

Creating the Constitution

8.1 Introduction

When the Revolutionary War ended, no one was happier than a small, bookish Virginia Patriot named James Madison. And no one was more worried about the future of the United States. While serving in Congress during the war, Madison had tried and failed to get the states to work easily together. He doubted that things would improve now that the war was over.

After declaring independence in 1776, Congress had tried to unite the states under one national government. This proved to be a difficult task. Most members of Congress were nervous about creating a strong central government. They feared that such a government would trample the very rights they were fighting to preserve.

Their solution was a plan of government known as the **Articles of Confederation**. The Articles created “a firm league of friendship” in which “each state retains its sovereignty, freedom, and independence.” This “league of friendship” was a loose union in which the 13 states cooperated for common purposes. It was run by Congress, in which each state had one vote.

On paper, the Articles of Confederation gave Congress several important powers. It could make war and peace, raise an army and a navy, print money, and set up a postal system.

In reality, however, these powers were limited by the inability of Congress to impose taxes. Instead, Congress had to ask the states for funds to do anything. All too often, the states ignored Congress’s “humble requests.” The result, said Madison, was that the Articles were no more effective at binding the states into a nation than “a rope of sand.”

In this chapter, you will read about the new nation’s shaky start under the Articles of Confederation. You will also learn how Madison and other leaders came together in Philadelphia’s Independence Hall in 1787 in the hope of forming “a more perfect union.”

8.2 Early Quarrels and Accomplishments

Even before the Revolutionary War ended, the states began quarreling among themselves. Many of their quarrels were about taxes on goods that crossed state borders. New York, for example, taxed firewood from Connecticut and cabbages from New Jersey. The states also quarreled over boundaries. The inability of Congress to end such disagreements was one of the key weaknesses of the Articles of Confederation.

Developing Western Lands Congress did get the states to agree on one important issue: how to develop the western lands acquired by the United States in the Treaty of Paris.

At that time, there was no orderly way of dividing up and selling these lands. Settlers walked into the wilderness and claimed the land they liked. Disputes over who owned what land clogged the courts.

To end this confusion, Congress passed the Land Ordinance of 1785. Under this law, western lands were divided into six-mile squares called townships. Each township was then divided into 36 sections of 640 acres each. One section of each square was set aside to support the township’s public schools. The other sections were to be sold to settlers.

Surveyors proceeded to lay out townships in the Ohio Valley, then known as the Northwest **Territory**. By 1787, the government was ready to sell sections to settlers. This raised the question of how these areas should be governed. Were they to be colonies of the United States or new states?

The Northwest Ordinance Congress answered this question in the Northwest Ordinance of 1787. This law divided the Northwest Territory into smaller territories, each governed by a territorial governor. As soon as a territory had 5,000 free adult males, it could elect its own legislature, or lawmaking body. When the population reached 60,000, a territory could apply to Congress to become a state.

The Northwest Ordinance included a list of rights that gave settlers the same privileges as other citizens, except for one. Slavery was banned in the Northwest Territory.

This system of settlement served the nation well. Over time, the United States would continue to establish territories as it spread to the Pacific Ocean and beyond.

8.3 Shays’s Rebellion and the Need for Change

Under the Articles of Confederation, the new nation also had serious money problems. The paper money printed by Congress during the war was worthless. Congress had the power to make coins that would not lose their value. But it lacked gold or silver to mint into coins.

The states reacted to the money shortage by printing their own paper currency (money). Before long, bills of different sizes and colors were floating from state to state. No one knew what any of these currencies were worth, but most agreed that they were not worth much.

Massachusetts Farmers Rebel The money shortage was particularly hard on farmers who could not earn enough to pay their debts and taxes. In Massachusetts, judges ordered farmers to sell their land and livestock to pay off their debts. Led by Daniel Shays, a hero of Bunker Hill, Massachusetts farmers rebelled.

First, Shays and his followers closed down courthouses to keep judges from taking their farms. Then they marched on the national **arsenal** at Springfield to seize the weapons stored there. Having disbanded the Continental Army, Congress was unable to stop them.

Massachusetts ended Shays's Rebellion by sending militia troops to Springfield to restore order. To many Americans, however, the uprising was a disturbing sign that the nation they had fought so hard to create was falling apart. "No respect is paid to the federal [national] authority," Madison wrote to a friend. "It is not possible that a government can last long under these circumstances."

A Call for a Convention Shays's Rebellion shocked Congress into calling for a convention to consider "the situation of the United States." Each state was invited to send delegates to Philadelphia in May 1787, "for the sole and express purpose of revising the Articles of Confederation."

Madison was ready. For the past year he had devoted himself to the study of governments, both ancient and modern. The lesson of the past was always the same. A nation that was made up of many groups needed a strong central government, or it was soon torn apart by quarrels. The question was, would Americans heed this lesson?

8.4 Opening the Constitutional Convention

Philadelphia was already hot and sticky when delegates began drifting into the city. On May 25, the Constitutional Convention met for the first time in the east room of the Pennsylvania State House (later known as Independence Hall). The Declaration of Independence had been debated in this very room just 11 years earlier. The delegates would meet in the east room all summer on days so steamy that, as one visitor wrote, "the slightest movement is painful."

The delegates' first action was to elect George Washington president of the convention. No man was more admired and respected than the former commander in chief of the Continental Army. When the war ended, Washington could have used his power and popularity to make himself a king. Instead, he went home to Virginia to resume his life as an ordinary citizen. But despite his reluctance to return to public life, Washington would play a key role by presiding over the convention and lending it his prestige.

The Delegates Fifty-five delegates from 12 states attended the convention. Rhode Island, which prided itself as "the home of the otherwise minded" and feared a strong national government, boycotted the meeting.

Some leaders of the revolution were missing. John Adams and Thomas Jefferson were representing the United States in Great Britain and France. Others who did not attend included Sam Adams, John Hancock, and Patrick Henry. They feared a strong national government would endanger the rights of states.

As a group, the delegates were, in the words of a modern historian, "the well-bred, the well-fed, the well-read, and the well-wed." Their average age was 42. At 81, Benjamin Franklin of Pennsylvania was the oldest. He arrived at the convention each day in a sedan chair carried by four good-natured prisoners from a nearby jail.

Most of the delegates brought extensive political experience to the meeting. More than two thirds were lawyers. More than one in three owned slaves. Thomas Jefferson was so impressed by the ability and experience of these men that he called the convention "an assembly of demi-gods."

The Father of the Constitution The best prepared of these "godlike" figures was James Madison of Virginia. One delegate wrote of Madison, "In the management of every great question he evidently took the lead in the Convention." Indeed, Madison's influence was so great that later he would be called the "Father of the Constitution."

Madison addressed the convention more than 200 times. When he was not speaking, he took notes. Sitting near the front of the room so that he could hear everything that was said, Madison wrote down nearly every word. When collected together, his notes covered more than 600 printed pages. From this remarkable record, we know what went on inside the convention day by day.

The Rule of Secrecy At the time, however, no one outside the convention knew what was happening. After choosing a president, the delegates voted on rules for the convention. The most important was the rule of secrecy. The delegates

wanted to feel free to speak their minds without causing alarm or opposition among the general public. They agreed to keep secret whatever was said in the meeting room until their work was done.

One day Washington was handed some notes that had been dropped in the hall outside the east room. Washington pocketed the paper until the end of debate the next day. Then, in his sternest voice, he lectured the delegates on the importance of secrecy. “I know not whose paper it is,” Washington said as he flung the notes on his desk. “But here it is, let him who owns it take it.” The notes were never claimed. Instead, they lay on Washington’s desk for days.

Like Washington, the delegates took the rule of secrecy very seriously. During that long summer, not a single word about the convention debates appeared in any newspaper.

Shared Beliefs and Clashing Views Once the convention was organized, the delegates got down to business. As a group, the delegates had much in common. But they also had very different views on many of the issues facing the new nation.

To be sure, all the delegates were committed to the ideals of the Declaration of Independence. The basic purpose of government, they believed, was to protect the rights to “life, liberty, and the pursuit of happiness.” And they agreed, in the words of the Declaration, that the “just powers” of governments came from “the consent of the governed.”

In part, these beliefs reflected the liberal ideas of **Enlightenment** thinkers like England’s John Locke. Human institutions, these thinkers had argued, should be based on “laws of nature.” Among these laws were the rights to liberty and equality. The best way to protect these rights, the delegates agreed, was through some form of **republic**.

From New England’s town meetings to lawmaking bodies like the Virginia House of Burgesses, Americans had a long tradition of participating in their own government. After the Revolution, all the states had adopted **constitutions** that embraced republican ideals. Despite many differences in details, every state had some form of representative government. States had also expanded the right to vote and to hold office. These state constitutions helped to shape the delegates’ thinking.

Despite delegates’ broad agreement on a government “of the people,” many questions were left unanswered. For example, who exactly should have a say in a truly “representative” government? Even in liberal Pennsylvania, only free, white males could vote. Some states allowed only wealthier citizens to vote or hold office. Women could not vote in any state except New Jersey. (And New Jersey women would lose the right to vote in 1807.)

Perhaps the most troubling question of all was how powerful the national government should be. Many delegates wanted to keep government close to the people by preserving the rights of the states. They feared that a strong national government would threaten individual liberty. Others, including James Madison, argued just the opposite. Look at what has happened under the Articles of Confederation, they said. If the central government is too weak, it cannot do its job of protecting liberty and property.

As they met behind closed doors, the delegates wrestled with these and other issues. Tempers often flared. Several times it seemed that the convention might collapse in failure. But as you will see, in the end the delegates found ways to save the convention—and the nation.

8.5 Issue: How Should States Be Represented in the New Government?

When the convention began, most delegates believed that their task was to revise the Articles of Confederation. To their surprise, the Virginia delegation presented them with a completely new plan of government. After a lengthy debate, the delegates made a bold move. They agreed to throw out the Articles of Confederation and write a new constitution.

While the delegates—later known as the framers—agreed to design a new framework of government, they were divided on a key issue. Where should the government’s power to rule come from? The states? Or the people? Under the Articles of Confederation, the answer was the states. Madison’s answer in the Virginia Plan was that the government’s power should come directly from the people.

The Virginia Plan The Virginia Plan called for a strong national government with three branches or parts. A legislative branch, or congress, would make laws. An executive branch would carry out (“execute”) the laws. A judicial branch, or system of courts, would apply and interpret the laws.

Under the Virginia Plan, Congress was to be made up of two houses, the House of Representatives and the Senate. The number of lawmakers that a state could send to Congress depended on its population. States with a large number of people would have more representatives than smaller states.

Delegates from Virginia, Pennsylvania, and other large states liked the Virginia Plan. Having the new government represent people, not states, would give them more representatives and more power in both houses of Congress.

The New Jersey Plan Not surprisingly, delegates from the small states disliked the Virginia Plan. Just as the convention was about to vote on it, William Paterson of New Jersey introduced a rival proposal.

Like the Virginia Plan, the New Jersey Plan called for a government with three branches. However, the legislative branch would have just one house, not two. And each state would have an equal vote in Congress, no matter how big or small. This plan, Paterson argued, would keep the small states from being “swallowed up” by their more populous neighbors.

8.6 Resolution: The Great Compromise

The New Jersey Plan was warmly received by delegates from small states. The majority of delegates, however, saw Paterson’s plan as little improvement over the Articles of Confederation and rejected it. But they could not agree on what should replace it.

Tempers Rise The debate over who Congress should represent continued into July, with tempers rising day by day.

To most delegates from large states, representation based on population seemed both logical and fair. “Can we forget for whom we are forming a Government?” asked James Wilson of Pennsylvania. “Is it for men, or for the imaginary beings called States?”

To Wilson, the answer was obvious. But his logic could not overcome the fears of small-state delegates. One hot Saturday afternoon, Gunning Bedford of Delaware tore into the delegates from large states. “They insist,” he said, “they will never hurt or injure the lesser states.” His reply was, “I do not, gentlemen, trust you!” If the large states continued trying to “crush the smaller states,” Bedford warned, “the small ones will find some foreign ally of more honor and good faith who will take them by the hand and do them justice.”

Rufus King of Massachusetts was shocked at this reference to foreign powers. He shot back that he was “grieved, that such a thought had entered into the heart.” Still, every delegate knew that Britain, France, and Spain were just waiting for the United States to fall apart so that they could pick up the pieces.

A Compromise Is Reached Finally, a **compromise** was proposed based on a plan put forward earlier by Roger Sherman of Connecticut.

The compromise plan kept a two-house Congress. The first house, the House of Representatives, would represent the people. In this house, the number of representatives from each state would be based on the state’s population. The second house, the Senate, would represent the states. Each state would have two senators, to be elected by their state legislatures.

The vote was very close, but the compromise plan was approved. This plan saved the convention and became known as the Great Compromise.

8.7 Issue: How Should Slaves Be Counted?

The Great Compromise kept the framers working together. But having agreed to base representation in one house of Congress on state population, they faced a new and difficult question. As Gouverneur Morris of Pennsylvania put it, “Upon what principle shall the slaves be computed in the representation?”

People or Property? By the time of the convention, nine tenths of the slaves lived in the South. Like everyone else, southerners wanted as many representatives in the House as possible. They argued that slaves should be counted the same as any other people in determining representation.

Delegates from the North challenged this idea. Were slaves to be considered people with a right to be represented in Congress? Or were they property?

“Blacks are property and are used to the southward as horses and cattle to the northward,” argued Elbridge Gerry of Massachusetts. Most northern delegates agreed. Slaves should be counted only as property that could be taxed like any other property. If slaves were to be counted as people in determining representation in Congress, said Morris, “then make them citizens and let them vote.”

New Thinking on Slavery This argument signaled a growing division over slavery among white Americans. As you read in Chapter 7, the Declaration of Independence and the Revolutionary War forced many whites to reexamine their views on slavery. Some became active in trying to end what they now saw as a great evil. Benjamin Franklin, for example, became president of an antislavery society in 1787. In the North, this new thinking led one state after another to pass laws ending slavery.

Although many southerners were uneasy about slavery, they were not yet ready to abolish it. The South’s economy was still too dependent on the labor of enslaved African Americans. But some southern states did pass laws making it easier for owners to free their slaves.

The question facing the framers was how far they could take this new thinking in a nation that was becoming half-slave and half-free.

8.8 Resolution: The Three-Fifths Compromise

After a bitter debate, Madison proposed a compromise. Count each slave as three fifths of a person, he suggested, when determining a state's population. The delegates approved this idea, known as the three-fifths compromise.

The three-fifths compromise made a mockery of the statement in the Declaration of Independence that "all men are created equal." Still, the delegates adopted the compromise because it seemed the only way to keep the convention moving forward.

The Slave Trade A dispute over trade raised another question about slavery. To help business in the North, northern delegates favored giving Congress broad power to control trade between the states and other countries. This proposal made southern delegates nervous. They worried that Congress might try to tax southern export crops such as rice and tobacco. Southerners also worried that Congress would use its power over trade to outlaw the slave trade—the importing of slaves from Africa.

Southerners had reason to be fearful. By 1787, several states had outlawed the slave trade within their boundaries. And a majority of the convention's delegates favored ending the slave trade completely.

South Carolina and Georgia, however, objected that their economies would collapse without a constant supply of fresh slaves. Neither state would agree to any constitution that threatened the slave trade.

Again, the delegates settled on a compromise. Congress would have the power to control trade, but with two limitations. First, Congress could not place any tax on exports going to other countries. Second, Congress could not interfere with the slave trade for 20 years, or until 1808.

To satisfy southerners, the delegates also agreed to a provision known as the "fugitive slave clause." This clause said that escaped slaves had to be returned to their owners, even if they were caught in a free state.

Without such compromises, the states might never have come together in a single union. Still, the compromises only postponed the day when Americans would have to resolve the terrible contradiction between slavery and the ideals of liberty and equality. Meanwhile, generations of African Americans would spend their lives in bondage.

8.9 Issue: How Should the Chief Executive Be Elected?

Another major question facing the delegates concerned who would head the new government's executive branch. Early in the convention, Charles Pinckney urged the creation of a "vigorous executive." James Wilson followed with a proposal that a single person serve as the chief executive.

A sudden silence fell over the convention. A single executive? Just the words brought to mind unhappy memories of King George III.

Wilson broke the silence by explaining that good government depends on clear, timely, and responsible leadership. Such leadership, he said, is most likely to be found in a single person.

One Executive or Three? Edmund Randolph of Virginia disliked this proposal. He preferred a three-member executive drawn from different parts of the country. Three people, he argued, could lead the country better than one.

Benjamin Franklin opposed a single executive for different reasons. "The first man put at the helm will be a good one," said Franklin, thinking of George Washington. "Nobody knows what sort may come afterwards." The next chief executive, he warned, might be overly ambitious or too "fond of war."

In spite of these objections, the framers agreed to a single executive, to be called the president. To keep this leader from becoming too kinglike, they limited the president's term to four years. A vice president was also to be elected to fill that term if the president died in office.

Choosing the Chief Executive Equally troubling was the issue of how to choose the chief executive. Some delegates wanted Congress to appoint the president. Gouverneur Morris objected. The president "must not be made a flunky of the Congress," he argued. "It must not be able to say to him: 'You owe your appointment to us.'"

Several delegates thought that the people should elect the president. Madison, however, argued that voters would naturally vote for someone from their own state. As a result, this method would not be fair to candidates from small states.

Still others suggested that the president be elected by a specially chosen group of "electors" from each state. Such a group, they felt, would be able to look beyond state interests to make a wise choice for the entire country.

8.10 Resolution: The Electoral College

After some 60 votes on the issue of how to elect the president, the framers reached another compromise. Neither Congress nor the people, they decided, should choose the president and vice president. Instead, a special body called the **Electoral College** would elect the government's leaders.

The Electoral College System The Electoral College is made up of electors who cast votes to elect the president and vice president every four years. Each state has as many electors in the Electoral College as the number of senators and representatives it sends to Congress.

The delegates left the method of choosing electors up to each state. Before 1820, state legislatures chose electors in most states. Today, the people choose their state's electors when they vote in presidential elections. The electors then cast their ballots for president and vice president on a date chosen by Congress.

Originally, the electors voted for two candidates without saying which one they preferred for president or vice president. The candidate receiving the most votes became president. The runner-up became vice president. As you will read in Chapter 11, this system caused great confusion in the election of 1800 and was later changed.

Political Parties and Elections The Electoral College system looks very odd to most Americans today. In our age of instant communication, it is hard to appreciate the framers' concern that voters would not know enough about candidates outside their own state to choose a president wisely.

The delegates could not have predicted how quickly communications would improve in the United States. Nor could they foresee the rise of national political parties. Within a few years of the convention, political parties were nominating candidates for president and educating voters in every state about those candidates.

The Electoral College system still affects presidential elections today. In most states, the candidate who gets the most votes—even if less than a majority—gets all of that state's electoral votes. As a result, a candidate can win a majority in the Electoral College without necessarily winning a majority of the votes cast across the country. In fact, in the election of 2000, George W. Bush won the presidency over Al Gore, even though more voters nationally chose Gore.

8.11 The Convention Ends

By the end of summer, the hard work of designing the Constitution was finished. But the new plan still had to be accepted by the states.

Approving the Constitution The first question was how many states would have to **ratify**, or approve, the Constitution before it could go into effect. Should ratification require approval by all 13 states? By a majority of 7 states? The framers compromised on 9 states.

The second question was who should ratify the Constitution—the people, or state legislatures? Ratification by state legislatures would be faster and easier. Madison, however, argued strongly that the people were “the fountain of all power” and should decide. The majority of delegates agreed. The Constitution would be ratified at special conventions by delegates elected by the people in each state.

Signing the Constitution On September 17, 1787, the delegates declared the Constitution complete. As this last meeting began, Franklin shared his final thoughts, which would be printed in more than 50 newspapers.

“I confess that I do not entirely approve of this Constitution,” he began. But no convention could produce a perfect plan. “It therefore astonishes me,” he continued, “to find this system approaching so near to perfect... and I think it will astonish our enemies.” Franklin added that he approved the final plan “because I expect no better, and because I am not sure that it is not the best.” He urged “every member of the convention” to “put his name to this instrument.”

Not everyone was won over by Franklin's words. Fourteen delegates left the convention before it ended, and three other doubters—Edmund Randolph and George Mason of Virginia, and Elbridge Gerry of Massachusetts—did not sign the Constitution either. Mason felt it gave too much power to the national government. Gerry refused to sign because he believed the new plan did not protect the rights of the people.

When the signing was over, Franklin confessed that he had often looked at the sun carved on the back of George Washington's chair and wondered whether it was about to rise or set. “But now,” he said, “I have the happiness to know that it is a rising and not a setting sun.” A new day was dawning for the United States.

8.12 The Constitution Goes to the Nation

Newspapers in every state printed the Constitution as soon as they could get it. What readers found was a plan that would create a “federal” system of government, in which a strong national government shared power with the states. Before long, the entire country was debating the same issues that had kept the convention in session for four long months.

The Federalists Supporters of the Constitution called themselves Federalists. The Federalists argued that the Constitution would create a national government that was strong enough to unite the quarreling states into a single republic.

James Madison, Alexander Hamilton, and John Jay led the Federalist campaign for ratification. In a series of newspaper articles, they recalled the weaknesses of the government under the Articles of Confederation. They showed how the Constitution would remedy those weaknesses by creating a stronger, more effective Union of the states.

The Federalist leaders also addressed the fears of many Americans that a strong government would threaten their freedom or take away their rights. The powers given to the government, they pointed out, were strictly limited. In addition, those powers were divided among three branches so that no one branch could become too powerful. The influential articles written by Madison, Hamilton, and Jay were later collected and published as *The Federalist Papers*.

The Anti-Federalists Opponents of the Constitution were known as Anti-Federalists. They found much to dislike about the new plan. Congress, they feared, would ruin the country with taxes. The president had power enough to rule like a king. And the judicial branch would swallow up state courts.

The Anti-Federalists also complained about what was missing from the plan. Their main complaint was that the plan listed the powers of the government but not the rights of the people. Most of all, the Anti-Federalists feared change. The idea of giving up any state power to form a stronger Union made them uneasy.

After listening to the arguments, Madison wrote that the question facing the nation was “whether the Union shall or shall not be continued. There is, in my opinion, no middle ground to be taken.”

8.13 Chapter Summary

In this chapter, you read about the Constitutional Convention, the historic meeting that replaced the Articles of Confederation with a new plan of government for the United States. You used an annotated drawing of the Assembly Room at Independence Hall to organize information about the convention.

Both the Articles of Confederation and the Constitution that replaced it were attempts to realize the ideals of the American Revolution and the Declaration of Independence. Americans wanted a government that would protect their rights to “life, liberty, and the pursuit of happiness.” The challenge was to create a government that was strong enough to guarantee these rights, yet not so strong that it could take them away.

The Articles of Confederation, which were America’s first attempt at self-government, created a loose union of states under a weak central government. This government saw the new nation through the Revolutionary War. It also established a procedure for settling western territories. But, as Shays’s Rebellion showed, it was too weak in peacetime to keep order or protect its own property.

Delegates to the Constitutional Convention quickly agreed to create a new constitution. For four long months, they argued in secret over a number of issues that often threatened to destroy the meeting. In the end, the framework they created included a series of compromises.

One of these agreements, the Great Compromise, established how the states were to be represented in the legislative branch of government. The three-fifths compromise settled how slaves were to be counted in determining a state’s population. A third set of compromises created a single chief executive, to be chosen by the Electoral College.

The labors of the framers were only the beginning. Their new Constitution had to be ratified by the people through special state conventions. Federalists, who supported the Constitution, were opposed by Anti-Federalists, who feared the power of the proposed national government. Now it was up to the people to decide.