# Constitutional Development

The American people constructed their respective state governments from their theory that smaller was better and a non-existent central government was best. Benjamin Rush, a signer of the Declaration of Independence and a civic leader in Philadelphia, made an argument for a stronger national government. The colonists were not prepared to accept a strong national government at the time of their declaration of independence.

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*I confess that there are several parts of the Constitution which I do not at present approve, but I am not sure I shall never approve them. For, having lived long, I have experienced many instances of being obliged, by better information or fuller consideration, to change opinions, even on important subjects, which I once thought right, but found to be otherwise. It is therefore that, the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others … In these sentiments, sir, I agree to this Constitution, with all its faults, if they are such; because I think a general government necessary for us.*Benjamin Franklin

## “Wrong Road”

The American people constructed their respective state governments from their theory that smaller was better and a non-existent central government was best. Quickly, reality proved that some of their theories were based on flawed assumptions that could only be corrected by creating exactly what they fought against—a federal government. Benjamin Rush, a signer of the Declaration of Independence and a civic leader in Philadelphia, made an argument for a stronger national government by explaining:

We had just emerged from a corrupted monarchy. Although we understood perfectly the principles of liberty, yet most of us were ignorant of the forms and combinations of power in republics.

This time period could be seen as a mistake. However, Elder Jeffrey R. Holland’s story about a “wrong road” might be a better way to look at this experience. Elder Holland and his son were visiting the Grand Canyon on an outing together many years ago. By the time they started back home, it was dusk. Getting lost in the dark became a dangerous possibility. Eventually, they came to a fork in the road, and, after praying about it, both Elder Holland and his son felt impressed to take the road on the left. They drove a couple of hundred yards and quickly found a dead end. Elder Holland went back and took the road on the right. His son, feeling confused, asked Elder Holland why they had a strong impression to go down the wrong road. Elder Holland replied:

The Lord has taught us an important lesson today. Because we were prompted to take the road to the left, we quickly discovered which one was the right one … [so we could turn around, and feel] perfectly confident we were headed in the right direction.

The colonists were not prepared to accept a strong national government at the time of their declaration of independence. Perhaps the American people, like Elder Holland, needed to go down the “wrong road” by implementing the Articles of Confederation in order to accept that a written constitution would have a more stabilizing influence between the states and more effectively secure the rights outlined in the Declaration of Independence.

## I. Timeline of Events

We will not have time to discuss each of these events in depth, nor can all the pivotal events that led to the formation of the U.S. Constitution fit in one page. However, it does help to see how history does not move as fast as our ability to turn pages while reading a book.

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| **Date** | **Event** |
| September 1, 1774 | **Paul Revere’s Ride**  : Announcing to the People in Massachusetts that the British were coming to take their gunpowder. |
| September 5–October 26, 1774 | **First Continental Congress**  : The British coming caused the colonists to meet to figure out what to do. |
| April 19, 1775 | **Battle of Lexington & Concord**  : “The Shots Heard Around the World” and seen as the beginning of the American Revolution. |
| June, 1775 | **Second Continental Congress**  : Appoints George Washington to create Continental Army |
| January 10, 1776 | **Publication of *Common Sense***  : Thomas Paine published  *Common Sense*  to try to persuade the people to break ties with England. |
| July 4, 1776 | *Declaration of Independence*  **Ratified**  : The  *Declaration of Independence*  was ratified and the 13 colonies became 13 states. |
| February 1777 | **Smallpox Epidemic**  : Washington makes the tough decision to inoculate his soldiers with smallpox to prevent destruction of his army. |
| November 1777 | **Articles of Confederation & Bank of North America**  : Congress creates the Articles of Confederations and the Bank of North America to help colonists be united and to help raise funds for the army. |
| February 1778 | **French Alliance with American Colonies**  : Congress and the Bank of North America had a tough time funding and supplying the army; the alliance with France helped them accomplish this. |
| February 1781 | **All States Ratify Articles of Confederations**  : Ratification of the Articles of Confederations formalizes the Confederation Congress. |
| September 3, 1783 | **Treaty of Paris**  : King George III officially signs the Treaty of Paris, ending war and declaring American colonies free and independent. |
| February 1784 | **The Land Ordinance of 1784**  : The Land Ordinance of 1784 expanded land boundaries north and west of Ohio River, but passing and regulating this Act started to show the weaknesses of the Articles of Confederation. |
| March 1785 | **Mt. Vernon Conference**  : James Madison asked Washington to oversee discussion between delegates of Virginia and Maryland concerning trade disagreements. This is a prototype for future Constitutional Convention. |
| May 1786 | **Land Ordinance of 1785**  : Allows for Congress to collect revenue by selling land. Congress was  **not**  allowed to tax, print, or borrow money. |
| August 1786 | **Shays’ Rebellion**  : Daniel Shays led a group of farmers, who were former Revolutionary soldiers, to attack courthouses in Massachusetts because of the foreclosures and tax laws. |
| September 1786 | **Annapolis Convention**  : 5 states gathered to discuss issues concerning trade barriers and uprisings; Madison argued for stronger national government. |
| May 25, 1787 | **Constitutional Convention**  : The Constitutional Convention began in Philadelphia. |
| July 13, 1787 | **The Northwest Ordinances**  : Congress passes the Northwest ORdinance which keeps new territories free of slavery. This matters more as expansion begins and more free states start to become part of the union. |
| July 16, 1787 | **Great Compromise Accepted**  : The Great Compromise preserved the debate because some delegates were about to leave concerning representation in Congress. |
| September 17, 1787 | **39 Delegates Sign the U.S. Constitution**  : The U.S. Constitution was ready to be sent to the people to ratify in each of the states. |
| October 27, 1787 | **The Federalist Papers**  : Essays appear in newspapers to try and persuade the public to ratify the U.S. Constitution. |
| June 21, 1788 | **The U.S. Constitution becomes Law** |
| April 30, 1789 | **George Washington becomes First U.S. President** |

## II. Revolution + Republics + Articles = Anarchy?

### A. Revolution (1775–1783)

The American Revolutionary War started before the American Colonists formally declared independence or the Articles of Confederation were written and ratified by the states. George Washington had the difficult task of persuading men to serve in the Continental Army because of the challenges in their path. Listed below are some issues they were facing besides enemy combatants:

#### Money

The Continental Congress printed Continental money, but people would not accept it. As officers tried to feed their soldiers, they complained, “the farmers would not sell and the millers would not grind for Continental money.”

This depreciation of the Continental money caused colonial leaders concern over whether they could continue to fund the war. “Even a Failure cannot be more fatal than to remain in our present situation. In short some enter-prize must be undertaken in our present Circumstances or we must give up the cause.”

Consequently, General Washington tried to shorten the war in order to prevent these economic troubles.

#### Disease

A quote by John Adams perfectly explains the devastating effect smallpox had on the Continental Army. “Our misfortunes in Canada are enough to melt the heart of a stone. The smallpox is ten times more terrible than Britons, Canadians and Indians, together.”

Additionally, the British soldiers were more immune as a whole because of the presence the disease already had in their country. However, because it was not as prevalent on the American continent it killed one in every three people who contracted the disease. George Washington made the difficult decision to inoculate his soldiers to prevent a bigger, more deadly outbreak. In many cases, they would inoculate soldiers by picking the scabs of those soldiers who had recently died from smallpox in order to expose themselves to the live organism. It was a success, and less than 1% of soldiers died from the process.

#### Supplies

One of the struggles of the American Revolution was the lack of supplies. Author and university professor, David Hackett Fischer writes:

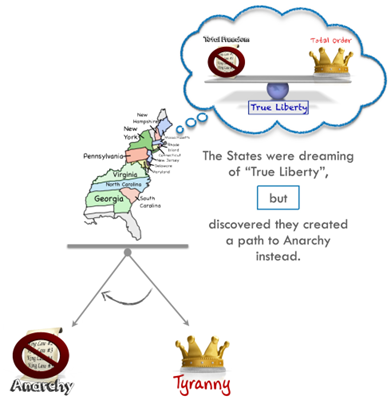
The household economy of early America was incapable of supplying Continental troops with clothing and shoes. …one ‘peaceable man’ watched American troops march by and observed ‘if the War is continued thro the Winter, the British troops will be scared at the sight of our Men, for as they had never fought with Naked Men.The story of supply in the Continental army is a drab subject, much neglected in most histories of these events, but it had a drama of its own. The American Revolution was yet another instance of Rommel’s Law that battles are won or lost by the quartermasters before the first shot is fired.

Each one of these three examples could have caused the American colonists to lose their war for independence.

### B. The New State Republics (1776–1787)

Following the Declaration of Independence, each of the thirteen original colonies wrote a state constitution. Each of the states were to become a small republic, based on democratic and republican principles, to protect the people’s rights. Most of the power was given to a legislative branch, which was designed to be virtuous and law based. As Larry Schweikart and Michael Allen wrote, “all of the constitution makers acknowledged the almost sacred nature of writing constitutions and sharply differentiated that process from that of merely passing legislation.” Unfortunately, many state constitutions failed to provide the peace and tranquility the people had hoped for, because the individual legislatures were not prepared for government.

George Washington, talking about this corruption, said, “The inefficiency of state governments indicates we have errors to correct.” James Wilson, another founder and signer of the Declaration, feared that “the legislature [was] swallowing up all the other powers. James Madison called the atmosphere in many of the state legislatures undependable: “revised laws have been altered, re-altered, made better, made worse; and kept in such a fluctuating position, that persons in civil commission scarce know what is law … This is the grievance complained of in all our republics.”



The colonists wanted the state republics to restore balance to their lives. Instead, the state legislatures had replaced King George’s tyranny with their own anarchy. Majority factions in the state legislatures dominated, with no executive branch to either check the power of the legislatures or enforce state laws.

### C. Articles and Anarchy (1781–1787)

The Articles of Confederation created the first post-independence national government. It had many problems; the table included below gives a brief explanation of the weaknesses created by the Articles and the outcomes of those weaknesses. We will not be able to discuss all of these weaknesses, but we will address three main problems that were apparent from the beginning.

#### Articles of Confederation

|  |  |
| --- | --- |
| **Weakness** | **Outcome** |
| Congress had no power to levy or collect taxes. | The government was always short of money. |
| Congress had no power to regulate foreign trade. | Quarrels broke out among states and trading with other countries was difficult. |
| Congress had no power to enforce its laws (in other words, no police force). | The government depended on the states for law enforcement. |
| Approval of 9 out of 13 states was needed to enact laws. | 69% approval to enact laws made it difficult to pass laws. |
| 13 states needed to approve amendments to the Articles. | 100% approval for amendments was impossible to obtain. |
| The government had no executive branch (in other words, police power). | There was no effective way to coordinate the work of government. |
| There was no national court system. | The central government had no way to settle disputes among the states. |

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| **Colonies** | **Estimated Population from 1780 Census** |
| **Northern Colonies** |
| Maine | 53,500 |
| New Hampshire | 84,500 |
| Vermont | 40,000 |
| Massachusetts | 307,000 |
| Rhode Island | 52,000 |
| Connecticut | 203,000 |
| **Middle Colonies** |
| New York | 200,000 |
| New Jersey | 137,000 |
| Pennsylvania | 335,000 |
| Delaware | 37,000 |
| **Southern Colonies** |
| Maryland | 250,000 |
| Virginia | 520,000 |
| North Carolina | 300,000 |
| South Carolina | 160,000 |
| Georgia | 55,000 |

#### One Branch of Government

First, the Articles of Confederation only had the legislative branch. Furthermore, the legislature poorly represented the people—despite population differences, each of the 13 states only had one vote. To give you an idea of the population differences, the chart on the right comes from a 1909 report by the U.S. Department of Commerce and Labor. In 1780, Virginia had a population of 520,000 versus Delaware with only 37,000 people. It is understandable why the larger populated states did not think this was a fair arrangement.

#### No Power to Raise Money

Second,the government had no way to raise money. In general, governments obtain funds in three ways: taxing, borrowing, or printing. The Articles of Confederation did not give the government power to do any of these. At the time, Americans were extremely fearful of taxation, so only the states had the power to tax. The central government had no credit because foreign countries were wary of lending money to a country that had no way to pay back those debts. In addition, there was no uniform national currency, leaving states to print and coin their own money. If Congress wanted money they had to beg for it from the states, and the states rarely obliged. All government action requires money, so the Congress was powerless to act meaningfully.

#### No Authority to Negotiate

Third, the country didn’t have a foreign policy because it had no authority. Authority comes from power. Congress did not have power over the states. Instead, each state had its own foreign relations and trade agreements. The army they had cobbled together during the Revolution had dissolved once the war ended. This rendered treaties toothless. States were putting tariffs and trade restrictions on other states and arguing over navigation rights of rivers and ports. There was also no judicial branch to settle interstate disputes. With a lack of unity and structure, the 13 states operated more like 13 different countries.

After 1776, The US government was too weak to protect people’s rights through the rule of law. In fact, the Articles of Confederation nearly led to disaster a few times.

One near disaster was Shays’s rebellion. Daniel Shays had sacrificed greatly for the cause of independence, and he understood the injustices of excessive taxation. During the war, Shays had to be away from his farm. Over the course of the war, Shays—along with many other farmers—found himself in debt.

Still, the Massachusetts tax collectors showed up and demanded payment. Shays was irate. To him, this was completely backward: he shouldn’t be giving money to the government, he should be getting money from the government. Afterall, he was in dire straits because of the war.

Shays had just finished fighting one war against unjust taxation and had no problem fighting another one. He organized his neighbors into an armed mob. They ran the tax collectors off, marched on the courts that had ordered these collections, and overthrew the local government. They were heading to seize a weapons arsenal to overthrow the state when the Massachusetts militia showed up and put down the uprising. This event is known as Shays’s Rebellion. People lost their lives, liberties, and properties because the government lacked the power to protect them or to collect taxes to pay Revolutionary War veterans.

This made Americans nervous. In particular, James Madison realized that the government under the Articles was not strong enough to secure liberty. Americans had so despised the tyranny of King George that they had gone too far into anarchy.

## III. Convention or Bust!

There are three men that were essential to making the Constitutional Convention (a meeting to address the weak central government) happen. One historian describes it this way: “Among those who began early to work for reform, three names stand out: Washington, Madison and Hamilton.” Each of these men had concerns about the young nation falling into anarchy because of division. Madison and Washington exchanged letters during the time of Shays’ Rebellion speaking to this worry.

James Madison wrote,

No morn ever dawned more favorable than ours did—and no day was ever more clouded than the present!

George Washington responded,

[The country appears] fast verging to anarchy and confusion. What stronger evidence can be given of the want of energy in our governments than these disorders? Will not the wise and good strive hard to avert this evil?

Alexander Hamilton also believed that a stronger central government was necessary to bring stability and peace to the fractured union. To him, central governments were the institutions that had the authority to make trade policy. The increasing trade disputes “persuaded Hamilton that unless a new federal government with a monopoly on customs revenues was established, disunion would surely ensue. As individual states developed interests in their own taxes, they would be less and less likely to sacrifice for the common good.” These men recognized the problems and threats against the Declaration of Independence, so they decided to organize an effort to amend the Articles of Confederation.

### George Washington: Stabilizing Factor



Madison persuaded Washington to come to the convention as the meeting’s president, just like Washington had done at the Mt. Vernon convention in 1785. Washington understood the implications of his presence and rose to the occasion. He wore his military uniform when he accepted the meeting’s presidency on May 25, 1787, and he presided with the firm, quiet dignity of a judge, speaking rarely and keeping delegates in line. Washington’s presence and behavior during the convention helped inspire the delegates to imagine how an executive branch could exist in their new government. “Pierce Butler of South Carolina opined that they would not have made it so strong ‘had not many members cast their eyes toward General Washington as president and shaped their ideas of the powers to a president by their opinions of his Virtue.’”

### James Madison: Political Philosopher



Madison formulated his ideas of a strong government through persistent reading, studying, and personal observation. In the spring and summer of 1786, he built up a knowledge for writing a constitution by having Thomas Jefferson send him books “by the hundreds from Europe—histories of confederations from ancient Greece to modern Switzerland in French and Latin as well as English, works of political theory from the Enlightenment and earlier.” Madison was more convinced from these studies and through his experience that “confederacies fail when they lack a strong central authority.”

Once Hamilton proposed another convention for 1787, Madison began to lay the groundwork for his constitutional theory in his written analysis, “Vices of the Political System of the United States.” As he worked out his theories on paper, Madison presented a prepared agenda. This agenda, called the Virginia Plan, was really an outline of a new republican form of government. It became the starting point for the delegates to debate. This is why Madison is known as the “Father of the Constitution.”

### Alexander Hamilton: Visionary



From the beginning, Hamilton had a problem with the Articles of Confederation because of its inability to generate and collect money. “In 1780, far in advance of anyone else, he had recommended a convention to remedy the articles.” Hamilton described the country as a collection of “petty states … jarring, jealous and perverse.” He understood that people preferred their state government over a national government. However, Hamilton believed citizens could be loyal to both state and country, if the central government was strong enough. A strong central government would also allow better interstate trade. His home state of New York was not the most populated state, but it did have control over the best seaports and waterways for commerce and trade. Convincing his own state to give up some power in order to obtain more peace and prosperity would be difficult.

Hamilton played two key pivotal roles at this time.

1. In 1786, at the Annapolis convention, he engineered “the calling of a national convention to rewrite the Articles of Confederation.” In essence, Hamilton got the ball rolling.
2. Starting in 1787, his “best-known contribution to the making of the Constitution [was] his co-authorship of The Federalist.” It was a series of articles written by John Jay, James Madison and Hamilton that “began as a propaganda tract, aimed only at winning the election for delegates to New York’s ratifying convention,” but quickly “evolved into the classic commentary upon the American federal system.”

In May of 1787, representatives from the other colonies began arriving in Philadelphia. Some of them are well-known today (for example, George Washington, Benjamin Franklin, and Alexander Hamilton), while others are not. But almost all of them were remarkable, wise men who made important contributions to the final version of the Constitution. Their average age was 42. Most had graduated from college and belonged to the elite professions in America (lawyers, planters, merchants, and others). Eight had signed the Declaration of Independence and all had extensive political experience in their state governments and/or the Congress. In short, they were all well-equipped for the task at hand.

## A Written Constitution

Those who gathered at the Constitutional Convention were in a unique position to create something revolutionary. Unlike the British form of government, which had been developed over hundreds of years, this new Constitution would be a formal mechanism that explicitly and immediately described the forms, structures, powers, and relationships of government entities. These written words would define and constrain power, making it sufficient to protect the “general welfare” and provide for the “common defense,” but prohibit its actions outside those enumerated (or listed in the document) powers. The U.S. Constitution would focus on:

* The Rule of Law
* The power of the people
* The consent of the governed in electing its representative
* The fact that freedom is protected by placing limits on those in power

One of the main lessons learned from the Articles of Confederation was that the United States needed a document that could "grow and develop to meet the changing needs of an advancing world." The Founders made this possible with the Constitution by instituting a comparatively easier amendment process. While it is still not a quick process, the difficulty is purposefully built into the Constitution so the document cannot be amended without the necessary debate and authority of the people.

## IV. The Great Debates and Compromises

After arriving, the delegates immediately got down to business. First, they elected George Washington president of the convention. His leadership and celebrity during the Revolutionary War made this choice a foregone conclusion and the participants would keep him in mind as they designed the office of the President of the United States. Washington would say little during the Convention, but he gave a crucial calming, unifying presence to the proceedings.

Madison sat at the front of the hall to take notes. He knew future generations would be interested in the “intentions of the Founders” and only a meticulous record could provide that.

Governor Edmund Randolph started the proceedings with an extremely controversial first motion: to do away with the Articles of Confederation entirely and replace them with Madison's plan for a new government. Many delegates protested that their states had given them instructions not to abolish the Articles and threatened to leave. As the convention went on, many would make good on that threat, but, to their credit, most of the delegates remained to at least see what Randolph had in mind. Randolph’s proposal kicked off the first of three major debates that defined the proceedings of the convention for the rest of the summer.

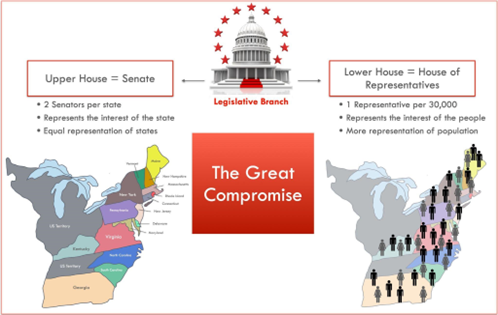
### Debate 1: Large States versus Small States

The first debate was between the large states and the small states. This was the most protracted and contentious of all the issues and took the majority of the summer to resolve. Remember that since 1776 each of these states was like an independent country and intensely protective of their autonomy. In 1786, a person wasn’t an American, but a Virginian, New Yorker, Georgian, and so on. The Articles of Confederation loosely bound these states, but this didn’t make these thirteen little nations into one big nation. The Congress had been a distant body with little power. Many believed this was a good thing, as they had just fought a taxing war against a distant tyrannical force. The small states were especially afraid of having their independence swallowed up by the larger states in a national government.

All of the delegates agreed a stronger central government was needed, but the real issue was how to determine representation in that new government. Madison’s “Virginia Plan'' proposed three branches of government: a judicial branch, an executive branch, and a bicameral legislature. He also proposed that representation be based on population. This was an anathema to the smaller states. Under the Articles, each state received one vote—no matter how large or small. This arrangement gave them comparatively more power: a small state would have 1/13th of the power even if they only had 1/100th of the population. To the large states, on the other hand, Madison’s proposal felt more democratic. Why should a state with far more people have the same say in the national government as one with far fewer people?

Although the delegates would eventually accept the basic structure of Madison’s plan, many couldn’t swallow the idea of a government in which representation was purely popular. Those from smaller states like New Jersey and Delaware knew that representation based on population alone would overwhelm and dilute their say in government, so William Paterson of New Jersey made a counter-proposal which we today call the “New Jersey Plan.” Paterson’s plan would strengthen the national government by giving it more power to tax and act, but would keep the one branch, one-state-one-vote system that had been in place under the Articles of Confederation.

This heated debate about representation lasted all summer and almost ended the Convention prematurely. It was finally resolved with what we call “The Great Compromise,” aptly named because without the compromise there would have been no United States Constitution. The Great Compromise answered the question of state or population based representation with a system in which we could use both methods of representation in the legislature. Remember that Madison had proposed two houses of Congress, or a “bicameral legislature.” Why not have one of the houses represent according to population and the other represent each state equally? States would send representatives to the House of Representatives based on their population, but would each send the same number of representatives to the Senate (two) regardless of population. This proposal eventually satisfied the delegates from both the large and small states.



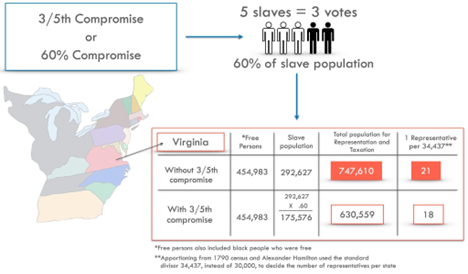
The Great Compromise also applied to the selection of the president in what became the Electoral College. While we sometimes say that we vote for the president, in reality we vote as a state for electors who in turn vote for the president. How many electors each state receives is determined through a combination of state and popular representation. A state has electoral votes equal to the number of its Senators (state) and Representatives in the House (popular). So if a state’s population entitled them to three seats in the House of Representatives, then that state would have five electoral votes for president (3 Representatives + 2 Senators). We see the Great Compromise at work in the selection of all three branches of government (albeit indirectly in the case of the judiciary). With this compromise, the Convention had overcome its greatest hurdle.

### Debate 2: Northern States versus Southern States

The second major debate at the Constitutional Convention was between the northern and southern states. The North-South split was easily the most important division in the history of the country and eventually led to civil war. Although this schism centered on slavery, it went beyond into larger cultural and economic questions. The North was largely commercial and industrial while the South was agricultural and plantation-based. The South had (and still has to a degree) a more communal social system based on kinship ties and honor, while the North had an individualistic culture based on contract.

Delegates from the South understood that they could increase their power at the expense of the North by including slaves in the population count. This led to the South wanting to inflate its population numbers by including the slaves in the census. The northerners responded that the southerners couldn’t have it both ways: either the slaves were people entitled to rights and representation (in which case they shouldn't be slaves at all), or they shouldn’t be counted in the population. This put the Convention at another impasse.

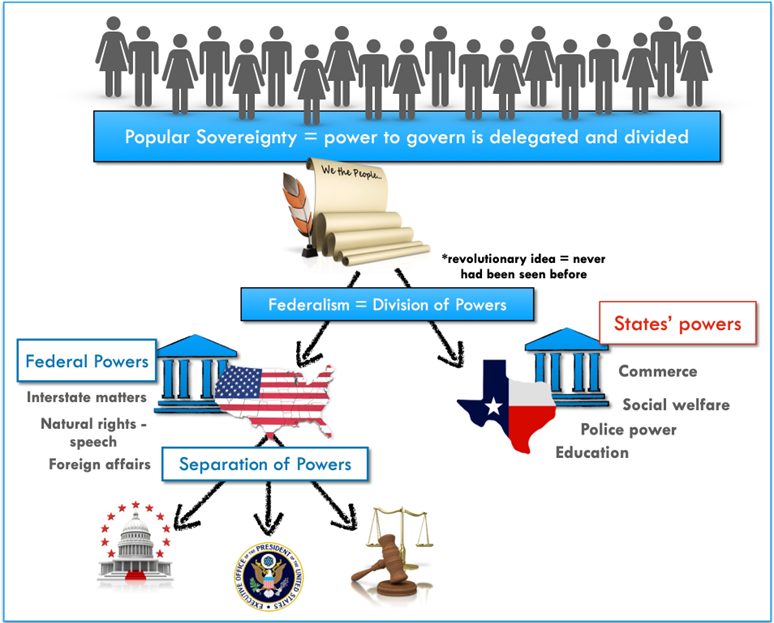
Most of the Founding Fathers wereagainst slavery (even though many of them held slaves) and wanted to see it abolished. In fact, George Mason wouldn’t even sign the Constitution because it allowed the abominable institution to continue. Eventually, they felt that they could make a concession on slavery that would create a union then and leave it to later generations to fix. We can give some credit to the Founders for their attempts to address this issue, even if we also condemn many of them as hypocritical slaveholders. The United States finally did address this issue, though its impacts still greatly affect current issues of racism, bigotry, and other cultural concerns Americans still need to address.



The agreement they finally came to is called “The Three-Fifths Compromise,” which was not a new idea. This compromise was proposed in 1783 to try and change the way taxes were calculated under the Articles of Confederation. The amendment did not pass because the Articles of Confederation required a unanimous vote and some of the southern states did not want their slave population counted towards their tax calculation. The southern states were now willing to make this compromise, but how does one count a 3/5ths vote? This sounds complicated, but it really meant that 5 slaves equaled 3 votes. One could also look at this as a 60% compromise.

The Founders agreed to a compromise that considered enslaved African-Americans as "less than a full person." Today, we can obviously see that this still did not adhere to the principles of life, liberty, and freedom that the Founders claimed to uphold. However, the Three-Fifths Compromise may have allowed for the eventual abolition of slavery. If the Founders had allowed the South to count each enslaved person towards representation, it would have given so much power to the South that Abraham Lincoln, the Great Emancipator, may not have been elected. Had the Founders not allowed any compromise at all on the slavery issue, they may not have been able to form the United States as we know it today. While it was and continues to be a contentious issue, the union at the time required Three-Fifths Compromise.

### Debate3: Federal Powers versus States' Powers



The third and final major debate at the Convention was over the relationship between the states and the new Federal Government. Formal compromises resolved the first two debates, but this one was much trickier since it involved the question of “sovereignty.” Citizens of the United States don’t use the word “sovereignty” much anymore, but it essentially answers the question: When the government needs a decisive voice, who has the final say? Prior to 1787, state governments had clearly been sovereign and acted as their own countries. Would they now surrender this sovereignty to the federal government under the new Constitution?

Madison and others tried to placate the states by saying that both national and state governments would be sovereign under the new Constitution. But how could this be when sovereignty, by definition, is indivisible? The whole point of sovereignty is to locate the one final authority in government matters.

They eventually found their way out of this dilemma with words rather than substance. They said that, unlike in a monarchy where the king sat atop the pyramid of authority, America would be a republic with the people on top; the people would be sovereign. So, no, they wouldn’t and couldn’t divide the sovereignty of the people—it was indivisible—but they could divide the representation of the sovereign people. States and the federal government could co-exist as two separate expressions of the sovereignty of the American people.

This was not a satisfactory answer. The Founders came up with a slogan “e pluribus unum” to describe the new nation: “out of many, one”. The federal government has steadily accrued more power since its founding, but states still claim prerogatives and the debate over what belongs in the state or federal sphere continues to this day.

## V. The Miracle at Philadelphia

After overcoming these three enormous hurdles, the Founders finally declared themselves satisfied with their handiwork and, on September 17, 1787, came forward one by one to sign the Constitution. It had taken all summer, but they all realized they had accomplished something remarkable, even supernatural. Many referred to the Constitution as a “miracle.” Washington, for example, maintained for the rest of his life that God had been with them in the Convention as much as he had been with them on the battlefield. Why would he say that and why do we still speak of a “divinely inspired Constitution” today?

### Content

First, the content of the Constitution was miraculous. It established a remarkable system of government (not “perfect,” but “more perfect” in the Founders’ words). This inspired document contains an effective and appropriate means for dividing power. The secret to freedom is the division of power, and our Constitution masterfully sets up a structure that balances power and preserves liberty. It has weathered many storms and prevented the abuses of power that come when power remains unchecked.

### Success

Second, the Constitution did nothing less than create the first and most enduring liberal democracy in history. America is not the only free country in the world today, but it has been the freest country over the course of the last three centuries. No other nation comes close to offering so much freedom to so many people for so long. France, Japan, and Germany, for example, are all exemplary free countries today, but were tyrannies as recently as 1945 or even 1989 in the case of East Germany. The Latin-American states never united as did the North American states and the differences are stark as we observe the cycle of tyranny and anarchy still playing out among many states south of the U.S. border today. Divided Europe, while currently stable and free, has been plagued by recurrent wars between themselves as well as civil wars. Who is to say this would not also have been the fate of America had not the Constitution bound the independent states together? Perhaps only divine inspiration can fully explain this success.

Note also the elegance of the U.S. Constitution. It is as thin as a pamphlet and an educated person can read it thoroughly in less than an hour. Simplicity, clarity, and precision are political virtues and the Constitution has them. Contrast it with the European Union Constitution which is thousands of pages long and requires weeks of labor and a team of lawyers to decipher it. The U.S. Constitution is direct enough to give us guidance, but open enough for flexibility in application.

### Participants

Third, the participants themselves were miraculous. Thomas Jefferson once dubbed the Convention an “assembly of demi-gods”—the most gifted assemblage of political minds in history. Almost any one of the delegates would have been the greatest statesman of their time had they lived in any other age, and yet in Philadelphia in 1787 (with a much smaller population to draw from than today), there were 55. The likelihood of this much talent being in one place at one time in such a small country defies the laws of probability. Even some secular historians are stumped by this “fantastic coincidence.” Once again, providential intervention may be the only adequate explanation.

### Compromises

Fourth and finally, there were miracles in the compromises the delegates agreed to. The Spirit of the Lord is the spirit of goodwill, humility, and being willing to listen to and understand other viewpoints. Only such a spirit can account for the degree to which the delegates put aside narrow interests and prejudices to create the American nation. In fact, there was one moment in the convention when the fighting was particularly heated and Benjamin Franklin, who had been sitting quietly in the back, finally spoke up. Franklin said, “The longer I live, the more convincing proofs I see of this truth—that God Governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid?” Even though they didn’t hire a chaplain to offer formal prayers in the Convention (they lacked funds to pay one) the advice was sound and heeded individually. Compromise came only after Franklin’s wise admonition.

The following is a chart of the summary of differences between the Articles of Confederation and the US Constitution.

**Articles versus Constitution**

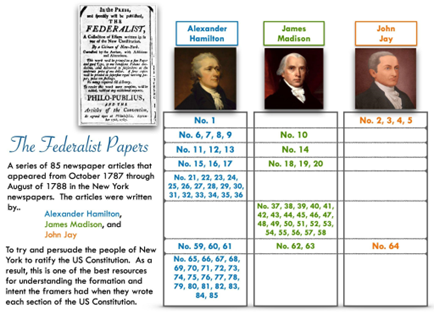
|  |  |  |
| --- | --- | --- |
| **Topic** | **Articles** | **Constitution** |
| Levying Taxes | Taxation based on state’s land value | Taxation based on a state’s population |
| Collecting taxes | Congress could request states to pay taxes | Congress has right to levy taxes on individuals |
| Federal courts | No system of federal courts | Court system created to deal with issues between citizens and states |
| Regulation of trade | No provision to regulate interstate trade | Congress has right to regulate trade between states |
| Executive | No executive with power; president of U.S. merely presided over Congress | Executive branch headed by President who chooses cabinet and has checks on power of judiciary and legislature |
| Amending document | 13/13 needed to amend Articles | ⅔ of both houses of Congress, plus ¾ of state legislatures or national convention |
| Representation of states | Each state received 1 vote regardless of size | Upper house (Senate) = 2 votes each state; Lower house (House of Representatives)= based on population |

Finally, as President of the convention, Washington sent Congress the final documents to start the ratification process that included a cover note that said,

Just as ‘individuals entering into society, must give up a share of liberty to preserve the rest, [so the states agreed to cede some] rights of their independent sovereignty to … provide for the interest and safety of all [in a] spirit of … mutual deference and concession.

## VI. The Battle for Ratification

After the signing of the Constitution in Philadelphia, each state held a special “ratifying convention.” The Constitution would only become the law of the land if the conventions of at least nine states approved. Many in the states, treasuring their autonomy, resisted ratification. Local politicians were concerned about giving up some of their power to a central government. Their self-interest was in opposition to ratification.



A debate broke out in the states between two opposing groups. Those who favored the ratification of the Constitution were called “Federalists” and those who opposed ratification were called “Anti-Federalists.” To convince the American people to ratify the Constitution (especially those in swing states like New York), three gifted Federalist authors, Alexander Hamilton, James Madison, and John Jay, took up their pens and wrote a series of editorials promoting and defending the Constitution (see the graph on the right). Hamilton later collected and published these editorials as The Federalist Papers. Although their purpose was a rhetorical one, an unintended consequence of The Federalist Papers was to give the world a great work of political philosophy and the best first-hand explanation of the workings and design of the U.S. Constitution.

### Federalist Number 10

One of the most famous of The Federalist Papers is Federalist Number 10. This essay, written by James Madison, tackles the concern about power congregating into the hands of one or a few groups, what he calls “factions,” rather than allowing many groups to check and balance each other.

Today we sometimes think of factions as special interest groups. Citizens from many different walks of life have an interest in how the government operates: farmers, bankers, educators, people of many different religious persuasions, and more. People with similar goals and ideologies may often organize into groups to promote their goals, and this is a vital part of how free governments work. However, if any one group were able to gain so much power that they were able to override the interests and rights of others, the free government could become a tyranny. Oppression by powerful groups had led to tyranny and the downfall of governments throughout history, and the Founders did not want this type of dangerous faction (or tyranny of the majority) to take control of the United States.

The people had experienced these dangerous factions under their own state republic governments. State governments wanted to correct the error of having an oppressive executive branch by cutting it out altogether and making a very strong legislative branch. This overcorrection had the effect of concentrating power into one place. This allowed for factions to grow more powerful. Therefore, the people feared factions and wanted to ban them by law. Madison persuades the people to turn against that idea by explaining:

Liberty is to faction what air is to fire, an ailment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

Thankfully, James Madison had a solution to this problem. He explained that although we can’t do away with factions, we can minimize the potential of tyrannical effects by multiplying the number of factions through a large republic. In a small republic, one faction could easily become a majority, get control over the government, and exercise tyrannical control over others, but in a large republic the many factions would neutralize one another. The larger the republic, the harder it would be for one special interest group to gain majority power since each faction would be but one faction among many. In Madison’s words:

The influence of factious leaders may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States.

Political theorists had long assumed that a republic needed to be small. Because of this, representatives were local, known, visible, and more directly accountable to the people. These are all clear benefits of a small republic. Madison showed that while a small republic had the advantage of keeping power closer to the people, it also had the disadvantage of making it possible for a single faction to dominate the government. In large republics, the factions can check and balance each other. According to Madison, a large republic would be more stable and less susceptible to both tyranny and anarchy.

To prove that Madison was correct on this point, we need look no further than the Civil Rights movement. In the 19th century American South, white Americans (the majority) voted to oppress black Americans through the Jim Crow laws. This discrimination, legally upheld and enforced by the government, came about through the majority rule. In the “small republic” southern states, the white-supremacist faction outnumbered the African-Americans and could thereby democratically tyrannize them. But in the large republic of the United States, the white-supremacist faction was diluted and outnumbered by those who wanted more racial equality.

We also see Madison’s wisdom on display in Church history. When the Latter-day Saints settled in Missouri, an anti-Mormon faction took control of the state government and elected Lilburn Boggs as governor. Boggs then proceeded to issue an “extermination order” against the Saints. This was a classic example of democratic tyranny. The anti-Mormon faction in Missouri was large and powerful enough to dominate politics. It was just such a “tyranny of the majority” that the Constitution was designed to prevent in the nation as a whole.

Again, we can see the wisdom of Federalist Number 10 by comparing the United States of North America to the divided countries of South America. After their revolutions against Spanish rule, Latin America remained fragmented in many small nations. Fragmentation can lead to issues with instability, military coups, corruption, and hyperinflation.

Finally, the Founders’ decision to institute the Electoral College as the means of electing the president of the United States is a manifestation of their concern about the tyranny of the majority. The Electoral College is a method of distributing the power and decision-making to the states so there is not a bare majority needed to elect the president, which would inevitably lead to the very “tyranny of the majority” that the Founders dreaded.

The benefits of small and large republics find their manifestation in the divine principle of federalism which allows the United States to enjoy the benefits of both small republics (the states) and a large republic (the nation) in the same system. Throughout the nation’s history, this has been instrumental in combating the threat of factions.

Federalist Number 10 and the rest of the 85 essays in The Federalist Papers are excellent illustrations of the wisdom and far-sightedness of the Founders of the United States.

### Ratification

Thanks to The Federalist Papers’ authors, the Constitution was ratified by the necessary number of states in 1788. In putting this document into place, the Founders gave life to the principles in the Declaration of Independence. The Declaration of Independence gives us our goals as a nation—the lofty principles of liberty, equality, and natural rights—while the Constitution gives us the mechanism of government with which to secure those goals. The Constitution provided the means by which the principles of the Declaration of Independence could be realized. The two primary documents of the Founding harmonize perfectly.

We will dive deeper into the specifics and significance of the United States Constitution in our next lesson.

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