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2

THE POLITICS OF THE AMERICAN FOUNDING

IN YOUR OWN WORDS

After you've read this chapter, you will be able to

- 2.1 Identify some of the questions to ask when examining the historical narrative of America's founding.
- 2.2 Outline the events and political motivations that led to the colonies' split from England.
- 2.3 Explain the competing narratives under the Articles of Confederation.
- 2.4 Identify the competing narratives, goals, and compromises that shaped the Constitution.
- 2.5 Explain the system of separation of powers and checks and balances.
- 2.6 Summarize the debate over ratification of the Constitution.
- 2.7 Evaluate the narratives told about the founding of the United States.

WHAT'S AT STAKE . . . IN CHALLENGING THE LEGITIMACY OF THE GOVERNMENT?

Declaring war on the U.S. government is a risky business. Governments depend for their authority on people believing their power is legitimate—when that legitimacy is challenged, so is their authority, and they need to bring the full weight of their power to defend their right to use that power. If they aren't successful, they are no longer "the government." Just ask the British how the eighteenth century challenge to their authority by American colonists worked out.

Quelling *insurrection*—a violent challenge to government authority—is even trickier in the nation those colonies became. The United States is a democracy that guarantees free speech and the right "peaceably to assemble." Where do we draw the line between peaceful protest and violent uprising? As we saw in the January 6, 2021, protests of the results of the 2020 presidential election, the very nature of "violent" can become the object of dispute. Though most of us have seen video footage of angry mobs from that day forcing themselves into the Capitol through broken windows, assaulting law enforcement officers, and calling for the death of the vice president, some of their defenders tried to argue that they were not threatening violence at all, with one Republican congressman calling the event "a normal tourist visit."

So in a democracy, governments have to perfect the Goldilocks task of policing protests in a way that is "just right"—not so strict as to quell the people's voice, but not so lax as to allow protest that weakens the state's authority, always aware that they are the defenders of a state that had its own birth in a successful violent insurrection. One person's armed rebel is another's freedom fighter, after all.

While the January 6th insurrection was the most recent and the most threatening challenge to the nation's security, it was by no means the first group of irate citizens intent on forcing a course correction on a United States government they see becoming too powerful, and/or too much of a threat to individual liberties like the right to bear arms or religious freedom. It was not the first time the federal authorities had to reach for that Goldilocks response.

That was why the federal government reacted cautiously when Ammon Bundy, leader of a militia group called Citizens for Constitutional Freedom and the son of antigovernment activist Cliven Bundy, responded to what he said was a divine instruction to take over the Malheur National Wildlife Refuge in eastern Oregon on January 2, 2016. Bundy said he was acting to support two ranchers who had been arrested for arson on federal land, though the ranchers disavowed the group. Specifically, Bundy demanded that the wildlife refuge land be given back to the state.

The federal government, which owned the land but was wary of causing a bloody showdown, waited. As various militias came to join the effort, police were able to apprehend Bundy and several of the other leaders traveling in a convoy. Although one person was shot and killed, most surrendered and the siege ended on February 28.¹

The Malheur National Wildlife Refuge occupation reflected a movement that has gained traction in recent years: declaring that the federal government is abusing the power of the Constitution, and that that power must be returned to the people via the action of private citizens. Timothy McVeigh's 1995 attack on the federal building in Oklahoma City, which killed 168 people, including 19 children, was the bloodiest incident in the antigovernment movement, but the broadest and strongest expression is the Tea Party movement, some of whose members have become part of the federal government themselves.

The birth of the Tea Party in 2010 might have been 1773 all over again. Antitax and antigovernment, the protesters were angry, and if they didn't go as far as to empty shiploads of tea into Boston Harbor, they made their displeasure known in other ways. Though their ire was directed at government in general, the Tea Party had found specific targets. In particular, they opposed the George W. Bush administration's bailouts of big financial institutions through the Troubled Asset Relief Program (TARP) in 2008 and other measures taken in response to the economic crisis that began that year, including mortgage assistance for people facing foreclosure, the stimulus bill, and the health reform act, all passed by Congress in 2009 and 2010 with the strong backing of President Barack Obama.

The Tea Party movement was a decentralized mix of many groups—mostly simply frustrated Republicans (the major party that most Tea Partiers identify with or lean toward). Ted Cruz from Texas and Marco Rubio from Florida won seats in the U.S. Senate with Tea Party support and went on to run for the presidency in 2016. Tea Party members elected to Congress caused many headaches for Speaker of the House John Boehner, leading to his resignation in 2015.

But other members of the rebellious faction chose less establishment paths. David Barstow of the *New York Times* wrote in early 2010 that a "significant undercurrent within

the Tea Party movement” was less like a part of the Republican Party than it was like “the Patriot movement, a brand of politics historically associated with libertarians, militia groups, anti-immigration advocates and those who argue for the abolition of the Federal Reserve.” He quoted a Tea Party leader so worried about the impending tyranny threatening her country that she could imagine being called to violence in its defense: “I don’t see us being the ones to start it, but I would give up my life for my country. . . . Peaceful means are the best way of going about it. But sometimes you are not given a choice.”²

Like the extreme Tea Partier quoted above, McVeigh and his associates, the Bundys, and their fellow militia group members like the Oath Keepers and Proud Boys who showed up to join the January 6th insurrection, are everyday men and women who say they are the ideological heirs of the American Revolution. They liken themselves to the colonial Sons of Liberty, who rejected the authority of the British government and took it upon themselves to enforce the laws they thought were just. The Sons of Liberty instigated the Boston Massacre and the Boston Tea Party, historical events that we celebrate as patriotic but that would be considered treason or terrorism if they took place today—and were considered as such by the British back when they occurred.

Today’s so-called Patriot groups claim that the federal government (and sometimes the state governments, too) has become as tyrannical as the British government ever was, that it deprives citizens of their liberty and over-regulates their everyday lives. They reject federal laws that do everything from limiting the weapons that individual citizens can own, to imposing taxes on income, to requiring the registration of motor vehicles, to creating the Federal Reserve Bank, to reforming the health care system. In the age of COVID-19, they have also opposed state regulations, such as those aimed at getting people to wear masks or maintain social distance. The groups base their claim to legitimate existence on the Constitution’s Second Amendment, which reads, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” Members of state militias, and other groups like them, take this amendment literally and absolutely. The website teaparty.org, though not representative of all Tea Party groups, says “gun ownership is sacred.”³

Some militias go even further. They may blend their quests for individual liberty with white supremacy or anti-Semitism and see conspiracies aimed at reducing the power of white citizens.⁴ That tendency was exacerbated during Donald Trump’s administration when his rhetoric was seen by some as bolstering white supremacist groups who supported him and, indeed, who showed up on January 6, 2021, at his request to prevent Vice President Mike Pence from declaring Joe Biden the rightful winner of the presidential election.

Although there are some indications that militia membership had declined after the Oklahoma City bombing, it surged after Obama’s first election, as did arguments that the federal government (or at least the president) was not legitimate.⁵ Donald Trump’s loud support for the birther movement, which argued that Obama was not qualified by birth for the presidency, presaged Trump’s presidential campaign, which seemed to capitalize on the same anger the Tea Party had thrived on. The rise of disinformation and

conspiracy theories in an age of social media that seemed unable to keep them in check made stoking that anger even easier. A number of writers, as we will see in Chapter 5, have argued that some of this increased anger is a panicky reaction of a shrinking white majority to demographic change and the presence of a Black man in the White House.⁶ In any case it helped propel Donald Trump there in 2016 and tried to keep him there in 2021.

The federal government has reacted strongly to limit the threat presented by state militias and others who believe that its authority is not legitimate. Congress passed an antiterrorism bill signed by President Bill Clinton in 1996 that would make it easier for federal agencies to monitor the activities of such groups, and these powers were broadened after September 11, 2001. In June 2014, in reaction to the surging numbers of radicalized people within the country, then-attorney general Eric Holder announced that he would revive the domestic terrorism task force that had been formed after the Oklahoma City bombings but had not met since the attacks of 9/11 turned the nation's attention to terrorism overseas. And in the wake of January 6th and just weeks after the 2022 attack on then-House speaker Nancy Pelosi's husband by a right-wing conspiracy theorist determined to find her and hold her hostage, the Senate Homeland Security and Governmental Affairs Committee submitted a report claiming that the nation was not doing enough to monitor and manage the threat of domestic terrorism.

How should the federal government respond to these challenges to its legitimacy? Are these groups, as they themselves claim, the embodiment of revolutionary patriotism? Do they support the Constitution, or sabotage it? And where do we draw the line between a Tea Party member who wants to sound off against elected officials and policies she doesn't like, and one who advocates resorting to violence to protect his particular reading of the Constitution? Think about these questions as you read this chapter on the founding of the United States. At the end of this chapter we revisit the question of what's at stake for American politics in a revolutionary challenge to government authority.

INTRODUCTION

Schoolchildren in the United States have had the story of the American founding pounded into their heads. From the moment they start coloring pictures of grateful Pilgrims and cutting out construction paper turkeys in grade school, the founding is a recurring focus of their education, and with good reason. Democratic societies, as we saw in Chapter 1, rely on the consent of their citizens to maintain lawful behavior and public order. A commitment to the rules and goals of the American system requires that we feel good about that system. What better way to stir up good feelings and patriotism than by recounting thrilling stories of bravery and derring-do on the part of selfless heroes dedicated to the cause of American liberty? We celebrate the Fourth of July with fireworks and parades, displaying publicly our commitment to American values and our belief that our country is special, in the same way that other nations celebrate their origins all over the world. Bastille Day (July 14) in France, May 17 in Norway, October 1 in China, and July 6 in Malawi all are days on which people rally together to celebrate their common past and their hopes for the future.

Of course, people feel real pride in their countries, and many nations, not only our own, do have amazing stories to tell about their earliest days. But since this is a textbook on politics, not patriotism, we need to look beyond the pride and the amazing stories. As political scientists, we must separate myth from reality. For us, the founding of the United States is central not because it inspires warm feelings of patriotism but because it can teach us about American politics—the struggles for power that forged the political system that continues to shape our collective struggles today.

The history of the American founding has been told from many points of view. You are probably most familiar with this narrative: The early colonists escaped from Europe to avoid religious persecution. Having arrived on the shores of the New World, they built communities that allowed them to practice their religions in peace and to govern themselves as free people. When the tyrannical British king made unreasonable demands on the colonists, they had no choice but to protect their liberty by going to war and by establishing a new government of their own.

Sound historical evidence suggests that the story is more complicated, and more interesting, than that. A closer look shows that early Americans were complex beings with economic and political agendas as well as religious and philosophical motives. After much struggle among themselves, the majority of Americans decided that those agendas could be carried out better and more profitably if they broke their ties with England.⁷ Just because a controversial event like the founding is recounted by historians or political scientists one or two hundred years after it happens does not guarantee that there is common agreement on what actually took place. People write history not from a position of absolute truth but from particular points of view. When we read a historical narrative, as critical thinkers we need to ask the same probing questions we ask about contemporary political narratives: Who is telling the story? What point of view is being represented? What values and priorities lie behind it? If I accept this interpretation, what else will I have to accept?

In this chapter we talk a lot about history—the history of the American founding and the creation of the Constitution. Like all authors, we have a particular point of view that affects how we tell the story. True to the basic theme of this book, we are interested in power and citizenship. We want to understand American government in terms of who the winners and losers are likely to be. It makes sense for us to begin by looking at the founding to see who the winners and losers were then. We are also interested in how rules and institutions make it more likely that some people will win and others lose. Certainly an examination of the early debates about rules and institutions will help us understand that. Because we are interested in winners and losers, the *who* of politics, we are interested in understanding how people come to be defined as players in the system in the first place. It was during the founding that many of the initial decisions were made about who “We, the people” would actually be. Finally, we are interested in the product of all this debate—the Constitution of the United States, the ultimate rule book for who gets what in American politics. Consequently, our discussion of American political history focuses on these issues. Specifically in this chapter we explore the colonial break with England and the Revolution, and the initial attempt at American government—the Articles of Confederation, the Constitutional Convention, the Constitution itself, and the ratification of the Constitution.

IN YOUR OWN WORDS

Identify some of the questions to ask when examining the historical narrative of America's founding.

THE SPLIT FROM ENGLAND

From British subjects to American citizens

America was a political and military battlefield long before the Revolution. Not only did nature confront the colonists with brutal winters, harsh droughts, disease, and other unanticipated disasters, but the New World was also already inhabited before the British settlers arrived, both by Native Americans and by Spanish and French colonists. These political actors in North America during the seventeenth and early eighteenth centuries had, perhaps, more at stake than they knew. All were trying to lay claim to the same geographical territory; none could have foreseen that that territory would one day become the strongest power in the world. Whoever won the battle for North America would put their stamp on the globe in a major way.

By the late 1700s the eastern colonies of North America were heavily English. For many reasons, life in England had limited opportunities for freedom, for economic gain, and for political power. English settlers arrived in America seeking, first and foremost, new opportunities. But those opportunities were not available to all. “We, the people” had been defined in various ways throughout the 1600s and 1700s, but never had it meant anything like “everybody” or even “every white male.” Religious and property qualifications for the vote, and the exclusion of women and Black people from political life, meant that the colonial leaders did not feel that simply living in a place, obeying the laws, or even paying taxes carried with it the right to participate in government. Following the rigid British social hierarchy, they wanted the “right kind” of people to participate—people who could be depended on to make the kind of rules that would ensure their status and maintain the established order. The danger of expanding the vote, of course, was that the new majority might have wanted something very different from what the old majority wanted.

Those colonists who had political power in the second half of the eighteenth century gradually began to question their relationship with England. For much of the history of colonial America, England had left the colonies pretty much alone, and they had learned to live with the colonial governance that Britain exercised. Of course, they were obliged, as colonies, to make England their primary trading partner. Even goods they exported to other European countries had to pass through England, where taxes were collected on them. However, smuggling and corrupt colonial officials had made those obligations less than burdensome. It is important to remember that the colonies received many benefits by virtue of their status: they were settled by corporations and companies funded with British money, such as the Massachusetts Bay Company; they were protected by the British army and navy; and they had a secure market for their agricultural products.

Whether the British government was actually being oppressive in the years before 1776 is open to interpretation. The colonists certainly thought so. Britain was deeply in debt, having won the **French and Indian War**, which effectively forced the French out of North America and the Spanish to vacate Florida and retreat west of the Mississippi. The war, fought to defend the British colonies and colonists in America, turned into a major and expensive conflict across the Atlantic as well. Britain, having done its protective duty as a colonial power and having heavily taxed British citizens at home to finance the war, turned to its colonies to help pay for their defense. It chose to do that by levying taxes on the colonies and by attempting to enforce more strictly the trade laws that would increase British profits from American resources.

The series of acts passed by the British infuriated the colonists. The Sugar Act of 1764, which imposed customs taxes, or duties, on sugar, was seen as unfair and unduly burdensome in a depressed postwar economy, and the Stamp Act of 1765 incited protests and demonstrations throughout the colonies. Similar to a tax in effect in Great Britain for nearly a century, it required that a tax be paid, in scarce British currency, on every piece of printed matter in the colonies, including newspapers, legal documents, and even playing cards. The colonists claimed that the law was an infringement on their liberty and a violation of their right not to be taxed without their consent. Continued protests and political changes in England resulted in the repeal of the Stamp Act in 1766. The Townshend Acts of 1767, taxing goods imported from England, such as paper, glass, and tea, and the Tea Act of 1773 were seen by the colonists as intolerable violations of their rights. To show their displeasure, the colonists hurled 342 chests of tea into Boston Harbor in the famous Boston Tea Party. Britain responded by passing the Coercive Acts of 1774, designed to punish the citizens of Massachusetts. In the process, Parliament sowed the seeds that would blossom into revolution in just a few years.

Revolution

From the moment the unpopularly taxed tea plunged into Boston Harbor, it became apparent that Americans were not going to settle down and behave like proper and orthodox colonists. Britain was surprised by the colonial reaction, and it could not ignore it. Even before the Boston Tea Party, mobs in many towns were demonstrating and rioting against British control. Calling themselves the Sons of Liberty, and under the guidance of the eccentric and unsteady Sam Adams, cousin of future president John Adams, they routinely caused extensive damage. In early 1770 they provoked the Boston Massacre, an attack by British soldiers that left six civilians dead and further inflamed popular sentiments.

By the time of the December 1773 Boston Tea Party, also incited by the Sons of Liberty, passions were at a fever pitch. The American patriots called a meeting in Philadelphia in September 1774. Known as the First Continental Congress, the meeting declared the Coercive Acts void, announced a plan to stop trade with England, and called for a second meeting in May 1775. Before they could meet again, in the early spring of 1775, the king's army went marching to arrest Sam Adams and another patriot, John Hancock, and to discover the hiding place of the colonists' weapons. Roused by the silversmith Paul Revere, Americans in Lexington and Concord fired the first shots of rebellion at the British, and the Revolution was truly under way. The narrative about where the locus of power should be spread quickly, even given the limited

communication channels of the day. The mobs were not fed by social media or connected electronically—the story was passed by word of mouth and, therefore, could be controlled relatively easily because each person could not disseminate ideas widely. The people who stood to gain the most financially from independence—the propertied and economic elite, the attendees at the Continental Congress—were translating a philosophical explanation for the masses to act on. Because many colonists could not read, they got their news at the tavern or at the Sunday pulpit, where it was colored by the interests of the teller, and then passed it on. The vast majority of citizens were passive recipients of the narrative.

The Declaration of Independence

In 1776, at the direction of a committee of the Continental Congress, thirty-four-year-old Thomas Jefferson sat down to write a declaration of independence from England. His training as a lawyer at the College of William and Mary and his service as a representative in the Virginia House of Burgesses helped prepare him for his task, but he had an impressive intellect in any case. President John F. Kennedy once announced to a group of Nobel Prize winners he was entertaining that they were “the most extraordinary collection of talents that has ever gathered at the White House, with the possible exception of when Thomas Jefferson dined alone.”⁸ A testimony to Jefferson’s capabilities is the strategically brilliant document that he produced.

The **Declaration of Independence** is first and foremost a political document. Having decided to make the break from England, the American founders had to convince themselves, their fellow colonists, and the rest of the world that they were doing the right thing. Jefferson did not have to hunt far for a good reason for his revolution. John Locke, whom we discussed in Chapter 1, had handed him one on a silver platter. Remember that Locke said that government is based on a contract between the rulers and the ruled. The ruled agree to obey the laws as long as the rulers protect their basic rights to life, liberty, and property. If the rulers fail to do that, they break the contract, and the ruled are free to set up another government. This is exactly what the second paragraph of the Declaration of Independence says, except that Jefferson changed “property” to “the pursuit of happiness,” perhaps to garner the support of those Americans who didn’t own enough property to worry about. The rest of the Declaration focuses on documenting the ways in which the colonists believed that England, and particularly George III, had violated their rights and broken the social contract.

Are there any circumstances in which it would be justifiable for groups in the United States to rebel against the federal government today?

“. . . That All Men Are Created Equal”

The Declaration of Independence begins with a statement of the equality of all men. Since so much of this document relies heavily on Locke, and since clearly the colonists did *not* mean that all men are created equal, it is worth turning to Locke for some help in seeing exactly what they did mean. In his most famous work, *A Second Treatise of Government*, Locke wrote,

Though I have said above that all men are by nature equal, I cannot be supposed to understand all sorts of equality. Age or virtue may give men a just precedency. Excellency of parts and merit may place others above the common level. Birth may subject some, and alliance or benefits others, to pay an observance to those whom nature, gratitude, or other respects may have made it due.⁹

Men are equal in a natural sense, said Locke, but society quickly establishes many dimensions on which they may be unequal. A particularly sticky point for Locke's ideas on equality was his treatment of slavery. Although he hemmed and hawed about it, ultimately he failed to condemn it. Here, too, our founders would have agreed with him.

African Americans and the Revolution. The Revolution was a mixed blessing for enslaved Americans. On the one hand, many enslaved people won their freedom during the war. Slavery was outlawed north of Maryland, and many enslaved people in the Upper South were also freed. The British offered freedom in exchange for service in the British army, although the conditions they provided were not always a great improvement over enslavement. The abolitionist, or anti-slavery, movement gathered steam in some northern cities, expressing moral and constitutional objections to the institution of slavery. Whereas before the Revolution only about 5 percent of Black Americans were free, the proportion grew tremendously with the coming of war.¹⁰

In the aftermath of war, African Americans did not find their lot greatly improved, despite the ringing rhetoric of equality that fed the Revolution. The economic profitability of slave labor still existed in the South, and enslaved people continued to be imported from Africa in large numbers. The explanatory myth that all men were created equal, but that Black people weren't quite men and thus could be treated unequally, spread throughout the new country, making even free Black people unwelcome in many communities. By 1786 New Jersey prohibited free Black people from entering the state, and within twenty years northern states started passing laws specifically denying free Black people the right to vote.¹¹ No wonder the well-known Black abolitionist Frederick Douglass said, in 1852, "This Fourth of July is yours, not mine. You may rejoice, I must mourn."

Native Americans and the Revolution. Native Americans were another group the founders did not consider to be prospective citizens. Not only were they already considered members of their own sovereign nations, but their communal property holding, their nonmonarchical political systems, and their divisions of labor between women working in the fields and men hunting for game were not compatible with European political notions. Pushed farther and farther west by land-hungry colonists, the Native Americans were actively hostile to the American cause in the Revolution. Knowing this, the British hoped to gain their allegiance in the war. Fortunately for the revolutionary effort, the colonists, having asked in vain for the Native Americans to stay out of what they called a "family quarrel," were able to suppress early on the Native Americans' attempts to get revenge for their treatment at the hands of the settlers.¹² There was certainly no suggestion that the claim of equality at the beginning of the Declaration of Independence might include the peoples who had lived on the continent for centuries before the white man arrived.

Women and the Revolution. Neither was there any question that "all men" might somehow be a generic term for human beings that would include women. The Revolution proved to be

TO BE SOLD & LET
BY PUBLIC AUCTION,
 On *MONDAY* the 18th of *MAY*, 1829,
 UNDER THE TREES.

FOR SALE,
THE THREE FOLLOWING
SLAVES,

VIZ.
HANNIBAL, about 30 Years old, an excellent House Servant, of Good Character.
WILLIAM, about 35 Years old, a Labourer.
NANCY, an excellent House Servant and Nurse.
 The MEN belonging to "LEECH'S" Estate, and the WOMAN to Mrs. D. SMIT

TO BE LET,
 On the usual conditions of the Hire finding than in Food, Clo^t in^g, and Medical^l lance,
 THE FOLLOWING
MALE and FEMALE
SLAVES,

OF GOLD CHARACTERS.
ROBERT BAGLEY, about 20 Years old, a good House Servant.
WILLIAM BAGLEY, about 18 Years old, a Labourer.
JOHN ARMS, about 18 Years old.
JACK ANTONIA, about 40 Years old, a Labourer.
PHILIP, an Excellent Fisherman.
HARRY, about 27 Years old, a good House Servant.
LUCY, a Young Woman of good Character, used to House Work and the Nursery.
ELIZA, an Excellent Washerwoman.
CLARA, an Excellent Washerwoman.
FANNY, about 14 Years old, House Servant.
SARAH, about 14 Years old, House Servant.

Also for Sale, at Eleven o'Clock,
Fine Rice, Gram, Paddy, Books, Muslins,
Needles, Pins, Ribbons &c. &c.

AT ONE O'CLOCK, THAT CELEBRATED ENGLISH HORSE
BLUCHER,

ADDISON PRINTER GOVERNMENT

Human Trade

Enslaved people were used to meet the needs of the South's burgeoning economy in tobacco and cotton, which required plentiful, cheap labor. They were shipped from Africa and sold to farmers alongside rice, books, and other goods. In the eighteenth century, approximately 275 enslaved people were shipped to the American colonies. Many did not survive the harsh conditions of the passage.

Paul Popper/Popperfoto via Getty Images

a step backward for women politically: it was after the war that states began specifically to prohibit women, even those with property, from voting.¹³ That doesn't mean, however, that women did not get involved in the war effort. Within the constraints of society, they contributed what they could to the American cause. They boycotted tea and other British imports, sewed flags, made bandages and clothing, nursed and housed soldiers, and collected money to support the Continental Army. Under the name Daughters of Liberty, women in many towns met publicly to discuss the events of the day, spinning and weaving to make the colonies less dependent on imported cotton and woolen goods from England, and drinking herbal tea instead of tea that

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was taxed by the British. Some women moved beyond such mild patriotic activities to outright political behavior, writing pamphlets urging independence, spying on enemy troops, carrying messages, and even, in isolated instances, fighting on the battlefields.¹⁴

Men's understanding of women's place in early American politics was nicely put by Thomas Jefferson, writing from Europe to a woman in America in 1788:

But our good ladies, I trust, have been too wise to wrinkle their foreheads with politics. They are contented to soothe & calm the minds of their husbands returning ruffled from political debate. They have the good sense to value domestic happiness above all others. There is no part of the earth where so much of this is enjoyed as in America.¹⁵

Women's role with respect to politics at the time was plain. They may be wise and prudent, but their proper sphere was the domestic, not the political, world. They were seen as almost "too good" for politics, representing peace and serenity, moral happiness rather than political dissension, the values of the home over the values of the state. This narrative provided a flattering reason for keeping women in "their place" while allowing men to reign in the world of politics.

IN YOUR OWN WORDS

Outline the events and political motivations that led to the colonies' split from England.

THE ARTICLES OF CONFEDERATION

Political and economic instability under the Nation's first constitution

In 1777 the Continental Congress met to try to come up with a **constitution**, or a framework that established the rules for the new government. The **Articles of Confederation**, our first constitution, created the kind of government the founders, fresh from their colonial experience, preferred. The rules set up by the Articles of Confederation show that the states jealously guarded their power. Having just won their independence from one large national power, the last thing they wanted to do was create another. They were also extremely wary of one another, and much of the debate over the Articles of Confederation reflected wide concern that the rules not give any states preferential treatment. (See the Appendix for the text of the Articles of Confederation.)

The Articles established a "firm league of friendship" among the thirteen American states, but they did not empower a central government to act effectively on behalf of those states. The Articles were ultimately replaced because, without a strong central government, they were unable to provide the economic and political stability that the founders wanted. Even so, under this set of rules, some people were better off and some problems, namely the resolution of boundary disputes and the political organization of new territories, were handled extremely well.

The Provisions of the Articles

The government set up by the Articles was called a **confederation** because it established a system in which each state retained almost all the power to do what it wanted. In other words, in a confederation, each state is sovereign and the central government has the job of running only the collective business of the states. It has no independent source of power and resources for its operations. Another characteristic of a confederation is that because it is founded on state sovereignty (authority), it says nothing about individuals. It creates neither rights nor obligations for individual citizens, leaving such matters to be handled by state constitutions.

Under the Articles of Confederation, Congress had many formal powers, including the power to establish and direct the armed forces, to decide matters of war and peace, to coin money, and to enter into treaties. However, its powers were quite limited. For example, although Congress controlled the armed forces, it had no power to draft soldiers or to tax citizens to pay for its military needs. Its inability to tax put Congress—and the central government as a whole—at the mercy of the states. The government could ask for money, but it was up to the states to contribute or not as they chose. Furthermore, Congress lacked the ability to regulate commerce between states, as well as between states and foreign powers. It could not establish a common and stable monetary system. In essence, the Articles allowed the states to be thirteen independent units, printing their own currencies, setting their own tariffs, and establishing their own laws with regard to financial and political matters. In every critical case—national security, national economic prosperity, and the general welfare—the U.S. government had to rely on the voluntary good will and cooperation of the state governments. That meant that the success of the new nation depended on what went on in state legislatures around the country.

Some Winners, Some Losers

The era of American history following the Revolution was dubbed “this critical period” by John Quincy Adams, nephew of patriot Sam Adams, son of John Adams, and himself a future president of the country. During this time, while the states were under the weak union of the Articles, the future of the United States was very much up in the air. The lack of an effective central government meant that the country had difficulty conducting business with other countries and enforcing harmonious trade relations and treaties. Domestic politics was equally difficult. Economic conditions following the war were poor. Many people had debts they could not pay. State taxes were high, and the economy was depressed, offering farmers few opportunities to sell their produce, for example, and hindering those with commercial interests from conducting business as they had before the war.

The radical poverty of some Americans seemed particularly unjust to those hardest hit, especially in light of the rhetoric of the Revolution about equality for all.¹⁶ This is a difficulty of having a narrative controlled from on high—if it doesn’t match up with the reality on the ground, new narratives can develop. Having used “equality” as a rallying cry during the war, the founders were afterward faced with a population that wanted to take equality seriously and eliminate the differences that existed between men.¹⁷ One of the places the American passion

for equality manifested itself was in some of the state legislatures, where laws were passed to ease the burden of debtors and farmers. Often the focus of the laws was property, but rather than preserving property, per the Lockean narrative, it frequently was designed to confiscate or redistribute property instead. The “have nots” in society, and the people acting on their behalf, were using the law to redress what they saw as injustices in early American life. To relieve postwar suffering, they printed paper money, seized property, and suspended “the ordinary means for the recovery of debts.”¹⁸ In other words, in those states, people with debts and mortgages could legally escape or postpone paying the money they owed. With so much economic insecurity, naturally those who owned property would not continue to invest and lend money. The Articles of Confederation, in their effort to preserve power for the states, had provided for no checks or limitations on state legislatures. In fact, such actions would have been seen under the Articles as infringing on the sovereignty of the states. What you had was a clash between two visions of what America was to be about.

The political elite in the new country started to grumble about **popular tyranny**. In a monarchy, one feared the unrestrained power of the king, but perhaps in a republican government, one had to fear the unrestrained power of the people. The final straw was **Shays’s Rebellion**. Massachusetts was a state whose legislature, dominated by wealthy and secure citizens, had not taken measures to aid the debt-ridden population. Beginning in the summer of 1786, mobs of musket-wielding farmers from western Massachusetts began marching on the Massachusetts courts and disrupting the trials of debtors in an attempt to prevent their land from being foreclosed (taken by those to whom the farmers owed money). The farmers demanded action by a state legislature they saw as biased toward the interests of the rich. Their actions against the state culminated in the January 1787 attack on the Springfield, Massachusetts, federal armory, which housed more than 450 tons of military supplies. Led by a former captain in the Continental Army, Daniel Shays, the mob, now an army of more than 1,500 farmers, stormed the armory. They were turned back, but only after a violent clash with the state militia, raised to counter the uprisings. Such mob action frightened and embarrassed the leaders of the United States, who of course also were the wealthier members of society. The rebellion seemed to foreshadow the failure of their grand experiment in self-governance and certainly challenged their story of what it was about. In the minds of the nation’s leaders, it underscored the importance of discovering what James Madison would call “a republican remedy for those diseases most incident to republican government.”¹⁹ In other words, they had to find a way to contain and limit the will of the people in a government that was to be based on that will. If the rules of government were not producing the “right” winners and losers, the rules would have to be changed before the elite lost control of their narrative and the power to change the rules.

IN YOUR OWN WORDS

Explain the competing narratives under the Articles of Confederation.

THE CONSTITUTIONAL CONVENTION

Division and compromise

State delegates were assigned the task of trying to fix the Articles of Confederation, but it was clear that many of the fifty-five men who gathered in May 1787 were not interested in saving the existing framework at all. Many of the delegates represented the elite of American society—wealthy lawyers, speculators, merchants, planters, and investors—and thus they were among those most injured under the Articles. Members of the delegations met through a sweltering Philadelphia summer to reconstruct the foundations of American government (see *Snapshot of America: Who Were the Founders?*). As the delegates had hoped, the debates at the **Constitutional Convention** produced a very different system of rules than that established by the Articles of Confederation. Many of them were compromises to resolve conflicting interests brought by delegates to the convention.

How Strong a Central Government?

Put yourself in the founders' shoes. Imagine that you get to construct a new government from scratch. You can create all the rules and arrange all the institutions just to your liking. The only hitch is that you have other delegates to work with. Delegate A, for instance, is a merchant with a lot of property. He has big plans for a strong government that can ensure secure conditions for conducting business and can adequately protect property. Delegate B, however, is a planter. In Delegate B's experience, big government is dangerous. Big government is removed from the people, and it is easy for corruption to take root when people can't keep a close eye on what their officials are doing. People like Delegate B think that they will do better if power is decentralized (broken up and localized) and there is no strong central government. In fact, Delegate B would prefer a government like that provided by the Articles of Confederation. How do you reconcile these two very different agendas?

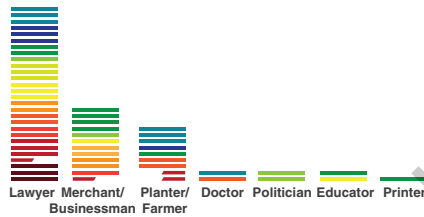
The solution adopted under the Articles of Confederation basically favored Delegate B's position. The new Constitution, given the profiles of the delegates in attendance, was moving strongly in favor of Delegate A's position. Naturally, the agreement of all those who followed Delegate B would be important in ratifying, or getting approval for, the final Constitution, so their concerns could not be ignored. The compromise chosen by the founders at the Constitutional Convention is called **federalism**. Unlike a confederation, in which the states retain the ultimate power over the whole, federalism gives the central government its own source of power, in this case the Constitution of the people of the United States. But unlike a unitary system, which we discuss in Chapter 3, federalism also gives independent power to the states.

Compared to how they fared under the Articles of Confederation, the advocates of states' rights were losers under the new Constitution, but they were better off than they might have been. The states could have had *all* their power stripped away. The economic elite, people like Delegate A, were clear winners under the new rules. This proved to be one of the central

Snapshot of America: Who Were the Founders?



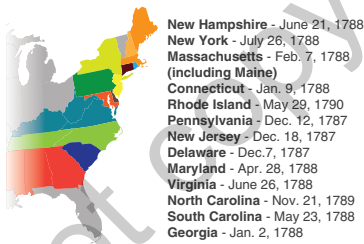
Occupations of the Founders



Religions of the Founders



Ratification by State



How Many Signed and How Many Didn't?



Behind the Numbers

The founders were clearly an elite group of men. They attended the top schools, and most were successful and wealthy. In general, how does one's economic and social status affect one's political views? Are your views shaped by your own circumstances? Can a government created by "an assembly of demigods" work for the rest of us mortals?

issues during the ratification debates. Those who sided with the federalism alternative, who mostly resembled Delegate A, came to be known as **Federalists**. The people like Delegate B, who continued to hold on to the strong-state, weak-central-government option, were called **Anti-Federalists**. We return to them shortly.

Large States, Small States

Once the convention delegates agreed that federalism would provide the framework of the new government, they had to decide how to allot power among the states. Should all states count the same in decision making, or should the large states have more power than the small ones? The rules chosen here would have a crucial impact on the politics of the country. If small states and large states had equal amounts of power in national government, residents of large states such as Virginia, Massachusetts, and New York would actually have less voice in the government than residents of small states like New Jersey and Rhode Island.

Picture two groups of people trying to make a joint decision, each group with one vote to cast. If the first group has fifty people in it and the second has only ten, the individuals in the second group are likely to have more influence on how their single vote is cast than the individuals in the first group. If, however, the first group has five votes to cast and the second only one, the individuals are equally represented, but the second group is effectively reduced in importance when compared to the first. This was the dilemma faced by the representatives of the large and small states at the Constitutional Convention. Each wanted to make sure that the final rules would give the advantage to states like his own.

Two plans were offered by convention delegates to resolve this issue. The first, the **Virginia Plan**, was the creation of James Madison. Fearing that his youth and inexperience would hinder the plan's acceptance, he asked fellow Virginian Edmund Randolph to present it to the convention. The Virginia Plan represented the preference of the large, more populous states. This plan proposed a strong national government run by two legislative houses. One house would be elected directly by the people, one indirectly by a combination of the state legislatures and the popularly elected national house. The numbers of representatives would be determined by the taxes paid by the residents of the state, which would reflect the free population in the state. In other words, large states would have more representatives in both houses of the legislature, and national law and policy would be weighted heavily in their favor. Just three large states—Virginia, Massachusetts, and Pennsylvania—would be able to form a majority and carry national legislation their way. The Virginia Plan also called for a single executive, to see that the laws were carried out, and a national judiciary, both appointed by the legislature, and it gave the national government the power to override state laws.

A different plan, presented by William Paterson of New Jersey, was designed by the smaller states to better protect their interests. The **New Jersey Plan** amounted to a reinforcement, not a replacement, of the Articles of Confederation. It provided for a multiperson executive, so that no one person could possess too much power, and for congressional acts to be the “supreme law of the land.” Most significantly, however, the Congress would be much like the one that had existed under the Articles. In its one house, each state would have only one vote. The delegates would be chosen by the state legislatures. Congressional power was stronger than under the Articles, but the national government was still dependent on the states for some of its funding. The large states disliked this plan because the small states together could block what the large states wanted, even though the large states had more people and contributed more revenue.

The prospects for a new government could have foundered on this issue. The stuffy heat of the closed Convention Hall shortened the tempers of the weary delegates, and frustration made

THE BIG PICTURE:

How We Got to the Constitution From the Articles of Confederation

1787

The Said States hereby severally enter into a firm league of friendship with each other...

Articles of Confederation

CRITICAL PERIOD

- economic downturn
- political instability
- weak central government
- state-level legislative chaos

1781: Articles ratified

1783: Treaty of Paris

1786: Shays's Rebellion

Founders abandon Articles of Confederation

CONSTITUTIONAL CONVENTION

Federalists
Anti-Federalists

How much power does the national government have vis-à-vis the states and individuals?

Large States
The Virginia Plan
The New Jersey Plan
Small States

Should representation be based on population or be equal across states?

Northern States
Southern States

If representation is based on population, who should be counted?

Articles of Confederation

State sovereignty

State law is supreme

Unicameral legislature; equal votes for all states

Two-thirds vote to pass important laws

No congressional power to levy taxes, regulate commerce

No executive branch; laws executed by congressional committee

No national judiciary

All states required to pass amendments

The Virginia Plan

Popular sovereignty

National law is supreme

Bicameral legislature; representation in both houses based on population

Majority vote to pass laws

Congressional power to regulate commerce and tax

No restriction on strong single executive

National judiciary

Popular ratification of amendments

Federal Compromise

Both state and national sovereignty preserved. Flexible balance of power between the levels. Protections for individuals come later in the Bill of Rights.

Great Compromise

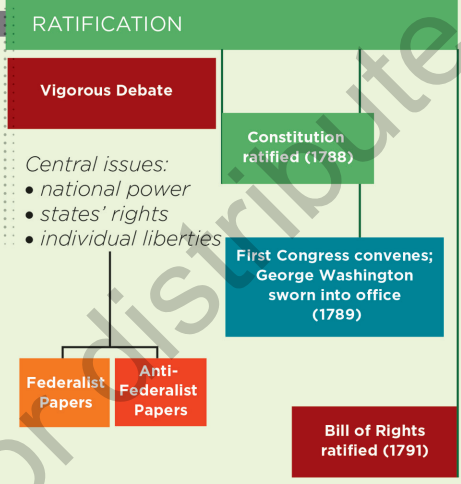
Two legislative chambers, one based on population, one on equality across states.

Three-Fifths Compromise

Representation in the House to be based on population, counting all "free Persons" and "three fifths of all other Persons."

*We the People
of the United States, in Order to form a more perfect Union...*

The Constitution



The New Jersey Plan

- State sovereignty
- State law is supreme
- Unicameral legislature; one vote per state
- Extraordinary majority to pass laws
- Congressional power to regulate commerce and tax
- Multiple executive
- No national judiciary
- All states required to pass amendments

The Constitution

- People are sovereign
- National law is supreme
- Bicameral legislature; equal votes in Senate; representation by population in House
- Simple majority to pass laws in Congress; presidential veto
- Congressional power to regulate commerce and tax
- Strong executive
- Federal court system
- Amendment process is complex

compromise difficult. Each side had too much to lose by yielding to the other's plan. The solution finally arrived at was politics at its best and shows the triumph of the compromise narrative. The **Great Compromise** kept much of the framework of the Virginia Plan. It proposed a strong federal structure headed by a central government with sufficient power to tax its citizens, regulate commerce, conduct foreign affairs, organize the military, and exercise other central powers. It called for a single executive and a national judicial system. The compromise that allowed the small states to live with it involved the composition of the legislature. Like the Virginia Plan, it provided for two houses. The House of Representatives would be based on state population, giving the large states the extra clout they felt they deserved, but in the Senate each state would have two votes. This would give the small states much more power in the Senate than in the House of Representatives. Members of the House of Representatives would be elected directly by the people, members of the Senate by the state legislatures. Thus the government would be directly binding on the people as well as on the states. A key to the compromise was that most legislation would need the approval of both houses, so that neither large states nor small states could hold the entire government hostage to their wishes. The small states were sufficiently happy with this plan that most of them voted to ratify the Constitution quickly and easily. See this chapter's *The Big Picture* for a visual illustration of how the founders got from the Articles of Confederation to the Constitution.

North and South

The compromise reconciling the large and small states was not the only one the delegates crafted. The northern and southern states, which is to say the non-slave-owning and the slave-owning states, were at odds over how population was to be determined for purposes of representation in the lower house of Congress. The southern states wanted to count enslaved people as part of their population when determining how many representatives they got, even though they had no intention of letting the enslaved people vote. Including enslaved people would give them more representatives and thus more power in the House of Representatives. For exactly that reason, the northern states said that if enslaved people could not vote, they should not be counted. The bizarre compromise, also a triumph of politics if not humanity, is known as the **Three-Fifths Compromise**. It was based on a formula developed by the Confederation Congress to allocate tax assessments among the states. According to this compromise, for representation purposes, each enslaved person would count as three-fifths of a person—that is, every five enslaved people would count as three people. Interestingly, the actual language in the Constitution is a good deal cagier than this. It says that representatives and taxes shall be determined according to population, figured “by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.”

The issue of slavery was divisive enough for the early Americans that the most politically safe approach was not to mention it explicitly at all and thus to avoid having to endorse or condemn it. Implicitly, of course, the silence had the effect of letting slavery continue. Article I, Section 9, of the Constitution, in similarly vague language, allows that

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by Congress prior to the Year one thousand

eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Even more damning, Article IV, Section 2, obliquely provides for the return of runaway enslaved people:

No Person held to Service or Labour in one State under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

The word *slavery* did not appear in the Constitution until it was expressly outlawed in the Thirteenth Amendment, passed in December 1865, nearly eighty years after the writing of the Constitution.

IN YOUR OWN WORDS

Identify the competing narratives, goals, and compromises that shaped the Constitution.

THE CONSTITUTION

Three branches—legislative, executive, and judicial—separate and checked

The document produced as a result of these compromises was a political innovation. All governments must have the power to do three things: (1) legislate, or make the laws; (2) administer, or execute the laws; and (3) adjudicate, or interpret the laws. Because of their fear of concentrated power, however, the founders did not give all the power to one institution. Instead, they provided for separate branches of government to handle it, and then ensured that each branch would have the ability to check the others. In this section we review briefly the U.S. Constitution and the principles that support it. While we are focused on the rules as written in the Constitution, we also need to be aware of the importance of the commitment to play by those rules. In Chapter 1 we discussed the power of norms—the unspoken understandings about how to behave that underlie the rules of law. One hugely important norm, the one that makes the rules meaningful, is the commitment not to cheat by breaking, bending, or skirting the rules, and the obligation to report anyone who does break them. Another important norm is to accept the results of the rules, even if it means you lose. If we tolerate the breaking of norms, then the bad behavior becomes “normal” and the rules become meaningless. What makes rules work is the norm that most of us agree to follow them and anyone who doesn’t is penalized.

How would American politics be different today if we had retained the Articles of Confederation instead of adopting the Constitution?

The Legislative Branch

Legislative power is lawmaking power. The body of government that makes laws is called the **legislature**. The U.S. Congress is a **bicameral legislature**, meaning that there are two chambers—the House of Representatives and the Senate. Article I, by far the lengthiest article of the Constitution, sets out the framework of the legislative branch of government. Since the founders expected the legislature to be the most important part of the new government, they spent the most time specifying its composition, the qualifications for membership, its powers, and its limitations. The best-known part of Article I is the famous Section 8, which spells out the specific powers of Congress. This list is followed by the provision that Congress can do anything “necessary and proper” to carry out its duties. The Supreme Court has interpreted this clause so broadly that there are few effective restrictions on what Congress can do.

The Rules. The House of Representatives, where representation is based on population, was intended to be truly representative of all the people—the “voice of the common man,” as it were. To be elected to the House, a candidate need be only twenty-five years old and a citizen for seven years. Since House terms last two years, members run for reelection often and can be ousted fairly easily, according to public whim. The founders intended this office to be accessible to and easily influenced by citizens, and to reflect frequent changes in public opinion.

The Senate is another matter. Candidates have to be at least thirty years old and citizens for nine years—older, wiser, and, the founders hoped, more stable than the representatives in the House. Because senatorial terms last for six years, senators are not so easily swayed by changes in public sentiment. In addition, senators were originally elected by members of the state legislatures, not directly by the people. (This was changed by constitutional amendment in 1913.) Election by state legislators, themselves a “refinement” of the general public, would ensure that senators were a higher caliber of citizen: older and wiser but also more in tune with “the commercial and monied interest,” as Massachusetts delegate Elbridge Gerry put it at the Constitutional Convention.²⁰ The Senate would thus be a more aristocratic body—that is, it would look more like the British House of Lords, where members are admitted on the basis of their birth or achievement, not by election.

The Norms. The Constitution created two bodies that have to agree on a law in the exact same form for it to pass. But it does not also spell out the norms—the assumptions underlying those procedures. For instance, the founders assumed that legislating meant compromise. If they hadn’t wanted to force compromise, a unicameral legislature (a one-chambered legislature) would have been an easier way to go. They rejected that. Given that the authors of the Constitution themselves had to compromise with those who preferred the Articles of Confederation, we can infer that *compromise* is an important democratic norm. The founders also set up the Senate to be the older and more stable chamber. That means the founders expected more from senators, that they behave with more *dignity* than the more unruly House. Senators were expected to act like the adults in the room. Finally, the members of Congress were to be elected, so they intended that the results of fair elections would be recognized by all parties. This implies the norm of *good sportsmanship*, another

way of saying that one occasionally has to be a good loser. When one side loses, it doesn't take its marbles and go home. It doesn't call the other side a cheater or say the win is illegitimate (unless it is). Instead, it accepts the loss, knowing it will have another chance, another day.

The Executive Branch

The **executive** is the part of government that “executes” the laws, or sees that they are carried out. Although technically executives serve in an administrative role, many end up with some decision-making or legislative power as well. National executives are the leaders of their countries, and they participate, with varying amounts of power, in making laws and policies. That role can range from the U.S. president—who, though not a part of the legislature itself, can propose, encourage, and veto legislation—to European prime ministers, who are part of the legislature and may have, as in the British case, the power to dissolve the entire legislature and call a new election.

The fact that the Articles of Confederation provided for no executive power at all was a testimony to the founders' conviction that such a power threatened their liberty. The chaos that resulted under the Articles, however, made it clear to founders like Alexander Hamilton that a stronger government was called for, not only a stronger legislature but a stronger executive as well. The constitutional debates reveal that many of the founders were haunted by the idea that they might inadvertently reestablish the same tyrannical power over themselves that they had escaped only recently with the Revolution.

The Rules. The solution finally chosen by the founders is a complicated one, but it satisfied all the concerns raised at the convention. The president, a single executive, would serve an unlimited number of four-year terms. (A constitutional amendment in 1951 limited the president to two elected terms.) But the president would be chosen neither by Congress nor directly by the people. Instead, the Constitution provides for the president's selection by an intermediary body called the **Electoral College**. Citizens vote not for the presidential candidates but for a slate of electors, who in turn cast their votes for the candidates about six weeks after the general election. The founders believed that this procedure would ensure a president elected by well-informed delegates who, having no other lawmaking power, could not be bribed or otherwise influenced by candidates. We say more about how this works in Chapter 12, on elections.

Article II of the Constitution establishes the executive branch. The four sections of that article make the following provisions:

- Section 1 sets out the four-year term and the manner of election (that is, the details of the Electoral College). It also provides for the qualifications for office: that the president must be a natural-born citizen of the United States, at least thirty-five years old, and a resident of the United States for at least fourteen years. The vice president serves if the president cannot, and Congress can make laws about succession if the vice president is incapacitated.

- Section 2 establishes the powers of the chief executive. The president is commander-in-chief of the armed forces and of the state militias when they are serving the nation, and he has the power to grant pardons for offenses against the United States. With the advice and consent of two-thirds of the Senate, the president can make treaties, and with a simple majority vote of the Senate, the president can appoint ambassadors, ministers, consuls, Supreme Court justices, and other U.S. officials whose appointments are not otherwise provided for.
- Section 3 says that the president will periodically tell Congress how the country is doing (the State of the Union address given every January) and will propose to the members those measures thought to be appropriate and necessary. Under extraordinary circumstances, the president can call Congress into session or, if the two houses of Congress cannot agree on when to end their sessions, can adjourn them. The president also receives ambassadors and public officials, executes the laws, and commissions all military officers of the United States.
- Section 4 specifies that the president, vice president, and other civil officers of the United States (such as Supreme Court justices) can be impeached, tried, and convicted for “Treason, Bribery, or other high Crimes and Misdemeanors.”

The Norms. The founders knew what kind of man they wanted to hold the presidency; George Washington was right in front of them, a model executive. But they left that description unspoken. Implied by the rules is the norm of *independence*—a separate executive and legislature make it difficult to ram through legislation, and the Constitution strictly guards against any allegiance to another country (hence the requirement of natural-born citizenship and the complicated emoluments clause, which forbids the president from taking expensive gifts from another country). They also wanted the president to demonstrate *dignity*. The office combines the jobs of head of government (the political role) and head of state (the symbolic role). Truth to tell, they never imagined a government as large and complex as ours is today, so the head-of-government role didn't loom as large. But the head-of-state role, representing the country as a whole, was key. So the founders implied the norm of *unity*, of representing the entire country. Finally, it is clear from the impeachment powers of Congress and from limits such as the emoluments clause that the founders had created a limited executive who could be removed from office by Congress for “Treason, Bribery, or other high Crimes and Misdemeanors.” So another executive norm is that the president is bound by *the rule of law*.

The Judicial Branch

Judicial power is the power to interpret the laws and to judge whether they have been broken. Naturally, by establishing how a given law is to be understood, the courts (the agents of judicial power) end up making law as well. Our constitutional provisions for the establishment of the judiciary are brief and vague; much of the American federal judiciary under the Supreme Court is left to Congress to arrange. But the founders left plenty of clues as to how they felt about

judicial power in their debates and their writings, particularly in *The Federalist Papers*, a series of newspaper editorials written to encourage people to support and vote for the new Constitution.

For instance, the practice of judicial review is introduced through the back door, first mentioned by Hamilton in *Federalist* No. 78 and then institutionalized by the Supreme Court itself with Chief Justice John Marshall's 1803 ruling in *Marbury v. Madison*, a dispute over presidential appointments. **Judicial review** allows the Supreme Court to rule that an act of Congress or the executive branch (or of a state or local government) is unconstitutional—that is, that it runs afoul of constitutional principles. This review process is not an automatic part of lawmaking; the Court does not examine every law that Congress passes or every executive order to be sure that it does not violate the Constitution. Rather, if an individual or a group challenges a law as unjust or unconstitutional, and if it is appealed all the way to the Supreme Court, the justices may decide to rule on it.

The Rules. This remarkable grant of the power to nullify legislation to what Hamilton called the “least dangerous” branch is not in the Constitution. In *Federalist* No. 78, however, Hamilton argued that it was consistent with the Constitution. In response to critics who objected that such a practice would place the unelected Court in a superior position to the elected representatives of the people, Hamilton wrote that, on the contrary, it raised the people, as authors of the Constitution, over the government as a whole. Thus judicial review enhanced democracy rather than diminished it.

In 1803 Marshall agreed. As the nation's highest law, the Constitution sets the limits on what is acceptable legislation. As the interpreter of the Constitution, the Supreme Court must determine when laws fall outside those limits. It is interesting to note that this gigantic grant of power to the Court was made by the Court itself and remains unchallenged by the other branches. It is ironic that this sort of empire building, which the founders hoped to avoid, appears in the branch that they took the least care to safeguard and spent the least amount of ink detailing in the Constitution. We return to *Marbury v. Madison* and judicial review in Chapter 9, on the court system.

Article III of the Constitution is very short. It says that the judicial power of the United States is to be “vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish,” and that judges serve as long as they demonstrate “good behavior.” It also explains that the Supreme Court has original jurisdiction in some types of cases and appellate jurisdiction in others. That is, in some cases the Supreme Court is the only court that can rule. Much more often, however, inferior courts try cases, but their rulings can be appealed to the Supreme Court. Article III provides for jury trials in all criminal cases except impeachment, and it defines the practice of and punishment for acts of treason. Because the Constitution is relatively silent on the role of the courts in America, that role has been left to Congress and, in some cases, the courts themselves to define.

The Norms. It's a little more difficult to make inferences about the judiciary because the founders didn't spell out the details in the Constitution. The founders wanted a judiciary to have *independence* from political and public influence, hence the grant of lifetime tenure. And it's pretty clear that the Federalists, at least, wanted it to be *powerful*. Hamilton's argument in *Federalist* No. 78 laid the groundwork for John Marshall's decision in *Marbury v. Madison* granting the Court

the power of judicial review. The founders also wanted the federal judiciary to be supreme, something they spelled out gently because it was still a sore spot with Anti-Federalists. And they wanted the Court to be perceived as above politics. One way to achieve that illusion was for the Court to remain *nonpartisan* in its rulings. Rulings would undoubtedly have political impact but not show blatant support for the agenda of one party over another. Recent political activity in the Senate to manipulate the appointment of justices to the Court and the subsequent rulings of a Court seen as deeply out of sync with public opinion have been perceived as violating the norm of judicial nonpartisanship. Over 80 percent of the public say they think the justices should leave their own political views out of judicial decisions, and only a bare majority say they approve of an institution that used to enjoy high approval rates.²¹

Separation of Powers and Checks and Balances

Separation of powers means that legislative, executive, and judicial powers are not exercised by the same person or group of people, lest they abuse the considerable amount of power they hold. We are indebted to the French Enlightenment philosopher the Baron de Montesquieu for explaining this notion. In his massive book *The Spirit of the Laws*, Montesquieu wrote that liberty could be threatened only if the same group that enacted tyrannical laws also executed them. He said, “There would be an end of everything, were the same man or the same body, whether of nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.”²² Putting all political power into one set of hands is like putting all our eggs in one basket. If the person or body of people entrusted with all the power becomes corrupt or dictatorial, the whole system will go bad. If, however, power is divided so that each branch is in separate hands, one may go bad while leaving the other two intact.

The principle of separation of powers gives each branch authority over its own domain. A complementary principle, **checks and balances**, allows each of the branches to police the others, checking any abuses and balancing the powers of government. The purpose of this additional authority is to ensure that no branch can exercise power tyrannically. In America’s case, the president can veto an act of Congress; Congress can override a veto; the Supreme Court can declare a law of Congress unconstitutional; Congress can, with the help of the states, amend the Constitution itself; and so on. Figure 2.1 illustrates these relationships.

The Rules. As we saw, the Constitution establishes separation of powers with articles setting up a different institution for each branch of government. Checks and balances are provided by clauses within these articles:

- Article I sets up a bicameral legislature. Because both houses must agree on all legislation, they can check each other. Article I also describes the presidential veto, with which the president can check Congress, and the override provision, by which two-thirds of Congress can check the president. Congress can also check abuses of the executive or judicial branch with impeachment.

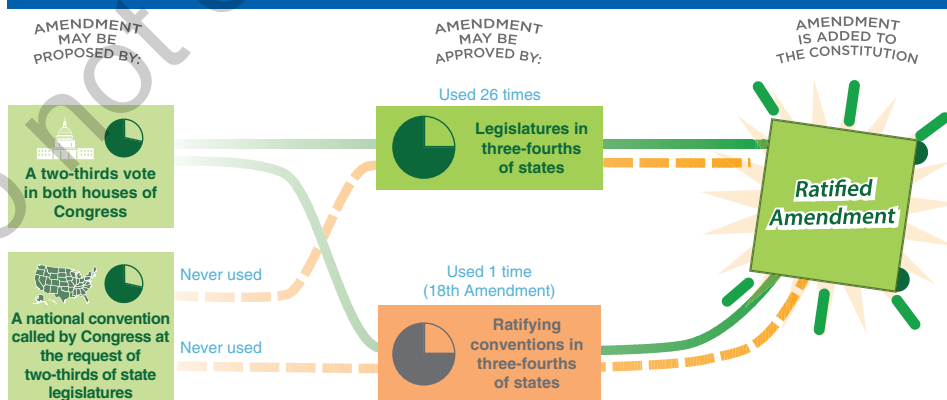
separation of powers and checks and balances are the principles of institutional independence and country over party. The founders expected checks and balances to hold even if a single party held Congress and the White House, and they intended for each institution to prioritize the nation's well-being over furthering the goals of the dominant party in the institution. They would have chosen a parliamentary system if they had wanted the Congress to rubberstamp executive action or the courts to take partisan sides.

Amendability

If a constitution is a rule book, then its capacity to be changed over time is critical to its remaining a viable political document. A rigid constitution runs the risk of ceasing to seem legitimate to citizens who have no prospect of changing the rules according to shifting political realities and visions of the public good. A constitution that is too easily revised, on the other hand, can be seen as no more than a political tool in the hands of the strongest interests in society. A final feature of the U.S. Constitution that deserves mention in this chapter is its **amendability**—the founders' provision for a method of amendment, or change, that allows the Constitution to grow and adapt to new circumstances. In fact, they provided for two methods: the formal amendment process outlined in the Constitution, and an informal process that results from the vagueness of the document and the evolution of the role of the courts (see Figure 2.2).

In the 200-plus years of the U.S. Constitution's existence, more than 10,000 constitutional amendments have been introduced, but the Constitution has been amended only twenty-seven times. By contrast, in the course of interpreting the Constitution, the Supreme Court has, for example, extended many of the Bill of Rights protections to state citizens via the Fourteenth Amendment, permitted the national government to regulate business, prohibited child labor, and extended equal protection of the laws to women (see the next section for more on the Bill of Rights). In some cases, amendments previously introduced to accomplish these goals (such as the Child Labor Amendment and the Equal Rights Amendment) were not ratified, and in other cases the Court has simply decided to interpret the Constitution in a new way. Judicial

FIGURE 2.2 ■ Amending the Constitution



interpretation is at times quite controversial. Many scholars and politicians believe that the literal word of the founders should be adhered to, whereas others claim that the founders could not have anticipated all the opportunities and pitfalls of modern life and that the Constitution should be considered a flexible, or “living,” document. We return to this controversy when we look more closely at the courts in Chapter 9.

The Constitution is silent on the subject of judicial interpretation, but in part because it is silent, especially in Article III, the courts have been able to create their own role. In contrast, Article V spells out in detail the rather confusing procedures for officially amending the Constitution. These procedures are federal—that is, they require the involvement and approval of the states as well as the national government. The procedures boil down to this: amendments may be proposed either by a two-thirds vote of the House and the Senate or when two-thirds of the states request it by a constitutional convention; they must be approved either by the legislatures of three-fourths of the states or by conventions of three-fourths of the states. Two interesting qualifications are contained in Article V: no amendment affecting slavery could be made before 1808, and no amendment can deprive a state of its equal vote in the Senate without that state’s consent. We can easily imagine the North-South and large state–small state conflicts that produced those compromises.

The constitutional convention method of amendment, where change is initiated by the states, has never actually been used, although states have frequently tried to initiate such a movement. In fact, an effort to create a balanced budget amendment in this way is currently under way. Nineteen of the necessary thirty-four states (nearly all Republican-led) have passed resolutions calling on Congress to hold a constitutional convention to pass a balanced budget amendment, with many more in the works. Several other efforts are right behind it that would try to put in extra protections for religious freedom (and perhaps defining citizenship as beginning at conception) or other limitations on government action. Opponents argue that once a convention is convened, it might be hard to contain the urge to make multiple changes to the Constitution, although three-quarters of the states would still need to approve the amendments.²³

IN YOUR OWN WORDS

Explain the system of separation of powers and checks and balances.

RATIFICATION

Selling the Constitution to Americans

For the Constitution to become the law of the land, it had to undergo **ratification**, that is, it had to be voted on and approved by state conventions in at least nine states. As it happens, the Constitution was eventually ratified by all thirteen states, but not until some major political battles had been fought.

Federalists Versus Anti-Federalists

So strongly partisan were the supporters and opponents of the Constitution that, if the battle were taking place today, Twitter feeds would be on fire and we would probably find the two sides sniping at each other on cable TV programs like *The Sean Hannity Show* and *The Rachel Maddow Show*, and Samantha Bee would be busy mocking both groups. It was a fierce, lively battle to control the narrative of what the new republic would be like, but instead of producing viral videos with the lifespan of a fruit fly and high television ratings, it yielded some of the finest writings for and against the American system. Those in favor of ratification called themselves Federalists. The Federalists, like Delegate A in our earlier hypothetical constitution-building scenario, were mostly men with a considerable economic stake in the new nation. Having fared poorly under the Articles, they were certain that if America were to grow as an economic and world power, it needed to be the kind of country people with property would want to invest in. Security and order were key values, as was popular control. The Federalists thought people like themselves should be in charge of the government, although some of them did not object to an expanded suffrage if government had enough built-in protections. Mostly they were convinced that a good government could be designed if the underlying principles of human behavior were known. If people were ambitious and tended toward corruption, then government should make use of those characteristics to produce good outcomes.

The Anti-Federalists told a different story. They rejected the notion that ambition and corruption were inevitable parts of human nature. If government could be kept small and local, the stakes not too large and tempting, and popular scrutiny truly vigilant, then Americans could live happy and contented lives without getting involved in the seamier side of politics. America did not need sprawling urban centers of commerce and trade; nor did it need to be a world power. If it did not stray from its rural roots and values, it could permanently avoid the creeping corruption that the Anti-Federalists believed threatened the American polity. The reason the Anti-Federalists found the Articles of Confederation more attractive than the Constitution was that the Articles did not call for a strong central government that, distant from the voters' eyes, could become a hotbed of political intrigue. Instead, the Articles vested power in the state governments, which could be more easily watched and controlled.

Writing under various aliases as well as their own names, the Federalists and Anti-Federalists fired arguments back and forth in pamphlets and newspaper editorials aimed at persuading undecided Americans to come out for or against the Constitution. Because the channels of communication were limited, the competing ideas were concentrated into two streams. The Federalists were far more aggressive and organized in their “media blitz,” hitting New York newspapers with a series of eloquent editorials, known collectively as *The Federalist Papers*, published under the pen name Publius but really written by Alexander Hamilton, James Madison, and John Jay. These essays were bound and distributed in other states where the ratification struggle was close. *The Federalist Papers* is one of the main texts on early American politics today. In response, the Anti-Federalists published essays under names such as Cato, Brutus, and the Federal Farmer.²⁴

The Federalist Papers. Eighty-five essays were written by Publius. In a contemporary introduction to the essays, compiled as a book, one scholar calls them, along with the Declaration

of Independence and the Constitution, part of “the sacred writings of American political history.”²⁵ Putting them on a par with holy things is probably a mistake. Far from being divinely inspired, *The Federalist Papers* are quintessentially the work of human beings. They are clever, well thought out, and logical, but they are also tricky and persuasive examples of the “hard sell.” Their archaic language makes *The Federalist Papers* generally difficult reading for contemporary students. However, the arguments in support of the Constitution are laid out so beautifully that it is worthwhile to take the trouble to read them. It would be a good idea to turn to them now and read them carefully.

In *Federalist* No. 10, Madison tries to convince Americans that a large country is no more likely to succumb to the effects of special interests than is a small one (preferred by the Anti-Federalists). He explains that the greatest danger to a republic comes from factions, what we might call interest groups. **Factions** are groups of people motivated by a common interest, but one different from the interest of the country as a whole. Farmers, for instance, have an interest in keeping food prices high, even though that would make most Americans worse off. Businesspeople prefer high import duties on foreign goods, even though they make both foreign and domestic goods more expensive for the rest of us. Factions are not a particular problem when they constitute a minority of the population because they are offset by majority rule. They do become problematic, however, when they are a majority. Factions usually have economic roots, the most basic being a difference between the “haves” and “have nots” in society. One of the majority factions that worried Madison was the mass of propertyless people whose behavior was so threatening to property holders under the Articles of Confederation.

To control the *causes* of factions would be to infringe on individual liberty. But Madison believed that the *effects* of factions are easily managed in a large republic. First of all, representation will dilute the effects of factions, and it is in this essay that Madison makes his famous distinction between “pure democracy” and a “republic.” In addition, if the territory is sufficiently large, factions will be neutralized because there will be so many of them that no one is likely to become a majority. Furthermore, it will be difficult for people who share common interests to find one another if some live in South Carolina, for instance, and others live in Maine. (Clearly, Madison never anticipated social media or even the telegraph.) We discuss Madison’s argument about factions again when we take up the topic of interest groups in Chapter 11. In the meantime, notice how Madison relies on mechanical elements of politics (size and representation) to remedy a flaw in human nature (the tendency to form divisive factions). This is typical of the Federalists’ approach to government and reflects the importance of institutions as well as rules in bringing about desired outcomes in politics.

We see the same emphasis on mechanical solutions to political problems in *Federalist* No. 51. Here Madison argues that the institutions proposed in the Constitution will lead neither to corruption nor to tyranny. The solution is the principles of checks and balances and separation of powers we have already discussed. Again building his case on a potential defect of human character, he says, “Ambition must be made to counteract ambition.”²⁶ If men tend to be ambitious, give two ambitious men the job of watching over each other, and neither will let the other have an advantage.

Federalist No. 84, written by Hamilton, is interesting politically because the Constitution was ratified in spite of it, not because of it. In this essay, Hamilton argues that a **Bill of**

Rights—a listing of the protections against government infringement of individual rights guaranteed to citizens by government itself—is not necessary in a constitution. The original draft of the Constitution contained no Bill of Rights. Some state constitutions had them, and so the Federalists argued that a federal Bill of Rights would be redundant. Moreover, the limited government set up by the federal Constitution didn't have the power to infringe on individual rights anyway, and many of the rights that would be included in a Bill of Rights were already in the body of the text. To the Anti-Federalists, already afraid of the invasive power of the national government, this omission was more appalling than any other aspect of the Constitution.

In *Federalist* No. 84, Hamilton explains the Federalist position, that a Bill of Rights was unnecessary. Then he makes the unusual argument that a Bill of Rights would actually be dangerous. As it stands, he says, the national government doesn't have the power to interfere with citizens' lives in many ways, and any interference at all would be suspect. But if the Constitution were prefaced with a list of things government could *not* do to individuals, government would assume it had the power to do anything that wasn't expressly forbidden. Therefore government, instead of being unlikely to trespass on citizens' rights, would be more likely to do so with a Bill of Rights than without. This argument was so unpersuasive to Americans at the time that the Federalists were forced to give in to Anti-Federalist pressure during the ratification process. The price of ratification exacted by several states was the Bill of Rights, really a "Bill of Limits" on the federal government, added to the Constitution as the first ten amendments.

Would we have more freedoms today, or fewer, without the Bill of Rights?

The Final Vote

The small states, gratified by the compromise that gave them equal representation in the Senate and believing they would be better off as part of a strong nation, ratified the Constitution quickly. The vote was unanimous in Delaware, New Jersey, and Georgia. In Connecticut (128–40) and Pennsylvania (46–23), the votes, though not unanimous, were strongly in favor of the Constitution. This may have helped to tip the balance for Massachusetts, voting much more closely to ratify (187–168). Maryland (63–11) and South Carolina (149–73) voted in favor of ratification in the spring of 1788, leaving only one more state to supply the requisite nine to make the Constitution law.

The battles in the remaining states were much fiercer. When the Virginia convention met in June 1788, the Federalists felt that it could provide the decisive vote and threw much of their effort into securing passage. Madison and his Federalist colleagues debated with Anti-Federalist advocates such as George Mason and Patrick Henry, promising as they had in Massachusetts to support a Bill of Rights. Virginia ratified the Constitution by the narrow margin of 89 to 79, preceded by a few days by New Hampshire, voting 57 to 47. Establishment of the Constitution as the law of the land was ensured with the approval of ten states. New York also narrowly passed the Constitution (30–27), but North Carolina defeated it (193–75), and Rhode Island, which



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had not sent delegates to the Constitutional Convention, refused to call a state convention to put it to a vote. Later both North Carolina and Rhode Island voted to ratify and join the Union, in November 1789 and May 1790, respectively.²⁷

Again we can see how important rules are in determining outcomes. The Articles of Confederation had required the approval of all the states. Had the Constitutional Convention chosen a similar rule of unanimity, the Constitution may very well have been defeated. Recognizing that unanimous approval was not probable, however, the Federalists decided to require ratification by only nine of the thirteen states, making adoption of the Constitution far more likely.

IN YOUR OWN WORDS

Summarize the debate over ratification of the Constitution.

CITIZENSHIP AND THE FOUNDING

New rights bring obligations

As we said at the beginning of this chapter, there are different narratives to be told about the American founding. We did not want to fall into the oversimplification trap, portraying the founding as a headlong rush to liberty on the part of an oppressed people. Politics is always a good deal more complicated than that, and this is a book about politics. We also wanted to avoid telling a story that errs on the other end of one-sidedness, depicting the American founding as an elite-driven period of history in which the political, economic, and religious leaders decided they were better off without English rule, inspired the masses to revolt, and then created a Constitution that established rules that benefited people like themselves.

Neither of these stories is entirely untrue, but they obscure a very important point. There was not just one “elite” group at work during the founding period. Although political and economic leaders might have acted together over the matter of the break from England (even then, important elites remained loyal to Britain), once the business of independence was settled, it was clear that competing elite groups existed. These groups included leaders of big states and leaders of small states, leaders of northern states and leaders of southern states, merchant elites and agricultural elites, and elites who found their security in a strong national government and those who found it in decentralized power. The power struggle between all those adversaries resulted in the compromises that form the framework of our government today.

Because the debates about the Constitution took place in a pre-digital age, they were vociferous, reasoned, angry, manipulative, and stubborn—but the players were limited. Imagine, if you can, what the arguments over constitutional winners and losers would have looked like in a hypermediated age like ours. Perhaps all of the norms that support the Constitution were easier to respect and observe when there were not multiple channels calling for them to be bent or broken to serve the ends of different players.

IN YOUR OWN WORDS

Evaluate the narratives told about the founding of the United States.

WRAPPING IT UP

Let's Revisit: What's at Stake . . . ?

Having read the history of revolutionary America, what would you say is at stake in the modern militia movement? The existence of state militias and similar groups poses a troubling dilemma for the federal government; and groups whose members are mostly benign, like the Tea Partiers, are even trickier for the government to deal with. Bill Clinton, who was president when Timothy McVeigh bombed the federal building in Oklahoma City, warned at the time of the

fifteenth anniversary of those attacks that “there can be real consequences when what you say animates people who do things you would never do.” Angry rhetoric and narratives that justify that anger can result in violence that those who goad the anger might not necessarily endorse.²⁸

The dilemma is that, on the one hand, the purpose of government is to protect our rights, and the Constitution surely guarantees Americans freedom of speech and assembly. On the other hand, government must hold the monopoly on the legitimate use of force in society or it will fall, just as the British government fell to the American colonies. If groups are allowed to amass weapons and forcibly resist or even attack U.S. law enforcers, then they constitute “mini-governments,” or competing centers of authority, and life for citizens becomes chaotic and dangerous.

The American system was designed to be relatively responsive to the wishes of the American public. Citizens can get involved; they can vote, run for office, change the laws, and amend the Constitution. By permitting these legitimate ways of affecting American politics, the founders hoped to prevent the rise of groups, like the Bundys, that would promote and act toward violence. The founders intended to create a society characterized by political stability, not by revolution, which is why Jefferson’s Declaration of Independence is so careful to point out that revolutions should occur only when there is no alternative course of action.

Some militia members reject the idea of working through the system; they say, as did McVeigh, that they consider themselves at war with the federal government. The January 6th insurrectionists were protesting the very elections that are our mechanism for working through the system. We call disregard for the law at the individual level “crime,” at the group level “terrorism” or “insurrection,” and at the majority level “revolution.” It is the job of any government worth its salt to prevent all three kinds of activities. Thus it is not the existence or the beliefs of the militia groups that government seeks to control but rather their activities.

What’s at stake in challenges to the legitimacy of government are the very issues of government authority and the rights of individual citizens. It is difficult to draw the line between the protection of individual rights and the exercise of government authority. In a democracy, we want to respect the rights of all citizens, but this respect can be thwarted when a small number of individuals reject the rules of the game agreed on by the vast majority.

REVIEW

Introduction

The history of the American founding has been told from many points of view. Historical evidence points to a more complicated story than the one we are told in grade school about the early colonists who escaped from Europe to avoid religious persecution. The early Americans had economic and political agendas as well as religious and philosophical motives. After much struggle among themselves, the majority of Americans decided that those agendas could be carried out better and more profitably if they broke their ties with England.

The Split From England

The battle for America involved a number of groups, including Native Americans, and Spanish, French, and British colonists. By the time the British won the **French and Indian War** to secure the colonists' defense, the colonists, already chafing under British rule, felt secure enough to sever the ties that bound them to the mother country, starting the Revolution and then in 1776 issuing the **Declaration of Independence**. Although that document proclaimed the equality of "all men," the American founders clearly did not include African Americans, Native Americans, or women in that category.

The Articles of Confederation

Charged with creating a **constitution**, the founders drew up the **Articles of Confederation**, establishing a **confederation** of sovereign states. The new government wasn't strong enough to provide political stability in the face of popular discontent, however. Worried about **popular tyranny**, which they saw threatened in actions like **Shays's Rebellion**, the political elite called for a new constitution.

The Constitutional Convention

At the **Constitutional Convention** in 1787, the founders rejected a confederal system in favor of **federalism**, giving the central government and the states each some power of their own. Those who endorsed this political innovation were known as the **Federalists**, and those who opposed it, the **Anti-Federalists**. Federalists supported a strong central government in which representation was determined by population—a plan, called the **Virginia Plan**, favored by the large states. The Anti-Federalists, suspicious of centralized power, favored the **New Jersey Plan**, which limited power and gave each state equal congressional representation regardless of its size. These issues were resolved in the **Great Compromise**, which created a bicameral legislature, basing representation on population in one house and on equality in the other. The other major conflict among the founders, over how enslaved people were to be counted for purposes of representation, was resolved by the **Three-Fifths Compromise**.

The Constitution

The new Constitution was based on **separation of powers** and **checks and balances**, keeping the **legislature**, the **executive**, and the judiciary distinct but allowing each some power over the others. The independence of the branches and the checks between them were enhanced by such institutions as the **bicameral legislature**, the **Electoral College**, **judicial power**, and the practice of **judicial review**, though the latter are not mentioned explicitly in the Constitution. The founders provided for **amendability**, should circumstances require that the Constitution be changed in the future.

Ratification

The Federalists and the Anti-Federalists waged a battle over **ratification** of the new Constitution, with the former setting out their case in a series of newspaper editorials known today as *The Federalist Papers*. In the most famous of these essays, James Madison argued that the new republic would be well able to handle the danger of **factions**, and in another,

Alexander Hamilton argued that it would be dangerous to add a **Bill of Rights** to the document. Hamilton ultimately lost the argument, and the Bill of Rights was the price the Anti-Federalists demanded for their agreement to ratify the Constitution.

Citizenship and the Founding

The American founding reflects competition among elites as well as the establishment of a new form of citizenship.

KEY TERMS

amendability (p. 82)	<i>The Federalist Papers</i> (p. 90)
Anti-Federalists (p. 70)	Federalists (p. 70)
Articles of Confederation (p. 66)	French and Indian War (p. 62)
bicameral legislature (p. 76)	Great Compromise (p. 74)
Bill of Rights (p. 85)	judicial power (p. 78)
checks and balances (p. 80)	judicial review (p. 79)
confederation (p. 67)	legislature (p. 76)
constitution (p. 66)	New Jersey Plan (p. 71)
Constitutional Convention (p. 69)	popular tyranny (p. 68)
Declaration of Independence (p. 63)	ratification (p. 83)
Electoral College (p. 77)	separation of powers (p. 80)
executive (p. 77)	Shays's Rebellion (p. 68)
factions (p. 85)	Three-Fifths Compromise (p. 74)
federalism (p. 69)	Virginia Plan (p. 71)

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