



## CHAPTER 2

# The Constitution

### □ LEARNING OUTCOMES

The nine learning outcomes below are designed to help improve your understanding of this chapter. After reading this chapter, you should be able to:

- **Learning Outcome 1:** Explain how the colonial experience prepared Americans for independence.
- **Learning Outcome 2:** Discuss the restrictions that Britain placed on the colonies and the American response.
- **Learning Outcome 3:** Describe how the Declaration of Independence came to be written and the importance of its second paragraph.
- **Learning Outcome 4:** Detail the Articles of Confederation and some of their weaknesses.
- **Learning Outcome 5:** Discuss the most important compromises reached at the Constitutional Convention and the basic structure of the resulting government.
- **Learning Outcome 6:** Summarize the arguments in favor of adopting the Constitution and the arguments against it.
- **Learning Outcome 7:** Explain how and why the Bill of Rights came to be adopted.
- **Learning Outcome 8:** Describe the process for amending the Constitution.
- **Learning Outcome 9:** Consider the informal ways in which the meaning of the Constitution has adjusted to modern circumstances.

### □ SUMMARY OVERVIEW

1. The first permanent English colonies were established at Jamestown in 1607 and Plymouth in 1620. The Mayflower Compact created the first formal government in New England.

2. In the 1760s, the British began to impose a series of taxes and legislative acts on their increasingly independent-minded colonies. The colonists responded with protests and boycotts of British products. Representatives of the colonies formed the First Continental Congress in 1774. The Second Continental Congress established an army in 1775 to defend the colonists against attacks by British soldiers.
3. On July 4, 1776, the Second Continental Congress approved the Declaration of Independence. Perhaps the most revolutionary aspects of the Declaration were its statements that people have natural rights to life, liberty, and the pursuit of happiness; that governments derive their power from the consent of the governed; and that people have a right to overthrow oppressive governments. During the Revolutionary War, the states signed the Articles of Confederation, creating a weak central government with few powers. The Articles proved to be unworkable because the national government had no way to ensure compliance by the states with such measures as securing tax revenues.
4. Dissatisfaction with the Articles of Confederation prompted the call for a convention at Philadelphia in 1787. Delegates focused on creating a constitution for a new form of government. The Virginia Plan, which favored the larger states, and the New Jersey Plan, which favored smaller ones, did not garner sufficient support. A compromise offered by Connecticut provided for a bicameral legislature and thus resolved the large-state/small-state controversy. The final version of the Constitution provided for the separation of powers, checks and balances, and a federal form of government.
5. Fears of a strong central government prompted the addition of the Bill of Rights to the Constitution. The Bill of Rights, which includes the freedoms of religion, speech, and assembly, was initially applied only to the federal government, but amendments to the Constitution following the Civil War were interpreted to ensure that the Bill of Rights would apply to the states as well.
6. An amendment to the Constitution may be proposed either by a two-thirds vote in each chamber of Congress or by a national convention called by Congress at the request of two-thirds of the state legislatures. Ratification can occur either by the approval of three-fourths of the legislatures of the states or by special conventions called in the states for the purpose of ratifying the amendment and approval by three-fourths of these conventions. Informal methods of constitutional change include reinterpretation through congressional legislation, presidential actions, and judicial review.

## ▣ CHAPTER OUTLINE

### ★ What If ... WE ELECTED OUR PRESIDENT BY POPULAR VOTE?

This feature explores the pros and cons of proposals for election reform that would abolish the Electoral College and provide for the election of the United States president by direct popular vote.

### I. The Colonial Background

In 1607, the first permanent English colony was set up in Jamestown, in what is now Virginia. Conditions in the early English settlements were unimaginable by today's standards. Why were so many people willing to relocate in America?

**A. Separatists, the *Mayflower*, and the Compact**

The first New England colony was established in 1620. The people were dissatisfied with the Church of England and sought a place where they could practice their religious beliefs.

1. **The Significance of the Compact.** The compact they formed set forth the idea of consent of the governed.
2. **Pilgrim Beliefs.** Although the Plymouth settlers committed themselves to self-government, in other ways their political ideals were different than those embraced later during the Constitutional Convention in 1787. For example, the new community was a religious colony without the ideals of separation of church and state we are accustomed to today.

**B. More Colonies, More Government**

People in each of the colonies became accustomed to making decisions that affected the internal order of the colony. While each colony had only limited authority to make decisions, in practice most governmental actions that affected the people were made within the colony. The colonies were not really united as a political force before the First Continental Congress (1774). Each colony was separate with its own decision-making government.

**★ Politics and Religion: JUST HOW CHRISTIAN WERE THE FOUNDERS?**

While the Declaration of Independence makes no reference to Christ and the word God does not appear in the Constitution, by and large, the founders were devout Christians who opposed mixing church and state.

**II. British Restrictions and Colonial Reactions**

In 1763 the British Parliament began to pass laws that treated the colonies as a unit. The major reason for these laws was to raise revenue to help pay off the war debt incurred during the French and Indian Wars (1756–1763).

**A. The First Continental Congress**

The colonists began to gradually realize they were similar in many respects and that as a political unit they would have more influence with Parliament. Still, the focus of these political meetings in Philadelphia was to restore the political structure that was in existence before the passage of legislation affecting the internal operations of each colony by Parliament. Had the Crown and Parliament relented on many of their demands, it is possible the Declaration of Independence would never have been issued.

**B. The Second Continental Congress**

This is the Congress that made Washington the general in chief and pursued the Revolutionary War.

**III. Declaring Independence****A. The Resolution of Independence**

A brief precursor to the Declaration

**B. July 4, 1776—The Declaration of Independence**

1. **Universal Truths.** The opening text—“We hold these Truths. . .”
2. **Natural Rights and Social Contracts.** People have **natural rights** (“unalienable Rights”) including life, liberty, and the pursuit of happiness. These rights are held to be inherent in natural law, not

dependent on government. The incorporation of these concepts by Thomas Jefferson in the document reveals the influence of the English philosopher, John Locke. Locke had argued that all people possess certain natural rights, including the rights to life, liberty, and property. An important component of the Declaration of Independence was the concept of a **social contract**, a voluntary agreement among individuals to secure their rights and welfare by creating a government and abiding by its rules. Like the Mayflower Compact more than 200 years before, the Declaration of Independence was based on the idea of consent of the governed, and that governments had the responsibility to protect the natural rights of its citizens. If the government failed to do so, the people had the right to revolt.

3. **The Significance of the Declaration.** It established the legitimacy of the new nation in the eyes of foreign governments and the colonialists.

C. **The Rise of Republicanism**

**NOTE:** *Republican as used here must be carefully distinguished from the current Republican Party.*

While republicans were opposed to rule by the British, they were also opposed to rule by any central authority. They were even skeptical of a permanent union of the states. Each state was seen as the sovereign authority and the only legitimate ruling force.

★ **Beyond Our Borders: FRANCE'S ROLE IN DEFEATING THE BRITISH**

IV. **The Articles of Confederation: Our First Form of Government**

States retained most of the power and the central government had a very limited role in the governing process. The loyalty most citizens had was to their state first and foremost.

A. **The Articles Establish a Government**

Under the Articles, the thirteen colonies, now states, established a government of the states—the Congress of the Confederation. The Congress was a unicameral assembly made up of representatives from each state, with each state possessing one vote. Each year, the Congress would select a president from its members but the Articles did not provide for a President of the United States.

B. **Accomplishments under the Articles**

The states consented to give up their land claims to the United States as a whole.

C. **Weaknesses of the Articles**

The lack of a strong central authority to resolve disputes between the states and to organize the states for the collective good, including the organization of a militia, was crucial to the development of the Constitutional Convention.

D. **Shays' Rebellion and the Need to Revise the Articles**

Events such as Shays' Rebellion convinced many political leaders that the national government, under the Articles of Confederation, and individual state governments were incapable of resolving the most pressing problems. The solution appeared to be the establishment of a stronger central government.

## V. The Constitutional Convention

### A. Who Were the Delegates?

Establishing a stronger central government would prove to be a very difficult task. A major obstacle was the republicans, who opposed any centralization of power. Those who favored a stronger government became known as Federalists. However, there was no agreement among the Federalists concerning the structure and division of power for this new government.

### B. The Working Environment

Some details are given that humanize the process.

### C. Factions among the Delegates

The beliefs of the delegates ranged from the near-monarchism of Hamilton to definite decentralized republicanism. George Washington and Benjamin Franklin were among those who sought a stronger central government. Some of the delegates from New York, who were totally against a strong national authority, left when they saw the federalist tenor of the proceedings.

### D. Politicking and Compromises

1. **The Virginia Plan.** This was actually fairly close to a parliamentary system, with power concentrated in a lower house that was to choose the executive. The major problem with it was that representation was strictly by population, to the disadvantage of the small states.
2. **The New Jersey Plan.** This was a one-state, one-vote plan that would have created a relatively weak central government. Again, the executive was to be elected by the Congress.
3. **The “Great Compromise.”** The **Great Compromise** was a compromise between more populous states that advocated representation based on population (the Virginia Plan) and the small states that advocated representation equal for each state (the New Jersey Plan). The Great Compromise (or the Connecticut Plan) provided for a **bicameral legislature** with one house based on population, the other with equal representation for each state. In this plan, Congress did *not* choose the president.
4. **The Three-Fifths Compromise.** Another compromise concerned the issue of slavery. Many delegates had serious doubts about slavery and wanted it banned entirely. Delegates from the South opposed a ban on slavery and wanted slaves to be counted in determining representation in Congress. Delegates from the North objected. The Three-Fifths Compromise, struck to prevent southern delegates from abandoning the convention, provided that three-fifths of the slaves would be counted (or each slave would count as three-fifths of a person).
5. **The Slave Trade and Future of Slavery.** A slavery compromise was struck to keep the South from abandoning the convention.
6. **Other Issues.** To the benefit of the agricultural south, export taxes were banned. As a compromise, both the president and the Senate had a role in choosing the membership of the Supreme Court.

### E. Working toward Final Agreement

1. **The Madisonian Model—Separation of Powers.** The legislative, executive, and judicial powers were to be independent of each other.
2. **The Madisonian Model—Checks and Balances.** Each of the three was to check the others. The founders produced a government that did have considerably more power than under the Articles of Confederation. However, it is also clear that these men were distrustful of those who would hold this power and of the people who would select the governmental officials. Power was divided between the three major branches and each branch was encouraged to confront the other two branches. This idea was based on the assumption that “ambition must be made to counteract ambition.” As each branch of government would attempt to gain more power, each branch would serve to check the power of the other two branches. The **separation of powers** is central to the American political system but it was not widely adopted when representative democracy began to spread around the world.
3. **The Development of the Madisonian Model.** In the years since the Constitution was ratified, the checks and balances built into it have evolved into a complex give-and-take among the branches.
4. **The Executive.** An **Electoral College** meant that the president was not to be chosen by Congress, but not by a popular vote, either.

### F. The Final Document

A summary of the results: popular sovereignty, a republican government, a limited government, separation of powers, and a **federal system** where both the national and the state governments each have their own sphere of influence.

1. **A Federal System.**
2. **A Novel Form of Government.**

## VI. The Difficult Road to Ratification

### A. The Federalists Push for Ratification

Two opposing forces in the battle over **ratification** were the **Federalists** and the **Anti-Federalists**. The Federalists were in favor of a strong central government and their opponents, called the Anti-Federalists, opposed the new Constitution as drafted, from being ratified.

1. **The Federalist Papers.** The *Federalist Papers* were an attempt to persuade the public to support the new form of government. *Federalist #10* and *Federalist #51* (see Appendix C in the text) provide an excellent view of James Madison’s political theory concerning human nature. Madison’s ideas are as relevant today as they were in 1787.
2. **The Anti-Federalist Response.** The Anti-Federalist ranks included such patriots as Patrick Henry and Samuel Adams. They argued the viewpoint derived from the French philosopher, Montesquieu that a republic was possible only in relatively small societies governed by a direct democracy or a large legislature with small districts.



**B. The March to the Finish**

The vote by the Virginia ratification convention was essential and somewhat close. The New York vote was even closer and put the Constitution “over the top.” At this point, North Carolina and Rhode Island had little choice but to join.

**C. Did the Majority of Americans Support the Constitution?**

1. **Beard’s Thesis.** Historian Charles Beard argued that the Constitution was put through by an undemocratic elite intent on the protection of property.
2. **State Ratifying Conventions.** These conventions were elected by a strikingly small part of the total population.
3. **Support Was Probably Widespread.** The perception that a strong central government was necessary to keep order and protect the public welfare appears to have been widespread among all classes, rich and poor alike.

**★ Politics and Economics: THE POST-REVOLUTIONARY DEPRESSION****VII. The Bill of Rights**

**A. A “Bill of Limits”** Although called the Bill of Rights, the first ten amendments to the Constitution essentially were a “bill of limits,” because the amendments limited the powers of the national government over the rights and liberties of individuals.

1. **Was a Bill of Rights Necessary?** Many framers thought that it was dangerous to enumerate specific civil liberties in a bill of rights.
2. **Madison Drafts the Bill.** The package was assembled by Madison, who culled through almost two hundred state suggestions.

**B. Adoption of the Bill of Rights**

Contrary to popular belief, the Bill of Rights did not apply to state governments. The restrictions only were applicable to the national government until the Fourteenth amendment incorporated some of these rights. Even though these restrictions were only applicable to the national government, they were nevertheless still very important for the protection of the people.

**VIII. Altering the Constitution: The Formal Amendment Process**

The founders realized the Articles of Confederation were too difficult to alter. Therefore, the amendment process to the Constitution was made less difficult, but it still would be a rigorous process. The basic reasoning for this was that every government needs to be able to cope with new and unforeseen problems and changes in the original document would be necessary. However, any change should be taken with extreme caution. If the process to amend the Constitution is rigorous, there should be ample time to consider the merits of such a change.

**A. Many Amendments Proposed, Few Accepted**

How difficult is it to amend the Constitution? From 1789 through 2002, twenty-seven amendments have been ratified, which represents one amendment every 7.8 years—a misleading ratio as 10 of those amendments came within the first four years. From 1791 through 2002 there have only been seventeen amendments, a number which represents one amendment every 12.4 years. Although there are always numerous recommendations for alterations to the

Constitution, few of these recommendations, especially controversial ones, have a realistic chance of success.

**B. Limits on Ratification**

Recent amendments have usually been accompanied by time limits for ratification, though this is not a Constitutional requirement.

**C. The National Convention Provision**

Such a convention could be called and could rewrite the entire Constitution. Naturally, many people find this possibility frightening. The product of such a convention, however, would have to be ratified by the states in the same way as any amendment.

**IX. Informal Methods of Constitutional Change**

While it is very difficult to amend the Constitution, the Constitution has changed through interpretation. Since the case of *Marbury v. Madison*, the federal courts have made major decisions concerning the meaning of the Constitution.

**A. Congressional Legislation**

Such interpretation has not been limited to the federal judiciary. Both the legislative and executive branches have interpreted the Constitution. Once an interpretation has been made and there is no challenge to this type of action, there has been a change in the meaning of the Constitution.

**B. Presidential Actions**

These actions, including the use of executive agreements, can affect the interpretation of the Constitution as well. *Key concept: executive agreements* are an international agreement between chiefs of state that does not require legislative approval.

**C. Judicial Review**

*Key concept: Judicial Review* is the power of the courts to declare a law or action unconstitutional, as decided in *Marbury v. Madison*.

1. **Not a Novel Concept.** It was based on English and colonial traditions.
2. **Allows Court to Adapt the Constitution.** The rejection of “separate-but-equal” (Jim Crow laws) is an example.

**D. Interpretation, Custom, and Usage**

Ultimately, the Constitution is not just the short document in the appendix to Chapter 2, but the entire body of judicial and other understandings that have grown up to implement it.

★ **Which Side Are You On? IS THE SUPREME COURT RIGHT ABOUT HEALTH-CARE REFORM?**

Should the legislation be struck down or should it be allowed to stand? Opposing views presented.

★ **Why Should You Care About ... THE CONSTITUTION?**

★ **E-mocracy: THE INTERNET AND OUR CONSTITUTION**



## LECTURE LAUNCHERS

1. Why did the British place restrictions on the colonies?
2. Does it matter how the term *people*, as used in the Declaration of Independence, is defined? Did the members of the Second Continental Congress mean all people? What of the rights of women? What of the rights of Native Americans? What of the rights of slaves?
3. What was one of the major deletions to Jefferson's first draft of the Declaration of Independence? (Slavery.) Why was this provision deleted? (To gain the support of pro-slavery states.) Does the deletion of the condemnation of slavery statement reduce the impact of the concept of "inalienable rights"? Remember that inalienable means incapable of being transferred to a new owner.
4. What is radical about the Declaration of Independence?
5. What were the major defects of the Articles of Confederation?
6. What was Madison attempting to achieve with his separation of powers and checks and balances?
7. What would have occurred if one or more of the states had rejected the Constitution? If a large state like New York or Virginia had voted to reject the Constitution, would the United States have taken economic and/or political sanctions against such a state? Could a single state have managed to survive outside the union of states? (Rhode Island could be an example.)
8. How difficult is it to amend the Constitution? How difficult should it be to make alterations in the Constitution? What are the problems, if a constitution is easy to amend? What are the problems, if a constitution is difficult to amend? How can the Constitution take on new meanings without formal amendments?
9. What would have happened without the case of *Marbury v. Madison*? Would the concept of judicial review have come about? Why is judicial review important?
10. Which amendments have served to make the Constitution more "democratic"?
11. What would the founders say about the ability of the president to use a line-item veto on legislation passed by Congress?
12. What are some of the other methods to bring about change to the Constitution?

## IN-CLASS ACTIVITIES

1. Write a Bill of Rights for your class. (This exercise will help to illustrate rights of the individual (student) versus rights of the government (instructor). What rights and responsibilities should students have? What rights and responsibilities should the instructor have? (Consider, for example, cheating. Should there be probable cause before an accusation is made? Who should decide? Who should control the punishment? Are their rights that students should have with which the instructor cannot interfere?)
2. Propose a new policy for the class. (Example: essay exams versus objective exams). This exercise will help to illustrate popular vote versus representative vote and also bicameral voting. Take a vote from the entire class. Then take the same vote but by rows, with half

of the rows representation based upon their population and the other half of the rows based upon “rowhood” or two votes per row. Is there a different outcome?

## □ KEY TERMS

**Anti-Federalist** An individual who opposed the ratification of the new Constitution in 1787. The Anti-Federalists were opposed to a strong central government.

**bicameral legislature** A legislature made up of two parts, called chambers. The U.S. Congress, composed of the House of Representatives and the Senate, is a bicameral legislature.

**checks and balances** A major principle of the American system of government whereby each branch of the government can check the actions of the others.

**confederation** A political system in which states or regional governments retain ultimate authority except for those powers they expressly delegate to a central government; a voluntary association of independent states, in which the member states agree to limited restraints on their freedom of action.

**electoral college** A group of persons called electors selected by the voters in each state and the District of Columbia (D.C.). This group officially elects the president and vice president of the United States. The number of electors in each state is equal to the number of each state’s representatives in both chambers of Congress. The Twenty-third Amendment to the Constitution grants D.C. as many electors as the state with the smallest population.

**executive agreement** An international agreement between chiefs of state that does not require legislative approval.

**executive order** A rule or regulation issued by the president that has the effect of law. Executive orders can implement and give administrative effect to provisions in the U.S. Constitution, treaties, or statutes.

**federal system** A system of government in which power is divided between a central government and regional, or subdivisional, governments. Each level must have some domain in which its policies are dominant and some genuine political or constitutional guarantee of its authority.

**Federalist** The name given to one who was in favor of the adoption of the U.S. Constitution and the creation of a federal union with a strong central government.

**Great Compromise** The compromise between the New Jersey and Virginia Plans that created one chamber of the Congress based on population and one chamber representing each state equally; also called the Connecticut Compromise.

**judicial review** The power of the Supreme Court and other courts to declare unconstitutional federal or state laws and other acts of government.

**Madisonian model** A structure of government proposed by James Madison in which the powers of the government are separated into three branches: executive, legislative, and judicial.

**natural rights** Rights held to be inherent in natural law, not dependent on governments. John Locke stated that natural law, being superior to human law, specifies certain rights of “life, liberty, and property.” These rights, altered to become “life, liberty, and the pursuit of happiness,” are asserted in the Declaration of Independence.

**ratification** Formal approval.

**representative assembly** A legislature composed of individuals who represent the population.

**separation of powers** The principle of dividing governmental powers among different branches of government.

**social contract** A voluntary agreement among individuals to secure their rights and welfare by creating a government and abiding by its rules.

**state** A group of people occupying a specific area and organized under one government. It may be either a nation or a subunit of a nation.

**supremacy doctrine** A doctrine that asserts the priority of national law over state laws. This principle is stated in Article VI of the Constitution, which provides that the Constitution, the laws passed by the national government under its constitutional powers, and all treaties constitute the supreme law of the land.

**unicameral legislature** A legislature with only one legislative chamber, as opposed to a bicameral (two-chamber) legislature, such as the U.S. Congress. Today, Nebraska is the only state in the Union with a unicameral legislature.

## ■ WEB LINKS

A list of proposed amendments to the U.S. Constitution:

([http://en.wikipedia.org/wiki/List\\_of\\_proposed\\_amendments\\_to\\_the\\_United\\_States\\_Constitution](http://en.wikipedia.org/wiki/List_of_proposed_amendments_to_the_United_States_Constitution))

Each State Has Its Own Bill of Rights; here is one example, the California State Bill of

Rights: ([http://www.leginfo.ca.gov/const/article\\_1](http://www.leginfo.ca.gov/const/article_1))

How to Call a Convention Today (<http://callaconvention.org/resolution.php>)

Reform Options for the Electoral College: ([http://archive.fairvote.org/e\\_college/reform.htm](http://archive.fairvote.org/e_college/reform.htm))

## ■ INSTRUCTOR RESOURCES

**Bodenhamer, David J.** *The Revolutionary Constitution*. New York: Oxford UP, 2012. PRINT. Bodenhamer, a professor of history, emphasizes the novelty of the Constitution and describes how interpretations of the document have changed as our nation developed.

**Maier, Pauline.** *Ratification: The People Debate the Constitution, 1787–1788*. New York: Simon & Schuster, 2011. PRINT. Maier, a professor at M.I.T., charts the Constitution's uncertain course toward ratification.

**Okrent, Daniel.** *Last Call: The Rise and Fall of Prohibition*. New York: Scribner, 2010. PRINT. Okrent, an editor at the *New York Times*, tells the story of America's greatest constitutional folly—the 1919 amendment to ban alcoholic beverages. The result was a huge crime wave that did not abate until Prohibition was repealed by another amendment in 1933.

**Wood, Gordon S.** *The Idea of America: Reflections on the Birth of the United States*. New York: Penguin Press, 2011. PRINT. Wood, a professor at Brown University, may be the most prominent living scholar of the revolutionary era. This collection of essays summarizes his life's work. Wood emphasizes the radicalism of the American Revolution, which truly did result in an entirely new conception of politics.

**MEDIA RESOURCES**

***John Adams***—A widely admired 2008 HBO miniseries on founder John Adams and his wife, Abigail Adams, and other prominent Americans of the revolutionary period. The series is largely based on David McCullough's book *John Adams*.

***Thomas Jefferson***—A 1996 documentary by acclaimed director Ken Burns. The film covers Jefferson's entire life, including his writing of the Declaration of Independence, his presidency, and his later years in Virginia. Historians and writers interviewed include Daniel Boorstin, Garry Wills, Gore Vidal, and John Hope Franklin.