convention to provide for a more effective national government.
- Congress endorsed call in February 1787 for general convention to remedy federal weaknesses.

## III. THE CONSTITUTIONAL CONVENTION

### A. The Nationalists Set the Agenda: The Virginia Plan

- The **Virginia Plan** was presented by Edmund Randolph, governor of Virginia.
  - The plan stated that federal government had too little authority and too few resources.
  - It argued for a new national government that was “paramount to the state constitutions” and based on “the republican principle.”
  - Virginia delegates also argued that the Articles of Confederation could not be saved; a wholly new government was necessary.
- Features of the proposed plan
  - Three independent branches of government

- Substantial new powers
- Ability to veto state laws
- Representation would be on state population in both houses
- Representatives would not be delegates of state legislatures
- Popularly elected assemblies in the states would approve plan
- Opponents of a strong central government complained that the Convention was illegal.
- Proponents countered that the Convention was necessary and legal.
  - Delegates were charged with fixing the federal constitution—but this could only be done by replacing it with an entirely new plan.
  - Any new plan would have to be reviewed by the American people, who could either accept or reject.

### B. The Small States Counterattack: The New Jersey Plan

- The **New Jersey Plan** was proposed by William Paterson, former attorney general of New Jersey.
- The plan allowed for increase in powers of national government, but retained basic framework of the Articles of Confederation.

### C. Hamilton's Speech

- Hamilton identified flaws in both Virginia and New Jersey plans.
- In a five to six hour session, Hamilton outlined to the Convention, the kind of government that he felt he wanted to see.
  - National government would appoint governors with absolute veto over state laws.
  - Members of one branch of legislature and the chief executive would serve for life terms.
- Why did Hamilton give this speech?
  - Some argued that his more radical plan was intended to make the Virginia Plan look moderate by comparison.
  - Others argued that the plan represented Hamilton's sincere beliefs.

### D. The Great Compromise

- Impasse over small states' representation prompted delegates to form a committee to fashion a compromise.
- Features of the **Great Compromise** (or the **Connecticut Compromise**):
  - The plan gave equal weight in one branch of the legislature—the central demand of small states.
  - It enhanced the role of the more popular branch of the legislature.
    - The plan required all taxing and spending bills begin in the first branch.
    - It prohibited the other branch from amending these bills.
- Plan was adopted by a vote of 5–4.

### E. Completing the Constitution

In late July the delegates appointed a five-member **Committee of Detail**: to fashion the resolutions passed by the Convention, up that point, into a draft constitution.

### 1. Presidency.

- Delegates were in agreement over key provisions.
  - Executive should be single person.
  - Salary should be fixed.
  - Executive should have ability to veto legislation (subject to two-thirds override).
- Delegates struggled to find a way to combine two goals.
  - Make president be independent from the legislature.
  - Make president eligible to run for reelection.
- Delegates expressed concern about direct popular elections for president.
  - People would usually vote for a local favorite, thus giving the large states an unfair advantage.
  - People, who are uninformed, might be “misled by a few designing men.”
  - Private groups might dominate the selection process.
  - Country was too large for citizens to know the qualifications of the candidates.
- Solution: Have electors select president to a four-year term.
  - Electors would be chosen by state legislatures.
  - Electors would meet within their state and vote for two persons for president—one of whom could not be from that state.
  - A person who received the votes of a majority of electors became president.
  - The person who came in second became vice president.
  - If no one received votes from a majority of electors—or if two did, but tied—then the House of Representatives would decide, with each state having one vote.
- Updates to **Electoral College**: The name later given to the method of electing presidents outlined in the Constitution of 1787 whereby electors, equal to the number of representatives and senators in each state, would be appointed as the state legislature saw fit and would meet in their states to vote for two persons for president, one of whom could not be a resident of the state.
  - Modified by the Twelfth Amendment, ratified in 1804; required separate votes be cast for president and vice president.
  - Since 1860, all presidential electors have been chosen directly by the people (but the Twenty-Second Amendment, ratified in 1951, now limits presidents to two full terms).
- Delegates removed all limits on reelection.

### ★ INTERNATIONAL PERSPECTIVE: Parliamentary Democracy versus Presidential Government

#### 2. Congress.

- Congress is divided into two chambers: House of Representatives and Senate.

- House of Representatives
  - Representatives would be elected by the people for two-year terms.
  - Representatives would be direct voice of the community.
  - The House could become so large that passion and disorder might corrupt its deliberations.
  - Part-time lawmakers might not have time to learn about national and international affairs.
  - Short terms of office might lead representatives to do what was immediately popular, even if unwise.
- Senate
  - The Senate would consist of two members from each state chosen by the state legislatures.
  - Members would serve six-year terms, with staggered elections (one-third up for reelection every two years).
  - According to Madison, Senate would function with “more coolness” and “more wisdom” than the House.
  - Less direct pressure by the public would promote deliberation and encourage a long-term view of the common good.

### 3. Judiciary.

- The purpose of the judiciary would be to resolve disputes that might arise under the new system.
  - Judges would serve for life, subject to impeachment and removal by Congress for serious misbehavior.
  - Increases in salaries would be allowed—but not decreases.
  - Congress would be given authority to create lower federal courts.
  - Authority to appoint federal judges would be given to president subject to Senate approval.
  - The idea of a “council of revision” that would allow the chief executive and some federal judges to veto acts of Congress was rejected.

### 4. Final Form.

- Given by **Committee of Style**: The five-member committee of the Constitutional Convention that met during the last week of the Convention in September 1787 to give final form to the Constitution. Along with the Committee of Detail it was one of the two most important committees at the Convention.
  - Committee reorganized the proposals into seven articles.
  - The preamble was revised.
  - Other stylistic changes were also made.
- Weary delegates rejected proposals involving substantive changes.
- On September 15, 1787, every state voted to approve.

- Last change was made on September 17, 1787.
  - George Washington endorsed a proposal to change the ratio of representation for the House of Representatives from one per forty thousand persons to one per thirty thousand persons.
  - Proposal had been previously defeated, but passed unanimously this time.
- Final approval and signatures completed on September 17, 1787.
- Final form included three separate oaths:
  - when the Senate conducts an impeachment trial (Article I);
  - by a president to “faithfully execute the office of President” and to “preserve, protect, and defend the Constitution” (Article II, Section 1); and
  - by all representatives, executive officials, and judges in the national government and the states “to support this Constitution” (Article VI).

★ **Today’s Oath to Support the Constitution**

#### IV. RATIFYING THE CONSTITUTION

##### A. The Course of Ratification

- Amendments to Articles of Confederation required unanimous vote.
- With new Constitution, delegates required approval of at least nine popularly elected state conventions.
- Advantages of state conventions included:
  - New government would have strength of popular **ratification**.
  - People are source of all political power.
  - Ratification method would combine public opinion and deliberation.
    - Members to conventions would be popularly elected and would broadly represent popular attitudes.
    - Delegates to conventions could debate and reason over best course of action.
- Congress forwarded the proposed Constitution to the states and called for ratification conventions.
- Pace of ratification
  - Quick ratification by Delaware, Pennsylvania, New Jersey, Georgia, and Connecticut
  - Ratification stalled in Massachusetts.
    - Opponents concerned about absence of a bill of rights and protections for state powers.
    - Supporters pledged a bill of rights once new government began operating.
    - Promise was sufficient to secure ratification.
  - More states ratified in mid-1788: Maryland in April; South Carolina in May; and New Hampshire in June.
- Virginia and New York, key states, were closely divided over issue, but ratified in summer 1788.
- North Carolina and Rhode Island did not ratify until after new



government was already in effect.

## B. Debating the Constitution

### 1. How Powerful a National Government?

- Arguments of the **Anti-Federalists**: The name given to those who opposed the ratification of the Constitution of 1787.
  - A true federalist system would give states the highest authority.
  - They feared that under the new system, states would eventually be annihilated or become mere agencies of the national government.
  - A powerful central authority would develop tyrannical tendencies and eventually undermine the liberties of the people.
- Arguments of the **Federalists**: originally, the name given to those who supported the ratification of the Constitution of 1787; later, it was the name for members of one of the first two political parties in the United States.
  - Confederation experience proved that the national government needed to operate directly on the people with sufficient powers to achieve its goals.
  - National government should have authority to manage matters of war and peace, commerce, and foreign relations.
- Issue of whether to have standing armies highlighted contrast.
  - Anti-Federalists were concerned that standing armies could be turned against the people.
  - Federalists argued that effective defense required a fast response and that new system provided for proper exercise of power.

### 2. Institutional Design.

- **Separation of powers**: An essential principle of the first American state constitutions and the U.S. Constitution according to which the legislative, executive, and judicial powers of government are assigned to three distinct institutions, each designed to carry out effectively its assigned power.
- **Checks and balances**: The principle of the U.S. Constitution that gives each of the three major branches of government the means to control partially the power exercised by another, largely to resist encroachments on its own powers.
- Federalists believed that these features would safeguard liberties against the self-interest of officeholders (*Federalist 51*).
- Anti-Federalists opposed the constitutional design. They felt that:
  - too much power was vested in aristocratic Senate and monarchical presidency,
  - the House of Representatives too small to adequately represent the people, and
  - accountability would be better achieved with short terms of office for representatives and small

legislative districts.

### 3. The Small Republic and Civic Virtue.

- Anti-Federalists were concerned that the United States was too big to be successful.
  - Montesquieu argued that republics must be small.
  - There was no example in history of a large republic that was also free.
- For Anti-Federalists, success depended on promotion of civic virtue, traits such as
  - public-spirited devotion to the common good,
  - self-control, and
  - willingness to abide by the law.
- Anti-Federalists believed that the proposed constitutional system promoted wrong values.
  - It relied too much on self-interest of leaders and citizens.
  - It did too little to inculcate civic virtue.
  - It promoted commerce and acquisitiveness, which threatened to undermine the virtues necessary for republican government.

### 4. The Case for the Large Republic.

- Refutation of Anti-Federalist arguments in *Federalist 9, 10*
  - Genuine small republics were not a realistic option.
  - Republics had fared poorly throughout history, regardless of size.
  - New state governments had problems with self-interested majorities.
- Advantages of large republic
  - Governing is done by representatives who are elected to promote the common good.
  - Greater diversity of groups and interests makes tyranny by the majority less likely.

## ★ IMPACT OF SOCIAL MEDIA AND COMMUNICATIONS TECHNOLOGY: The Debate over the Constitution

### ★ Amending the Constitution

#### 5. The Federalists and Virtue.

- Virtue was considered essential for just government.
- Virtue is promoted by effective and just policies.

## V. ADDING A BILL OF RIGHTS

### A. Protecting Rights in the Original Constitution

- **Writ of habeas corpus:** Protects individuals from arbitrary arrest by authorizing a judge to free someone from confinement if there are not sufficient legal grounds for holding him or her.
  - It stems from **Habeas Corpus Act of 1679:** A law passed by the British Parliament that codified the right to a writ of *habeas corpus*.
  - It is considered a fundamental protection against a tyrannical executive.

- Prohibition of **bills of attainder**: Acts by a legislature convicting someone of a crime and imposing a punishment without a trial before a court.
  - Bills of attainder were originally used by British Parliament.
  - The new American states used bills of attainder during the Revolution to confiscate the properties of Loyalists.
  - Bills of Attainder were considered to be an effective safeguard against unfair judicial procedures.
- Prohibition of **ex post facto laws**: Laws that make an act criminal after it was committed or increases the penalty after the fact.

★ **Provisions Protecting Rights in the Constitution of 1787**

**B. Fashioning the Bill of Rights**

- Why was a Bill of Rights considered?
  - Existing state protections
  - Specific urging by Thomas Jefferson
  - Proposals generated by seven state ratifying conventions
- Originally opposed by Constitutional supporters
  - Many felt it unnecessary as the new government would be limited to only certain delegated powers.
  - Listing certain rights would imply that others did not exist.
  - Bills of rights were traditionally enacted after struggles with a monarch—not representative governments.
  - By defining the power and authority of the people, the new Constitution was itself a “bill of rights” (*Federalist* 84).
- Federalists eventually agreed to a Bill of Rights to preempt calls for another constitutional convention.
- Anti-Federalists sought amendments that changed structure of Constitution, but these attempts failed.

**C. Ratifying the Bill of Rights**

- Ten of twelve original amendments were ratified in 1791.
- Ratification was achieved quietly, without public fanfare.
- Ratification essentially ended organized opposition to Constitution.

**VI. SLAVERY AND THE CONSTITUTION**

**A. Debating Slavery at the Constitutional Convention**

- Three main issues were debated. These were:
  - whether to count slaves for the purpose of determining representation,
  - whether to allow the new Congress to prohibit the importation of slaves, and
  - whether to obligate the states to return runaway slaves.
- Division within the state delegations
  - Southern delegates threatened to withhold support of any plan that failed to protect Southern States against emancipation.
  - Other delegates denounced slavery and the slave trade as immoral and inconsistent with the principles of the revolution.
  - Some delegates willing to compromise because of belief that

emancipation was already underway in the states and would soon be completed.

- Question over whether slavery should be considered at the convention
  - Georgia delegate argued that slavery was a local—not national—issue.
  - Delaware delegate argued that the slave trade affected the “national happiness.”

### B. The Compromises of the Constitution

- **Three-fifths clause:** The provision of the Constitution (Article I, Section 2) that stipulated that slaves would count as three-fifths of a person when determining population for apportioning seats in the House of Representatives and direct taxes among the states.
  - Anti-slavery northerners did not want slaves to inflate the population totals since they could not vote for representatives.
  - Pro-slavery southerners wanted the ratio of free persons and slaves to be one-to-one.
  - Three-fifths ratio was a compromise over representation, not a moral statement about value of blacks versus whites.
- **Importation of slaves clause:** The provision of the Constitution (Article I, Section 9) that prevented Congress from prohibiting the importation of slaves before 1808.
  - Only Georgia still allowed the importation of slaves.
  - The clause represented compromise between those that wanted Congress to ban it immediately and those who wanted to prevent Congress from banning it altogether.
- **Fugitive slave clause:** The provision of the Constitution (Article IV, Section 2) that stipulated that slaves who escaped to another state would be returned to their masters.
  - Concession to slave interests represented at Convention
  - Language was altered several times to avoid inferences that slavery was moral or just.

### ★ Americans Debate Slavery and the Constitution

## VII. THE CONSTITUTION AND DELIBERATIVE DEMOCRACY

- Through deliberation, the Constitution was drafted and adopted.
- The Constitution established foundation for future deliberations.

## CRITICAL THINKING QUESTIONS

### IS THE PARLIAMENTARY SYSTEM OR PRESIDENTIAL SYSTEM BETTER?

As the text sidebox explains, not all democratic systems are alike. Parliamentary governments are different from presidential governments because they unite many legislative and executive functions into a single institution. Presidential systems, such as the one outlined in the U.S. Constitution, require governing power to be distributed among separate institutions. Apart from the Vice President of the United States, who is also President of the Senate, no executive officer can also simultaneously hold a legislative position.

Supporters of the parliamentary system argue that a unified legislative and executive branch allow officials to act faster and more efficiently. It also precludes the possibility of divided government, which occurs when different political parties control the executive branch and at least one chamber of the legislature. In the American presidential system, divided government is not only theoretically possible—it has become a common occurrence. Just recently, President Obama expressed frustration with divided government in early 2012 when he commented that “our Founders designed a system that makes it more difficult to bring about change than I would like sometimes.” While President Obama may have experienced difficulty accomplishing his agenda with divided government, scholars have found that not all eras of divided government result in deadlock. Sometimes, leaders operating in conditions of divided government accomplish just as much as those serving in periods of unified government. Nonetheless, when partisan differences are pronounced, divided government makes it more difficult for the president and/or congressional members to accomplish their governing goals.

With this in mind, have students discuss the intent of the Framers in creating the “separation of powers” system that makes divided government possible. Was it the intent of the Framers to make it more difficult for a president (or Congress) to bring about change or did the Framers fail to foresee the possibility of divided government? How do *Federalist 10* and *Federalist 51* inform this discussion? Today, what are the concerns about government efficiency and effectiveness represented in President Obama’s comment? Would the Framers find the inability to rapidly implement change a problem or a benefit?

### SHOULD WE EXPAND THE BILL OF RIGHTS?

During the ratification debates, Federalists offered a number of arguments for why we did not need a federal bill of rights. They explained that the central government was limited to enumerated powers; that bills of rights were only necessary in monarchies; that the government was accountable to the people who would not be inclined to deprive themselves of liberty; and, finally, that a complete listing of specific rights would be impossible. Nonetheless, Anti-Federalists insisted a bill of rights be included as a condition of ratification. The original Bill of Rights was adopted in 1791, but over the last half-century the U.S. Supreme Court has practically expanded the list of liberties through case opinions articulating such rights as the right to privacy, the right to marry, the right to raise children without undue restriction by the government, and the right to learn. Although most people would agree that these liberties are indeed protected in our constitutional system, others would argue that until they are officially added to the Constitution, they remain subject to interpretation by individual justices. What do you think? Should the Constitution be amended to cover other personal liberties such as the ones mentioned above? Or, is it unnecessary to formally list those rights that everyone assumes to be true? If the Bill of Rights was expanded, what rights should be included?

## LECTURE LAUNCHERS

### SHOULD WE REPEAL THE SEVENTEENTH AMENDMENT?

Soon after the November 2010 midterm elections in which Republicans secured a number of electoral victories, a proposal began to circulate among conservatives to repeal the Seventeenth Amendment, which provided for the direct election of U.S. Senators. According to their argument, the 1913 amendment distorted the vision of the American Founders by removing one of the key checks on national power. As discussed in this chapter, the intent of the Constitution was to preserve liberty by safeguarding against tyranny, and many of the Framers argued that this was best accomplished by giving the people a direct voice in the House of Representatives and the states a direct voice in the Senate. When the Seventeenth Amendment was ratified, Senators ceased to be accountable to state legislatures; thus, the change nullified the ability of state governments to object to expanding federal power. Tea Party activists and other advocates of limited government argue that if the Seventeenth Amendment were repealed today, the power of the national government would naturally recede and the Founders' plan for our federal republic would be restored.

### QUOTING THE FOUNDERS

As the American Founding approaches the quarter-millennium mark, it would be plausible to think that the opinions of statesmen from long ago would have little bearing on our discussion of modern political problems. However, even casual political observers are likely to notice that ideas, principles, and quotes from the Founders are invoked frequently by officials and candidates from both political parties. For example, President Obama quoted John Adams in a 2009 foreign policy speech in Cairo; Governor Romney repeatedly invoked the principles of the Founding during his campaign for the presidency in 2012; and in recent years, references to the Founders' original intent appeared regularly in U.S. Supreme Court opinions. Not everyone appreciates the frequent references to our Founders, though. Some historians note that the quotes are often used erroneously or are taken out of context while others complain that the views of some of the Founders represent outmoded ways of thinking. Despite these criticisms, however, one thing is clear: the message of the Founders continues to shape the way Americans think about the nation and its politics.

## IN-CLASS ACTIVITIES

*These activities are designed to complement the activities presented in Chapter 1. Instructors could pair these activities together as a review exercise, or complete them individually at the conclusion of each chapter.*

### **Activity #1: Blogging the Ratification Debate**

*This activity will take approximately 30 minutes and may be completed individually or in small groups. Each student or group should be familiar with the arguments for and against ratification of the Constitution.*

When the people were deliberating whether or not to ratify the Constitution, much of the debate took place in print. Both supporters and opponents of the proposed government published persuasive essays in local newspapers with the hope of educating readers about the merits or dangers of the plan. Although some supporters/opponents of the Constitution used inflammatory

language or sensationalist cartoons to get their points across, most of the essayists used rhetoric that appealed to readers' reason and intellect.

In this exercise, students can try to craft their own persuasive arguments that effectively facilitate informed debate about the ratification of the Constitution. First, divide the class into equal groups of "Federalists" and "Anti-Federalists." Then, individually, or in small groups, ask them to pen one entry, similar in style to a typical blog post, that articulates an argument made in support or against the Constitution, such as might have been offered by Federalist and Anti-Federalist authors. Then, ask students to upload their entries to a class blog or class Web site and invite comment from their fellow students. Although it may be fun to use inflammatory language to make a political point, encourage students to only use rhetoric that promotes deliberation and civil discourse.

### Activity #2: Creating a Constitution Day Activity

*This activity will take approximately 30–60 minutes and should be completed in small groups. Each student will need a complete copy of the U.S. Constitution. This exercise will help students better understand the structure and design of the Constitution. This activity could be used to fulfill the mandated Constitution Day education requirement and/or incorporated into a civics-oriented service learning project.*

Divide class into four groups and assign Article I to one group, Article II to another group, and Article III to a third group. These first three groups will be responsible for summarizing the purpose, institutional structure, and key powers associated with their assigned branch of government. The last group will be responsible for identifying and summarizing the various checks and balances incorporated into the Constitution. (To ensure that the summaries are brief, consider restricting summaries to 300 words or less.) Then, ask the groups to prepare an oral presentation or a visual display (e.g., PowerPoint slide show) of their findings that could be shown or disseminated to others. For a service-learning project, ask students to share their presentations with students in a K-12 setting or with members of the general community.

## □ KEY TERMS

**Annapolis Convention** A gathering of delegates from five states that met in Annapolis, Maryland, in September of 1786 to address commercial problems. It called on Congress to convene a constitutional convention to provide for a more effective national government.

**Anti-Federalists** The name given to those who opposed the ratification of the Constitution of 1787.

**Articles of Confederation** The first national constitution for the United States. In force from 1781 to 1789, it created a single-branch national government (Congress) in which each state had one vote.

**Bicameral legislature** A legislative body that has two separate chambers or houses, often with equal authority to pass or amend legislation.

**Bill of attainder** An act by a legislature convicting someone of a crime and imposing a punishment without a trial before a court.

**Bill of Rights** The first 10 amendments to the U.S. Constitution, which became effective in 1791.

- Checks and balances** The principle of the U.S. Constitution that gives each of the three major branches of government the means to control partially the power exercised by another, largely to resist encroachments on its own powers.
- Committee of detail** The five-member committee of the Constitutional Convention that met in late July and early August of 1787 to fashion the resolutions passed by the Convention, up to that point, into a draft constitution. Along with the Committee of Style, it was one of the two most important committees at the Convention.
- Committee of style** The five-member committee of the Constitutional Convention that met during the last week of the Convention in September 1787 to give final form to the Constitution. Along with the Committee of Detail, it was one of the two most important committees at the Convention.
- Confederation** A system of government in which a weak central authority acts on behalf of powerful independent states.
- Confederation Congress** The name often given to the Congress established by the Articles of Confederation in 1781 to distinguish it from the Continental Congress, which it replaced.
- Connecticut Compromise** See **Great Compromise**.
- Constitutional Convention** The gathering of delegates from 12 states (all but Rhode Island) that met in Philadelphia from May 25 to September 17, 1787, and wrote the Constitution.
- Critical period** The period of economic, financial, and political distress between the effective end of the Revolutionary War (1781) and the establishment of a new government under the Constitution (1789).
- Divided government** When different political parties control the executive branch and at least one chamber of the legislature in a separation of powers, or presidential, system of government.
- Electoral College** The name later given to the method of electing presidents outlined in the Constitution of 1787 whereby electors, equal to the number of representative and senators in each state, would be appointed as the state legislature saw fit and would meet in their states to vote for two persons for president, one of whom could not be a resident of their state (modified by the Twelfth Amendment in 1804).
- Ex post facto law** A law that makes an act criminal after it was committed or increases the penalty after the fact.
- Federalist Papers** Eighty-five essays in defense of the proposed Constitution and published in New York City newspapers between October 1787 and May 1788 under the pseudonym “Publius.” They were written by Alexander Hamilton, James Madison, and John Jay and originally titled *The Federalist*.
- Federalists** Originally, the name given to those who supported the ratification of the Constitution of 1787. Later, it was the name for members of one of the first two political parties in the United States.
- Fugitive slave clause** The provision of the Constitution (Article IV, Section 2) that stipulated that slaves who escaped to another state must be returned to their masters.
- Great Compromise** The compromise between the large and small states at the Constitutional Convention according to which population would be the basis for representation in the first branch of the new national legislature and equality of the states in the second. It also



required that bills for raising revenues and appropriating funds originate in the first branch. Also called the **Connecticut Compromise**.

**Habeas Corpus Act of 1679** A law passed by the British Parliament that codified the right to a writ of habeas corpus.

**Importation of slaves clause** The provision of the Constitution (Article I, Section 9) that prevented Congress from prohibiting the importation of slaves before 1808.

**Loyalists** Americans who remained loyal to the British government during the Revolutionary War.

**New Jersey Plan** A plan of government supported by the small states at the Constitutional Convention as a counterproposal to the Virginia Plan. It preserved the basic structure of the government under the Articles of Confederation (with equal state vote) but added new powers to regulate trade, raise revenues, and allowed the Congress to create executive and judicial branches.

**Paper money laws** Laws passed by several states during the 1780s that allowed citizens to borrow paper money from the government and use it as legal tender, especially to pay taxes and debts.

**Parliamentary government** The type of representative democracy in which the people vote for representatives to the lawmaking body and then the head of the majority party (or coalition of parties) becomes the chief executive. Many of the top executive officials also serve in the legislature.

**Presidential government** The American system of representative democracy (also called a separation of powers system) in which the chief executive is independently elected and cannot be dismissed by the legislature. No executive official may also serve in the legislature.

**Ratification** The process by which popularly elected conventions in the states formally approved the proposed Constitution of 1787.

**Separation of powers** An essential principle of the first American state constitutions and the U.S. Constitution according to which the legislative, executive, and judicial powers of government are assigned to three distinct institutions.

**Shays's Rebellion** A forcible uprising of mainly poor farmers in central and western Massachusetts between August 1786 and February 1787. The rebels, led by former Continental Army officer Daniel Shays, closed courts to prevent the foreclosure of farms or the imprisonment of farmers for debt.

**State** The name given to the former American colonies when they collectively declared independence from British rule in 1776.

**Three-fifths clause** The provision of the Constitution (Article I, Section 2) that stipulated that slaves would count as three-fifths of a person when determining population for apportioning seats in the House of Representatives and direct taxes among the states.

**Virginia Plan** The plan for a strong national government of three independent branches—legislature, executive, and judiciary—introduced by Virginia Governor Edmund Randolph at the beginning of the Constitutional Convention. It rejected amending the Articles of Confederation and proposed instead a wholly new government.

**Writ of habeas corpus** Protects individuals from arbitrary arrest by authorizing a judge to free someone from confinement if there are not sufficient legal grounds for holding him or her.

## WEB LINKS

There are numerous Web sites on the American Founding and the U.S. Constitution that can be used to supplement this chapter. Some of these sites include historical overviews, which may be helpful for international students who lack previous coursework in American history.

Archiving Early America: ([www.earlyamerica.com](http://www.earlyamerica.com)). An online repository of historical documents from the eighteenth century.

Avalon Project at Yale Law School: ([http://avalon.law.yale.edu/subject\\_menus/constpap.asp](http://avalon.law.yale.edu/subject_menus/constpap.asp)). Extension of the U.S. Constitution.

Constitution Finder: (<http://confinder.richmond.edu>). Index to constitutions of the nations around the world maintained by the University of Richmond.

Constitution of the United States of America: (<http://www.law.cornell.edu/constitution/>). An online version of the U.S. Constitution and its 27 amendments, maintained by Legal Information Institute of the Cornell University Law School.

The Founders' Constitution: (<http://press-pubs.uchicago.edu/founders>). An extensive collection of materials related to the writing and meaning of the U. S. Constitution maintained by the Liberty Fund and the U of Chicago P.

Founding.com: ([www.founding.com](http://www.founding.com)). Provides documents and explanations of principles that support the American founding.

Liberty Library of Constitutional Classics: (<http://www.constitution.org/liberlib.htm>). Classic books and references on constitutional government.

Library of Congress, The Federalist Papers: (<http://thomas.loc.gov/home/histdox/fedpapers.html>). An online reprint of the 85 essays typically known as the *Federalist Papers*.

Library of Congress, Religion and the Founding of the American Republic: ([www.loc.gov/exhibits/religion](http://www.loc.gov/exhibits/religion)). A collection of documents, organized by time period, that pays tribute to the role of religion in the American Founding.

National Archives, Charters of Freedom: ([www.archives.gov/national\\_archives\\_experience/charters/constitution.html](http://www.archives.gov/national_archives_experience/charters/constitution.html)). The National Archives Web site on the Declaration of Independence, the Constitution, and the Bill of Rights. Historical overview of the people and political movements that led to the founding of the American republic.

National Constitution Center: ([www.constitutioncenter.org/ncc\\_edu\\_Educators.aspx](http://www.constitutioncenter.org/ncc_edu_Educators.aspx)). A Web site for the museum within Independence National Historic Park in Philadelphia devoted to the U. S. Constitution. This site provides information about ongoing exhibits at the Center in Philadelphia. In addition, it offers interactive online resources for student use.

TeachingAmericanHistory.org: (<http://teachingamericanhistory.org/founding.html>). A collection of documents, audio lectures, and lesson plans related to the American Founding.

U.S. Constitution Online: ([www.usconstitution.net](http://www.usconstitution.net)). Reprint of important founding documents, including the U.S. Constitution and the Articles of Confederation.

## INSTRUCTOR RESOURCES

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- Webster, Mary E., ed. *The Federalist Papers: In Modern Language Indexed for Today’s Political Issues*. Bellevue, WA: Merrill Press. 1999. Print.
- West, Thomas G. *Vindicating the Founders: Race, Sex, Class, and Justice in the Origins of America*. Lanham, MD: Rowman & Littlefield Publishers. 1997. Print.

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Wood, Gordon S. *The Creation of the American Republic, 1776–1787*. New York: Norton. 1969. Print.