

# AP American Government

## WILSON, CHAPTER 2

### The Constitution



#### OVERVIEW

The Framers of the Constitution sought to create a government capable of protecting liberty and preserving order. The solution they chose—one without precedent at that time—was a government based on a written constitution which combined the principles of popular consent, separation of powers, and federalism.

Popular consent was most evident in the procedure for choosing members of the House of Representatives. However, popular consent was limited by the requirements that senators be elected by their state legislatures and presidents by the Electoral College. Powers were separated among branches that then had to cooperate to effect change. Thus, separation of powers was joined with a system of checks and balances. This, it was hoped, would prevent tyranny, even by a popular majority.

Federalism came to mean a system in which both the national and state governments had independent authority. Allocating powers between these two levels of government and devising means to ensure that neither large nor small states would dominate the national government required the most delicate compromises at the Philadelphia convention. The Framers' decision to protect the institution of slavery was another compromise, which presumably helped to ensure the Constitution's ratification by states engaged in the slave trade.

In the drafting of the Constitution and the struggle for its ratification, the positions people took were determined by a variety of factors. In addition to their economic interests, these included profound differences of opinion over whether the state governments or the national government would be the best protector of personal liberty.

#### OBJECTIVES

The purpose of this chapter is to introduce students to the historical context within which the United States Constitution was written. After reading and reviewing the material in this chapter the student should be able to do each of the following:

- Explain the notion of “higher law” by which the colonists felt they were entitled to certain “natural rights.” List these rights.
- Compare the basis on which the colonists felt a government could be legitimate.
- List and discuss the shortcomings of government under the Articles of Confederation.
- Compare and contrast the Virginia and New Jersey plans, and show how they led to the “Great Compromise.”
- Explain why separation of powers and federalism became key parts of the Constitution.
- Explain why a bill of rights was not initially included in the Constitution and why it was added.
- List and explain the two major types of constitutional reform advocated today, along with specific reform measures.

# OUTLINE

- I. The problem of liberty
  - A. Colonists were focused on traditional liberties
    - 1. The right to bring legal cases before independent judges
    - 2. The right to not have to quarter troops in their homes
    - 3. The right to trade without burdensome restrictions
    - 4. The right to pay no taxes which they had not had direct representation in establishing
    - 5. They came to see independence as possible because they had lost confidence in the English constitution
  - B. The colonial mind
    - 1. Believed that men seek power because they are ambitious, greedy and easily corrupted
    - 2. Believed in a higher law embodying natural rights
      - a) Life
      - b) Liberty
      - c) Property (Jefferson changed this to “pursuit of happiness”)
    - 3. A war of ideology, not economics
    - 4. Declaration of Independence cited specific complaints against George III for violating inalienable rights
  - C. The real revolution
    - 1. The “real” revolution was the radical change in belief about what made authority legitimate and liberties secure
    - 2. Government exists by consent of the governed, not by royal prerogative
    - 3. Political power exercised by direct grant of power in a written constitution
    - 4. Human liberty exists prior to government and government must respect liberty
    - 5. Legislative branch created as superior to executive branch because the legislature directly represents the people
  - D. Weaknesses of the confederation (Articles of Confederation)
    - 1. Could not levy taxes or regulate commerce
    - 2. Sovereignty, independence retained by states
    - 3. One vote in Congress for each state
    - 4. Nine of thirteen votes in Congress required for any measure
    - 5. Delegates to Congress picked, paid for by state legislatures
    - 6. Little money coined by Congress
    - 7. Army small and dependent on independent state militias
    - 8. Territorial disputes between states led to open hostilities
    - 9. No national judicial system
    - 10. All thirteen states’ consent necessary for any amendments
- II. The Constitutional Convention
  - A. The lessons of experience
    - 1. State constitutions
      - a) Pennsylvania: radically democratic, but trampled minority rights—government was too strong
      - b) Massachusetts: less democratic: directly elected governor, but electors and officials had to own property; clear separation of power
    - 2. Shays’s Rebellion (Massachusetts) brought fear that states about to collapse from internal dissension
  - B. The Framers

1. Fifty-five (55) attending: men of practical affairs, including Continental army veterans and members of the Congress of the Confederation
  2. Absent: Thomas Jefferson, John Adams, Samuel Adams, Patrick Henry
  3. An entirely new constitution was written, although the gathering was authorized only to revise Articles
  4. Primary concern was with defense of liberty as a natural right (based in Lockean reasoning)
  5. Doubt that popular consent alone could guarantee liberty: fear of tyranny of the majority
  6. “A delicate problem:” how could government be strong enough to preserve order but not threaten liberty
- III. The challenge
- A. The Virginia Plan
    1. Strong national government organized into three branches
    2. Bicameral legislature
    3. Executive and members of the national judiciary were chosen by legislature
    4. Council of revision (executive and some judiciary branch members) with veto power; legislature could override the veto
    5. Two key features of the plan:
      - a) National legislature with supreme powers
      - b) One legislative house elected directly by the people
  - B. The New Jersey Plan
    1. Submitted as alternative to Virginia Plan
    2. Generated from a fear that legislative representation would be based on population, allowing the more populated states to always out-vote the less populated states
    3. Sought to amend rather than replace the Articles of Confederation
    4. Proposed one vote per state, so Congress would be the creature of the state governments
    5. Protected small states’ interests while enhancing power of national government
  - C. The Great Compromise (or Connecticut Compromise)
    1. House of Representatives based on population and directly elected by people
    2. Senate composed of two members per state and elected by state legislatures
    3. Reconciled interests of large and small states—the former dominated in the House of Representatives, the latter in the Senate
- IV. The Constitution and democracy
- A. Founders did not intend to create direct democracy
    1. Physical impossibility in a vast country
    2. Founders also mistrusted popular passions and were concerned to secure minority rights
    3. Intended instead to create a republic, a government by representation
  - B. Popular rule only one element of new government
    1. State legislators to elect senators
    2. Electors to choose president
    3. Two kinds of majorities: voters (for example, the House of Representatives) and states (for example, the Senate)
    4. Judicial review another limitation, though one not necessarily intended by Founders
    5. Amendment process
  - C. Key principles of representative government in the U.S.
    1. Separation of powers: between branches of the national government

2. Federalism: power divided between national and state governments
  3. Three categories of governmental powers
    - a) Enumerated powers: given to the national government exclusively; include power to print money, declare war, make treaties, conduct foreign affairs
    - b) Reserved powers: given exclusively to the states; include power to issue licenses and to regulate commerce wholly within a state
    - c) Concurrent powers: shared by both national and state governments; include collecting taxes, building roads, borrowing money, having courts
  4. Checks and balances allow national institutions to check each others' powers (see How Things Work box)
- D. Government and human nature
1. Founders' central belief: people would seek their own advantage, in and out of politics
  2. Government based on popular consent was possible, but not inevitable
    - a) Aristotelian view (championed by Samuel Adams): government should improve human nature by cultivating virtue
    - b) Madisonian view: cultivation of virtue would require a government too strong, too dangerous; self-interest should be freely pursued within limits
  3. Factionalism could be harnessed to provide a source of unity and guarantee of liberty
    - a) Separation of powers enables each branch to check the others
    - b) Federalism enables one level of government to act as a check on another
- V. The Constitution and liberty
- A. Whether proposed constitution respected personal liberties was a primary debate during ratification
1. Required ratification by conventions in at least nine states—the most democratic feature of the Constitution
  2. Ratification process was technically illegal—the Articles, which still governed, could be amended only with unanimous agreement of the thirteen states
  3. Framers knew that unanimity was not possible—the North Carolina and Rhode Island conventions did initially reject the Constitution
- B. The Antifederalist view
1. Liberty could be secure only in small republics
    - a) Otherwise national government would be distant from people, becoming tyrannical
    - b) Strong national government would use powers to annihilate state functions
  2. Nation needed, at best, a loose confederation of states with most of the power wielded by the state legislatures
  3. If there was a strong national government, there should be many more restrictions on it
  4. Madison's response (*Federalist* #10 & #51): personal liberty safest in large (extended) republics
    - a) Coalitions were then more likely to be moderate because there would be a greater diversity of interests to be accommodated
    - b) Government should be somewhat distant from the people to be insulated from their passions
  5. Reasons for the absence of a bill of rights
    - a) Several guarantees in Constitution already
      - (1) *Habeas corpus*
      - (2) No bill of attainder
      - (3) No *ex post facto* law

- (4) Trial by jury in criminal cases
    - (5) Citizens of each state guaranteed the privileges and immunities of citizens of every other state
    - (6) No religious tests for federal office
    - (7) No state could pass a law impairing the obligation of contracts
  - b) Most states had bills of rights
  - c) Intent in writing the Constitution was to limit federal government to specific powers
- C. Need for a bill of rights
  - 1. Ratification impossible without one
  - 2. Promise by key leaders to obtain one
  - 3. Bitter ratification, narrowly successful
  - 4. Twelve amendments approved by Congress; 10 ratified by the states and went into effect in 1791
- D. The Constitution and slavery
  - 1. Slavery was addressed in three provisions of the Constitution
    - a) House of Representatives apportionment—the “three-fifths compromise”
    - b) Congress could not prohibit slave trade before 1808
    - c) Fugitive slave clause
  - 2. Necessity of compromise: the Constitution would not have been ratified and slavery would have continued under the Articles of Confederation—with no prospective challenge possible
  - 3. Legacy: civil war, social and political catastrophe
- VI. The motives of the Framers
  - A. Economic interests at the convention
    - 1. Economic interests of Framers varied widely
    - 2. Charles Beard: those who supported the Constitution expected to benefit economically from it
    - 3. No clear division along class lines found by historians in the 1950s
    - 4. More recent research (1980s) suggests state economic considerations outweighed personal considerations
    - 5. Exception: slaveholders voted to minimize national government influence over slaveholding
  - B. Economic interests and ratification
    - 1. Economic factors played larger role in state-ratifying conventions
    - 2. More likely to vote in favor of ratification: merchants, urban, owned western land, held government IOUs, and did not own slaves
    - 3. Less likely to vote in favor of ratification: farmers, held no government IOUs, owned slaves
  - C. The Constitution and equality
    - 1. Contemporary critics: government today is too weak
      - a) Bows to special interests that foster economic inequality
      - b) Changing views of liberty and equality are reflected in this criticism
    - 2. Framers were more concerned with political inequality—they wanted to guard against political privilege
- VII. Constitutional reform—modern views
  - A. Reducing the separation of powers to enhance national leadership
    - 1. Urgent problems cannot be solved—gridlock
    - 2. Also, government agencies are exposed to undue interference from legislators and special interests

3. Proposed remedy: President should be more powerful and held accountable to voters
  4. Proposed remedies to allow government to be more proactive and decisive:
    - a) Allow Congress members to serve concurrently in Cabinet
    - b) Allow president to dissolve Congress and call for a special election
    - c) Empower Congress to call for a special presidential election before the end of a president's term, when the president has lost the nation's confidence
    - d) Require presidential/congressional candidates to run as a team in each congressional district
    - e) Establish single six-year term for president
    - f) Lengthen terms in House to four years so elections would be concurrent with the president
  5. Results uncertain, worse from these reforms?
- B. Making the system less democratic
1. Government does too much, not too little
  2. Attention being given to special-interest claims rather than long-term values
  3. Proposals to cut back on government activism
    - a) Limit amount of taxes collected
    - b) Require a balanced budget
    - c) President gained enhanced rescission authority (a delimited line-item veto) in 1996; this was overturned in 1998
    - d) Limit the authority of federal courts
  4. Changes unworkable or open to evasion?
- C. Who is right?
1. Constitution not based in abstract reasoning or unproven factual arguments
  2. Crucial questions to ask when considering Constitutional reform
    - a) How well has it worked in history?
    - b) How well has it worked in comparison with the constitutions of other democratic nations?