

AM GOV 2015-2016

Chapter 2 – The Constitution: The Foundation of Citizens' Rights

Learning Objectives

Having read the chapter, the students should be able to do the following:

1. Discuss the historical background surrounding the American independence movement and the drafting of the Articles of Confederation, the Declaration of Independence, and the U.S. Constitution.
2. Identify the factors that contributed to the need for a Constitutional Convention.
3. Summarize the various compromises made by the Framers during the drafting of the Constitution.
4. Discuss and define the constitutional principles of separation of powers, checks and balances, and federalism.
5. Describe the basic construction of the U.S. Constitution.
6. Understand and describe the positions of the Federalists and Antifederalists.
7. Explain the methods by which Constitutional change can occur.

Focus and Main Points

This chapter examines the foundations of American democracy and the basic principles upon which its governing document, the U.S. Constitution, is based. The following points are emphasized:

- Colonial America's dissatisfaction with British taxation policy in the colonies led to the convening of the Continental Congress and the beginning of hostilities with Britain. In 1776, the colonies formally declared independence with the signing of the Declaration of Independence. The Second Continental Congress drafted the Articles of Confederation, which loosely consolidated the colonies under a common rule.
- Problems with the Articles of Confederation, as highlighted by Shays's Rebellion, demonstrated the need for a strong central government.
- The Constitution enshrines principles of liberal democracy buttressed with protections achieved through the separation of powers, checks and balances, and federalism.
- The U.S. Constitution is a brief document that consists of a preamble and seven articles that prescribe the powers and limits of the various units of government.
- The fight for ratification of the Constitution was fierce, requiring different strategies for different states and an impassioned intellectual argument for ratification by the Federalists against the objections of the Antifederalists.

- The Constitution was ratified in 1790. The Bill of Rights, which defines individual freedoms and protections that are beyond the reach of the government, was adopted by the states in 1791.
- The Constitution contains a seldom-used process for change that allows for parts of the document to be altered while preserving the structure of government as a whole. Our governmental structure—with checks and balances, judicial review, and federalism—is able to accommodate subtle changes in the social, political, and cultural landscape.
- The processes of institutional adaption and judicial review have worked over time to bring about an ongoing evolution in the functioning and powers of the three branches of government.

Chapter Summary

During the first 150 years of colonial settlement in America, colonists thought little of independence and focused on what they needed for survival, which included the development of local self-government. The nation's first legislative body, the House of Burgesses, was created in Jamestown in 1619. Eventually, however, Colonial America grew dissatisfied with British taxation on a wide variety of colonial staples. As the tensions between the colonies and Britain grew, the First Continental Congress was convened in 1774 and urged the boycott of British goods. It was followed by the Second Continental Congress, which drafted the Articles of Confederation, a document that created a loose confederation of colonies under a common rule. Tensions continued, and in 1776, the colonies formally declared independence with the Declaration of Independence, which asserted the right to “life, liberty, and the pursuit of happiness,” and also served as a declaration of war.

The Articles of Confederation adequately served as a governing document during the Revolutionary War, but shortly after the end of the war, the need to replace it became apparent. The Articles of Confederation created three major economic problems: lack of a common national currency; lack of control of interstate commerce; and an inability to collect federal taxes.

These problems were highlighted by Shays's Rebellion, in which dissidents demanding debt relief captured a cache of weapons from the Springfield, Massachusetts armory. It was after this event that the need for a strong central government became apparent. The Constitutional Convention was called in 1787 to amend the Articles and create a new governing document, the Constitution.

Many compromises went into the drafting of the Constitution. Disagreement between small states and large states over representation in Congress led to the Great Compromise, in which it was agreed that states' representation would be equal in the Senate and determined by population in the House of Representatives. Other compromises were necessary because of regional

differences between the North and South. The three-fifths compromise allowed for each slave to be counted as three-fifths of a person for purposes of taxation and congressional representation.

After delegates to the Constitutional Convention drafted the Constitution, it had to be ratified by the states. Ratification faced the opposition of a group known as the Antifederalists, who opposed the Constitution on several grounds. Antifederalist farmers were afraid that a national currency would lower prices for commodities and allow the wealthy to buy up their land. Other Antifederalists were worried that a powerful central government would threaten state sovereignty and that the Constitution's lack of a Bill of Rights failed to protect basic freedoms. On the other hand, supporters of the Constitution, known as Federalists, supported the newly-drafted Constitution and its strong central government and felt that a separate Bill of Rights was unnecessary because the document sufficiently limited the power of federal bodies. After fierce debate, the Constitution was adopted in 1790 when Rhode Island became ninth state to ratify it. Shortly after ratification, Congress presented the Bill of Rights, which defines individual freedoms and protections that are beyond the reach of the government. The Bill of Rights was ratified in 1791.

The Constitution enshrines principles of liberal democracy. Separation of powers and checks and balances ensure no single branch dominates government and is intended to prevent the arbitrary use of power. To assuage people's fear of putting power in the hands of a remote federal government, the Constitution provides for federalism, which creates a system of power sharing between states and the national government. The Constitution also contains a process for change that allows for parts of the document to be altered while preserving the structure of government as a whole. The Constitution is also flexible enough to adapt to changing times and circumstances; the processes of institutional adaptation and the judiciary's power of judicial review have wrought changes in our structure and process in ways which the founders did not conceive. Our governmental structure—with checks and balances, judicial review, and federalism—is ultimately able to accommodate more subtle changes in the social, political, and cultural landscape.

Major Concepts

1. sovereign
2. bicameral
3. unicameral
4. Great Compromise
5. elastic clause
6. supremacy clause
7. Federalists
8. Antifederalists
9. factions
10. judicial review

Lecture Outline

This lecture outline closely follows the text in its organization. The instructor can use this outline as a lecture aid.

I. The Foundations of American Democracy

Colonial America's dissatisfaction with British policies that limited economic progress soured the relationship between Britain and the colonies and, eventually, deteriorated the relationship to the point of revolution.

- Britain sought to defray the costs of protecting their colonies by imposing taxes on a variety of colonial staples.
- The First Continental Congress (1774) urged a boycott of British goods.
- The Second Continental Congress drafted the Articles of Confederation, which loosely consolidated the colonies under a common rule in which the states were largely considered to be sovereign entities.
- In 1776 the colonies formally declared independence with the Declaration of Independence, which both asserted the ideal of natural rights and equality of all men and served as a declaration of war.

II. The Birth of a Nation

The Articles of Confederation adequately served as a governing document during the Revolutionary War, but shortly after the end of the war, the need to replace it became apparent.

- The Articles of Confederation recognized states as sovereign, limiting the powers of the central government.
- The Articles of Confederation created three major economic problems: lack of a common national currency, lack of control of interstate commerce, and an inability to collect federal taxes.
- Shays's Rebellion highlighted weaknesses in the Articles of Confederation and the need for a strong central government.
- The Constitutional Convention was called in 1787 to amend the Articles and create a new governing document, the Constitution.
- Many compromises went into the drafting of the Constitution. Disagreement between small states and large states over representation in Congress led to the Great Compromise, in which it was agreed that states' representation would be equal in the Senate and determined by population in the House of Representatives.

- Other compromises were necessary because of regional differences between the North and South. Under the three-fifths compromise, each slave was to be counted as 3/5 of a person for purposes of taxation and congressional representation. The importation of slaves was permitted by the Constitution until 1808.

III. Constitutional Principles

The Constitution enshrines the principles of liberal democracy, which are reinforced with protections for individual freedoms and against the abuse of power.

- The Constitution embodies the liberal democratic principles of self-rule and citizen control over government.
- Separation of powers and checks and balances ensures that no single branch dominates government, and are intended to prevent the arbitrary use of power.
- The Constitution provides for federalism, which is power sharing between state and federal governments. Federalism was intended to protect citizens by preventing government from exercising power outside of its intended sphere.

IV. Constitutional Construction

The U.S. Constitution is a brief document that consists of a preamble and seven articles that prescribe the powers and limits of the government.

- Article I deals with the organization, powers, responsibilities, and qualifications for election of the legislature.
- Article II deals with the organization, powers, and responsibilities of the executive branch, including qualifications for being president and the powers of the president.
- Article III creates the federal judicial system, defines its powers and jurisdiction, and specifies terms for appointment and dismissal of judges.
- Article IV discusses the relationship between the states, admission of new states, and guarantees that states have republican forms of government.
- The remaining articles deal with a variety of issues, including the supremacy clause which gives federal law precedence over state law, and also how the Constitution can be amended.

V. The Fight for Ratification

After delegates to the Constitutional Convention drafted the Constitution, it had to be ratified by the states.

- Supporters of the Constitution, known as Federalists, promoted the newly-drafted Constitution and its strong central government and felt that a separate Bill of Rights was unnecessary because the document sufficiently limited the power of federal bodies.
- The Antifederalists opposed the Constitution on several grounds: fear that a national currency would lower prices for commodities and allow the wealthy to buy up land; fear that a powerful central government would threaten state sovereignty; and the lack of a Bill of Rights to protect basic freedoms.
- The Constitution found support among commercial centers, Western territories, land speculators, plantation owners, and smaller states. Federalists won hard-fought ratification battles in large states, including Virginia, Massachusetts, and New York.
- Pro-ratification newspaper articles, the Federalist Papers, were Federalist propaganda but have been hailed by modern scholars for their insightful analysis of the principles of American government.
- The Constitution was adopted in 1788 when it was passed by the ninth state.
- The Bill of Rights was adopted in 1791 and defines the individual freedoms that are beyond the reach of the government.

VI. Constitutional Change

The Constitution contains a seldom-used process for change that allows for parts of the document to be altered while preserving the structure of government as a whole.

- Framers provided two methods for amending the Constitution: An amendment introduced to Congress and, if approved by a 2/3 vote of both houses, submitted to the states for ratification; and a national convention called by Congress to propose an amendment if requested by 2/3 of state legislatures.
- To be adopted, constitutional amendments must be ratified by three-fourths of the states, either by state legislatures or state conventions.
- The Framers intended the Constitution to be adaptable to change but also difficult to amend. The Constitution has been flexible enough to adapt to changing times and circumstances. Our governmental structure is more accommodating to subtle changes in the social, political, and cultural landscape. Institutional adaptation has brought many changes, such as an increase in the executive power of the presidency.
- Congress has often interpreted the Constitution in ways that expanded congressional power or promoted government policies.
- The case of *Marbury v. Madison* (1803) established the Supreme Court's power to rule on the constitutionality of laws or other acts of government, a power known as judicial review.

- Women, African Americans, and those without property were given the franchise via constitutional amendment.

VII. The Constitution and Civic Engagement Today

The fundamental rights that are enshrined in the Constitution face evolving challenges.

- After the 9/11 attacks, most Americans were willing to accept intrusions into their personal privacy for the purposes of security.
- The need for broad governmental investigative powers and how far the government can intrude into citizens' personal lives in the name of security are just some of the questions that face Americans today.

Complementary Lecture Topics

Below are suggestions for lectures or lecture topics that will complement the text. In general, these topics assume that students have read the chapter beforehand.

- The Constitution is designed to preserve liberty. Americans have traditionally distrusted their perception of big government, and the American system puts a variety of limits on governmental authority and safeguards personal rights. Given the present-day international and domestic environment, is this emphasis still practical and workable?
- The U.S. Constitution restricts political power in a number of ways—grants of power, denials of power, a separation of institutions, and the Bill of Rights. Evaluate the effectiveness of these various mechanisms and how well they continue to operate compared to the founders' original intentions.

Class Discussion Topics

Below are suggestions for class discussion topics. In general, these topics assume that students have read the chapter beforehand.

- The limited efficacy of constitutional constraints on political power is widely acknowledged. Some of the world's most repressive regimes are governed by constitutions that solemnly provide for individual rights in theory. What are the social, economic, and cultural conditions that promote limited or repressive government?
- Since the 9/11 attacks on the World Trade Center and the Pentagon, our nation has been grappling with the problem of balancing national security with the exercise of individual freedoms protected by the Constitution and the Bill of Rights. Notable legislation, like the USA PATRIOT Act passed in 2001, has been criticized for sacrificing longstanding civil liberties in return for increased security, and criticism rose sharply in the wake of the 2013 leaks from Edward Snowden. Among the terms of the USA PATRIOT Act (and those of its

reauthorization in 2006) are the provision for warrantless wiretaps and the ability of federal officials to subpoena libraries and book stores for records of loans and purchases. Supporters of the legislation warn of the genuine dangers posed by international terrorism and believe that additional limits on civil liberties are necessary for defense of the homeland. How can we best maintain the balance between security and freedom? Research provisions of the USA PATRIOT Act and the Snowden leaks. Are such legislation and actions justified in light of potential and real threats?

- Ask your students to assume they are members of the constitutional convention. Have them identify the most controversial issues at the convention and why they would support one side or another of each issue, depending on various factors such as class, region, and views on slavery.
- The United States Constitution has fallen out of favor as a model for other countries. Why is this so? Are the criticisms leveled at the Constitution valid?
- Periodically there are calls for a new constitutional convention. What types of issues seem most likely to elicit such calls? Why could such a convention hold both great promise and great peril?
- The United States government, and particularly Congress, has come under heavy criticism for its inability to take needed action in many policy areas. To what extent is this gridlock a function of the United States Constitution? What can be done about it?