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CHAPTER 2

The Constitution

LEARNING OBJECTIVES

2.1 Explain how evolving debates about liberty led from the Revolutionary War to the Constitutional Convention.

2.2 Discuss the major proposals and compromise over representation in the Constitutional Convention.

2.3 Summarize the key issues presented by Federalists and Antifederalists in ratification debates for the Constitution.

2.4 Discuss continuing debates about democracy and the Constitution.

SUMMARY

2-1 The Problem of Liberty

The goal of the American Revolution was liberty; the colonists asked for liberties they were already entitled to as British subjects. Their original intent was not independence, but by 1775, when the war broke out, the colonists had lost faith in the English constitution. They believed their liberties were violated due to abuses of political power.

The colonists' initial concern was that corrupt English politicians were not interested in citizens' liberties. Colonists believed their liberties were ordained by God, and essential to human progress.

The Revolution brought about many changes: government by royal prerogative was rejected; political power could not be exercised on the basis of tradition; human liberty existed before government was organized, and government must respect that liberty; the legislative branch of government, in which the people were directly represented, should be superior to the executive branch. No government at the time had been organized on these principles.

A first attempt at a governing document, the **Articles of Confederation,** went into effect in 1781. The Articles gave each state sovereignty and independence; each state had one vote in Congress; nine (of 13) votes were required to pass any measure; and the delegates who cast these votes were picked and paid for by the legislatures.

2-2 The Constitutional Convention

In 1787, delegates assembled in Philadelphia at the **Constitutional Convention** to revise the Articles, but ended up writing a new constitution. Protection of life, liberty, and property was still their objective with a national government to serve that goal.

Their defense of liberty was derived from the writings of English philosopher John Locke who defended a "state of nature" in which all men cherish and seek to protect their life, liberty, and property. But in this state of nature; that is, a society without a government, the strong can use their liberty to deprive the weak of theirs. The delegates wanted to devise a government strong enough to preserve order but not so strong as to threaten liberty.

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In the end, the **Great Compromise** combined the best practices of the **Virginia Plan** and the **New Jersey Plan** and established the structure of the national legislature, while reconciling the interests of small and large states.

2-3 Ratification Debates

The Framers intended to establish a **republic** with representative democracy because they saw it as a way to minimize power abuse either by a tyrannical popular majority or by self-serving officeholders. They wanted to create a republic that would protect freedom and private property—a moderate regime that would simultaneously safeguard people and leave them alone.

The American version of representative democracy was based on two major principles: **separation of powers** and **federalism.** Political power is shared by three separate branches of government; political authority was divided between a national government and several state governments—federalism. Governmental powers can be divided into three categories: **enumerated, reserved,** and **concurrent.**

Separation of powers divides power so that one level of government can restrain the powers of the others to form a system of **checks and balances.** Division of power allows every **faction** an opportunity to gain some power.

Proponents of the Constitution called themselves **Federalists** (though a more accurate term might have been "nationalists")**;** opponents were **Antifederalists** (though they could have been termed "states' rights advocates")**.** It quickly became clear that without the promise of a bill of rights, the Constitution would not be ratified. By spring of 1790, all 13 states had ratified it; the **Bill of Rights** went into effect in 1791.

During the Philadelphia convention, efforts to end slavery would have alienated southern states and ensured the Constitution's failure. The Framers sidestepped slavery, never mentioning that word in the Constitution, in order to create a union that they hoped would be strong enough eventually to handle this problem.

2-4 Democracy and the Constitution: Post-Ratification Debates

The Framers had mixed motives, although individual economic interests played only a modest role in their deliberations. The Framers voted their states' economic interests on important matters. But ideas counted as much as interests, particularly ideas about the need for a strong national government.

Today that debate continues. Two groups of critics to the Constitution are those who think the federal government is too weak or too strong. The first kind of critic wants to reduce the separation of powers, so the president can formulate and carry out policies. The second kind of critic thinks the government does too much and that government catering to special interests can produce unintended results.

CHAPTER OUTLINE

I. **The Problem of Liberty**
   A. The Colonial Mind
   B. The Real Revolution
   C. Weaknesses of the Confederation
II. **The Constitutional Convention**

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A. The Lessons of Experience
1. State Constitutions
2. Shays's Rebellion
B. The Framers
C. The Challenge
1. The Virginia Plan
2. The New Jersey Plan
3. The Compromise

III. **Ratification Debates**
A. Key Principles
B. Government and Human Nature
C. The Constitution and Liberty
D. The Antifederalist View
E. Need for a Bill of Rights
F. The Constitution and Slavery

IV. **Democracy and the Constitution: Post-Ratification Debates**
A. Economic Interests
B. The Constitution and Equality
C. Constitutional Reform: Modern Views
D. Reducing the Separation of Powers
1. Making the System Less Democratic
2. Who Is Right?

TEACHING TOOLS

LEARNING OBJECTIVE 1: EXPLAIN HOW EVOLVING DEBATES ABOUT LIBERTY LED FROM THE REVOLUTIONARY WAR TO THE CONSTITUTIONAL CONVENTION.

Critical Thinking Questions

How did the colonial goal of liberty rather than equality influence both the Revolution and the Articles of Confederation?

Lecture Launcher

What distinguishes what Jefferson called "unalienable rights" from other kinds?

In-Class Activity

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Identify the key weaknesses of the Articles of Confederation, and consider whether they were deliberate or circumstantial.

LEARNING OBJECTIVE 2: DISCUSS THE MAJOR PROPOSALS AND COMPROMISE OVER REPRESENTATION IN THE CONSTITUTIONAL CONVENTION.

Critical Thinking Question

How did Shays's Rebellion influence delegates to the Constitutional Convention?

Lecture Launcher

Discuss the pros and cons of the Virginia and New Jersey Plans, and how the Great Compromise attempted to strike a balance between them.

In-Class Activity

Divide the class into two groups and have them argue for or against the requirement that laws pass Congress by majority vote. What would be the impact of a two-thirds requirement for passage? Does the filibuster, which is not mentioned in the Constitution but now widely used in the Senate, achieve the same effect?

LEARNING OBJECTIVE 3: SUMMARIZE THE KEY ISSUES PRESENTED BY FEDERALISTS AND ANTIFEDERALISTS IN RATIFICATION DEBATES FOR THE CONSTITUTION.

Critical Thinking Questions

Do you accept the textbook's assertion that the Framers "thought they were creating a government with specific, limited power? It could do…only what the Constitution gave it the power to do, and nowhere in that document was there permission to infringe on freedom of speech or of the press or to impose cruel and unusual punishments." Would our rights, as stated in the Bill of Rights, have been protected if they had not been ratified?

Lecture Launcher

What rights are in fact protected by the main body of the Constitution (before any amendments)?

In-Class Activity

Identify your rights in this class. Where are they printed? Does this protect them, why or why not?

LEARNING OBJECTIVE 4: DISCUSS CONTINUING DEBATES ABOUT DEMOCRACY AND THE CONSTITUTION

Critical Thinking Question

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To what extent were the Framers influenced by economic interests?

Lecture Launcher

How well has the United States Constitution worked compared to those of other countries?

In-Class Activity

Discuss two modern criticisms of the Constitution – that the national government it established does too much and too little – in the context of the separation of powers and the line-item veto.

KEY TERMS

unalienable A human right based on nature or God.

Articles of Confederation A weak constitution that governed America during the Revolutionary War.

Constitutional Convention A meeting in Philadelphia in 1787 that produced a new constitution.

Shays's Rebellion A 1787 rebellion in which ex–Revolutionary War soldiers attempted to prevent foreclosures of farms as a result of high interest rates and taxes.

Virginia Plan Proposal to create a strong national government.

New Jersey Plan Proposal to create a weak national government.

Great Compromise Plan to have a popularly elected House based on state population and a state-selected Senate, with two members for each state.

republic A government in which elected representatives make the decisions.

judicial review The power of the courts to declare laws unconstitutional.

federalism Government authority shared by national and local governments.

enumerated powers Powers given to the national government alone.

reserved powers Powers given to the state government alone.

concurrent powers Powers shared by the national and state governments.

separation of powers Constitutional authority is shared by three different branches of government.

checks and balances Authority shared by three branches of government.

faction A group with a distinct political interest.

Federalists Those who favor a stronger national government.

Antifederalists Those who favor a weaker national government.

coalition An alliance of groups.

habeas corpus An order to produce an arrested person before a judge.

bill of attainder A law that declares a person, without a trial, to be guilty of a crime.

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ex post facto law A law that makes an act criminal although the act was legal when it was committed.

Bill of Rights First ten amendments to the Constitution.

line-item veto An executive's ability to block a particular provision in a bill passed by the legislature.

WEB LINKS

To find historical and legal documents

Teaching American History: TeachingAmericanHistory.org

National Constitution Center: http://constitutioncenter.org/

Congress: thomas.loc.gov/ (choose Historical Documents)

To look at court cases about the Constitution

Cornell University: http://www.law.cornell.edu/supremecourt/text/home

INSTRUCTOR RESOURCES

Bailyn, Bernard. *The Ideological Origins of the American Revolution*. Cambridge: Harvard University Press, 1967. A brilliant account of how the American colonists formed and justified the idea of independence.

Becker, Carl L. *The Declaration of Independence*. New York: Vintage, 1942. The classic account of the meaning of the Declaration.

Federalist papers. By Alexander Hamilton, James Madison, and John Jay. The definitive edition, edited by Jacob E. Cooke, was published in Middletown, CT, in 1961, by the Wesleyan University Press.

Maier, Pauline. *Ratification: The People Debate the Constitution, 1787–1788.* New York: Simon and Schuster, 2010. Not only is this a marvelous study of ratification, but it also is virtually the only one in existence. A splendid, comprehensive account.

McDonald, Forrest. *Novus Ordo Seclorum.* Lawrence: University of Kansas Press, 1985. A careful study of the intellectual origins of the Constitution. The Latin title means "New World Order," which is what the Framers hoped they were creating.

Sheldon, Garrett W. *The Political Philosophy of James Madison*. Baltimore: Johns Hopkins University Press, 2001. Masterful account of Madison's political thought and its roots in classical republicanism and Christianity.

Storing, Herbert J. *What the Anti-Federalists Were For.* Chicago: University of Chicago Press, 1981. Close analysis of the political views of those opposed to the ratification of the Constitution.

Sundquist, James L. *Constitutional Reform and Effective Government,* rev. ed Washington, D.C.: Brookings Institute Press, 1992. Systematic evaluation of proposals to incorporate features of parliamentary democracy in the American political system.

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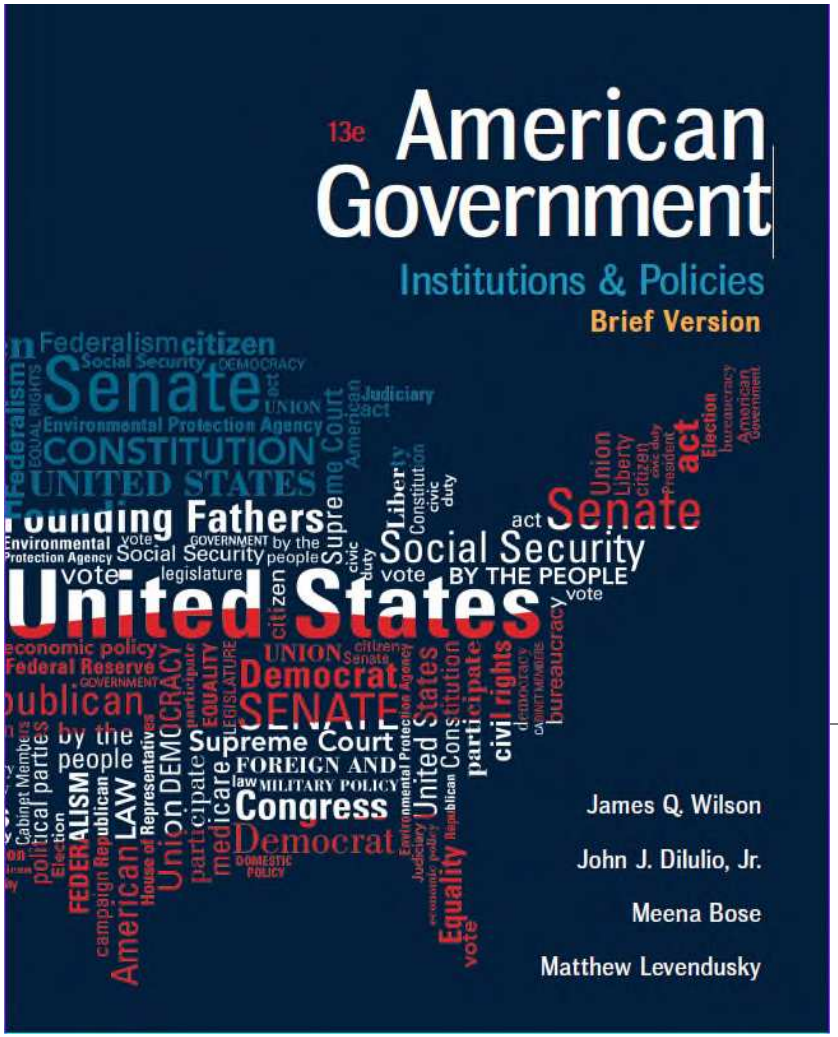
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Wood, Gordon S. *The Creation of the American Republic.* Chapel Hill: University of North Carolina Press, 1969. A detailed study of American political thought before the Philadelphia convention.

Wood, Gordon S. *The Radicalism of the American Revolution.* New York: Penguin Random House, 1993. Magisterial study of the nature and effects of the American Revolution and the relationship between the socially radical Revolution and the Constitution.

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Chapter 2

THE CONSTITUTION

Learning Objectives

2-1 Explain how evolving debates about liberty led from the Revolutionary War to the Constitutional Convention.

2-2 Discuss the major proposals and compromise over representation in the Constitutional Convention.

2-3 Summarize the key issues presented by Federalists and Antifederalists in ratification debates for the Constitution.

2-4 Discuss continuing debates about democracy and the Constitution.

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2-1 The Problem of Liberty 1 of 3

The goal of the American Revolution was liberty

- The colonial mind
  - Liberties based on natural rights
    - Cannot be taken away
    - Life, liberty, & property
  - The Declaration of Independence
    - Unalienable rights



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Signing the Declaration of Independence, painted by John Trumbull

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2-1 The Problem of Liberty 2 of 3

The Real Revolution

- John Adams: Revolution is “radical change in principles, opinions, sentiments, and affections of the people”
  - Political authority is the result of a direct grant of power contained in a written constitution
  - Government must respect liberty
  - The legislative branch should be superior to the executive branch

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2-1 The Problem of Liberty 3 of 3

Weaknesses of the Confederation

- League of friendship
  - Could not levy taxes or regulate commerce
- Each state retained sovereignty and independence
- No national judicial system to settle disputes

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2-2 The Constitutional Convention

The Lessons of Experience

- State Constitutions
  - Pennsylvania Constitution
    - Advocated unicameral legislature
    - Executive Council (rather than single governor) proved tyrannical
  - Massachusetts Constitution
    - Less democratic
    - Clear separation of powers
- Shays's Rebellion

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2-2 The Constitutional Convention
2 of 7



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Shays's Rebellion in western Massachusetts in 1786–1787 stirred deep fears of anarchy in America. The ruckus was put down by a hastily assembled militia, and the rebels were eventually pardoned.

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2-2 The Constitutional Convention
3 of 7

The Framers

- The Philadelphia Convention
  - 55 delegates attended
  - Produced a wholly new written constitution
  - Created true national government

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2-2 The Constitutional Convention

The Challenge

- Devise a government strong enough to preserve order but not threaten liberty
- Madison and others thought people would seek power because man by nature is ambitious, greedy, and easily corrupted

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2-2 The Constitutional Convention
5 of 7

The Challenge continued

- The Virginia Plan
  - National legislature with supreme power over states
  - People directly elect at least one house of legislature

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2-2 The Constitutional Convention
6 of 7

The Challenge continued

- The New Jersey Plan
  - Smaller states feared both houses would be represented on the basis of population
  - Proposed to amend the Articles
  - Enhanced the power of the national government but left states' representation at one vote per state

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2-2 The Constitutional Convention
7 of 7

The Challenge continued

- The Great Compromise
  - House of Representatives based on state population
  - State legislatures elected two senators per state to the Senate
  - Electoral college would choose the president
  - Unresolved issues handled by Committee of Detail

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2-3 Ratification Debates 1 of 11

- Framers created a republic
- Influenced by Locke and Hobbes
- Limitations placed on power of government
- House elected directly by the people, state legislatures would choose the senators, electors would choose the president
- Supreme Court given power of judicial review
- Amendment process

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2-3 Ratification Debates 2 of 11

Key Principles

- Separation of powers and federalism
  - Political power was to be shared by three separate branches of government
  - Political authority was divided between a national government and several state governments

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2-3 Ratification Debates 3 of 11

Key Principles continued

- Powers of the national government
  - Enumerated powers
  - Reserved powers
  - Concurrent powers

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2-3 Ratification Debates 4 of 11

Government and Human Nature

- Separation of powers
- Checks and balances
- Factions would represent the different interests and keep one part of government from dominating another

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2-3 Ratification Debates 5 of 11

The Constitution and Liberty

- Federalists
  - Support strong central government
  - Advocate ratification of Constitution
- Antifederalists
  - Oppose strong central government
  - Want confederation of large, independent states

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2-3 Ratification Debates 6 of 11

The Antifederalist View

- Liberty could be secure only in a small republic in which the rulers were physically close to—and closely checked by—the ruled
- Strong national government would be distant from the people and would negate states' powers
- Supported a bill of rights

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2-3 Ratification Debates 7 of 11

The Antifederalist View continued

- The *Federalist Papers* No. 10 and 51
  - Madison: liberty is safest in large republics
  - Different interests must form a coalition
  - Coalition in large republics are more diverse and more moderate

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2-3 Ratification Debates 8 of 11

The Antifederalist View continued

- Liberties guaranteed in the Constitution
  - Writ of habeas corpus may not be suspended (except during invasion or rebellion).
  - No bill of attainder may be passed by Congress or the states.
  - No ex post facto law may be passed by Congress or the states.
  - Right of trial by jury in criminal cases is guaranteed.

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2-3 Ratification Debates 9 of 11

The Antifederalist View continued

- Liberties guaranteed in the Constitution continued
  - The citizens of each state are entitled to the privileges and immunities of the citizens of every other state.
  - No religious test or qualification for holding federal office is imposed.
  - No law impairing the obligation of contracts may be passed by the states.

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2-3 Ratification Debates 10 of 11

Need for a Bill of Rights

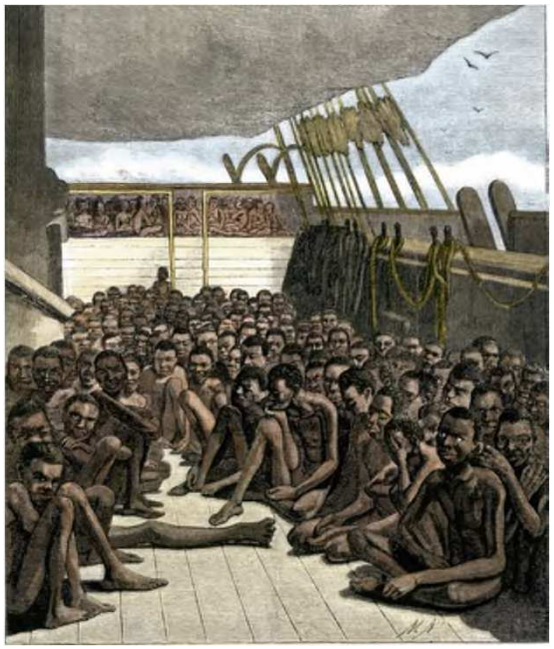
- Ten amendments ratified by states in 1791
- Focus on civil liberties
- Fourteenth Amendment extended guarantees in Bill of Rights to the states

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2-3 Ratification Debates 11 of 11

The Constitution and Slavery

- Constitution does not mention slavery
- Apportionment of seats in House of Representatives
  - Counted all free persons and three-fifths of slaves
- Congress could not prohibit importation of slaves
- Escaped slaves returned to masters



Chicago History Museum, USA/Bridgeman Images

The Constitution did not address the debate about slavery, so buying and selling slaves continued for many years.

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2-4 Democracy and the Constitution: Post-Ratification Debates 1 of 5

Economic Interests

- Individual interests of Framers were a small factor during Convention
- Economic position of states had greater effect on votes

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2-4 Democracy and the Constitution: Post-Ratification Debates 2 of 5

The Constitution and Equality

- Government created by Constitution too weak, especially national government
- Too strong government = political privilege
- Too weak government = differences in wealth

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2-4 Democracy and the Constitution: Post-Ratification Debates 3 of 5

Constitutional Reform: Modern Views

- Deep, broad popular support
- Two views:
  - Federal government too weak
  - Federal government too strong

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2-4 Democracy and the Constitution: Post-Ratification Debates 4 of 5

Reducing the Separation of Powers

- Gridlock among branches prevents effective action
- Separation of powers makes president weak and unaccountable
- Parliamentary system good solution

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2-4 Democracy and the Constitution: Post-Ratification Debates 5 of 5

Making the System Less Democratic

- Government does too much
- Amendment limiting amount government could collect in taxes or require government to have balanced budget
- Line-item veto
- Narrow the authority of federal courts

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People write on a large copy of the U.S. Constitution in Washington, D.C., bringing their perspective on the relevance of the 18th-century document today.

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