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AMERICAN POLITICAL STORIES

Claiming Rights, Demanding to Be Heard

LEARNING OBJECTIVES

By reading this chapter, you will be able to do the following:

- **1.1** Explain how diverse Americans have used the political process to make claims on their fundamental rights and freedoms.
- **1.2** Define the key elements of American political culture.
- **1.3** Identify the political, social, and economic events and institutions that gave rise to the American Revolution and reflect on what was and was not achieved.
- **1.4** Describe the core features of American political institutions.
- **1.5** Assess the ways in which the "Letter from Birmingham Jail" draws on core American ideals.

INTRODUCTION

On the first day of my undergraduate Introduction to American Government course at the University of Minnesota, I often tell my students, "I don't care *what* you think," which tends to generate some uncomfortable silence. But I mean it. Before things get too out of hand, though, I quickly follow up with, "However, I care very much about *how* you think. That is what this course is about."

This book is no different. My hope is that it will help you to question what everyone says you *should* know or think, to become more confident in making your own ideas known, and to sharpen your ability to interpret for yourself the political world around you. This book uses stories to help accomplish those goals. These stories are a central part of the book's structure and objectives. Each chapter's stories illustrate important concepts in the study of American politics. They are meant to make those ideas come to life—to help you understand that American government is not something that exists apart from you. And because they are *real* stories, in all their messy, complicated glory, they will also encourage you to think in ways that are not either/or and to walk in the shoes of people who may be very different from you.

Some of these stories may be familiar to you; some of them won't be. Even when we go back to events and people in history that you may have read about and studied, we will usually be doing so through a different lens: We will be trying to assess the political landscape as *they* perceived it—their choices as they saw them, the opportunities they hoped to take advantage of, and the lack of rights and freedoms they observed and that they wanted to change.

In this chapter and in the book generally, we raise fundamental questions when we try to define what we mean by a "good government" or a bad one. Whose rights get protected? Whose get restricted? Who gets to decide? The stories told in this book illustrate how big questions like these are resolved, revisited, and re-resolved through **politics**, the process of influencing the actions and policies of a **government**. Politics and government are closely connected, but they are not the same thing. Politics describes processes; government describes the rules and institutions that arise from political action and conflict and that structure future political action. Throughout the book, we'll hear from people who have engaged with those institutions and who have taken part in those processes.

Many of the stories in this book don't have clear heroines, heroes, or villains. Many of them do not have tidy endings either. At the end of the day, the point is not whether a person or a group of people won or lost but that they acted, that they participated in politics, just as you will be encouraged to do. This book is very much meant as a handbook, like a nature book a person might carry around on a hike and not think to look at until some spider or gopher jumps out and gets their attention. It is meant to be a useful tool for those who would try to understand and shape the political worlds around them. Nothing more, nothing less.

Read the stories; absorb the nuts-and-bolts facts and concepts that emerge along the way in these chapters. Most important, however, connect the two. Use the stories to more deeply understand the



complexity of American politics, then and now. Use them to understand the diversity of the voices that are a part of the national conversation. Use the stories to make your own voices stronger, better informed, more politically savvy, and more effective.

In this book, I will quote individuals whose words or ideas some will strongly disagree with or find objectionable. But this is necessary; we will not shy away from that at all. Also, this book will not offer any one political, theoretical, or academic perspective. Instead, we will do our best to understand the political world as those who have participated in it did. How did they assess the political landscape and shape their political participation accordingly? How did they use the political tools available to them or make new ones?

We start with members of the Standing Rock Sioux Nation claiming their rights, not only in protesting an oil pipeline but also over the land and the water and the future on which it depends. We then go back in time to the American Revolution and Thomas Jefferson's drafting of the Declaration of Independence before concluding by fast-forwarding to Dr. Martin Luther King Jr.'s "Letter from Birmingham Jail." What could these stories possibly have in common? In them we will witness the efforts of vastly different people who have wrestled with what fundamental rights and freedoms mean in American democracy and see how they as individuals and groups have tried to answer that question, staking their own claims on their rights.

STANDING ROCK: WATER PROTECTORS CLAIM THEIR RIGHTS AND FREEDOMS IN NORTH DAKOTA

Shekóli. A single arrow may be snapped over one's knees with ease, but a bundle of arrows may not. This old adage is exemplified by the strength and fortitude shown by the gathering of water protectors in Hunkpapa territory north of the Standing Rock Sioux nation.¹

In the letter quoted above, Ray Halbritter, chair of the Oneida Nation of New York and publisher of *Indian Country Today*, was referring to protests aimed at stopping a \$3.7 billion pipeline project designed to transport oil from the rich Bakken fields of North Dakota to Illinois, where it could then be sent along to major refineries and oil markets. Energy Transfer Partners (ETP), one of the largest owners and operators of oil and natural gas pipelines in the United States, was the parent company to the developers.²

Though the pipeline would run mostly through private land, whose owners had largely already ceded access, it would also be running under bodies of water. This brought federal agencies into the mix, especially the US Army Corps of Engineers, who were tasked with studying the pipeline's potential environmental and cultural impacts and risks.³ By early 2016, the Army Corps had issued all necessary permits. Other federal agencies, however, including the Environmental Protection Agency and the US Department of the Interior, urged the Army Corps to undertake a more thorough environmental impact assessment.

The Dakota Access Pipeline's path would take it just north of the Standing Rock Sioux Reservation and under Lake Oahe, a body of water whose creation decades before had displaced members of the Standing Rock Nation when a portion of the Missouri River was dammed to produce electricity and control floods. "Out there, I lived down there with my grandmother and grandfather," said Verna Bailey when interviewed for the *New York Times*. "We had a community there. Now it's all gone."⁴

In April 2016, a small group of people from the Standing Rock Sioux Reservation began gathering and camping near the banks of the Cannonball River on Army Corps land to protest and educate. Each day they would walk about a mile to a construction site. Through exercise of their civil liberties of free speech, freedom of the press, and free assembly, the protesters aired their grievances with the federal government. They demanded tribal sovereignty, the preservation of sacred places, and water.

They worried about a potential oil leak into the waterways on which they and other Americans downstream depended: "'We say "mni wiconi": Water is life,' said David Archambault II, the

chairman of the Standing Rock Sioux.... 'We can't put it at risk, not for just us, but for everybody downstream.... We're looking out for our future, the children who are not even born yet. What is it they will need? It's water. When we start talking about water, we're talking about the future generations.'"⁵

The Standing Rock protesters were few in number and off the national radar when they started. In the summer and early fall of 2016, that began to change. Members of 280 Indigenous nations joined the protests "in what activists [called] the largest, most diverse tribal action in at least a century."⁶ They were later joined by non-Indigenous supporters from across the country, #NoDAPL on Twitter,



Members of the Colorado River Tribes hold a banner in September 2016 to show their support for Native Americans of the Standing Rock Sioux Reservation who oppose the construction of the Dakota Access Pipeline. Although the protests started small, Indigenous and non-Indigenous supporters from around the country joined in to support the Standing Rock Sioux as they claimed their rights.

Robyn Beck/AFP via Getty Images

and Facebook campaigns to show solidarity. A group of military veterans announced in November that up to two thousand of their members would join Standing Rock to act as "human shields" and stand against, in their words, the "assault and intimidation at the hands of the militarized police force."⁷

Like others who had claimed their rights before them, residents of Standing Rock and their supporters used tools other than protest. They also pursued legal action to stop construction until a thorough study of the pipeline's impact on sacred sites and potential environmental impacts was undertaken. In July 2016, the Standing Rock Sioux Tribe sued the US Army Corps of Engineers to halt the issuance of permits and order a stop to construction near the Standing Rock reservation. They formed organizations such as the Water Protector Legal Collective to "provide legal advocacy, jail and court support, criminal defense, and civil and human rights to the Native peoples and their allies who gathered there."⁸

Interaction of the Protesters with Law Enforcement Officials Shows How Fundamental Rights and Freedoms Are Connected

As the Standing Rock protests grew in the summer and fall of 2016, tensions between the protesters and state, local, and federal law enforcement officers also increased. In August, construction began on the disputed portion of the pipeline. Less than two weeks later, North Dakota governor Jack Dalrymple declared a state of emergency, citing public safety risks associated with the protests. In September, he mobilized about thirty National Guard members to a security checkpoint up the road.

Many local landowners and residents became nervous, viewing, according to an article in the *New York Times*, "the demonstrations with a mix of frustration and fear, reflecting the deep cultural divides and racial attitudes."⁹ There were charges of violence on both sides. In July, a protester's hand was badly injured in an explosion, its source disputed. Protesters condemned private security contractors' use of dogs, claiming that several of their number had been bitten.

Morton County sheriff Kyle Kirchmeier asserted that some protesters were believed to be readying pipe bombs. "Officers said that protesters had attacked them with firebombs, logs, feces and debris. . . . One woman who was being arrested, the authorities said, had pulled a gun out and fired at a police line."¹⁰ Members of Standing Rock insisted that their protests were peaceful: "Weapons, drugs and alcohol are prohibited from the protest camp. Children march in daily demonstrations. The leaders believed the reports of pipe bombs were a misinterpretation of their calls for demonstrators to get out their wooden chanupa pipes—which have deep spiritual importance—and pass them through the crowd."¹¹ In November, law enforcement officials used water cannons on protesters in subzero weather, citing aggressive behavior by members of a crowd numbering in the hundreds. Sixteen protesters were arrested.



In February 2017, Standing Rock protesters set fire to their camp just before they were removed under an order signed by North Dakota's governor. Efforts to stop the pipeline continued in the courts, however.

Stephen Yang/Stringer via Getty Images

Not all relations between protesters and law enforcement officials were heated. Some members of local law enforcement knew members of the Standing Rock Nation. Some protesters tried to educate officers and others about their goals. Mekaski Horinek, whose father had marched with labor leader César Chávez for agricultural workers' rights, told a group of police while he was sitting in a prayer circle, "This isn't just a native issue. We're here protecting the water, not only for our families and our children, but for your families and your children. For every ranch and farm living along the Missouri River."¹² Although the original protest camp was on federal property, other protests and satellite camps were on private property, which local and state law enforcement officers noted in defending their actions.

Critics challenged connections between law enforcement and private security firms hired by ETP, citing email communications allegedly "showing an alliance between the pipeline's private security firm, the FBI, the Bureau of Indian Affairs, North Dakota's U.S. attorney's office, and local law enforcement agencies."¹³ There were sharp criticisms of what some saw as yet another example of the "militarization" of local law enforcement agencies. According to the American Civil Liberties Union, North Dakota received more than \$3 million worth of surplus military equipment through a Department of Defense program that began in the 1990s.¹⁴ "We need our state and federal governments to bring justice and peace to our lands, not the force of armored vehicles,' said Dave Archambault II, the chairman of the Standing Rock Sioux tribe. 'We have repeatedly seen a disproportionate response from law enforcement to water protectors' nonviolent exercise of their constitutional rights.'"¹⁵

Arrested protesters claimed that their constitutional protections had been violated and that they had been arrested only to later—sometimes weeks later—have the charges dropped because, "although the protesters were on private property, no authority figure specifically requested that they leave."¹⁶

The Water Protectors Disperse but Continue to Claim Their Rights

In the first weeks of his presidency, Donald J. Trump moved to speed up the pipeline's completion, with the Army Corps formally approving construction of the last mile in February 2017. In a video broadcast in the Standing Rock camp, Linda Black Elk, a member of the protesters' "healer council," urged them to carry on: "Pray for the water. Pray for the people. Pray for the water protectors. Pray for the tribe."¹⁷

The last group of protesters to hold out was forcibly removed under the evacuation order of North Dakota's new governor, Doug Burgum, two weeks later. Forty-six were arrested. In all, more than six hundred protesters had been arrested since the protests began. The governor and the North Dakota state legislature took further steps: "About an hour after the protest camp was cleared, Mr. Burgum

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signed into law four bills that had been passed largely as a result of the protests. They expand the scope of criminal trespassing laws, make it illegal to cover your face with a mask or hood while committing a crime, and increase the penalties for riot offenses."¹⁸ By early 2017, the Standing Rock protest camps had been cleared. Construction continued, as did legal efforts by members of the Standing Rock Nation. But the underlying questions—about the policies themselves and law enforcement's responses to them—remained.

On his first day in office, President Joseph R. Biden signed an executive order cancelling the crossborder permit for the Keystone Pipeline, a different line from the Dakota Access Pipeline but one that had also been the source of protests and action. Following Biden's action, TC Energy, the sponsor of the Keystone Pipeline, abandoned the project.¹⁹ Though hopeful that Keystone's cancellation would lead to the end of the Dakota Access Pipeline, water protectors were dealt a blow by the US Supreme Court when it dismissed a legal challenge from the pipeline's sponsor, Energy Transfer LP. Though the Court left in place a requirement for an environmental impact study that had been ordered by a lower federal court, Energy Transfer was allowed to continue to operate the pipeline while the study was carried out.²⁰ Members of several Sioux Nations called on the Biden administration to end the contract with the reviewing agency, which they argued was too favorable to the energy industry, and to shut down the pipeline project for good.²¹

Years after the initial Standing Rock protests, members of the Tribe and their allies continued to fight against the pipeline, and their concerns had only grown. In March 2024, court proceedings revealed that "up to 10 informants managed by the FBI were embedded in anti-pipeline resistance camps near the Standing Rock Sioux Indian Reservation at the height of mass protests against the Dakota Access pipeline in 2016."²² Despite the protests and four documented leaks in the early years of its operation, the oil continued to flow. "So our lives are not the same anymore," Chase Iron Eyes, an attorney for the Lakota People's Law Project, lamented, "We're worrying about that [potential spills and leaks] every day. Every single day, people are, in the back of their minds, wondering if they're gonna get a call saying the oil is leaking underneath the water."²³

Fundamental rights and freedoms do not exist in a vacuum. As we can see, asserting such rights can draw in many other actors in the American political space, including the media, politicians, governmental agencies, law enforcement, the courts, and powerful interest groups. The protesters at Standing Rock were claiming their access to sacred places and clean water. They used tools protected by the First Amendment to the US Constitution: the freedom to speak, publish, and assemble in order to air grievances with the government of the United States. However, law enforcement's response to the actions of the protesters raised questions about the degree to which the freedoms of Americans are truly protected today when they are being investigated, arrested, and tried for crimes. We will explore these tensions when we examine civil liberties in Chapter 4.

Indigenous Americans, as members of both their tribal nations and the United States, have a different political relationship with the national government than other Americans, who are members of both the nation and the individual states.²⁴ We will explore these differences in Chapter 3. For now, however, we note that the protection of fundamental rights and freedoms for all Americans has required action and participation, has often had to overcome tremendous resistance along the way, and will never be settled once and for all.

In the next section, we turn back to the American Revolution and the drafting of the Declaration of Independence, when a group of individuals set out to enumerate, and then defend, Americans' fundamental rights and freedoms. Their efforts, like those of the Standing Rock protesters, involved protest, conflict, and strategic political action.

AMERICAN POLITICAL CULTURE IS BUILT ON A SET OF SHARED IDEAS

When members of the Standing Rock Nation asserted their rights, they did so on the basis of a handful of ideas that form the foundation of the American Republic itself. Indeed, these ideas were affirmed in the Declaration of Independence in 1776, making them part of the country's basic DNA: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator

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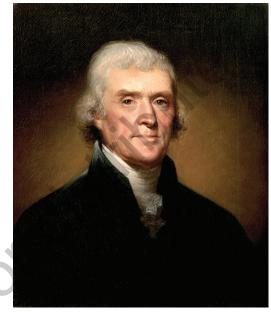
with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." These were revolutionary ideas, but they were not original ones. They weren't supposed to be.

In drafting the Declaration of Independence, Thomas Jefferson and his coauthors drew on a set of ideas about liberty and government that were widely known in the colonies and Great Britain—ideas Jefferson knew needed to be persuasive and compelling enough to successfully launch a revolution.

From the histories and philosophical works of ancient Greece and Rome, they borrowed the idea of **democracy** (from the Greek *demos*, meaning "people," and *kratos*, or "power"), whereby power is held by the people.

They also borrowed from English Enlightenment philosopher John Locke, who had argued against the divine, or God-given, right of kings to rule with absolute power. Locke claimed that people are born with inherent rights (also referred to as natural rights) that kings cannot give or take away. A legitimate government, to Locke, is one that involves a social contract, in which people give to their governments the power to rule over them to ensure an orderly and functioning society. If a government breaks that social contract by violating people's inherent rights, then the people have the right to replace that unjust government with a just one.

From the French Enlightenment, Jefferson and his colleagues drew on the works of Baron de Montesquieu, who gave an institutional form to the ideas of inherent rights and the social contract in proposing that power in government should be divided between different branches so that no one branch can become too powerful. Jefferson also drew on Scottish Enlightenment thinkers such as David Hume. Given the historical tendency of leaders to abuse political power, Hume believed a just government should be carefully designed and the lessons of science and history carefully applied to its structure to keep the greedy and ambitious from using political power to their own advantage. In



Thomas Jefferson in an 1800 painting by Rembrandt Peale. GraphicaArtis via Getty Images

applying scientific principles from studies of the natural world to human political action and interaction, Hume and others like him made major contributions to the modern study of **political science**.

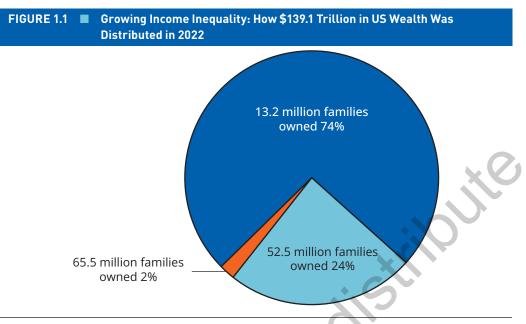
Later in the chapter we will see how the ideas underpinning the Declaration of Independence gave rise to a revolution and helped form the basis for the institutions of modern government. Those ideas liberty, equality, rights, happiness, and others—endure in other ways. Today, they shape the shared set of beliefs, customs, traditions, and values that define the relationship of Americans to their government and to other American citizens. We call those shared beliefs **American political culture**.

Equality Is About Having the Same Rights or Status

Central to all of this—and the first key idea expressed in the Declaration of Independence—is a commitment to equality, to all people having the same rights and status. This might involve **social equality**, in which no individuals have an inherently higher social status than others. Unlike Europe, with its nobility and royalty, America was founded on the idea that all individuals could reach the social status they sought through their own efforts. **Political equality** exists when members of a society possess the same rights under the laws of the nation. Gains in political equality for many groups of Americans—such as Indigenous Americans whose efforts we began the chapter with—have been made over decades or centuries of political struggle, and many question whether political equality for all has been fully achieved.

Finally, economic equality refers to a situation in which wealth is relatively evenly distributed across society. America does not have economic equality. In fact, differences in wealth and incomes are as stark today as they have ever been in the nation's history (see Figure 1.1). Rather than emphasizing equality of economic *outcomes*, American political ideas tend to focus on ensuring equality of economic *opportunity*.

These are two very different concepts. For example, think about American public education in high schools. Equality of opportunity would mean that all students have a right to attend equally good public high schools. Equality of outcomes, however, might mean they have the right to achieve the same graduation rates or test scores. Americans weigh the differences between opportunity and outcomes all the time in seeking to resolve important civil rights issues and make choices about domestic public policy options.



Source: Data from Ana Hernández Kent and Lowell R. Rickets, "U.S. Wealth Inequality: Gaps Remain Despite Widespread Wealth Gains," Federal Reserve Bank of St. Louis, February 7, 2024, https://www.stlouisfed.org/open-vault/2024/feb/u s-wealth-inequality-widespread-gains-gaps-remain.

Inalienable Rights Exist above Any Government Powers

The thinking behind the Declaration of Independence and the government that was eventually based on it is that some truths and some rights are *self-evident*. These were called "inalienable rights" at the time, but are more properly called "inherent rights," because they exist before and above any government or its powers. Jefferson names "life, liberty, and the pursuit of happiness" as among those inherent, self-evident rights. Because they—unlike *privileges* a government might grant—may not rightly be taken away by a government, a just system of political rule must be constructed in such a way as to protect rights and their expression. Although specific rights of an individual may be taken away—such as when a person is incarcerated—the *process* through which that happens must itself protect those fundamental rights. To many of the Standing Rock protesters, the actions of law enforcement in restricting or suppressing their protests violated their procedural rights.

Liberty Involves Both Freedom from Interference and Freedom to Pursue One's Dreams

Another foundational American ideal expressed in the Declaration is a commitment to **liberty**—to social, political, and economic freedoms. That liberty might involve freedom *from* interference by a government or a freedom *to* pursue one's dreams. The degree to which the government should focus on freedom *from* or freedom *to* remains a hotly debated topic in American politics. There is often tension between these two visions of liberty. Consider the question of religious faith in a public high school: Suppose that a student wants to start a faith-based student club. The student may claim their freedom *to* explore their faith in this club. By allowing the group to meet, however, public school officials may risk violating other students' freedom *from* having a government endorse a particular religious faith or endorse religious over nonreligious beliefs.

The Pursuit of Happiness Is at the Core of the American Dream

When Jefferson wrote about "the pursuit of happiness," he was tapping into another core American political value: the belief that individuals should be able to achieve prosperity through hard work, sacrifice, and their own talents. The idea of the American dream has drawn immigrants to the nation's shores and borders since its founding, and it continues to do so today. Some observers, however, question whether the American dream remains alive and well in an era of such profound economic inequality.

American Political Culture Has Many Roots

Religious traditions have had more of an impact on American political culture than they have had on many modern democratic governments. Some of the very first British colonies were founded by groups of individuals fleeing persecution for their religious beliefs and hoping to practice their faiths without interference. Though the diversity of religious faiths represented in American society continues to expand, America was, and is, a nation partly defined by religious faith and expression. In this book, we will continue to explore how a nation founded on liberty, especially religious liberty, wrestles with decisions about whether, or how, to place boundaries on religious expression.

Today, questions about the proper role of religion in the nation endure. What kinds of holiday displays are acceptable for a community to officially sponsor? Would a ban on immigration by members of specific religious faiths be constitutional?

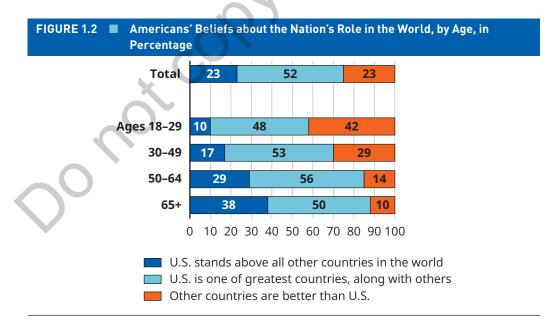


Nan Dubin (left) of East Wallingford, Vermont, reads a prompt to Mahsen Bouchnak, originally from Syria, who immigrated to Vermont in January 2017 along with her two boys. Dubin has worked with the Bouchnaks and other refugee families since their arrival at the beginning of 2017. At its most basic level, the American dream promises hope and opportunity for all.

Sarah Priestap/The Washington Post via Getty Images

American Exceptionalism Flows from the Nation's Historical Development

Finally, when Americans tell stories about themselves, their politics, and their histories, they often refer to the ways in which the nation is different because of the historical patterns of the nation's development. **American exceptionalism** refers to these historical and cultural differences, shaped in many ways by the voices of those who have contributed to the national chorus but also by the fact that America was an experiment, starting anew, without the legacy of the European monarchies to constrain its promise.²⁵ The idea of an exceptional America is not a new one. In 1630, Puritan leader John Winthrop delivered a sermon to a group of immigrants from Britain on board their ship as they waited to land in New England. In it he exhorted, "We must Consider that we shall be as a City upon a Hill, the eyes of all people are upon us."²⁶ Although the idea of an exceptional America has deep roots in the nation, views of the nation's place in the world differ by age (see Figure 1.2).



Source: Data from Hannah Hartig, "Younger Americans Still More Likely than Older Adults to Say There Are Other Countries Better than the U.S.," Pew Research Center, December 16, 2021, https://www.pewresearch.org/fact-tank/2021/12/16/younger-americans-still-more-likely-than-older-adults-to-say-there-are-other-countries-better-than-th e-u-s/.

THE AMERICAN REVOLUTIONARIES EMPLOY STRATEGIC POLITICAL ACTION

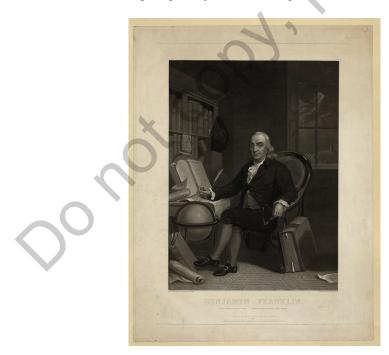
In April 1607, three British ships made their way up what would later become known as the James River in Virginia. After deciding on a spot far enough up the river to avoid Spanish warships, they established Jamestown, the first permanent British settlement in the modern-day United States of America.²⁷ Over the course of the next 170 years, the turbulent political, economic, and social experiences they faced would shape the conditions that led to their eventual separation from Great Britain and establish the foundations of a set of institutions that continue to influence American politics today.

Colonial Settlements Establish a Precedent for Independence

The colonists who established Jamestown hoped to find gold, harvest forest products, and maybe discover a valuable trade route.²⁸ Though chartered by the Crown, the British colonists at Jamestown—and those who would follow them—were subject to less oversight than those sent out by the governments of France and Spain. From the beginning, British colonists began to develop their own political institutions. In 1619, the Virginia colony formed its own legislative assembly, the House of Burgesses, which was the first elected assembly in colonial America.²⁹ Each of the other thirteen colonies eventually did the same. These assemblies instilled in their colonies a tradition of self-governance and a resistance to being told what to do by Great Britain, especially by the British legislature, Parliament. In terms of the subsequent development of the thirteen British colonies and the American states that later grew out of them, the initial political and economic structure of the colonies proved to be as important as any other factor. The colonists' history and sense of autonomy would increasingly come into conflict with the policies of a British Empire bent on increasing control.

A Global War Forces Change in Colonial Policy

The Treaty of Paris in 1763 ended the fourth major military conflict between two global powers, France and Great Britain, in less than seventy-five years. In Europe, this conflict was known as the **Seven Years' War**.³⁰ In the American colonies, it was known as the French and Indian War. Fighting took place across the globe and involved most of the European powers of the time.



Benjamin Franklin's skill in strategic politics as a representative of the would-be Republic abroad proved to be crucial to American independence.

Courtesy of the Library of Congress, Prints and Photographs Division

COMMON SENSE: ADDRESSED TO THE INHABITANTS E R I C A. BJE С T S. L. Of the Origin and Delign the Boglifh Confl II. Of Monarchy and Hereditary Succession. III. Thoughts on the prefent State of Ameri V. Of the prefent Ability of America, with fome mif-cellaneous Reflections. Man knows no Malter fave creating HEAVLN, Or these whom choice and common good ordain. THOMSON PHILADELPHIA; and Sold, by R. BELL, in Third-Stree M DCC LXX VI.

The cover of Thomas Paine's pamphlet *Common Sense* (1776).

Library of Congress

The North American part of the war began when members of the Ohio Company, a land speculation company established by a group of wealthy Virginians, pushed Virginia's claims on Indigenous lands in the Ohio River Valley into lands claimed by France.

Hoping to coordinate alliances with Indigenous peoples—and to keep them from allying with the French—Great Britain requested that its colonies meet at a conference in Albany, New York, in the summer of 1754.³¹ The so-called Albany Congress accomplished very little. However, one of its delegates, Benjamin Franklin, who later became America's first international celebrity, presented to the Congress a plan for closer coordination between the colonies. The **Albany Plan** called for a "Plan of Union," in which colonial legislatures would choose delegates to form an assembly under the leadership of a chief executive appointed by Great Britain.³² This governing body would have power over dealings with Native American peoples and collective self-defense. And, in a premonition of an issue that would return again in debates over governance of the victorious United States, it would have the power to tax the colonies to pay for their collective defense.

Franklin's proposal for a unified legislative body was not adopted by the colonial governments. It was not an idea whose time had come. Great Britain preferred to deal with its North American colonies individually rather than as a potentially powerful unified colonial legislature. For their part, many colonies did not want to give up their own sovereignty, especially when it involved land claims that might allow a lucky few colonies (especially Virginia) to grow even larger and more powerful at the expense of the small coastal colonies, such as Rhode Island and Delaware, whose boundaries were constricted by the ocean and those of neighboring colonies.

Franklin may not have expected his plan to be adopted. He was a very savvy politician. But his plan did plant the seeds for an American union. Writing four years later, Franklin discussed the "impossibility" of an American union at that time, stating, "When I say such a union is impossible, I mean without the most grievous tyranny and oppression."³³ In the minds of many American revolutionaries, they would get just that.

After the Seven Years' War, Great Britain was the unquestioned European power in Canada and in the modern United States east of the Mississippi River. With victory, however, came problems: Great Britain now had to confront increasingly assertive colonies. It had acquired a vast new territory that needed to be administered, defended, and paid for. But money was scarce. War had left Great Britain with a significant amount of debt, and the British government fully expected its thirteen colonies to pay the British Crown to cover their costs and not to make the debt problem even worse³⁴ (see Figure 1.3).

Beginning in 1763, Parliament passed a series of acts and proclamations that enlarged the scope of Great Britain's involvement in colonial affairs, producing a backlash from colonists who felt that Great Britain was going too far. To make matters worse, these acts were instituted during an economic depression in the colonies. Colonial legislatures became increasingly resistant to Parliament's interference in areas of economic life that the colonies had been in charge of for decades.

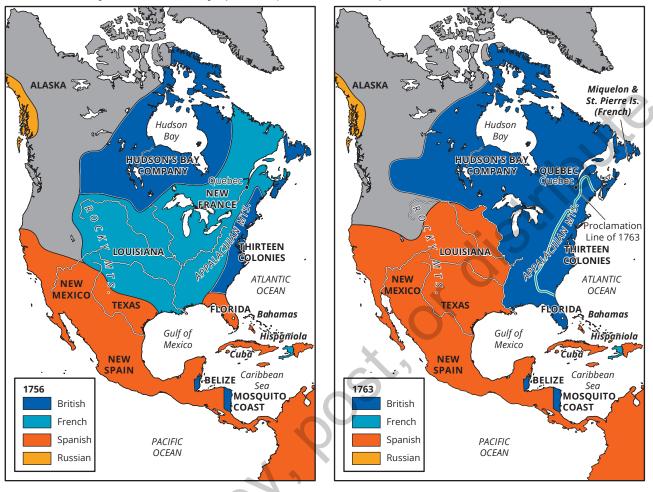
The Idea of Independence Is Given Voice in Political Propaganda

In this uncertain political environment, there were a few colonists who advocated resistance to Great Britain, some who remained loyal to Great Britain, and many more who were undecided and afraid of actions that might lead to a hopeless war against the greatest military power in the world. It was this last group, the undecided, who found themselves in the crosshairs of a radical few. Those few had a powerful, cheap, and flexible technology on their side. It was called the printing press, and the American radicals used it very well.

From the printing presses came inexpensive and easy-to-produce papers called pamphlets; the printers came to be called pamphleteers. Enough people had access to and the ability to read their products to make the pamphlet a revolutionary technological innovation.³⁵ The pamphleteers were engaged in **political propaganda**; their goal was to change public opinion and thus influence people's actions.³⁶ American pamphleteers were not trying to show their intelligence or literary skill. They were trying to mobilize people in support of their cause. Words and ideas, as the pamphleteers knew well, could also constitute strategic political action.

FIGURE 1.3 📕 European Territorial Claims before and after the Seven Years' War

Following the Seven Years' War, Britain laid claim to much of the territory once held by the French, thus consolidating its power in the eastern portion of North America. Administering those colonies and finding ways to fund expansion were enormously difficult.



Of all the American pamphlets, the most widely read was Thomas Paine's 1776 pamphlet *Common Sense*, which was a massive bestseller in its day. *Common Sense* ultimately "had more influence in focusing the spirit of revolt than the writings of all the intellectuals taken together."³⁷

Calling King George III the "royal brute of England," Paine challenged the legitimacy of the British monarchy, refuted arguments in favor of reconciling differences with Great Britain, and announced that "the period of debate is closed."³⁸ He used the dreaded word, *independence*, writing that independence from Great Britain was not only possible but sure to come to pass.³⁹ Drawing on the idea that the American colonists had a unique destiny in the world and in history, Paine called the colonists into action at just the time when many were ready to receive his message.

Revolutionaries Take Action, Their Eyes on Increasing the Powers of Colonial Legislatures

Words alone, however powerful, were not enough to mobilize the colonists to make a final break from Great Britain. Colonial radicals began a planned strategy of resistance—one that involved propaganda, organization, and occasionally violence. A phrase we commonly associate with resistance to British tax policy is "No taxation without representation!" Although it was used at the time, the phrase did not fully capture the struggle between colonists and Great Britain.

It might seem logical to assume that a protester declaring "No taxation without representation" wanted to gain representation, in this case by electing a member of Parliament who could promote

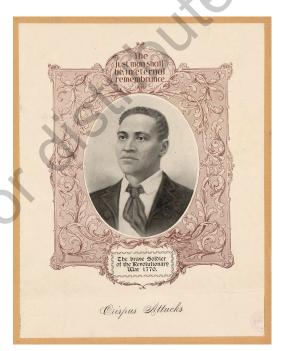
the interests of the colonists. American radicals, however, generally did not want to be represented in Parliament. Representatives would have been out of communication with the colonies during debates, given the vast distances involved, and would have been consistently outvoted in Parliament. Instead, the colonists argued that the power of taxation should be held by colonial legislatures, not British Parliament. In many ways, colonial opposition to British policies was conservative rather than revolutionary. Its adherents wanted to go back to the way things had been prior to the Seven Years' War, when British colonial policy was more hands-off. Economic and political realities, however, made this an unrealistic goal.

The Sons of Liberty Attempt to Mobilize Colonists around British Tax Policies

In 1765, in response to Great Britain's tax policies, a group of merchants and laborers, including Sam Adams, formed the **Sons of Liberty**. It was a working-class organization, with a potentially much larger appeal to the general public than the revolutionary elites had. That potential made the Sons of Liberty both attractive and scary to the wealthy elites in the revolutionary movement. They feared they might not be able to control the actions of the Sons of Liberty. Through rallies, sermons, protests, and heavy use of the newspapers, the Sons of Liberty tried to mobilize public opinion in support of resistance to Great Britain and its tax policies. They also resorted to mob violence, including rioting and looting.

The group's violent actions backfired as a political strategy, sparking fear among uncommitted colonists. In response, radicals changed their strategy. They planned and organized boycotts of British goods, pressuring fellow colonists to comply.

In October 1765, at the invitation of Massachusetts's colonial legislatures, nine of thirteen colonies sent representatives to New York to prepare a colonial response to Britain's policies.⁴⁰ This so-called Stamp Act Congress (named after the Stamp Act, another British tax) issued a Declaration of Rights and Grievances, which was, in many ways, quite mild. Although it protested the imposition of taxes without colonial consent, it also affirmed colonial loyalty to the British Crown. Most important, however, the Stamp Act Congress was an assembly of representatives from different colonies, an early example of the colonies working together.



Crispus Attucks and four others were shot and killed at the Boston Massacre.

Library of Congress

The Crisis Accelerates as Protests Intensify

Despite continuing tensions, the next few years were relatively quiet politically, with radicals losing power and influence. Beginning in 1770, however, that began to shift.

The exact sequence of events leading up to the Boston Massacre in 1770 is not entirely clear, nor is the exact role of radicals in escalating the situation. It involved a confrontation between a mob of Bostonians and a small group of British soldiers, beginning with taunts and snowballs and ending in the deaths of five American colonists. Sam Adams and other radicals quickly mobilized to use the press to rally support for their cause, describing "the blood of our fellow citizens running like water through King Street."⁴¹

The Boston Tea Party Adds Fuel to the Revolutionary Fire

In 1773, the Boston Sons of Liberty seized on another conflict to create further division between the colonists and Great Britain. It began over a bailout of the East India Company by the government of Great Britain. Though corrupt and poorly managed, the East India Company was no ordinary company. It ruled much of India with its own private army. It could count among its investors some of the wealthiest and most powerful men in Great Britain. It was—in modern terms—too big to fail. But the company was nearly bankrupt, and it had large stocks of unsold tea.

It needed a bailout, and it got one with the Tea Act, passed by Great Britain in 1773. The act gave the East India Company a tax-free monopoly on the tea trade to the colonies. New England merchants were not pleased and saw "ruin staring them in the face."⁴²

It was the fear of what Great Britain might do next as much as what it actually *had* done that drove many merchants into the radical camp. In late 1773, three ships entered Boston Harbor loaded with tea. With the merchants increasingly on their side, the Sons of Liberty provoked a crisis, dumping the tea from the ships into the harbor, an event known as the Boston Tea Party.

Not everyone in the American colonies cheered the actions of the radicals. Their lawlessness worried many. The violence that accompanied the protest seemed to some completely unjustifiable. Despite the limited support for the radicals, their strategic actions placed the British government in a very difficult situation. It could not ignore the attack on British property and commerce. Asserting control, however, risked driving moderate colonists into the radical camp.

Parliament, with the support of King George III, clamped down. Hard. In a series of actions in 1774, known in the colonies as the **Intolerable Acts**, Britain sought to make an example of Massachusetts and its radicals. If Parliament and the Crown thought that this show of resolve—backed, if necessary, by force—would quiet the colonies, they were wrong. Instead of driving a wedge between the colonies, the Intolerable Acts brought them together. Writing many years after the American Revolution, John Adams observed this:

The colonies had grown up under constitutions of government so different, there was so great a variety of their religions, they were composed of so many different nations . . . that to unite them in the same principles in theory and the same system of action, was certainly a very difficult enterprise. . . . Thirteen clocks were made to strike together—a perfection of mechanism which no artist had ever before effected.⁴³

The actions of the British government and the Boston radicals had helped to synchronize these thirteen clocks.

Enslavement Denies the Inherent Rights of Black Individuals in the Colonies and the New Nation

The first group of twenty Africans arrived in Jamestown, Virginia, in 1619 aboard a Dutch ship. Like the Indigenous peoples whose lands had been taken and occupied by British settlers, the African peoples who followed this small group came from diverse cultures, nations, and kinship groups. Initially, some were given the status of indentured servants—people who still possessed the ability to pay off their "debts" through labor and achieve their freedom. Throughout the seventeenth and eighteenth centuries, white individuals arrived from Europe who also carried the status of indentured servitude. As the plantation economies of colonial America developed, however, enslaved Africans and their descendants confronted legal systems designed more and more to strip them of any legal or political rights or any hope of freedom under that legal order.

By the time Virginia's government fully codified the status of enslaved people in the eighteenth century, "no black, free or slave, could own arms, strike a white man, or employ a white servant. Any white person could apprehend any black to demand a certificate of freedom or a pass from the owner giving permission to be off the plantation."⁴⁴ Like the Indigenous peoples, enslaved Africans and their descendants strove to maintain their ways of life and acted to protect their spiritual and cultural traditions, kinship networks, and families over the coming centuries.

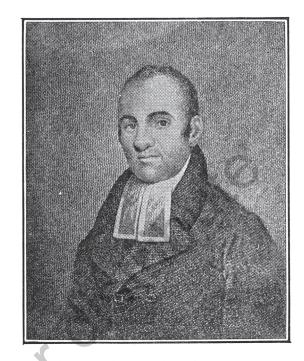
As colonial America moved toward a revolution based on individual liberty, it was far from an equal society. To many white colonials, the prospect of individual advancement made America more equal than the class-stratified societies in Europe, with the exception of the almost feudal southern plantation societies.⁴⁵ The willingness of white colonial Americans to attack Great Britain for assaults on their liberty while allowing the enslavement of Africans did not go unnoticed by British officials and some white colonists. Thomas Hutchinson, governor of Massachusetts before the war, questioned how the American revolutionaries could "justify the depriving of more than a hundred thousand Africans of their rights to liberty, and the same *pursuit of happiness*, and in some degree to their lives, if these rights

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are so absolutely inalienable.⁷⁴⁶ Paine was one of only a relatively small number of white pamphleteers to point out the contradiction of calling for liberty in a society that allowed slavery. In a 1775 newspaper article, he wondered how the colonists could "complain so loudly of attempts to enslave them, while they hold so many hundred thousand in slavery."⁴⁷ This hypocrisy did not go unnoticed by enslaved people and free peoples of African descent either. In April 1773, a group of Black colonials in Massachusetts petitioned the government for a redress of their grievances, drawing "a straight line between their own condition as chattel slaves and the conditions colonists were then objecting to as virtual slavery."⁴⁸ They asked that the same principles be applied to their own condition in colonial America.

"We expect great things," they wrote, "from men who have made such a noble stand against the designs of their *fellow men* to enslave them. . . . As the people of this province seem to be actuated by the principles of equity and justice, we cannot but expect your house will again take our deplorable case into serious consideration, and give us that ample relief which, *as men*, we have a natural right to."⁴⁹

In 1776, Lemuel Haynes, a Massachusetts minister, wrote an unpublished pamphlet titled *Liberty Further Extended*. The son of an African father and a white mother, Haynes became a servant to a religious white farming family in the backcountry of Massachusetts. Haynes educated himself in Puritan theology and on the pamphlets of colonial America. He volunteered as a minuteman (a volunteer reserve) in Boston in 1774 and for the Continental Army in 1776. In his pam-



LEMUEL HAYNES

Lemuel Haynes, a Massachusetts minister, challenged slavery based on its violation of inherent rights.

Interim Archives via Getty Images

phlet, Haynes anchored his arguments about the injustice of slavery in the principle of inherent rights and the Christian theology with which colonists were very familiar:

Liberty is a Jewel which was handed Down to man from the cabinet of heaven, and is Coaeval with his Existence. And as it proceed from the Supreme Legislature of the univers, so it is he which hath a sole right to take away; therefore, he that would take away a mans Liberty assumes a prerogative that Belongs to another, and acts out of his own domain.⁵⁰

Revolutionary Women, Though Excluded, Build Institutions of Their Own

In many ways, women in revolutionary America were legally and politically invisible. In spite of commonalities in their legal standing, however, *colonial women* as an all-encompassing term fails to capture significant differences in the status, economic class, and religious orientation of the women in question.⁵¹ Women who were enslaved, of African descent, or of Native American ancestry struggled against multiple forms of oppression. Though sexual and physical abuse was a danger for all colonial women, those who were enslaved or indentured servants faced a higher risk.⁵² War only heightened these risks; during the conflict, sexual assault was sometimes practiced systematically. In 1776 in Staten Island, New York, and New Jersey, British troops repeatedly raped women in the area.⁵³

White women, unless they had acquired property through widowhood, generally had no legal identity or ability to secure their personal and economic rights in a court of law. They did not have to struggle against the destruction of their families, traditions, and ways of life, as women of African or Native American descent did. Theirs was a "protective oppression," designed to keep them out of involvement in government and public life. Because of more restricted educational opportunities and therefore lower literacy rates than men, fewer women's voices were expressed in print. In spite of these challenges, however, many women did speak, write, and act against the restrictions on their own rights and liberties in colonial America.

Because of their general exclusion from public life, white women had fewer opportunities to adopt leadership roles in revolutionary America. Religious organizations proved an important exception, because women could act as leaders in them without the same risk of social disapprobation they would face if acting in the male-dominated political space. Maintaining the boycotts of British goods in the years before revolution also "politicized women and the



E. D. Bert ____

A portrait of Esther de Berdt Reed by Charles Wilson Peale done sometime before 1780.

Print Collector via Getty Images

domestic arena," especially in the production of substitutes for those goods.⁵⁴ The replacement of British textiles, in particular, brought many colonial women together as **Daughters of Liberty** in spinning events. Although these meetings remained in the "acceptable" realm of home production in the eyes of the male-dominated white colonial society, they did provide an experience in collective organization—an act of public "joining" that was itself a departure from and challenge to traditional gendered roles.⁵⁵

Efforts to support the Revolutionary War effort led Esther de Berdt Reed, Sarah Franklin Bache (daughter of Benjamin Franklin), and other colonial women to work to create a women's organization across, not just within, the United States. The Ladies Association of Philadelphia was "the biggest domestic fundraising campaign of the war,"⁵⁶ in part because women and girls who were not wealthy could still participate by donating small amounts of money to door-to-door fundraising efforts.⁵⁷

The collection, accounting, and delivery of these donations required the development of an organizational and administrative structure. Though the members focused on activities considered acceptable for white women in colonial America, the act of organizing and institution building was itself revolutionary. These fundraising efforts were extremely successful, and this was perhaps the first truly national American women's organization.

Indigenous Peoples in North America Challenge Colonization

The social, cultural, and linguistic diversity of the Indigenous peoples in North America at the time of British colonization was staggering. At the time of first contact with the European invaders, perhaps a quarter of "all human languages in the world were North American Indian."⁵⁸ Initially, British colonists depended on the adaptive technologies and agricultural advances of the Indigenous peoples for their own survival. As the British colonies grew in size and confidence, however, they began to assert their ideas about land ownership more aggressively, provoking resistance by Indigenous peoples who had not agreed to such terms. The violence that resulted was often horrific, including massacres of entire Indigenous local communities and reprisals against individual British colonists.

By the time Jefferson sat down to draft the Declaration of Independence, the population of Indigenous peoples in the thirteen British colonies had been reduced to a fraction of its level before first contact with the Europeans. Foreign diseases, against which Indigenous peoples had little or no immunity, were the largest factor. Death from armed conflict also played a role. However, the disruption in the traditional ways of life of Indigenous peoples caused by European settlement, including the cascading effects of losing their land—which upset agreements and boundaries between them and other Indigenous peoples—also had an effect. The impact of British colonization on traditional ways of life was total. The habitats on which Indigenous peoples depended were altered and depleted. The traditional social and economic systems that had been developed before the British colonists arrived often broke down.

Indigenous peoples, however, did not sit idly by and allow this to happen. They resisted—at times militarily, and often quite successfully. Many Indigenous peoples also practiced diplomacy among and between European powers and other Indigenous peoples. Sometimes this approach bore fruit, but sometimes it had disastrous outcomes, especially as the European powers were often quite willing to abandon their promises to their "allies" among Indigenous peoples once European objectives had been met. For most Indigenous peoples, resistance probably took personal, nonviolent, and largely unrecorded forms as they tried to maintain the survival of their families and kinship networks, their spiritual traditions, and their economic and social structures in the presence of powerfully destabilizing forces.⁵⁹

Independence Becomes Institutionalized

By the time the delegates to the Second Continental Congress convened in Philadelphia in May 1775, the "war of pamphlets and protests was giving way to the war of rifles and cannon."⁶⁰ In April, British general Thomas Gage ordered troops to move on Lexington, Massachusetts—to arrest radical leaders, including Sam Adams—and on Concord, Massachusetts—to seize weapons. He failed to do both, and the battles of Lexington and Concord, though small, handed the radical pamphleteers the best ammunition they could hope for. They immediately published exaggerated reports of British atrocities against colonial citizens, especially women and children. Individual colonies began to organize or expand colonial militias and organize their manufacturers for war.

Though few could probably have imagined it that May, the **Second Continental Congress** remained the government of the United States until 1781, when a new American government, one designed by the Congress, took its place.⁶¹ The Second Continental Congress was perpetually in crisis, trying to fight a war in the face of what seemed like unending military defeats and inadequate supplies, troops, and hard money. Its capital even had to be moved in the face of advancing British troops.

When the Second Continental Congress first assembled, the colonies were not yet united in the cause of war. A group of wealthy elites with personal, political, or financial ties to Great Britain opposed independence. A second group, the radicals, set their sights on armed conflict with Great Britain. A third group, the moderates, agreed that a show of force might be necessary but only to serve the ultimate end of a negotiated solution. There were other divisions—between slave and nonslaveholding states, between large and small colonies, and between urban and rural colonists. These divisions would become more important once independence had actually been achieved.

In the early months of 1776, events began to accelerate toward independence. *Common Sense* had given a clear voice to the cause, and British actions had given ammunition to the radicals. Individual colonies began to pass resolutions authorizing their delegates in Congress (often at the request of those delegates) to move for independence from Great Britain. On June 7, Richard Henry Lee of Virginia offered a motion in Congress declaring "that these united colonies are, and of right ought to be, free and independent states, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved."⁶²

Congress was not quite ready to act on the Lee Resolution. The vote was postponed for three weeks to allow for more instructions to arrive from some of the colonies and to convince reluctant colonies and their delegates to get on board. In the meantime, a committee was appointed to draft a basic structure for a government in the event of independence. A second committee was charged with trying to secure foreign aid. Another committee, consisting of Jefferson, John Adams, Franklin, Roger Sherman, and Robert R. Livingston, was charged with writing a declaration of, and justification for, American independence. On July 2, 1776, the Second Continental Congress approved the Lee Resolution. Two days later, on July 4, Congress approved Jefferson's revised Declaration of Independence, which announced, and defended, American independence to the world.

Congress had not accepted Jefferson's original draft of the Declaration, however. Of all the changes that members of the Second Continental Congress made, none was more significant than the deletion of his charges against the king on the issue of slavery. The first section of the deleted charges accused the king of violating inherent rights by allowing the slave trade to continue. Yet Jefferson enslaved other human beings, 607 during his lifetime.⁶³ His lifestyle depended on the capture, sale, and oppression of other individuals. That lifestyle both benefited from and supported the oppression and violence that kept the system in place. Today, there is considerable debate about how best to acknowledge and present the complicated and uncomfortable legacies of individuals like Jefferson. Discussion over the placement of statues and other public monuments to commemorate these individuals is a current, and contentious, example.

The second deleted section, in which Jefferson charged the king with trying to incite slave rebellions in the colonies, spoke directly to the fears of many southern plantation owners. British officials had recently made offers of freedom to enslaved colonials in exchange for their joining the British against the American revolutionaries. Many eventually did.

In the end, Jefferson's charges against the king on the issue of slavery were deleted, partly due to opposition from southern-state delegates. The contradiction—of a new nation announcing its birth on the foundation of freedom while holding hundreds of thousands of people in slavery—remained.

The American Revolution Is Still under Construction

From the start, the Revolutionary War went poorly for the Americans. Successive defeats, disease, and logistic problems all plagued the colonists and their general, George Washington. By adapting their tactics to suit their strengths—knowledge of the terrain and support among many of the locals—the colonists managed to use hit-and-run tactics to harass Britain and attack its long supply lines. With the help of Britain's rivals, especially France and its powerful navy, the Americans finally defeated Great Britain in 1781. The Treaty of Paris, signed in 1783 and ratified by Congress in 1784, secured the independence of the United States of America.

Militarily and politically, the American Revolution wasn't technically a revolution. King George III was not overthrown; the British Empire remained intact. The conflict in America is more properly called a secession, in which a group of citizens break off from the larger government to form one of their own. In the backcountry, it was frequently a civil war, with members of the same communities fighting each other, often brutally.

It was, however, very much a revolution of ideas. Though imperfectly and incompletely, the idea of a government based on inherent rights and individual liberty had been given political and institutional form. Later American revolutionaries would undertake their own wars of ideas and political strategies to try to make the government live up to its promises. As part of their efforts, they would build, rebuild, and reshape the political institutions that protect and express Americans' inherent rights in a representative democracy.

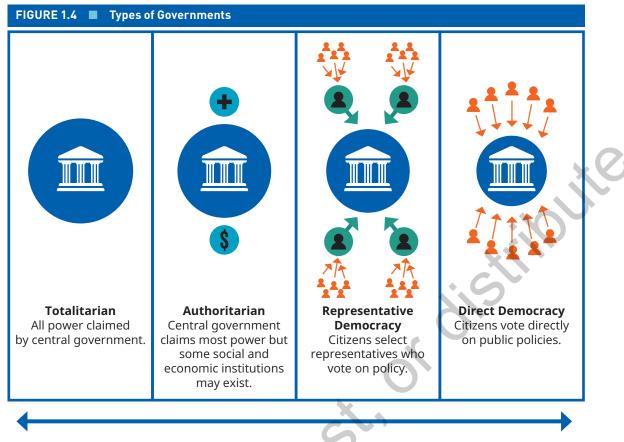
THE STRUCTURE OF INSTITUTIONS AFFECTS HOW CITIZENS PARTICIPATE

As we have seen in the stories that have already been mentioned, though the actions of people and their ideas matter to American government, the **political institutions** that structure how citizens may be involved matter as well. To a great extent, institutions determine how conflicts over political power are resolved, and they can also shape the ideas of people acting within them.

The term *political institution* often conjures images of *organizations*, like Congress or the Supreme Court. Political institutions in America today are almost too numerous to list, comprising bodies at the local, state, and national levels. However, the *rules* that structure how these organizations are formed and how they operate are equally essential to consider, including the most important American political institution, the Constitution of the United States. The Constitution, as we will explore in the next chapter, is itself largely a set of rules about how things are supposed to work. This document forms the basis of the nation's government and in turn creates a host of political institutions through which conflicts over political power are resolved. It places textual limits on the power of the national government in order to protect Americans' fundamental rights. It also constitutes, or creates, a people with its first seven words: "We the People of the United States."

In devising a system of government, two basic questions need to be resolved: how much power that government will claim, and how political power will be distributed or withheld. Different forms of governments distribute power in very different ways. Totalitarian governments admit no limitations on their own power or competing centers of political power. Similarly, authoritarian governments suppress the voices of their citizens to maintain a grip on power; however, unlike totalitarian systems, authoritarian systems may have some economic or social institutions not under governmental control that may serve to moderate the government's power. Governments that admit no external challenge to their claims on power might be monarchies, ruled by royal figures; theocracies, ruled by religious elites; or oligarchies, ruled by a small group of powerful elites. At the other end of the spectrum of power is a **direct democracy**, in which citizens vote directly on public policies (see Figure 1.4).

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Power concentrated in central government

Power concentrated in citizenry

The United States is none of these extremes. Although the nation does have elements of direct democracy—in, for example, local votes to approve or reject public school budgets or property tax increases—the vast majority of conflicts over power in America are handled through a system of **representative democracy**, in which voters select representatives who then vote on matters of public policy. In doing so, voters in a representative democracy are confronted with a serious challenge: How can they be sure that their representatives are carrying out their wishes? This is a question that we will examine in some detail in this book.

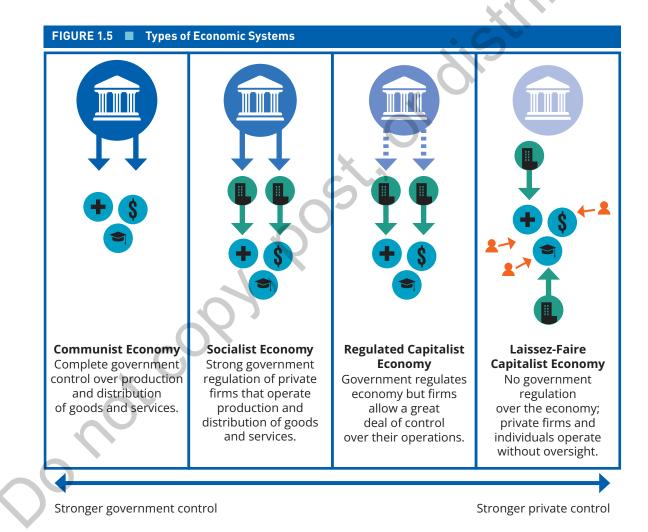
By ceding some of the expression of their inherent rights to a government, Americans have tried to create institutions that ensure an orderly and prosperous society. They have thus entered a social contract as described by various Enlightenment thinkers. In doing so, however, they run the risk of creating institutions that oppress instead of uplift.

The challenge is that representative democracy does not, by itself, protect against all forms of tyranny. By allowing citizens to select their representatives or vote them out of office, the nation does gain protections against abuse of power by those selected. But what if a *majority* of Americans are in favor of suppressing the rights of others, as was the case in many states with laws allowing or requiring racial segregation?

To further protect against infringements on individuals' rights and freedoms, whether that be from officials, a majority of the population, or others, the United States of America also has a **constitu-tional government**. In this type of system, limits are placed on the power of government to infringe on people's rights in a constituting document that is recognized as the highest and most supreme law of the nation.

The institutions and rules of a government not only structure the politics of a nation but also may serve to structure its **economy**, or the ways in which goods and services are produced and distributed within a society.

When comparing different economic systems, the key thing to focus on is how much power a government has to regulate the production and distribution of goods and services. In a **communist system**, a government acting on behalf of all workers in a society controls the means of production and distribution—all the factories and stores, railroads, and trucks. In a **socialist system**, private firms are allowed to operate but with significant intervention by the government, which may include governmental control of sectors of the economy, such as energy or mining, in the service of ensuring economic equality. In a **capitalist system**, private ownership of the means of production and distribution of a society's resources is emphasized and protected under the laws of that society. Capitalism emphasizes the efficiency of the marketplace in optimally allocating a society's resources. A completely unregulated capitalist system is called *laissez-faire* (from the French "let go," or "let be") and allows individuals and private firms to operate without regulation or oversight. No representative democracies currently practice laissez-faire capitalism. Instead, even nations like the United States that emphasize private economic action practice regulated capitalism, in which firms are allowed to control much of their own decision making but are also subject to governmental rules and regulations (see Figure 1.5).



DR. MARTIN LUTHER KING JR.'S "LETTER FROM BIRMINGHAM JAIL" LINKS THE CHALLENGE AGAINST RACIAL SEGREGATION TO CORE AMERICAN IDEALS

As they led about forty protesters from the Sixteenth Street Baptist Church in Birmingham, Alabama, Reverend Martin Luther King Jr. and his close friend, Reverend Ralph David Abernathy, were dressed for jail. Wearing work shirts and jeans, carrying coats to ward off the cold and damp of Birmingham

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City Jail, King and Abernathy walked past hundreds of spectators, witnesses, and supporters. Some "sang freedom songs, some knelt in silence."⁶⁴ A few cried.

Despite the seriousness of the situation, the two leaders had tried to show calmness and strength. One evening prior to leaving for Birmingham, King had lightened the mood of all present when, looking at Abernathy and knowing his friend's habits, he said, "Let me be sure to get arrested with people who don't snore."⁶⁵ On the night before the march, King had told the planners and supporters gathered in Room 30 of the Gaston Motel in Birmingham, "I don't know what will happen. I don't know where the money will come from. But I have to make a faith act."⁶⁶

Born in Atlanta in 1929, King received a doctorate in theology from Boston University and, like his father, joined the Christian clergy. After university, King moved back to the South, even though "there had been offers of jobs in safe northern universities."⁶⁷ Later, he became one of the founders and the president of the Southern Christian Leadership Conference (SCLC), an organization devoted to challenging racial segregation and advocating civil rights. In its founding statement, the conference's leaders pointed to the violence against those struggling for racial justice and announced that "we have no moral choice, before God, but to delve deeper into the struggle—and to do so with greater reliance on non-violence and with greater unity, coordination, sharing and Christian understanding."⁶⁸

King, Abernathy, and other civil rights leaders faced a near-constant threat of violence for their opposition to racial segregation, as did many other women and men who took on the white racial order in the American South. King's own home in Montgomery, Alabama, had been bombed in 1956,

though no one was harmed. Prior to that act of racial violence, King had also been verbally threatened in an anonymous phone call—a clear attempt to intimidate him. It didn't work. King, as well as other leaders, members, and supporters of the SCLC, pressed ahead.

That they were marching in Birmingham in 1963 was no accident. The city was a bastion of segregation, and threats of violence to anyone who resisted were pervasive. The protests were designed as acts of civil disobedience: Participants defied a law seen as unjust and accepted the consequences of that defiance, as King put it, "openly, lovingly."⁶⁹

For breaking a prohibition on their marching or protesting, King, Abernathy, and about fifty others were arrested and taken to Birmingham City Jail. King was thrown into solitary confinement—"the hole," as it was called—with only a cot with metal slats to sleep on. "You will never know the meaning of utter darkness," he recalled, "until you have lain in such a dungeon."⁷⁰



Rev. Ralph D. Abernathy, desegregation leader, with Dr. Martin Luther King Jr. (second from right), after their release from jail in Albany, Georgia, in 1962. They had been arrested on charges of parading without a permit the previous year and chose to serve time in jail rather than pay a fine.

Bettmann via Getty Images

White Clergy Members Urge Moderation

The morning after King's arrest, a copy of an article from the *Birmingham News* was "slipped in to" his cell.⁷¹ Titled "White Clergymen Urge Local Negroes to Withdraw from Demonstrations," the letter, written by eight white members of the Protestant, Catholic, and Jewish clergies, admonished King and the other leaders of the SCLC to slow down, to stop protesting, and to end the strategy of civil disobedience in Birmingham.⁷²

Calling the demonstrations "unwise and untimely" and "directed and led in part by outsiders," the eight clergy members argued that "honest convictions in racial matters could properly be pursued in the courts." They "commend[ed] the [Birmingham] community as a whole and the local news media and law enforcement officials in particular, on the calm manner in which these demonstrations ha[d] been handled." (However, a photograph taken less than a month later and published in the *New York Times* showing a young Black man being attacked by a police dog under

the direction of a Birmingham police officer led millions of Americans to question claims of police restraint.) In closing, the clergy members urged Birmingham's "Negro community to withdraw support from these demonstrations."

Dr. King's Letter Affirms Inherent Rights for Black Americans

Writing in the margins of the smuggled newspaper, King penned a response from jail to the clergy members' accusations and advice.⁷³ His notes were smuggled out of the jail, typed up, and eventually published by a group of Quakers as the "Letter from Birmingham Jail." Though it did not have the benefit of King's powerful speaking voice to increase its impact, it is one of the most important documents of the American Civil Rights Movement.

PRACTICING POLITICAL SCIENCE

The Power of the Media

Black activists in the Civil Rights Movement of the 1960s used a variety of strategies to bring about social change, including holding sit-ins in whites-only areas, such as lunch counters and on public transportation, and organizing marches and demonstrations across the South. The white clergy who urged "moderation" said that those types of protests were unwise and argued that protesters should pursue institutional avenues, such as the courts, for change.

This photograph of a student activist being attacked by a police dog in Birmingham, Alabama, appeared on the front page of the *New York Times* in 1963. President John F. Kennedy is reported to have viewed it and said it sickened him. He also said that it would make the United States look bad across the world, because Birmingham was "a dangerous situation for our image abroad."⁷⁴ Shortly afterward, Kennedy delivered his own famous civil rights speech, vindicating Martin Luther King Jr.'s statements in the "Letter from Birmingham Jail."



Associated Press/Bill Hudson

What Do You Think?

What role do you think images like this may have played in shaping American public opinion on civil rights? Might this role be similar or different in the era of cell phone cameras and YouTube?

In the letter, King begins by affirming that his reply is a sincere response to the white clergy members' concerns, calling them "men of genuine goodwill." Then he defends his presence in Birmingham

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professionally, as president of the SCLC. However, he also lays out a much more fundamental basis for his involvement. He declares, "I am in Birmingham because injustice is here."

King defends his and his movement's tactics on the basis of inherent rights, drawing a distinction between just and unjust laws: "A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the natural law." Racial oppression, he asserts, in all of its legal manifestations, is unjust. Individuals, therefore, have the right to break these unjust laws—but, he adds, "one who breaks an unjust law must do so openly, lovingly."

In a single sentence, more than three hundred words long, King lists the grievances, the injustices, and the evidence that led to his and many others' revolutionary acts. In its use of language, logic, and the principles of inherent rights, the "Letter from Birmingham Jail" knows no superior as an American revolutionary pamphlet. Politically, one of the most important passages in the letter pointed to the white moderate as a severe obstacle to justice: "I have almost reached the regrettable conclusion that the Negro's great stumbling block in the stride toward freedom is not the White citizens' 'Councilor' or the Ku Klux Klanner, but the white moderate who is more devoted to 'order' than justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice."

Doyle Brunson, one of the greatest no-limit Texas Hold'em poker players of all time, said of his poker strategy, "I want to put my opponent to a decision for all his chips."⁷⁵ The radicals of the American Revolution meant to present the colonial moderates with exactly the same decision. Through their actions—and with help from British reactions to their strategies—the radicals took away the possibility of a comfortable, moderate, middle ground. By creating a crisis and a confrontation, King and his fellow protesters sought to force white moderates to make a choice, to decide whether racial segregation and the oppression of Black Americans was consistent with the ideals of the United States.

CONCLUSION: THE AMERICAN EXPERIMENT CONTINUES, AND YOU ARE PART OF IT

A study of American government requires an understanding of the ideas on which it is based. It requires an understanding of the ways in which political institutions promote, shape, or hinder the fulfillment of these fundamental ideas. It requires a study of the past and the present. However, and most importantly, a deep study of American government requires that you think, and perhaps act, as a strategic player in the political space, which is rarely, if ever, neat and clean.

Should you choose to act in American politics—should you choose to stake your own claims on your rights—you will want to be well informed about both your own positions on critical issues and the positions of those with whom you disagree. You will want to have developed your skills in analyzing the words, images, and data that will serve as your tools along the way. And you will need to question: What is American political culture? Is there such a thing? How do the institutions of American government make "good government" more or less likely?

At the beginning of the chapter, I stated that this book would be centered on stories, and it is. But why? Why read the stories? Why not just skim the definitions for the "important" content? Because the stories and, most importantly, your engagement with them have the potential to capture what definitions and lists might not:

- The understanding that American political institutions did not fall out of the sky; they were created through conscious action and contestation, sometimes based on success, sometimes based on failure, and sometimes based on pure chance
- The comprehension that in the world of American government and politics, there is rarely, if ever, an either/or solution to major problems but instead a complex interplay among ideals, actions, time, and place

- The understanding that the development of American government and politics has always involved the experiences of individuals and groups whose lives were written outside conventional narratives
- The realization that people matter, even if they do not succeed
- The knowledge that your own voices matter—that your own opinions, thoughtfully constructed and respectfully offered, matter, even if these ideas and opinions may seem to be outside some perception of what you are supposed to think or what others tell you to think

As you read, engage with, and discuss the material in this book and in your courses, there are only two things of which I will try to convince you: You matter. And your stories matter as well, even if nobody ever retells them in a book.

The American experiment always was a complicated and incomplete thing. It still is. At its heart, it poses one difficult and basic question: Can a people design and maintain a government that uplifts and energizes its citizens rather than oppresses them? The answer to that question is not up to other people. It is up to you.

CHAPTER REVIEW

This chapter's main ideas are reflected in the Learning Objectives. By reviewing them here (Table 1.1), you should be able to **remember** the key points, **know** the terms that are central to the topic, and **think** about the critical issues raised in each section.

| | TABLE 1.1 Chapter 1 Learning Objectives Review 1.1 Explain how diverse Americans have used the political process to make claims on their fundamental rights and freedoms. | | | | | |
|-----|---|--|--|--|--|--|
| | | | | | | |
| | Remember | The American political system is designed so that different individuals and groups of people, regardless of their points of view and backgrounds, are able to make claims on the rights and freedoms they all share. | | | | |
| | Know | politics government | | | | |
| | Think | • Are there certain fundamental rights and freedoms whose protection is especially important to you? Are there some you think are not getting enough attention in the media or society? | | | | |
| | 1.2 Define the key elements of American political culture. | | | | | |
| 000 | Remember | The American political system was founded on a set of shared ideas and values that together are called political culture. The most important aspects of American political culture are the commitments to equality, rights, liberty, the pursuit of happiness, and religious freedom, and the idea that America is unique in the ways it has developed. Those ideas and values define the relationship of Americans to their government and to each other. | | | | |
| | Know | American dream American exceptionalism American political American political culture democracy American dream e conomic equality political equality political science social contract social equality | | | | |
| | Think | What are some of the key ideas that define American political culture? To what extent do your experiences inform you of the degree to which these ideas have been realized? | | | | |

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| Remember | • The Declaration of Independence was drafted primarily by Thomas Jefferson in connection | | | | |
|------------------------|--|---|--|--|--|
| | with the Second Continental Congress in 1776. | | | | |
| | Jefferson and his colleagues in the Continental Congress made a series of strategic decisions in incorporating key ideas from history into a document that successfully laid out the justification for independence. | | | | |
| | Colonial economies depended on enslaving other human beings. Enslaved peoples, their descendants, and Indigenous peoples were not extended rights under the Declaration of Independence. | | | | |
| | • The Declaration was shaped by the politics and historical context of American colonies trying to assert themselves in the face of tyranny. | | | | |
| | The political, social, and economic ideas that circulated in political pamphlets, especially Thomas Paine's <i>Common Sense</i>, contributed greatly to the rationale for independence and revolution in the face of increasing British taxation. Women played a role in the economy and affairs of the colonies but were not extended full rights. | | | | |
| | | | | | |
| Know | Albany Plan | • political propaganda | • Seven Years' War | | |
| | Daughters of Liberty Intolerable Acts | Second Continental Congress | • Sons of Liberty | | |
| | | | | | |
| Think | | behind the Declaration of Indep | | | |
| | Do you think the ideals in the | ne Declaration have been achie | eved in today's United States? | | |
| 1.4 Describe | the core features of American | political institutions. | | | |
| Remember | • In the American model of representative democracy, the forms our political institutions take affect how people are represented. | | | | |
| | • The institutional structure of the United States is that of a constitutional republic, in which the people elect representatives to make most of the laws and policies in the nation rather than voting on them directly. | | | | |
| | Institutions can both protect and restrict rights, and people may use and change them to protect their own rights or those of others. | | | | |
| | • America's political institutions also structure the country's economy. | | | | |
| Know | capitalist system | direct democracy | representative democracy | | |
| | • communist system | • economy | • socialist system | | |
| | constitutional | | | | |
| | government | political institutions | | | |
| Think | | | | | |
| 'hink | government What form of government of How are political decisions | does America have? | | | |
| Think 1.5 Assess th | What form of government of How are political decisions | does America have? . in America made? | rs on core American ideals. | | |
| 1.5 Assess th | What form of government of the theorem of the theorem of the theorem of the | does America have? .in America made? om Birmingham Jail" draw | | | |
| | What form of government of How are political decisions How are political decisions ways in which the "Letter from the theory of theory of the theory of the theory of the the | does America have? . in America made? om Birmingham Jail" draw 5 "Letter from Birmingham Jail | | | |
| 1.5 Assess th | What form of government of How are political decisions How are political decisions Dr. Martin Luther King Jr.'s important documents of th made by Thomas Jeffersor | does America have? in America made? om Birmingham Jail" draw s "Letter from Birmingham Jail e Civil Rights Movement, direct | ." (1963), one of the most tly echoes the claims for rights | | |

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KEY TERMS

Albany Plan American dream American exceptionalism American political culture capitalist system communist system constitutional government Daughters of Liberty democracy direct democracy economic equality economy government inherent rights

JOL CORY

liberty political equality political institutions political propaganda political science politics representative democracy Second Continental Congress Seven Years' War social contract social equality socialist system Sons of Liberty

Intolerable Acts

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Chip Somodevilla via Getty Images



THE CONSTITUTION OF THE UNITED STATES

A New Vision of Representative Government

LEARNING OBJECTIVES

By reading this chapter, you will be able to do the following:

- **2.1** Describe the ideas and contradictions that shaped James Madison's thinking about republics and the Constitution.
- **2.2** Explain the challenges faced by the nation following the American Revolution in trying to form a government strong enough to rule effectively but not so strong as to oppress the rights of Americans.
- **2.3** Describe the role that compromise over states' interests played in shaping the government during the Constitutional Convention.
- **2.4** Identify the institutions of government established by the Constitution and the distribution of political power among them.
- **2.5** Compare and contrast the arguments put forth by the Federalists and Anti-Federalists during the ratification debates.

INTRODUCTION

"We the People of the United States. . . . "Perhaps no seven words are as important in US political history as these. Penned by Gouverneur Morris in Philadelphia, Pennsylvania, during the fateful summer of 1787, these words did more than begin a document. They sought to *constitute*, to create, a new nation. In the Declaration of Independence, Thomas Jefferson and the other members of the Second Continental Congress had announced to the colonies and to the world why they felt that separation from Great Britain was justified and necessary. Following the American Revolution, that goal was achieved . . . but then what?

In the years following the Revolution, the American states and the government they had collectively agreed to form struggled against the realities of financial crises, the possibility of foreign invasion, and the threat of internal discord and even revolution. Against this backdrop, a group of delegates convened in Philadelphia in 1787 to create a new government—a new *kind* of government.

The delegates to the Constitutional Convention drafted and then tried to sell to skeptical individuals in the thirteen American states a blueprint for a new government, though the delegates themselves were often divided about what this government should be, how it should be structured, and how much power it should have. In spite of all of these divisions and challenges, they produced a **constitution**: a document that simultaneously creates a people, sets out fundamental principles by which these people agree to be governed, and establishes the rules and institutions through which this governing will take place.

In this chapter, we will explore the events leading up to the Constitutional Convention, the political debates within the convention, and the debates surrounding the ratification process. We will focus primarily on one person: James Madison of Virginia. Though he was hardly the most powerful political figure of the time, Madison's efforts were instrumental in shaping the Constitution of the United States.

JAMES MADISON PLANS FOR A REPUBLIC THAT WILL LAST

In the spring of 1786, James Madison Jr. settled into his home in Montpelier, Virginia, with two trunks full of books. As one of America's first political scientists, Madison aimed to apply science to the study of government. The subject of his studies that spring was the unspringlike topic of death, specifically the death of governments. Kingdoms and empires had endured, sometimes for centuries, under the rule of monarchs and emperors. But **republics**, governments ruled by representatives of the people, had

without exception eventually died. Madison wanted to know how a people could create a republic that lasted: one that could avoid being taken over by a small group of men or descending into civil war or anarchy; one that was strong enough to govern effectively but yet would not trample on the rights of its citizens.

In 1786, America was in a precarious position. In the tumultuous years that followed independence, the young nation had been plagued by economic disruption, European military and economic powers, and the dangers of rebellion within the thirteen states. The country needed a clear path forward if it was to survive. To Madison, that meant a plan for a new kind of government. It needed someone who could sell such a plan to a skeptical public too.¹ Madison poured himself into these projects systematically, scientifically, and with a great deal of energy.

Though he was shy, often sick, and a quiet public speaker, Madison was well educated, and he did his homework. In 1786, as the American government of the time came under increasingly harsh criticism and calls to fix or replace it grew louder, Madison's years of preparation allowed him to help shape the agenda of the debates taking place in his newly independent country and to get others to talk about his ideas, whether they agreed with him or not. In the spring of 1787, Madison, true to form,

showed up in Philadelphia having done his homework. Together with a group of similarly practical men, he attempted to create a republic that would last, one that would be strong enough to govern but not so strong as to trample on the rights and liberties of its citizens. Madison and others sought practical, institutional solutions for the seemingly timeless tendency of political leaders to pursue power, prestige, and riches, even when this meant the downfall of their own republics. That Madison and his colleagues were pragmatic politicians was no surprise; most of them had already been involved in the realworld politics of their own colonies and, later, states. Writing in 1923, Robert Livingston Schuyler captured this essential fact about those who shaped the new American Republic better than anyone since. "The Fathers," he declared, "were practical men."² Ideas and ideals are certainly part of America's constitutional heritage, but so are politics.

Madison's immediate concern in 1786 was to prepare for a conference set to take place in Annapolis, Maryland, in the fall. Officially, the Annapolis Convention had been called to address trade and navigation disputes between states. Unofficially, at least in the minds of Madison and those who shared his views, the hope was that the outcome of the convention might lead to significant changes in the fundamental structure of the government of the United States. Though Madison wanted to see major reforms, he was not optimistic about the prospect for real change. "Tho' my wishes are in favor of such an event," he wrote to Thomas Jefferson in August, "yet I despair so much of its accomplishment at the present crisis that I do not extend my views beyond a Commercial Reform. To speak the truth I almost despair even of this."³

An engraving of James Madison, American politician and scholar. His study of republics led him to investigate how to create a form of government led by people that was capable of enduring.

Ipsumpix/Corbis via Getty Images

His lack of optimism turned out to be well founded. Only five of the thirteen states sent representatives to the convention; the other states either did not appoint anyone or did not do so in time to make it to the meeting. Despite the poor attendance, however, delegates to the convention kept the dialogue of reform moving by calling for a convention in Philadelphia the following spring to discuss how to make the American government more effective in dealing with issues of trade and other pressing needs of the nation.

Madison's research, preparation, intellect, and understated political skill were important factors in the creation of the Constitution of the United States. The American Republic that he helped shape was based on the premise that liberty is something with which people are born, something that cannot be given or taken away by governments. This concept was expressed powerfully in the Declaration of Independence in its timeless affirmation "We hold these truths to be self-evident, that all men are created equal." As we have explored in Chapter 1, however, this American liberty was not originally meant for all.

Like Jefferson, George Washington, and Benjamin Franklin, Madison claimed a right to enslave other human beings. Each acted on the claim, keeping individuals in enslavement. The white power structure—through its legal systems, violence, and threats of violence—allowed and supported these fundamental violations of inherent rights. Though his own writings show that Madison at times struggled personally against the institution of slavery and that he realized how the practice had corrupted past republics, Madison's Virginia plantation had more than one hundred enslaved people. Madison never relinquished his claims to own others during his lifetime, holding individuals in enslavement for the rest of his life. Nor did he provide for their legal freedom after his death. Later in his life, Madison had written out a plan for ending slavery that involved a "gradual" emancipation. Compensation would be made to the enslaver for his "loss," the enslaved person would explicitly acknowledge preferring freedom to bondage, and all former enslaved peoples would be relocated to a region not "occupied by or allotted to a White population."⁴

The contradiction inherent in Madison's and others' statements, writings, and actions is not fundamentally resolvable. In their daily lives—in the structures of white power from which they benefited and which they helped uphold—these individuals argued for liberty while practicing enslavement, backed by the full legal and social power of state-sponsored violence and oppression. Under Virginia's laws of the time, Madison, or any other enslaver, could "correct" an enslaved person for any offense. If that person died under such a correction, the enslaver would likely not be punished at all. He could take a child from their family and sell the child for profit.⁵ As the delegates convened in Philadelphia, they, too, would struggle with or perpetuate these contradictions.

THE CONFEDERAL SYSTEM MADE COORDINATION BETWEEN THE STATES DIFFICULT

The government that Madison and his like-minded colleagues hoped to change was the first government of the United States. It was a confederation: a union of thirteen sovereign states in which the states, not the union, were supreme. It had been created by the **Articles of Confederation and Perpetual Union**, which had been adopted by the Second Continental Congress in 1777 and formally ratified in 1781. Although they had successfully guided the country through war and the accompanying economic and material devastation, the articles had few carrots or sticks to make member states work together to make and carry out national policy. By 1786, the American confederation was showing its limitations, at least in the minds of those who wanted a stronger union.

The Articles of Confederation Attempt to Unite the States While Preserving Their Authority

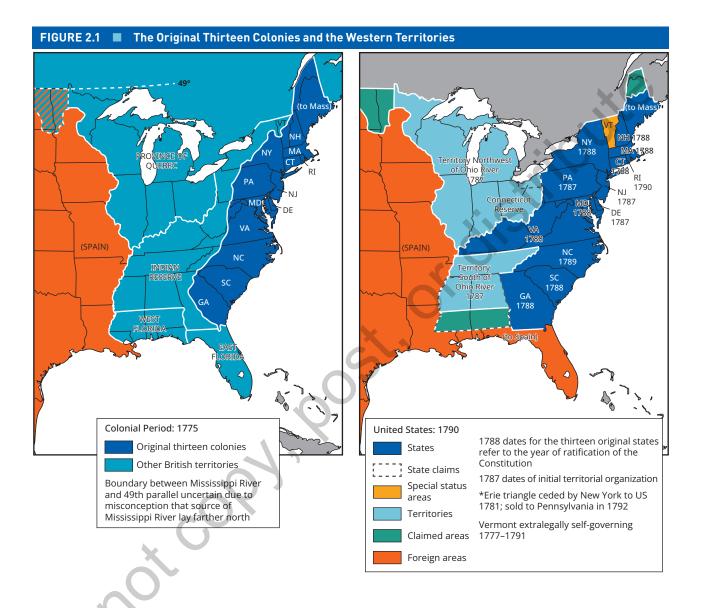
When the delegates to the Second Continental Congress had created the Articles of Confederation, they debated two related issues. Both involved mistrust. Colonists in one state did not always trust the motives of the governments of the other states. They also did not trust any government that would rule over them from far away, whether it be that of Great Britain before the war or of the new American nation after victory had been achieved.

Though it may be difficult now to imagine a United States in which states were strong and the nation was weak, the idea that the states were the real centers of power was not at all unnatural for Americans at the time. Long after the Constitution was ratified, many Americans still referred to "these United States" instead of "the United States." The British colonies, since their inception as business enterprises, plantations, or religious communities, had been self-sufficient and left alone to govern themselves. Colonists often viewed members of other colonies with distrust. They also reacted strongly against Britain's tardy attempt to create a more centralized colonial policy in the decades before the American Revolution.⁶

During the debates over the Articles of Confederation, mistrust of other colonies crystallized in conflicts over land, representation, and sovereignty. Some colonies had land claims on parts of other colonies (see Figure 2.1). Small coastal colonies, such as Delaware and Rhode Island, whose size was fixed by their location, viewed the western states' claims on Native American land with worry and



suspicion. How big would Virginia, whose charter had land claims extending to the "South Sea," eventually become?⁷ "The most acrimonious disagreements," according to one historian, "were over control of western lands."⁸ The views of Indigenous peoples on questions of ownership did not factor into these calculations.



Under the Confederal System, States Have Sovereignty and Equal Representation

Leading up to the Revolutionary War, the relationship between the colonies and Great Britain was one of mutual lack of understanding and lack of trust. The colonies failed to see how they played a part in Britain's role in global politics and struggles against other empires. For its part, Great Britain failed to understand that what had been plantations, business enterprises, and religious outposts "had grown up and become states in the making."⁹ This did not, however, mean naturally united colonies or, later, naturally united states. Each state had its own interests, and each worried that it might lose control over its future to other states or to a national government with its own agendas and desires.

In the face of the prospect of large, populous, and ever-growing neighbors, smaller states demanded, and received, equal representation in the new government. Each state had one vote in the new Congress. This Confederation Congress was unicameral, meaning it had only one chamber. States selected their representatives to the legislature and could choose the number of representatives they sent, though each

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state's delegation had to agree on these decisions, and each state received only one vote. Finally, states not the new union—would be sovereign, possessing ultimate political authority in almost all areas of policy, a right that was firmly established in the document.¹⁰

The Confederal Government Is Designed to Be Weak

The confederal government under the Articles of Confederation was intentionally made to be weak. With the Revolutionary War ongoing, colonists were still experiencing the tyranny of British rule, and they did not want to re-create it in a new American version. The confederal government could not tax

BARDRED & FIFTY DOL This Bill of Two HUNDRED AND FIF DOLLARS shall be exchanged and redeemed in nifh Milled Dollars, or the Value thereof Cald or Silver, at the rate One for Forty, at the Trea y of VIRGINIA, on or before the 301b Day of December, 1792, according to an Acr o Assembly paffed the 1st Day of March, 178 ž

A Virginia state currency two-hundred-fifty-dollar banknote from 1781. The rate of "one for forty" indicates the high inflation resulting from the American Revolutionary War. The collapse in the value of the currency caused severe economic disruption and unrest in the years leading up to the Constitutional Convention.

Sarin Images/GRANGER

its citizens, and it could not force states to carry out its policies. States could recall their representatives at will, and limits were placed on how long a representative could serve.¹¹ There was no independent judicial branch; a national court existed primarily to resolve differences between states but had no real way of enforcing these decisions. The president of the Confederation Congress was even less powerful than the delegates and was there mostly to keep order and count votes.

The confederal government did have certain powers. Only it could declare war and conduct foreign policy, though it had to rely on states to pay for these activities. In practice, the confederal government continually faced the challenge of getting states to contribute to the national effort. Sometimes the states had good reason not to comply with these requests. During the war, colonies had been reluctant to send away scarce troops or supplies when they might be desperately needed close to home. Because of concerns over land rights, the Articles of Confederation provided states with protections against the possibility of any other state claiming disputed territory without the approval of the confederal government.

Lack of money was a constant problem, and the Continental Army was continually without adequate supplies and occasionally faced starvation. Due to the difficulties of collecting contributions from the states

and getting loans from European governments, Congress made its own currency during the war, called the "continental," which was backed only by the promise of the government to make good on its debts, assuming it won and survived the war intact. The currency later collapsed, creating financial chaos, which only added to calls for reform.

The Prospect of Changes to Systems of Slavery and Representation Sows Unrest

To ensure that the agreements made during their creation would hold, the Articles of Confederation placed a tall hurdle in the path of potential reformers: changing or amending the articles required the approval of all thirteen of the states. In spite of what many saw as problems with the articles, many Americans did not want to amend, much less replace, them.

Some in the southern states feared that slavery, which was allowed and unregulated under the confederal government, might be restricted or outlawed. Citizens of smaller states feared losing their equal representation in Congress and seeing it replaced by representation based on population, a change that would drastically weaken their position. And many worried that something worse than the problems with the articles might come out of a process of revising them. When a small group of people takes it on itself to overturn a political order, there is no guarantee that what they create will not be worse, maybe much worse, than what came before.

Politicians in many states were still mistrustful of the actions and motives of their counterparts in other states. Many were also still nervous about the idea of a strong national government. But in the years since the American Revolution, the political landscape had altered and the balance of political power had shifted.¹² State legislative elections in 1786 and 1787 handed strong victories to nationalist candidates, who were in favor of a stronger national government. These nationalist-controlled legislatures would be selecting the delegates to the Philadelphia convention.

Fears of Unrest and Rebellion Worry State Governments

Shays' Rebellion, named after Daniel Shays, one of its military leaders, was a grassroots popular uprising against the Massachusetts state government that, in the minds of many of its citizens, had grown too powerful, too distant, and too much like that of Great Britain. Though the rebellion took place in Massachusetts, the conditions that caused it and the popular anger that fueled it were also present in other states. This crisis added to the sense of urgency in the American confederation, and it provided ammunition to those who wanted to replace the structure of government under the articles. Some, like Madison, wanted a stronger nation, a different kind of republic than had ever been tried before. Others sought a return to monarchy and the British Empire.

The roots of Shays' Rebellion were both economic and political. In the difficult economic times that followed the Revolutionary War, there was a shortage of "hard money," of gold and silver and money backed by gold and silver. What there was no shortage of was debt. Citizens and governments throughout the confederation found themselves unable to pay debts that had been incurred during the war or during the tough economic times that followed. Shopkeepers and cash-strapped state governments alike demanded that their customers and citizens pay debts and taxes in hard currency. Foreclosures—the taking of property to pay outstanding debts backed by that property—were widespread.

The first responses of citizens in Massachusetts and other states were political. Towns asked state governments to issue paper money to help citizens settle their debts. Local citizens petitioned their governments to take action to help them. Some towns in Massachusetts called for a new state constitutional convention. Much of the debt, however, was owed to wealthy elites, and those elites wanted to be paid back in real money, not paper promises. Some states were sympathetic to the people's demands. The government of Rhode Island issued paper money, and the state did not see widespread civil unrest, though many elites came to view the "paper money" politicians as dangerous and undependable. Rhode Islanders, for their part, refused to send delegates to the Constitutional Convention and continued to resist the push for a stronger national government.

The government of Massachusetts held the line, siding with the banking interests. Many of the state's citizens began to feel they had successfully broken with an oppressive government in London only to replace it with one nearly as bad in Boston. When their attempts at political solutions failed, citizens—especially in the western part of the state—began to take the kind of action they had against King George III and the British Parliament. They rebelled.

Rebellion Begins

To each other, the members of Shays' Rebellion were "Regulators," a label used by the American rebels in the struggle against Great Britain.¹³ Many were Revolutionary War veterans with sufficient military skills and popular support to provide a genuine challenge to the Massachusetts government. The Regulators organized themselves by town and family, and they made a point of trying not to antagonize the local population. Instead, they focused on the courts, as had been done before the Revolution, closing them down in the hopes of stalling the foreclosure process until a solution to the debt crisis could be achieved in the state legislature. Although many closures were committed by rebels carrying weapons, some of them "were peaceful, even jocular."¹⁴

The rebellion and Massachusetts's response to it began to follow a script similar to that of the American Revolution. Citizens took action. The government (this time of Massachusetts, not Great Britain) clamped down, which only made the population more radical. In October 1786, the Massachusetts legislature passed the Riot Act, which granted sheriffs and other officials immunity from prosecution for killing rioters. With fears of standing armies fresh in the minds of its members, the resistance grew and became more radical, though never as radical as it was portrayed in the Boston newspapers, which accused the Regulators of wanting to redistribute private property¹⁵ or hoping to reunite with Great Britain.¹⁶ Both claims were untrue but served to increase the level of fear and concern within and beyond the state's borders.

The Massachusetts state militia was unable to put down the rebellion. Many militia members, themselves Revolutionary War veterans, sided with the rebels. The government of the United

States, the Confederation Congress, could not raise an army; its requests to the states for money were refused by every state except Virginia. The wealthy elites in Boston ultimately paid for an army on their own, loaning money to Massachusetts for the purposes of suppressing the rebellion.



An engraving depicts the British colonial governor of North Carolina (center) suppressing a Regulators' revolt in 1771. Daniel Shays and other members of the rebellion in Massachusetts patterned their protests against the state government on the actions of the Revolutionary War Regulators.

Sarin Images/GRANGER

Shays, a former captain in the Revolutionary War, joined the Regulators later than many but became a commander of its largest regiment, partly due to his notable service in the war. In January 1787, Shays's regiment and two others moved on the state armory at Springfield. Major General William Shepard, commanding the newly raised state militia and in possession of artillery that the Regulators lacked, defeated Shays and the rebels, who were forced to withdraw. Two rebel leaders were hanged, and most of the other rebels eventually returned to their farms and towns. Shays escaped to Vermont and was later pardoned, though he never returned to Massachusetts. With the help of the Boston newspapers, Shays became the personification of anarchy in the United States. In reality, most of the Regulators wanted only to keep their farms and keep their family and friends out of foreclosure or debtors' jail.

From Shays' Rebellion Came New Opportunity

After the Revolutionary War, Washington had, as promised, stayed away from public life and retired to his slaveholding plantation in Mount Vernon. But after receiving what turned out to be exaggerated reports of the strength of Shays's militia from one of his most trusted former generals, Washington grew fearful of what would become of the country. In a letter to Madison in November 1786, Washington identified precisely what was needed to "check . . . these disorders": a strong and "energetic Constitution."¹⁷

PRACTICING POLITICAL SCIENCE

Image as a Political Tool

One skill that political actors develop is the ability to *use* images for a political purpose—to highlight an issue, to advance an argument, or to challenge arguments that others are making. For consumers of these images, a related skill is to *interpret* images so used—to understand what the creator is trying to accomplish, to look for cues in the images or ways in which they are presented, and to critique the creators' intent and arguments.

Consider these two depictions of Shays' Rebellion. Though they aim to depict the same broad set of events, they do so in very different ways. In the top image, the Regulators are seen calmly assembled on the steps of a Massachusetts courthouse.

The bottom image depicts violence and discord.

Recall the ways in which advocates for a stronger national government, such as James Madison, and those in favor of maintaining the Articles of Confederation disagreed about the most severe dangers facing the young nation. Although these

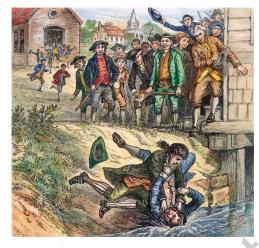


Sarin Images/GRANGER

particular images were not used during the debates over amending or replacing the articles, they do point to differences between the two groups.

What Do You Think?

Which of these images corresponds better with the view of Shays' Rebellion held by those who wanted a stronger national government? Which might correspond better with the view of those who were wary of a strong national government? Can you think of images you have seen of modern-day controversial events that try to shape the viewer's perception of those events?



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Madison may have sensed that Shays' Rebellion would be enough to lure Washington out of retirement and place his unequaled status among Americans behind the effort to create a new political order. Though initially reluctant to attend the Philadelphia conference, Washington eventually agreed; the Philadelphia convention would have the most famous and respected American there to give it legitimacy.

Rebellion was not the only worry among the new states. Great Britain had been defeated but hardly destroyed. The nation's troops had merely been pushed back into Canada, and that was due only to the help of Great Britain's other rivals, who themselves might not always be helpful to the young United States. As states sent their delegates to Philadelphia in the spring of 1787, the world powers were watching, expecting, and perhaps hoping for failure.

DELEGATES REACH A COMPROMISE AT THE CONSTITUTIONAL CONVENTION

In May 1787, fifty-five delegates from twelve of the thirteen states began to arrive in Philadelphia. Rhode Island and its paper money men had refused to participate. Though it was by some reports a hot, humid summer, the windows of the Pennsylvania State House where delegates met were shut to ensure secrecy. This secrecy was maintained partly to allow the delegates to say what they wanted and partly because none were sure how citizens in the various states would react to their deliberations. At the time, the meeting was called the Grand Convention or the Federal Convention, not the **Constitutional Convention** as it is called today. The delegates had not been sent to Philadelphia to write a new constitution, only to fix the Articles of Confederation as necessary. Writing a new constitution might have been thought of as a revolutionary act, which it was.

Madison arrived eleven days early with his research in hand. Though he would become perhaps the most influential person at the convention, Madison was not the only delegate who shaped the final document. And he was certainly not the most famous person there. Washington served as the president of the proceedings. Most delegates expected that he would be the leader of whatever government emerged, if the convention could agree on one. Franklin, possibly the second–most famous person in America, was also present, but because of his poor health, four prisoners from a city jail carried him through the streets of Philadelphia in a chair on his way to and from the convention. He remained a shrewd politician, however, and used his many skills at important moments in the debate.

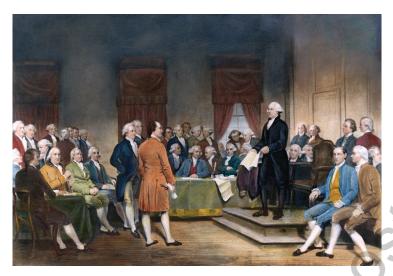
Other delegates also guided and shaped the debates and outcomes. Alexander Hamilton, who had served as Washington's aide in the war, emerged as one of the leading proponents of a strong national government. James Wilson of Pennsylvania made important, often unheralded, intellectual

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contributions to the convention. Wilson served as an intellectual ally of Madison's during and after the convention. Also from Pennsylvania, Gouverneur Morris assembled the various resolutions passed by the convention into a whole document, adding his own literary style and crafting the declaration at its beginning, "We the People of the United States."

Many important leaders from the Revolution could not or would not attend. Jefferson and John Adams, both future presidents and supporters of the Constitution, were out of the country in service of the American government. Others, like Sam Adams and Patrick Henry, both vocal revolutionaries and opponents of a national constitution, were not selected as delegates or refused to go, sensing that the delegates planned to do much more than merely revise the Articles of Confederation. Their suspicions were correct. Adams was skeptical of what might emerge from the convention, wary of the dangers to liberty that a strong central government might pose and concerned that such a government could



George Washington presiding at the Constitutional Convention in Philadelphia in 1787. Considerable measures were taken to ensure the secrecy of the proceedings at the convention.

Sarin Images/GRANGER

not adequately address the diverse needs of the states.¹⁸ Patrick Henry became one of the most effective opponents to the document once it had been submitted to the states. "Here is a revolution as radical as that which separated us from Great Britain," he wrote.¹⁹

The delegates who assembled in Philadelphia certainly did not represent a snapshot of the people living in the thirteen states. All were men. Most were welleducated. None were enslaved people, former enslaved people, or Indigenous Americans. Roughly one-third were enslavers. Not all were wealthy, but they were all elites. Unlike the revolutionaries who would soon lead France into chaos in the name of democracy, however, most of the Founders of the American Republic had previous practical political experience to guide them and temper their revolutionary ideals—Madison included. The solutions the delegates came up with were pragmatic, political, and strategic, for better and for worse.

Delegates Look to America's State Constitutions for Models, Good and Bad

In the decade between the Declaration of Independence and the Philadelphia convention, individual states had drafted their own constitutions. They were often very different from each other. Pennsylvania's state constitution was the most democratic. All real power rested in a unicameral legislature whose legislators served one-year terms. To many elites, the Pennsylvania constitution represented nothing more than institutionalized mob rule,²⁰ sometimes at the expense of religious minorities. Massachusetts's constitution was much less democratic, with a much more powerful governor and property requirements for serving in the government. To the Regulators and those who sympathized with them, Massachusetts had replaced Great Britain's royal aristocracy with Boston's constitutional aristocracy. As the delegates convened in Philadelphia, they drew from the experiences of the various states as they tried to fashion a new form of government. Some worried about democracy, others about aristocracy. Most worried about failure.

Delegates Debate Forms of Representation and the Powers of the National Government

By Friday, May 25, 1787, enough delegates had made it over the muddy Pennsylvania roads to begin the deliberations. Their first order of business was to unanimously select Washington as president of the convention. Madison, though not selected as the official reporter for the convention, took a seat up front and assumed the role informally. The other delegates were agreeable to this and made sure he got copies of their speeches to be entered into this unofficial record.²¹ Much of what we know about what happened in Philadelphia comes from his notes.

The delegates adopted a set of rules to guide themselves, calling for absolute secrecy about their deliberations.²² They knew that the enormous task of coming to an agreement would be made more difficult if the details of their discussions were leaked. It was said that a member of the convention was assigned to attend dinners with Franklin, who was fond of alcoholic beverages, to change the conversation if Franklin began to talk too loosely.²³ The delegates agreed not to record their individual votes so that they would not feel bound by previous votes if the same issues came up again, giving themselves the ability to compromise and change their positions as needed.

As the proceedings began, the Delaware delegation put the issue of how states were to be represented in the new government on the table—the most contentious issue of the convention and the one that determined so many other outcomes. No other question so dominated the convention during the early weeks and months of deliberations or so threatened to tear it apart. How would states be represented in a new government? Would it be the same one state, one vote formula as under the Articles of Confederation? Or would states be represented on the basis of their population or wealth?

The Virginia Plan Outlines a System of Proportional Representation for the States

On the third day of the convention, the delegation from Virginia presented a set of proposals for the rest of the members to consider. The ideas behind what came to be known as the **Virginia Plan** were Madison's. Madison had been building their foundations for more than a year and had coached the rest of the Virginia delegation in the days before their presentation. The Virginia Plan was much more than a modification of the Articles of Confederation. Its proposals described a new, national form of government, although Madison and his allies used the less controversial word *federal* when presenting and defending it.

The Virginia Plan laid out the failures of the American confederation—weakness in national defense and the conduct of foreign policy, conflicts between states, and the failure to suppress internal rebellion—and presented an answer to those defects: The national government would be strong. Its constitution would be "paramount to the state constitutions."²⁴ It would consist of three branches: a legislative branch to make laws, an executive branch to carry out the laws, and a judicial branch to resolve disputes between the states and between the national government and the states. The national legislature would be bicameral, consisting of two houses. Members of the lower house would be elected directly by the people. The upper house would consist of representatives nominated by state legislatures and chosen by members of the lower house. The executive and some members of the judiciary would have the power to veto—or overturn—acts of the legislature, which could, in turn, override that veto. The supremacy of the national government would be unmistakable. It could make laws as needed to govern the country as a whole and use military force against states if necessary.

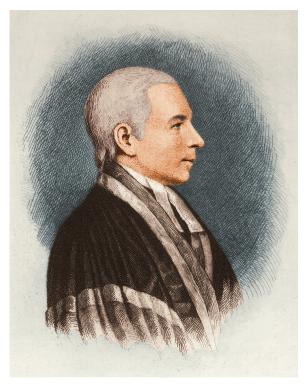
Many details were vague or literally left blank, such as the length of terms of members of Congress, the frequency of elections, and the number of votes needed to override a veto. The change in representation of states, however, was clear. The Virginia Plan proposed to overturn the one state, one vote structure of the Articles of Confederation. Instead, there would be a system of proportional representation in which more populous states would have more members in both houses of the legislature. The answer to the question "Proportional to what?" was left somewhat vague, however: Would population counts include enslaved individuals? The Virginia Plan was not clear.

Delegates from smaller states reacted immediately and strongly to the Virginia Plan's suggestion of proportional representation. They had successfully fought it off in the Second Continental Congress, when the articles were drafted, and they continued to fight against it. If state representation were to be based on population totals, a delegate from New Jersey warned, Virginia would have sixteen votes to South Carolina's one, plus all there knew that Virginia's boundaries were far from settled.²⁵ They seemed limitless. New Jersey's William Paterson vowed never to approve the plan, saying that New Jersey "would be swallowed up."²⁶

For the next two weeks, however, the convention discussed the Virginia Plan and little else. Within days of its introduction, several provisions of the plan—a government of three branches and a bicameral legislature—had already been approved. Madison and his fellow nationalists had won the first

victory in the strategic political struggle over the Constitution. They had set the agenda. They had forced the opposition to respond to their ideas.

The New Jersey Plan Maintains Equal Votes in the Legislature



A profile portrait of Irish-born American jurist William Paterson. Paterson presented what became known as the New Jersey Plan, which preserved most of the structure of the government as established under the Articles of Confederation.

Stock Montage via Getty Images

Two weeks later, Paterson presented the small states' response to the Virginia Plan. Known as the New Jersey Plan, it proposed to strengthen the power of the confederal government but make relatively few changes to the Articles of Confederation. There would be only one house in the legislature, just as under the articles. Each state delegation (chosen by state legislatures) would still get one equal vote in that legislature. That legislature would get new powers, mostly over taxation and the economy, though it would still depend on the states for some revenue. The executive and judicial branches were much less well envisioned than under the Virginia Plan. Paterson correctly argued that his state's plan was consistent with the purpose of the meeting in Philadelphia; the original mandate of the convention had included only making some changes to the articles. However, delegates had already been debating almost nothing except the Virginia Plan, the framework of which centered on a strong national government and provisions that would essentially replace the current form of government.

After Paterson had presented his plan, Madison proceeded to "tear the New Jersey plan to pieces."²⁷ Madison argued that the New Jersey Plan would leave the nation with all the problems that had motivated the convention in the first place: tax collection across state borders would remain a disaster; rebellions such as the one Massachusetts had just barely put down would continue to plague the Republic.²⁸

Madison and James Wilson grew frustrated over the less populous states' objections to the Virginia Plan. To these two men, neither the states nor the national government was or should be supreme; the people were supreme to both. How their numbers were apportioned was beside the point. To allow equal representation in Congress for states

would allow the political divisions between and within states to infect national politics. Delegates from smaller states did not see it this way. To them, equal representation was not open for negotiation; it was essential to their sovereignty. At one point, Gunning Bedford from Delaware threatened that the small states might have to break off, form their own union, possibly even ally with a foreign power.²⁹ This was, in modern political terms, the "nuclear option" for the small states. There would be no going back if it were used. All knew it was a possibility, even if unlikely, but to have the idea raised so boldly and so publicly shocked the convention and highlighted for all present the stakes for which they were playing and the possible consequences should they fail to reach an agreement.

The Great Compromise Calls for a Bicameral Legislature with Different Methods of Representation in Each Chamber

With the issue of how states would be represented threatening to break apart the convention, the question was sent to a committee. While the young nation celebrated the Fourth of July, delegates to the convention were unsure whether their work would succeed, or even continue. The stakes were very high. Elbridge Gerry of Massachusetts warned, "If we do nothing, it appears we must have war and confusion."³⁰ On July 5, the committee responded with a proposal to give something to each side. The new national legislature would be bicameral; it would have two chambers. Representation in the lower house would follow the Virginia Plan and representation in the upper house, the New Jersey Plan. Compromise having been put on the table, the mood of the convention began to shift. Bedford of Delaware—who had threatened that small states might seek an alliance with a foreign power—insisted that he had been misunderstood.³¹

On July 16, by a vote of 5–4, the delegates agreed to what would be called the **Great Compromise.**³² Under this agreement, much like the committee's recommendations, the national legislature would be bicameral. States would be represented in the House of Representatives according to their populations. The people would directly elect these representatives. States would be represented equally in the upper chamber, the Senate. Two senators would be chosen from each state by their state legislatures. Not all of the small-state delegates were satisfied with the agreement; two left in protest. But the rest felt that having the Senate was protection enough, and they became much more cooperative in the weeks that followed. Delaware, for all its threats and opposition early in the convention, was the first state to later ratify the Constitution that was being hammered out in Philadelphia (see Table 2.1).

| TABLE 2.1 Legislative Structures under the Virginia Plan, New Jersey Plan, and Great Compromise | | | | |
|---|---|--|--|--|
| | Virginia Plan | New Jersey Plan | Great Compromise | |
| Structure of Legislature | Bicameral (two chambers) | Unicameral (single chamber) | Bicameral (two chambers) | |
| Apportionment | Lower house Number of seats apportioned by state population Members directly elected by citizens Upper house Number of seats apportioned by state population Members elected by lower house (from list supplied by state legislatures) | Legislature Equal representation for states regardless of state population Members appointed by the states | House of Representatives States represented according to population Members directly elected by citizens Senate States represented equally (two senators per state) Members appointed by state legislatures | |
| Powers | Legislature has strong powers to enforce national policy | • Legislature has similar power as under the Articles of Confederation but can also levy taxes and regulate commerce | Legislature has broad powers over commerce and the ability to make laws as necessary House of Representatives has power to levy taxes | |

That the question of representation in Congress was settled first is important, because this shaped the political strategies of the delegates going forward. Having secured equal representation in the Senate, small states offered less opposition to a strong national government. They were now less afraid of Congress, even seeing it as a defense against the power of their larger neighbors. Madison, who had wanted popular representation in both houses, began to push to strengthen the other two branches to act as a counter to the Congress he had proposed but now mistrusted due to the equal state representation in the Senate.³³

The Constitution did not fall out of the sky. It was the result of compromise. But it was also the result of adaptation to earlier compromises and to changes in the political landscape in which the delegates pursued their goals and those of the states that they had been chosen to represent.

DELEGATES WORK OUT DETAILS OF THE NEW GOVERNMENT

With the bicameral legislature having resolved the first and largest issue of the convention—the distribution of representation among the states—the convention moved on to the structure of the rest of the government and the specific powers of each branch. In doing so, it confronted the second major issue of the convention: the question of national power. Many of the details of the new government were worked out in two committees over the rest of the summer and then presented to the full convention for approval. The Committee of Detail presented its recommendations on the structure of government and the relationships among the three branches. The Committee on Unfinished Parts took up issues that had not been resolved and generally tried to tie up loose ends in the structure of the new government.

The Legislative Branch Is Made the Most Powerful

Although representation in Congress had been settled, its powers still had to be worked out. To do so, delegates looked to the powers of the Confederation Congress under the Articles of Confederation as well as to state legislatures under the various state constitutions. As the **legislative branch** of government, Congress's purpose was to legislate—to make laws. Both houses had to work together to pass laws, but because of how congressional members were chosen, each house had a slightly different purpose. Members of the House of Representatives, who were elected directly by the people and had to run for reelection every two years, were meant to be more responsive to the people, to directly represent their constituents. Senators, who were chosen by state legislatures and served six-year terms, were there to check the passions of the people. Senators' terms were staggered in two-year shifts so that only about one-third of senators would be up for reelection in any given election year, making it more difficult for any swift change in mood among citizens to quickly affect national policy.

Congress, as expected, was made more powerful than the unicameral legislature under the Articles of Confederation, especially with regard to issues of money and the economy. Congress was given the power to borrow money, collect taxes, and "regulate Commerce with foreign Nations, and among the several states." This commerce clause has enabled Congress to become involved in large areas of the American economy, even within states. Debates over the power of and limits to the commerce clause continue today, as we will explore in the next chapter.

To preserve its flexibility, Congress was also given the ability "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all the other Powers vested by this Constitution in the Government of the United States." The "necessary and proper" clause, combined with the commerce clause, paved the way for a dramatic expansion in Congress's power over national policy in the centuries following ratification.

The Executive Branch Puts the Laws into Effect

Neither the Virginia Plan nor the New Jersey Plan had been very specific about the **executive branch** of government. Madison had not given it as much thought as he had Congress—at least until he decided he needed to build in more protections against equal state representation in the Senate. Initially there was not even a consensus on how many chief executives the country should have, much less on how powerful the branch should be. Hamilton, young, ambitious, self-made, and not trusted by many delegates, proposed a powerful president who would be elected for life. His plan made the Virginia Plan look moderate. Though it was not voted on, Hamilton's suggestion of an "American king"³⁴ followed him for the rest of his political career. Most delegates expected that Washington would serve as an, if not *the*, executive of the country. Some wrote that confidence in Washington reduced anxiety about how powerful the executive would become.

In the end, the delegates settled on a single executive—a president—who would serve for fouryear terms. As head of the executive branch, the president was there to "execute," or carry out, the laws that had been passed by Congress. The president was given some, but not unlimited, power over Congress, with the ability to veto legislation that Congress had passed. Congress could, however, override the veto with a two-thirds vote in each of the two houses. The president was named commander in chief of the army and navy. Again, though, power was to be shared. Congress, not the



president, was given the power to declare (and raise money for) war. Presidents were given power to oversee the people working in the executive branch and to obtain from them the information needed to govern the country, which has led to the growth of a large and influential federal bureaucracy. Finally, the president was given the power to make foreign policy, though again, this responsibility was to be shared with the Senate.

More controversial than what powers the executive would have was how the president would be elected, raising once again the question of how states would be represented in the new government. In the end, delegates settled on a complicated compromise for electing the president, one that is still not fully understood by many Americans. Citizens would not vote directly for the president. Instead, an Electoral College consisting of electors awarded to states based on their representation in Congress would select the president. Each state received two electors (for their senators) plus one each for their members of the House of Representatives. Each state would decide how its electors were to be chosen, and successful candidates would need to win the votes of a majority of electors to become president. The system of the Electoral College continues to incite criticism and suggestions for reform. In the minds of the delegates, however, the complicated structure managed to prevent reigniting the disagreements between small and large states over representation.

The Judiciary Is Designed to Interpret Constitutional Conflicts

The Virginia and New Jersey Plans were even less specific about the **judicial branch** of the government, the system of federal courts. Delegates decided on one Supreme Court to be the highest in the land and a system of lower federal courts whose structure and composition would be determined by Congress. Unlike the judiciary under the articles, the federal courts would have jurisdiction—the authority to hear and decide cases—over all disputes between states and the national government, between two or more states, and between citizens of different states. Combined with the supremacy clause of the Constitution, which declared that national treaties and laws "shall be the supreme law of the Land," the federal court emerged as superior to state courts.

Not included in the Constitution was an explicit description of the power of judicial review, which gives the judicial branch of government the authority to determine whether a law, part of a law, or an act of government violates the highest law of the land and, if it *is* in conflict, declare it thus invalid. In the United States, that supreme law is the Constitution, and the power of judicial review



Shown here arriving at Congress Hall in Philadelphia on March 4, 1793, for his second inauguration, George Washington chose to retire after his second term despite the fact that the Constitution would have permitted him to run for reelection for an unlimited number of terms.

rests ultimately with the US Supreme Court. State supreme courts may exercise judicial review of state laws and actions, but the supremacy clause of the Constitution ensures that the exercise of judicial review by the Supreme Court includes the authority to use that power over both national and state laws and actions.

In exercising this power, the Supreme Court does not claim to be above the executive or legislative branch. Instead, the Constitution and the people are above all three branches, and it is the role of the Court to act as the interpreter of conflict between the Constitution and governmental action. This power has been retained throughout history by shrewd political action and the conscious preservation of it by Supreme Court justices. We will examine the concept of judicial review, its foundations, and controversies surrounding its use in much more detail in our chapter on the judiciary.

The power of judicial review, combined with the supremacy clause, became crucial in later battles to protect civil liberties and secure civil rights, many of which were waged by citizens who because of their identity had been ignored by the original document or had their rights restricted by it. Like the other two branches, the judiciary was not to exist in isolation. Congress, not the Supreme Court, had the authority to create the lower federal courts. Congress would determine the number of Supreme Court justices, and the Senate had the power to confirm justices (with a majority vote), who first had to be nominated by the president.

Separation of Powers Allows for Checks and Balances on Government

In drawing up the powers of each of the three branches, the delegates tried to make sure that no one branch could become too powerful on its own. The idea of **separation of powers** was widely supported by delegates at the convention and well-known to those who had studied the writings of Baron de Montesquieu. Under this system, branches are not meant to preside over their own spheres. Rather, a system of "separated institutions sharing power" was created.³⁵ Each branch, whose members tended to represent a different group of people, has to work with the other branches to make things happen, though not on every issue all the time (see Table 2.2). This was the central blueprint around which the national government was structured. Popularly known as the system of checks and balances, the idea of overlapping (but not perfectly overlapping) spheres of influence also applies to relations between the states and the federal government. Federalism, or the sharing of power over some aspects of governance between the states and the nation, is as central to American government as checks and balances, and it has been the source of much conflict and controversy throughout its history.

| | Institutions | | |
|---|---|---|--|
| | Executive Branch | Legislative Branch | Judicial Branch |
| Lawmaking Authority National Security and Foreign Policy Responsibilities | Executes laws Has veto power Nominates judges to the federal judiciary and key executive branch officials Shapes legislative agenda President acts as commander in chief of the military Sets foreign policy | Writes nation's laws Has veto override Senate confirms judicial nominees and key executive branch officials Determines number of Supreme Court justices Creates lower courts Declares war Senate ratifies treaties with other nations | Interprets contest laws Can declare both federal and state laws unconstitutional* |
| Oversight Responsibilities | Sets for eigh policy agenda Oversees federal bureaucracy | Holds power of impeachment Holds budgetary authority and power | May declare laws or executive branch actions in conflict with the |
| Sovereignty | Sovereignty rests with the pe The Constitution is the supre | of oversight over executive branch agencies | Constitution* |

*Formally established in later Supreme Court decisions.

Delegates Address the "Unfinished Parts" but Preserve Enslavement

At the beginning of September 1787, the Committee on Unfinished Parts³⁶ reported back to the convention on its efforts to address issues that had been left unresolved. Not all of these issues were ironed out, and the question of slavery threatened to break up the proceedings.

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In an attempt to clear up commercial relationships among states, the delegates decided that "full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The full faith and credit clause was designed to ensure that each state recognized contracts and other legal proceedings from other states. It has become an important constitutional element in the question of same-sex marriage and marriage equality in the United States (see Chapter 4). The structure of the Electoral College was finalized, as was the office of vice president of the United States, whose constitutional powers are quite limited but who plays an important role in presidential elections.

In important ways, however, the Constitution remained unfinished even after the delegates completed their deliberations in September. This was partly by design and partly due to political compromises made during the convention itself. By making provisions for changing the Constitution through a process of **amendment**, the Framers acknowledged that it would always be unfinished, that it would need to be adaptable if it were to endure. By *adaptable*, however, the delegates did not mean easily changed. They purposefully designed a system for amending the Constitution that made this very difficult to achieve. Once again, divisions over representation of states emerged, with small states arguing that states should have the power to approve amendments and the nationalists arguing that it should be left to the people to decide.

In the end, another complicated compromise emerged, with both the people—through official proposal in Congress—and the states—through the process of final ratification—being necessary to alter the Constitution. Amending the document is a two-stage process, with two possible routes to completion for each of the two stages needed for amendment. First, the amendment has to be officially proposed, which involves much more than someone just suggesting an idea. Proposal can happen in one of two ways, only the first of which has ever been used: (1) passage by a two-thirds vote in both the House and the Senate or (2) passage in a national convention called at the request of two-thirds of the states. After formal proposal, the proposed amendment must be ratified in one of two ways: by (1) a majority vote in three-fourths of the state legislatures or (2) acceptance by ratifying conventions in three-fourths of the states. The second method for ratification has been used only once.

Of the thousands of suggestions for amending the Constitution presented in Congress since its founding, only twenty-seven amendments have been formally ratified. The first ten of these, which make up the **Bill of Rights**, became part of the debate over ratification itself and are often thought of as part of the "original" Constitution. Two others—an amendment prohibiting the sale and consumption of alcoholic beverages and one repealing that prohibition—canceled each other out. Though the Constitution has rarely been amended, some scholars argue that important decisions by the Supreme Court and major changes in how the American people view themselves have at critical times in history led to changes in government just as significant as formal amendments.³⁷

The Founders Reach a Fateful Compromise on Slavery

At the time of the convention, nearly one out of every six individuals living in the thirteen states was enslaved. Most, but not all, lived in the southern states. Southern plantation owners, many of whom were politically powerful in their state legislatures and some of whom were delegates to the Philadelphia convention, had no intention of seeing their institution outlawed or heavily regulated. Plantation owners were not the only interests who benefited from slavery. The slave trade and the trade in goods they produced benefited some powerful shipping interests as well, especially in the Northeast. About onethird of the delegates to the convention, including Madison and Washington, held enslaved people. A few others, however, saw the preservation of slavery as a moral failure and spoke out at the convention about the hypocrisy of trying to preserve liberty in a document that allowed slavery.

In spite of a few speeches on the floor of the convention, however, the question of slavery was not generally debated in terms of morality or of liberty but rather in terms of states' representation, the same issue that affected so many others at the convention: Would enslaved peoples count when it came time to tally a state's population? In the end, the question of slavery was settled on political considerations.

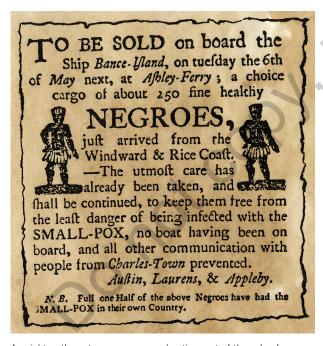
The final document dealt with slavery in three ways. The word *slavery* never appears—a minor tactical victory for those who did not want the Constitution to appear to approve of it. On the question

of slavery and representation in Congress, the **Three-Fifths Compromise** ensured that an enslaved person—called an "other person" in the Constitution—would count as three-fifths of a person for a state's representation.³⁸ Enslaved persons could not vote or be represented, but their numbers would boost the influence of the slave states in which they were held; because enslaved individuals were counted among the population, slaveholding states would be allotted more members of Congress. In a second facet of the compromise, Congress would not be allowed to restrict the slave trade until 1808 at the earliest. Third, enslaved peoples who had successfully escaped would have to be returned to their enslavers, regardless of the laws of individual states.

Historians and political scientists have debated how the delegates could have agreed to preserve slavery when some observed that it went against the very idea of inherent rights on which the Constitution is based and at a time when some states were beginning to restrict or outlaw it on their own. There are several reasons, and they are not mutually exclusive.

The first reason is that enslaved peoples had not voted for their state legislators. Some delegates did oppose slavery, but enslaved peoples had no direct representation in the Constitutional Convention. And though enslaved peoples were not represented, enslavers were, and their delegates used the threat of leaving the convention to secure their interests. Had the southern states pulled out, the Articles of Confederation, which contained no restrictions on slavery, would have remained the law of the land. Politics during the convention also played a large role. The question of slavery had been handed to the Committee of Detail, chaired by John Rutledge of South Carolina. Rutledge's committee proposed to give the slave states everything they demanded. In his notes, Madison commented on the political implications of this slave-state delegate being in charge of the committee that would set the agenda for debate on the issue of slavery.

Others have argued that the preservation of slavery was the result of a **logroll**, or a trading of votes, between the southern slave states and the northeastern commercial states (in which enslavement was or had also been in practice). Northeastern states received the strong commercial policy they wanted



An eighteenth-century newspaper advertisement of the sale of a cargo of enslaved persons aboard the vessel *Bance-Island*, then anchored off Charleston, South Carolina, during a smallpox epidemic. Slavery was deeply entrenched in the economies of the colonies at the time of the Constitutional Convention.

Sarin Images/GRANGER

in return for protections on slavery for the southern states. Evidence from the records of the convention supports the idea of a logroll.

Regardless of the reasons, the question of slavery was temporarily handled but fundamentally unsettled. Not until the country was literally torn apart in the Civil War eighty years later would the issue of slavery be ultimately decided. It would take nearly another century and a great deal of sacrifice and strategic political activity to make equality for Black Americans a reality, or at least more of a reality, on the ground rather than just in words. As we will explore throughout this book, today, injustices and inequalities continue to impact the lives of Americans of color, and the question of whether Americans are all truly equal in the Republic endures.

The Constitution Is Finished but Not Yet Made the Law of the Land

By proposing a system for amending the Constitution, the Framers ensured that it would always be unfinished so that it could be adapted over time. More immediately, however, the Constitution was unfinished because the states had yet to approve it. The document that emerged from Philadelphia was just a proposal. It carried no force until the states chose to adopt it. That would be determined by the battle over ratification.

A skillful move by Franklin at the convention's conclusion required only that delegates sign their names as witnesses to their

state's endorsement, which allowed some delegates to sign the Constitution even knowing that they would soon speak out against it. Franklin's move, and the departure over the summer of delegates who

did not approve of the outcomes, made the delegates appear to be in greater agreement than they really were. In fact, many did have strong reservations, and three refused to sign.

The delegates also used a bit of trickery to get around another issue. The Articles of Confederation stipulated that amendments to the articles required the approval of the Confederation Congress and all thirteen state legislatures. This, members of the Constitutional Convention knew, was going to be very difficult. Rhode Island had refused to participate in the Convention, and public opinion in many states was closely divided. So, the delegates declared that the Constitution would become the law of the land if ratifying conventions in nine out of thirteen states approved it, bypassing the Confederation Congress as well as the requirement for unanimous approval by the state legislatures. Even with this somewhat unconventional ploy—breaking the spirit if not the law of the articles—it was still far from certain that the Constitution would be adopted.

FEDERALISTS AND ANTI-FEDERALISTS ARGUE OVER RATIFICATION

The fight between those in favor of the Constitution and those opposed to it was America's first national—and first *negative*—political campaign. Both sides issued dire premonitions of what

might happen if the Constitution was or was not ratified. The debate was carried out through the printing presses, which had become widespread enough to allow both sides to carry their messages to the people. The supporters of the proposed Constitution scored the first tactical victory by claiming the name **Federalists** for their group. That was ironic, because the proposed government was actually strongly national, whereas the term *federalist* generally meant more of a balance between the power of states and the national government. That forced those arguing against the document to be tagged as **Anti-Federalists** despite the fact that their position was in reality more federalist.

The Anti-Federalists were in the difficult position of having to argue against a proposal, since basing their argument only on what was good about the Articles of Confederation was a tough sell. So they turned negative. They raised fears in the minds of Americans about what this potentially radical change in the government would bring. Mostly, they argued, it would trample on the rights of the people and the states in which they lived.



The fate of the Constitution was decided in the state ratifying conventions (nine states had to ratify for the Constitution to take effect), but it was the subject of intense debates everywhere—in homes, taverns, coffeehouses, and newspapers.

Sarin Images/GRANGER

For their part, the Federalists pointed to the problems that plagued the government under the articles—inability to deal with foreign powers, economic challenges, and especially the threat of anarchy—and warned citizens that the only way to avoid these dangers was through the new Constitution. The Federalists had celebrity on their side in the figures of Washington and Franklin. The Anti-Federalists, with the exception of a few misguided attempts to counter the celebrity endorsements of Washington and Franklin, stayed away from the issue of famous supporters.

In some ways, the Federalists and Anti-Federalists split along distinctions of class (see Table 2.3). Many wealthy merchants favored the strong economic policy that the Constitution would allow, and many wealthy southern plantation owners supported the agreements that had been struck. On the other side, a large number of Anti-Federalists came from rural areas and mistrusted powerful elites in their states' capitals. To say that the Federalists were wealthy elites and the Anti-Federalists small farmers and shopkeepers is, however, an oversimplification. Many Anti-Federalist leaders were educated elites; some of the most prominent were Revolutionary War heroes, delegates to the convention itself, or important members in state politics.

Though the Federalists tried to associate the threat of anarchy and Shays' Rebellion with their opponents, the Anti-Federalists were just as concerned as their opponents about securing a stable future

TABLE 2.3 Federalists and Anti-Federalists

Both Federalists and Anti-Federalists were interested in a politically and economically secure nation, but they differed in how they thought that would best be achieved.

| | Federalists | Anti-Federalists | |
|----------------------------------|--|---|--|
| View of proposed Constitution | Supporters | Opponents | |
| Proponents of | A strong national government | Stronger state government | |
| Concerned about | Tyranny of the majority | Tyranny of the minority | |
| Proposed | An extended republic to limit factions and help to resolve the tyranny of the majority | Strong restrictions on branches of government to help solve the problem of too-strong national government | |
| Supporters included | Wealthy merchants and southern plantation owners George Washington, Benjamin Franklin, Alexander Hamilton, James Madison, John Jay | People in rural areas, farmers, and shopkeepers Fewer well-known supporters, but leadership included educated elites, Revolutionary War heroes, and convention delegates | |

for the country. The divisions between the two sides represented fundamentally different visions for how to accomplish this.

Three main issues divided the Anti-Federalists and the Federalists on a vision of this future: (1) how to best protect individual liberties against **tyranny** (the suppression of the rights of a people by those holding power), (2) the relative power of states and the nation, and (3) the lack of a bill of rights (a list of rights and liberties that people possess and that governments cannot take away) in the Constitution. Each of these issues was closely related to the others.

Will This Experiment Work? Federalists and Anti-Federalists Debate the Dangers of Tyranny

The Federalists made their case for the Constitution in a collection of eighty-five essays written primarily for the New York papers from the fall of 1787 to the spring of 1788. The *Federalist Papers* were written under the collective name Publius but were actually written by Hamilton, Madison, and John Jay. They are now considered some of the most important writings in American political history. They laid out the theory behind the Constitution (which itself does not directly speak to the reasons behind its own provisions), showing how a large republic could be constructed in a way that would prevent it from growing so self-interested and powerful that it would trample on the rights of states and their citizens.

Many of Madison's essays are now considered to be among the most important in the collection. Two essays in particular, *Federalist* No. 10 and No. 51 (see Appendixes 4 and 5), tackle Anti-Federalist critiques by laying out the reasons behind the proposed constitutional republic. From his research, Madison knew that in a republic one must *not* assume that people will always act in noble ways, putting their own needs behind what is best for the republic. Instead, a republic must be constructed to account for self-interest and selfish motives.³⁹

In American political history, there is no one work that encapsulates Anti-Federalist thought in the same way that the *Federalist Papers* did for Federalists. There are no Anti-Federalist Papers; rather, as scholars have pointed out, "the Antifederalist literature is immense and heterogeneous, encompassing speeches, pamphlets, essays and letters."⁴⁰ Publishing under pseudonyms—often chosen from ancient Roman politicians and thinkers such as "Cato" and "Brutus"—the Anti-Federalists agreed that a nation cannot rely on enlightened self-interest to protect the people from tyranny; however, they disagreed with the Federalists over *how* best to do that.

A Republic Must Be Able to Handle the Problem of Factions. The danger in the view of both sides was not only that people would act according to their self-interest but also that they might join

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forces with others who had the same motives. Collectively, this group of people, however large or small, could try to use the government to get what it wanted, trampling on the rights of others in the process. Such a group of self-interested individuals would constitute what Madison called a **faction**, the most dangerous challenge to a republic.

Long before Karl Marx wrote about the inevitability of class conflict in capitalist societies, Madison made it clear in *Federalist* No. 10 that inequality of wealth is the primary driver of factionalization, asserting that "those who hold and those who are without property have ever formed distinct interests in society."⁴¹ Madison included enslavement of others as a source of factions, because enslaved persons were considered a form of property during the discussions in the Constitutional Convention. However, this issue was not addressed in *Federalist* No. 10.

Madison saw several ways to solve the problem of factions. The first was tyranny—factions emerge under conditions of liberty, not tyranny—but tyranny was an unacceptable option. The second was to create a totally unified, factionless society where everyone has "the same opinions, the same passions, and the same interests."⁴² This second solution was unrealistic, especially in a large republic like the United States. Indeed, the American Republic has had factions since its origin. Political parties can be thought of as factions, as can interest groups and social movements. Madison concluded that factions were inevitable, so he turned to the question of how a republic can keep them in check.



This political cartoon depicts the Connecticut debate over ratification of the US Constitution. The state is represented by a wagon loaded with debt stuck in a muddy ditch while two factions pull it in opposite directions. On the left are the Federalists, on the right the Anti-Federalists. In the middle are various characters making obscene gestures to show their opinions on the debate. Library of Congress

The superior way to check their power, Madison argued in *Federalist* No. 10, is through an **extended republic**: a republic so large and diverse, with so many factions vying for power, that no one faction is able to assert its will over all the others. Tactically, this was a clever argument. The Anti-Federalists had claimed that the American Republic would be too large to govern effectively, whereas Madison argued that the only solution to the dangers of factions was precisely to have such a large republic. Madison, however, was no populist; his design for government placed brakes on popular passions, insulating representatives from the desires of their citizens.

Anti-Federalists argued that the national government would grow more distant from the people over time and would eventually begin to oppress them. Congress having the power to tax would only make this danger greater, they claimed. Therefore, the Anti-Federalists asserted, more restrictions needed to be placed on the national government and more power reserved for the states. To the

Anti-Federalists, those in power in a too-strong national government would eventually, inevitably, come to form their own faction. They noted that many of the Enlightenment writers that Madison had drawn his ideas from had argued that republics had to be small to work properly, and all expected this one to grow even larger over time, making the challenges even worse.

Federalists and Anti-Federalists Fear Different Forms of Tyranny. Federalists and Anti-Federalists did not disagree in their mistrust of government and the harm that could be inflicted by a self-interested few. Rather, both sides acknowledged that tyranny could take two forms. In a **tyranny of the minority**, a small number of citizens trample on the rights of the rest of the larger population. In a **tyranny of the majority**, a large number of citizens use the power of their majority to trample on the rights of a smaller group. The two sides disagreed on which was the greater danger and, therefore, on how a republic should be structured.

Given Madison's earlier observations about property and the panic associated with Shays' Rebellion, one of the dangers the Federalists saw was a majority of poorer people using their power to redistribute wealth in a more equal way. In *Federalist* No. 10, Madison did not argue for direct democracy, in which citizens vote directly on policies, because he saw that form of government as too unstable, with too few protections for personal security or private property.⁴³ Instead he argued for the delegation of power to representatives by the people and for power to be divided across government institutions. In *Federalist* No. 51, Madison laid out the blueprints of such a structure. Separation of powers is the guiding principle, with power divided and parsed between the states and nation, among the three branches of the national government, and within each branch.

The Anti-Federalists focused more on the dangers of a tyranny of the minority. Shays and the Regulators had viewed the government of Massachusetts as becoming dangerously disconnected from the people and controlled by wealthy elites. The Anti-Federalists feared the government of the United States would follow a similar path. While acknowledging the dangers of minority tyranny, Madison and the Federalists focused more on the dangers of majority rule and its necessary counters. A majority of people, if in control of all the levers of power, might use that power to oppress a minority of citizens. Slavery could be thought of as a tyranny of the majority, though in fact the number of enslaved persons outnumbered white people in many areas of the country.

Federalists and Anti-Federalists Debate Where Power Should Be Concentrated

Debates over the relative power of the states and the nation were central to the political battles over ratification of the Constitution. The Federalists tried to convince American citizens that the proposed form of government was necessary to preserve their rights and liberties. The Anti-Federalists argued against the proposed increase in national power and warned Americans of what might come to pass over time as the advantages given to the national government in the Constitution might allow it to infringe more and more on the authority of the states.

Federalists Argue for a Strong National Government. In their campaign to defend the proposed Constitution, the Federalists highlighted the problems and dangers of a government in which the states were strong and the nation was weak, pointing out failures of past republics as well as the problems experienced under the Articles of Confederation.⁴⁴ In *Federalist* No. 16, Hamilton argued that, for instance, if the national government in a confederacy were ever forced to use military might against one of its members, it would surely result in the "violent death of the confederacy."⁴⁵

Madison took a more moderate approach in his contributions to the *Federalist Papers*, emphasizing the balance between state and national power in the proposed Constitution. Across numerous papers, Madison argued that the Constitution divided the people's sovereignty in such a way as to preserve the integrity of both states and the nation and to guard against the dangers of faction, with checks and balances built into both the legislative and executive branches.

Anti-Federalists Fear Losing Representation at the National Level. The Anti-Federalists were not convinced by the arguments in the *Federalist Papers*. They feared what they saw as a radical increase in national power, not only in the proposed Constitution but in how the government might evolve over time. They feared the distant future as much as the immediate present. They were, in

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many ways, conservative, trying to preserve the power of the states as enjoyed under the Articles of Confederation.

Many Anti-Federalist concerns centered on how representation of the people's interests could be maintained as the country grew in size, population, and power. They "feared that, once elected and comfortable in their jobs, the representatives would not relinquish power," creating the possibility of a new, elected, American aristocracy.⁴⁶ This "democratic" aristocracy, an Anti-Federalist essay warned, would be accompanied by an irresistible trend toward a large and complex national government, driven by the demands of a growing nation, ending in "despotism."⁴⁷

The economic power of the national government to tax and regulate interstate commerce was one of the Anti-Federalists' greatest worries, and it was only made worse by the necessary and proper clause of the proposed Constitution. In one Anti-Federalist essay, the author argued that "this power, given [to] the federal legislature, directly annihilates all the powers of the state legislatures."⁴⁸

A Bill of Rights Is a Key Issue in the Ratification Debates

Strategically, the most effective Anti-Federalist charge against the Constitution was that it lacked a bill of rights—a list of rights and liberties with which people are born and that governments cannot take away. Many state constitutions already had them. Motions to include these statements were raised during the convention, but they did not pass; a proposed clause guaranteeing the freedom of the press failed by just one vote. To Madison and other opponents of a bill of rights, such a statement was simply not necessary. In the republic that the delegates had fashioned, the people were already sovereign, and the government was already limited. There was no need to limit Congress's power over things that the Constitution gave it no control over in the first place. Some questioned whether it was possible or even desirable to try to make a complete list of rights and liberties. What about the ones that were left out? Would Congress respect rights if they were not part of the official list?

Some, however, both during the convention and after, remained strongly in favor of a bill of rights. A bill of rights, they argued, was necessary to check the tendency of government to infringe on the rights and liberties of citizens over time. They pointed out that one should be concerned about what the government might become in the future, not just what it was in the present, as the prospect of tyranny loomed large in their minds. In addition, the Anti-Federalists argued that a bill of rights served an important educational function in a republic.⁴⁹ It would serve to remind citizens of their inherent rights and remind them to assert those rights when governments might, often slowly, try to take them away.



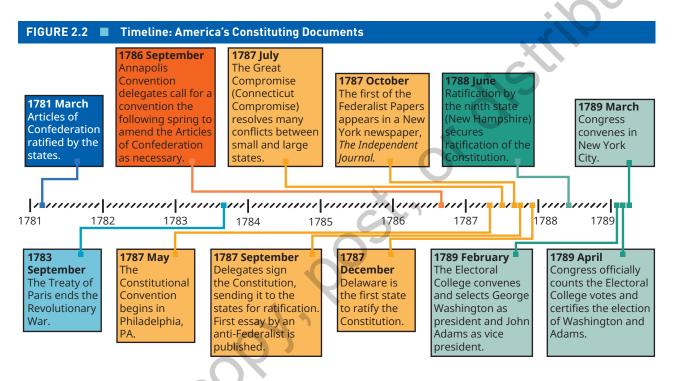
A nineteenth-century steel engraving depicting Mercy Otis Warren. Sarin Images/GRANGER

One proponent of including a bill of rights was Anti-Federalist Mercy Otis Warren. Before and during the American Revolution, she had displayed her strong support for independence through her plays, pamphlets, and poems.⁵⁰ Publishing anonymously—and therefore assumed to be a man by many who read her essays—she corresponded with many revolutionary leaders, who were well aware of her contributions. Later, during the ratification debates, Warren warned that there was "no provision by a bill of rights to guard against dangerous encroachments of power in too many instances to be named."⁵¹

As the state ratification conventions took up the debate, the lack of a bill of rights in the document became a powerful political tool for the Anti-Federalists, and the Federalists shifted gears in response. During the ratification campaign, sensing the realities of the political landscape, Madison promised to introduce a bill of rights as proposed amendments during the first session of the new Congress after the Constitution had been ratified.

As the conventions began to vote in the fall of 1787, Delaware, Connecticut, and New Jersey, which had supported the New Jersey Plan during the constitutional convention—satisfied by their equal representation in the Senate under the Great Compromise—were among the first to vote in favor of ratification. Georgia and Pennsylvania were quick to follow suit. The outcome in larger states, however, was uncertain.

In February 1788, the Federalists won a narrow victory in Massachusetts, the sixth of nine states needed for ratification, but only after the pro-constitutional forces agreed to propose a bill of rights once the original document had itself been ratified. Three months later, South Carolina also ratified, also contingent on a set of amendments that would be offered in the first national Congress. On June 21, 1788, with the help of some shrewd procedural tactics on the part of Federalists in the state convention, New Hampshire became the ninth state to ratify.⁵² The Constitution of the United States would become the supreme law of the land the following year (see Figure 2.2).



Even after New Hampshire, Madison continued to worry about the four states that had not yet ratified. It was not North Carolina or Rhode Island that worried him most, but if Virginia and New York continued to hold out, it might lead to deep divisions within the new country. To Madison's relief, Virginia ratified in June, and New York followed in July. North Carolina and, finally, Rhode Island ratified within a year. Madison kept his word, and in 1791, ten of the amendments that he proposed in the new federal Congress became part of the Constitution. We will examine the Bill of Rights in detail in Chapter 4.



CONCLUSION: THE MOTIVES OF THE FRAMERS AND THE EFFECTS OF THE CONSTITUTION ARE STILL BEING DEBATED

While the delegates to the Constitutional Convention were debating and negotiating behind the closed windows of the Pennsylvania State House, many Americans wondered what they were really up to. And we still do.

To some scholars, constitutions give order to disorder. They make progress in a society possible, but only if the people place in them credible, enforceable restrictions on the power of those who would abuse such power.⁵³ The Constitution drew from the religious traditions and individual constitutions of the colonies. It is a document that creates—or constitutes—a people.⁵⁴ It sets out who those people are and why they are doing what they are doing.

To other scholars, American reverence for the Constitution is a dangerous thing. Faith in the Constitution as a symbol of liberty misdirects citizens from the fact that some persons, past and present, have been able to enrich themselves under its protections at the expense of others.⁵⁵ Inequality in all its forms has survived, and at times thrived, in the American Republic. Is the Constitution antidemocratic? Does it go against or restrain the will of the majority of the people? Yes, sometimes it is, and sometimes it does. The Constitution was intentionally designed to put brakes on popular desire to change public policy quickly. The result—incrementalism in public policy development whereby policy changes tend to be small and come slowly—has important implications for the United States.

Madison's studies of the untimely deaths of republics helped to shape the longest-lived written national constitution in the history of human experience. It is also a document written during a time of state-sanctioned violence against enslaved individuals and, to a significant degree, by individuals who benefited from these violations. It did not ban enslavement or the trade in enslaved peoples. It did not affirm or institutionalize the rights and liberties of women, Indigenous Americans, enslaved or formerly enslaved peoples, and many others. It did, however, affirm the rights of citizens to worship as they saw fit, to speak out and organize against tyranny, and to expect that their government will exist to protect and promote their rights and liberties. It created mechanisms to enforce these expectations, should those in power forget whom they were there to represent. And, intentionally or not, it provided a platform and a path for those ignored or oppressed by the original document to change it, to make it acknowledge their inherent rights and liberties as well.

The Founders of the American Republic were practical, tactical, strategic individuals. Their compromises had enormous consequences for people's lives. The document that emerged from the Pennsylvania State House was unfinished and imperfect. Would it allow for a remedy of its defects? Would it create, as Madison had hoped, a republic that would last? The answers to these questions cannot be found in studies of the motives of the Founders or even of the document itself. The answers have come not from words penned in quill and ink but from the efforts of political actors—sometimes generations later—using their own skills in strategic politics, developing their own ideas, and making their own compromises and mistakes. And having done their own homework.

CHAPTER REVIEW

This chapter's main ideas are reflected in the Learning Objectives. By reviewing them here (Table 2.4), you should be able to **remember** the key points, **know** the terms that are central to the topic, and **think** about the critical issues raised in each section.

| TABLE 2.4 | Chapter 2 Learning Objectives Review | | | |
|------------------------------|--|--|--|--|
| 2.1 Describe and the Cons | the ideas and contradictions that shaped James Madison's thinking about republics stitution. | | | |
| Remember | James Madison wanted to form a republic that would last. He and other delegates to the Constitutional Convention met and debated how best to strengthen their union and avoid significant political and economic problems. | | | |
| | Madison helped to shape a document designed to preserve inherent rights while enslaving other human beings, a fundamental contradiction that would also be present at the Constitutional Convention. | | | |
| Know | constitution republics | | | |
| Think | • How did Madison and other proponents of a stronger national government use the political events of the time to advance their own goals? | | | |

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(Continued)

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| | he challenges faced by the nation nment strong enough to rule ef | | | |
|------------------------------|---|---|--|--|
| Remember | The Articles of Confederation seemed insufficient to hold together the new country, but delegates understood that amending them posed significant challenges. Large slaveholding states stood to gain much power, yet many feared a too-strong national government. Economic and political crises precipitated Shays' Rebellion, which in turn sparked the call for a stronger national constitution. | | | |
| | | | | |
| | | | | |
| Know | • Articles of Confederation and Perpetual Union | • Shays' Rebellion | | |
| | the role that compromise over onstitutional Convention. | states' interests played in sl | naping the government | |
| Remember | | utional Convention were not char oposing possible changes to the | | |
| Know | Constitutional ConventionGreat Compromise | • New Jersey Plan | Virginia Plan | |
| Think | How did political divisions and compromises over them shape the debates during the Constitutional Convention? | | | |
| | he institutions of government e er among them. | stablished by the Constitutio | on and the distribution of | |
| Remember | • The idea of separation of por connected branches of the fe | vers influenced the decision to c ederal government. | reate three separate but | |
| Know | amendment | legislative branch | • separation of powers | |
| | Bill of Rightsexecutive branch | • logroll | • Three-Fifths Compromise | |
| | • judicial branch | | | |
| Think | Has the US Constitution cont or why not? | trolled the problem of faction in t | the twenty-first century? Why | |
| | • What factions do you see as | especially powerful in America t | oday? | |
| 2.5 Compare the ratification | and contrast the arguments pu on debates. | t forth by the Federalists an | d Anti-Federalists during | |
| Remember | • The proposed Constitution had to be ratified by nine of the thirteen states in order to replace the Articles of Confederation. | | | |
| | Proponents and opponents of convince individuals of their | of the Constitution tried to rally o position. | thers to their side and | |
| Know | Anti-Federalists | • Federalist Papers | • tyranny of the majorit | |
| | extended republicfaction | Federaliststyranny | tyranny of the minorit | |
| | | , , , | | |

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KEY TERMS

amendment Anti-Federalists Articles of Confederation and Perpetual Union Bill of Rights constitution Constitutional Convention executive branch extended republic faction *Federalist Papers* Federalists Great Compromise

Jot copy

judicial branch legislative branch logroll New Jersey Plan republics separation of powers Shays' Rebellion Three-Fifths Compromise tyranny tyranny of the majority tyranny of the minority Virginia Plan

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