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CHAPTER 2

Forging a New Government: The Constitution

Learning Outcomes

The five learning outcomes below are designed to help improve students' understanding of this chapter.

LO 2.1: Explain how the colonial experience prepared Americans for independence, the restrictions that Britain placed on the colonies, and the American response to those restrictions.

LO 2.2: Describe the significance of the Declaration of Independence and the Articles of Confederation, as well as the weaknesses of the Articles.

LO 2.3: Discuss the most important compromises reached at the Constitutional Convention and the basic structure of the resulting government.

LO 2.4: Summarize the arguments in favor of and the arguments against adopting the Constitution, and explain why the Bill of Rights was adopted.

LO 2.5: Describe the process of amending the Constitution and the informal ways in which Constitutional interpretation has changed over time.

Summary Overview

Learning the historical and political context in which the U.S. Constitution was created is essential to understanding American government and politics today. The Constitution did not just come from creative thinking but is based on the philosophical thinking of the day. The delegates to the Constitutional Convention brought their political culture and political experience to the discussion.

The first permanent English colonies were established at Jamestown in 1607 and Plymouth in 1620. The Mayflower Compact created the first formal government in New England. In the 1760s, the British began to impose a series of taxes and legislative acts on their increasingly independent-minded colonies. The colonists responded with protests and boycotts of British products. Representatives of the colonies formed the First Continental Congress in 1774. The Second Continental Congress established an army in 1775 to defend the colonists against attacks by British soldiers.

On July 4, 1776, the Second Continental Congress approved the Declaration of Independence. Perhaps the most revolutionary aspects of the Declaration were its statements that people have natural rights to life, liberty, and the pursuit of happiness; that governments derive their power from the consent of the governed; and that people have a right to overthrow oppressive governments. During the Revolutionary War, the states signed the Articles of Confederation, creating a weak central government with few powers. The Articles proved to be unworkable because the national

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government had no way to ensure compliance by the states with such measures as securing tax revenues.

General dissatisfaction with the Articles of Confederation prompted the call for a convention at Philadelphia in 1787. Delegates focused on creating a constitution for a new form of government. The Virginia Plan, which favored the larger states, and the New Jersey Plan, which favored small ones, did not garner sufficient support. The Great compromise offered by Connecticut provided for a bicameral legislature and thus resolved the large-state/small-state dispute. The final version of the Constitution provided for the separation of powers, checks and balances, and a federal form of government.

Those who supported the Constitution's ratification were called Federalists. Fears of a strong central government prompted the addition of the Bill of Rights to the Constitution. The Bill of Rights, sometimes referred to as the bill of limits, includes the freedoms of religion, speech, and assembly. Anti-Federalists, those who opposed the new Constitution, were concerned that it did not include the first ten amendments, which make up the Bill of Rights. The Bill of Rights was added to the Constitution in 1791, allaying some of the fears of the Anti-Federalists. The Bill of Rights was initially applied only to the federal government, but amendments to the Constitution following the Civil War were interpreted to ensure that the Bill of Rights would apply to the states as well.

The Anti-Federalists argued against adopting the Constitution, but supporters of the document won in the end. Fears of a strong central government prompted the addition of the Bill of Rights to the Constitution. The Bill of Rights, which includes the freedoms of religion, speech, and assembly, was initially applied only to the federal government, but amendments to the Constitution following the Civil War were interpreted to ensure that the Bill of Rights would apply to the states as well.

The delegates also provided a mechanism to make changes to the new Constitution. An amendment to the Constitution may be proposed either by a two-thirds vote in each chamber of Congress or by a national convention called by Congress at the request of two-thirds of the state legislatures. Ratification can occur either by the approval of three-fourths of the legislatures of the states or by special conventions called in the states for the purpose of ratifying the amendment and approval by three-fourths of these conventions. Informal methods of constitutional change include reinterpretation through congressional legislation, presidential actions, and judicial review.

Chapter Outline

I. The Colonial Background

A. Separatists, the *Mayflower*, and the Compact
B. More Colonies, More Government
C. British Restrictions and Colonial Grievances
D. The First Continental Congress
E. The Second Continental Congress

II. An Independent Confederation

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A. The Resolution for Independence
B. July 4, 1776—The Declaration of Independence
C. The Rise of Republicanism
D. The Articles of Confederation: Our First Form of Government

III. The Constitutional Convention
A. Factions among the Delegates
B. Politicking and Compromises
C. Working toward Final Agreement
D. The Final Document

IV. The Difficult Road to Ratification
A. The Federalists Push for Ratification
B. The March to the Finish
C. The Bill of Rights

V. Altering the Constitution
A. The Formal Amendment Process
B. Informal Methods of Constitutional Change

Teaching Tools

Learning Outcome 2.1: Explain how the colonial experience prepared Americans for independence, the restrictions that Britain placed on the colonies, and the American response.

Critical Thinking Question:
After reviewing the pre-constitutional history of America, what were the essential elements of the Mayflower Compact and why does the compact still have significance today?

Lecture Launcher:
Was the Mayflower Compact a constitution? Why or why not?

The minutemen were members of a colonial militia that was ready to fight the British at a moment's notice. *In what ways might a local militia be less effective than an actual army in confronting the British?*

In-Class Activity:
Using popular culture as imagination fodder, ask students in small groups to create a list of movies in which outside forces inspire the protagonists in a call to action. What was the outcome of the action? Was the outcome satisfying and lasting? Why or why not? Ask the class as a whole to find similarities in between the movie stories and the story of revolutionary America.

Organize a class debate after outside preparation time on the founder's intent regarding the separation of church and state. Use the feature "*Which side are you on? Should the United States*

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Be a Christian Nation?" as an assignment launcher.

Learning Outcome 2.2: Describe the significance of the Declaration of Independence and the Articles of Confederation, as well as the weaknesses of the Articles.

Critical Thinking Question:
Which elements of John Locke's (1632–1704) social contract are illuminated by the Declaration of Independence? Why were these ideas so radical?

How did the rise of republicanism (small "r") change the balance of power between the executive and legislative branches in the colonies?

Lecture Launcher:
Benjamin Franklin, John Adams, and Thomas Jefferson all worked on the Declaration of Independence. *Why was that document so important?*

Because of the weakness of the Articles of Confederation, the central government could do little to maintain order in the new nation. By 1784, the country faced a serious economic depression. Banks were calling in loans and those who could not pay were thrown into prison. In August 1786, a group of armed farmers seized country courthouses and disrupted the trials of debtors in Massachusetts. The rebellion demonstrated that the new central government could not protect the citizenry from internal strife or provide for the public welfare. Reflect on the Great Recession of 2007–2008 and on unrest in urban centers in recent times. How does our government today respond to economic crises and civil unrest by comparison?

In-Class Activity:
Does it matter how the term *people*, as used in the Declaration of Independence, is defined? Did the members of the Second Continental Congress mean all people? What of the rights of women? What of the rights of Native Americans? What of the rights of slaves? In small groups, ask students to make a list of the accomplishments of those *people* who would be wiped from history if the definition of the term, *people*, and the legal protections reserved for such *people* remained unchanged until today.

The fear of a powerful central government led the colonial leaders to pass the Articles of Confederation. The term *confederation* means a voluntary association of independent states. What were some accomplishments and weaknesses of the new government under the Articles? Ask students to create an organizing grid in small groups that list and rank in importance the powers and limits of the Articles of Confederation.

Learning Outcome 2.3: Discuss the most important compromises reached at the Constitutional Convention and the basic structure of the resulting government.

Critical Thinking Question:
Which of the compromises reached at the Constitutional Convention of 1787 do you believe is

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most important and why?

Lecture Launcher:
George Washington, who would become the nation's first president, presided over the Constitutional Convention of 1787. It formally opened in the East Room of the Pennsylvania State House (later named Independence Hall) on May 25. *Why might Washington have been chosen to chair this convention?*

James Madison (1751–1836) has been called "the master builder of the Constitution." *What did he do to earn that title?*

In-Class Activity:
On September 17, 1787, the Constitution was approved by thirty-nine delegates. Of the fifty-five who had attended originally, only forty-two remained. Three delegates refused to sign the Constitution. Others disapproved of at least parts of it but signed anyway to begin the ratification debate. Ask the students to search and list the fundamental principles established by the Constitution

Learning Outcome 2.4: Summarize the arguments in favor of and the arguments against adopting the Constitution, and explain why the Bill of Rights was adopted.

Critical Thinking Question:
The U.S. Constitution is the oldest in the world. What elements of the Constitution give this document strength and longevity?

Lecture Launcher:
Alexander Hamilton was among those who wanted a monarchy. About two-thirds of the *Federalist Papers* were written by Alexander Hamilton. *What was the impact of that writing on American political thought?*

In-Class Activity:
Write a Bill of Rights for your class. This exercise will help to illustrate rights of the individual (student) versus rights of the government (instructor). What rights and responsibilities should students have? What rights and responsibilities should the instructor have? (Consider, for example, cheating. Should there be probable cause before an accusation is made? Who should decide? Who should control the punishment? Are their rights that students should have with which the instructor cannot interfere?

Learning Outcome 2.5: Describe the process of amending the Constitution and the informal ways in which Constitutional interpretation has changed over time.

Critical Thinking Question:
The Constitution adapts on a continuous basis via judicial review—the power of the U.S. courts to examine the constitutionality of actions by the executive and legislative branches of government. Why is the power of judicial review important to our democracy?

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Lecture Launcher:
Various groups support or oppose a number of constitutional amendments before Congress. Some of these amendments would ban flag burning, end marriage equality for gay and lesbian citizens, or require a balanced federal budget. Which of these amendments do you believe would have a chance of passing if voted on by the citizens directly rather than by Congress? Would it be a good idea to bypass the legislative system to take these kinds of hot-button measures directly to the people? Why or why not?

The Equal Rights Amendment in 1980 would have written the equality of women into the Constitution. It was not ratified by a large enough number of states, however, and so was not adopted. *Why is it so hard to amend the Constitution?*

In-Class Activity:
One of the most important parts of the Constitution can be found in Article I, Section 8, which lays out the powers of Congress. More than any other section, it describes what the government is meant to do. The opening clauses discuss financial matters including the power to tax, borrow, regulate commerce, coin money, and determine the rules for nationalized citizenship. Form small groups to discuss your understanding of the operations of Congress gathered from news sources before class or during class from an electronic device. Based on your findings, how is Congress doing in terms of effective management of these constitutional responsibilities? Support your opinion with examples. After groups have determined a position, ask the groups to report to class.

Interact:

Our Constitution is based on the separation of powers, but in many other democracies, the legislative and executive branches are united. The chief executive, often called the prime minister, is also the leader of parliament (the legislature). In fact, parliament elects the prime minister. Research the government of Britain, Denmark, Poland, or another European country online. Use hyperlinks to learn the meaning of terms that are new to you. Consider—or discuss with your classmates—which constitutional principles of the country you chose to research would be surprising or unacceptable to Americans. How would the United States be different if the founders had adopted a parliamentary system

Discussion Assignments

- Why would states be reluctant to forward taxes to the Confederation?
- The major checks and balances among the three branches of the U.S. government are illustrated in Figure 2.1. The Constitution does not mention some of these checks. Checks and balances can be thought of as a confrontation of powers or responsibilities. Each branch checks the actions of the others. Two branches in conflict have powers that can result in balances or stalemates requiring one branch to give in or both to reach a compromise. Which result is more likely?

Essay Questions

1. Consider what might have happened if Georgia and the Carolinas had stayed out of the Union because of a desire to protect slavery. What would subsequent American history have been like?

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Would the eventual freedom of the slaves have been delayed—or advanced?

2. A result of the Great Compromise is that representation in the Senate dramatically departs from the one-person, one-vote rule. The 39 million people who live in California elect two senators, as do the almost 600,000 people living in Wyoming. What political results might occur when the citizens of small states are much better represented than the citizens of large ones?

Key Terms

Anti-Federalist: An individual who opposed the ratification of the new Constitution in 1787. The anti-federalists were opposed to a strong central government.

Bicameral Legislature: A legislature made up of two parts, called chambers. The U.S. Congress, composed of the House of Representatives and the Senate, is a bicameral legislature.

Checks and Balances: A major principle of the American system of government whereby each branch of the government can check the actions of the others.

Confederation: A political system in which states or regional governments retain ultimate authority except for those powers they expressly delegate to a central government; a voluntary association of independent states, in which the member states agree to limited restraints on their freedom of action.

Electoral College: A group of persons called electors selected by the voters in each state and the District of Columbia (D.C.). This group officially elects the president and vice president of the United States.

Federalist: The name given to one who was in favor of the adoption of the U.S. Constitution and the creation of a federal union with a strong central government.

Federal System: A system of government in which power is divided between a central government and regional, or subdivisional, governments. Each level must have some domain in which its policies are dominant and some genuine political or constitutional guarantee of its authority.

Great Compromise: The compromise between the New Jersey and Virginia Plans that created one chamber of the Congress based on population and one chamber representing each state equally; also called the Connecticut Compromise.

Judicial Review: The power of the Supreme Court and other courts to examine and possibly declare unconstitutional federal or state laws and other acts of government.

Madisonian Model: A structure of government proposed by James Madison in which the powers of the government are separated into three branches: executive, legislative, and

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judicial.

Natural Rights: Rights held to be inherent in natural law, not dependent on governments. John Locke stated that natural law, being superior to human law, specifies certain rights of "life, liberty, and property."

Ratification: Formal approval.

Representative Assembly: A legislature composed of individuals who represent the population.

Separation of Powers: The principle of dividing governmental powers among different branches of government.

Social Contract: A voluntary agreement among individuals to secure their rights and welfare by creating a government and abiding by its rules.

State: A group of people occupying a specific area and organized under one government. It may either be a nation or a subunit of a nation.

Supremacy Doctrine: A doctrine that asserts the priority of national law over state laws. This principle is stated in Article VI of the Constitution, which provides that the Constitution, the laws passed by the national government under its constitutional powers, and all treaties constitute the supreme law of the land.

Unicameral Legislature: A legislature with only one legislative chamber, as opposed to a bicameral (two-chamber) legislature, such as the U.S. Congress. Today, Nebraska is the only state in the Union with a unicameral legislature.

Web Links

The National Constitution Center, at constitutioncenter.org, provides a variety of information on the document in an entertaining format.

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You can get a free annotated copy of the Constitution and related documents as an app for your Android smartphone at https://play.google.com/store/apps?hl=en. The site offers *The Federalist Papers* for free as well. If you have an iPhone, you can find similar apps at Apple's App Store, but you'll probably have to cough up $0.99 for *The Federalist Papers*.

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Instructor Resources

Beck, Derek. *Igniting the American Revolution: 1773–1775.* New York: Sourcebooks, 2016. A dramatic retelling of the revolutionary crisis from both the American and British viewpoints. Beck is a retired Air Force officer and freelance historian.

Keyssar, Alexander. *Why Do We Still Have the Electoral College?* Cambridge, Mass.: Harvard University Press, 2016. Keyssar, a history professor at Harvard, details how the founders came to create the electoral college and why it has never been abolished.

Maier, Pauline. *Ratification: The People Debate the Constitution, 1787–1788.* New York: Simon & Schuster, 2011. Maier, a professor at M.I.T., charts the Constitution's uncertain course toward ratification.

Media Resources

John Adams—A widely admired 2008 HBO miniseries on John Adams and his wife, Abigail Adams, and other prominent Americans of the revolutionary period. The series is largely based on David McCullough's book, *John Adams*.

Thomas Jefferson—A 1996 documentary by acclaimed director Ken Burns. The film covers Jefferson's entire life, including his writing of the Declaration of Independence, his presidency, and his later years in Virginia. Historians and writers interviewed include Daniel Boorstin, Garry Wills, Gore Vidal, and John Hope Franklin.

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Chapter 2

Forging a New Government: The Constitution

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Learning Outcomes (1 of 2)

1. Explain how the colonial experience prepared Americans for independence, the restrictions that Britain placed on the colonies, and the American response to those restrictions.
2. Describe the significance of the Declaration of Independence and the Articles of Confederation, as well as the weaknesses of the Articles.
3. Discuss the most important compromises reached at the Constitutional Convention and the basic structure of the resulting government.

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Learning Outcomes (2 of 2)

4. Summarize the arguments in favor of and the arguments against adopting the Constitution, and explain why the Bill of Rights was adopted.
5. Describe the process of amending the Constitution and the informal ways in which Constitutional interpretation has changed over time.

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The Colonial Background (1 of 4)

- Separatists, the *Mayflower*, and the Compact
  - The significance of the compact
  - Pilgrim beliefs
- More Colonies, More Government

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The Colonial Background (2 of 4)

The signing of the Mayflower Compact, by the American painter Jean Leon Gerome Ferris.

Was the Compact a constitution? Why or why not?



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The Colonial Background (3 of 4)

- British Restrictions and Colonial Grievances
  - The Stamp Act
  - The Sugar Act
- The First Continental Congress
- The Second Continental Congress

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The Colonial Background (4 of 4)

The minutemen were members of a colonial militia that was ready to fight the British at a moment's notice.

In what ways might a local militia be less effective than an actual army in combating the British?



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An Independent Confederation (1 of 4)

- The Resolution for Independence
- July 4, 1776—The Declaration of Independence
  - Universal truths
  - Natural rights and social contracts
  - The significance of the declaration

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An Independent Confederation (2 of 4)

Benjamin Franklin, John Adams, and

Thomas Jefferson work on the Declaration of Independence.

Why was that document so important?



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An Independent Confederation (3 of 4)

- The Rise of Republicanism
  - The Treaty of Paris
  - Unicameral legislatures

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An Independent Confederation (4 of 4)

- The Articles of Confederation: Our First Form of Government
  - The Articles establish a government
  - Accomplishments under the Articles
  - Weaknesses of the Articles
  - Shays' Rebellion and the need to revise the Articles

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The Confederation Congress—Powers and Limits

Why would states be reluctant to forward taxes to the Confederation?

Congress Had Power to	Congress Lacked Power to
• Declare war and make peace. • Enter into treaties and alliances. • Establish and control armed forces. • Request soldiers and funds from states. • Regulate coinage. • Borrow funds and issue bills of credit. • Fix uniform standards of weight and measurement. • Create admiralty courts. • Create a postal system. • Regulate Indian affairs. • Guarantee citizens of each state the rights and privileges of citizens in the several states when in another state. • Adjudicate disputes between states on state petition.	• Provide for effective treaties and control foreign relations. It could not compel states to respect treaties. • Compel states to meet military quotas. It could not draft soldiers. • Regulate interstate and foreign commerce. It left each state free to tax imports from other states. • Collect taxes directly from the people. It had to rely on states to collect and forward taxes. • Compel states to pay their share of government costs. • Provide and maintain a sound monetary system or issue paper money. This was left up to the states, and paper currencies in circulation differed tremendously in purchasing power.

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The Constitutional Convention (1 of 6)

- Factions among the Delegates
  - Majority were strong nationalists

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The Constitutional Convention (2 of 6)

- Politicking and Compromises
  - The Virginia Plan
    - Bicameral legislature
  - The New Jersey Plan
    - Supremacy doctrine
  - The “Great Compromise”
  - The Three-Fifths Compromise
  - The slave trade and the future of slavery
  - Other issues

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The Constitutional Convention (3 of 6)

George Washington, who would become the nation's first president, presided over the Constitutional Convention of 1787. It formally opened in the East Room of the Pennsylvania State House (later named Independence Hall) on May 25.

Why might Washington have been chosen to chair this convention?



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The Constitutional Convention (4 of 6)

James Madison

(1751–1836) has been called “the master builder of the Constitution.”

What did he do to earn that title?



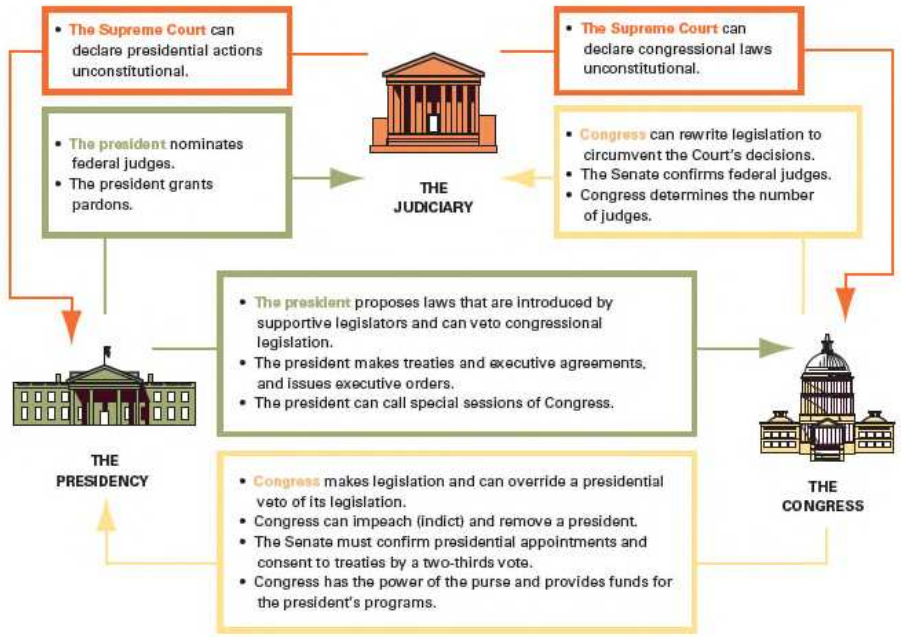
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The Constitutional Convention (5 of 6)

- Working toward Final Agreement
  - The Madison an model—separation of powers
  - The Madison an model—checks and balances
  - The Executive
    - The electoral college

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Checks and Balances



The major checks and balances among the three branches of the U.S. government are illustrated here. The Constitution does not mention some of these checks.

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The Constitutional Convention (6 of 6)

- The Final Document
  - Ratification
  - Popular sovereignty
  - A republican government
  - Limited government
  - Separation of powers
  - A federal system

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The Difficult Road to Ratification (1 of 2)

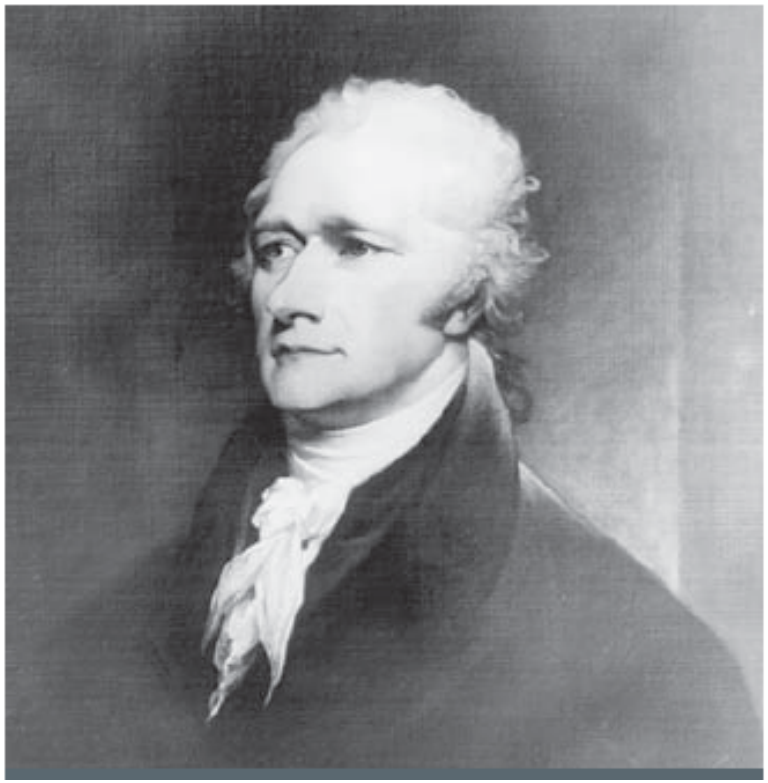
- The Federalists Push for Ratification
  - The *Federalist Papers*
  - The Anti-Federalist response
- The March to the Finish
- The Bill of Rights

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The Difficult Road to Ratification (2 of 2)

Alexander Hamilton was among those who wanted a monarchy. About two-thirds of the *Federalist Papers* were written by Alexander Hamilton.

What was the impact of that writing on American political thought?



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Altering the Constitution (1 of 3)

- The Formal Amendment Process
- Informal Methods of Constitutional Change
  - Congressional legislation
  - Presidential actions
  - Judicial review
  - Interpretation, custom, and usage

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Altering the Constitution (2 of 3)

Why have so few amendments been adopted?

Amendment	Subject	Year Adopted	Time Required for Ratification
1st–10th	The Bill of Rights	1791	2 years, 2 months, 20 days
11th	Immunity of states from certain suits	1795	11 months, 3 days
12th	Changes in electoral college procedure	1804	6 months, 3 days
13th	Prohibition of slavery	1865	10 months, 3 days
14th	Citizenship, due process, and equal protection	1868	2 years, 26 days
15th	No denial of vote because of race, color, or previous condition of servitude	1870	11 months, 8 days
16th	Power of Congress to tax income	1913	3 years, 6 months, 22 days
17th	Direct election of U.S. senators	1913	10 months, 26 days
18th	National (liquor) prohibition	1919	1 year, 29 days
19th	Women's right to vote	1920	1 year, 2 months, 14 days
20th	Change of dates for congressional and presidential terms	1933	10 months, 21 days
21st	Repeal of the Eighteenth Amendment	1933	9 months, 15 days
22d	Limit on presidential tenure	1951	3 years, 11 months, 3 days
23d	District of Columbia electoral vote	1961	9 months, 13 days
24th	Prohibition of tax payment as a qualification to vote in federal elections	1964	1 year, 4 months, 9 days
25th	Procedures for determining presidential disability and presidential succession and for filling a vice-presidential vacancy	1967	1 year, 7 months, 4 days
26th	Prohibition of setting the minimum voting age above eighteen in any election	1971	3 months, 7 days
27th	Prohibition of Congress's voting itself a raise or cut in pay that takes effect before the next election	1992	203 years

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Altering the Constitution (3 of 3)



"Remember, gentlemen, we aren't here just to draft a constitution. We're here to draft the best damned constitution in the world."

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How Can You Affect the U.S. Constitution?

- Supporters of the Equal Rights Amendment in 1980. The amendment would have written the equality of women into the Constitution. It was not ratified by a large enough number of states, however, and so was not adopted.
- *Why is it so hard to amend the Constitution?*



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SUMMARY (1 of 2)

- The Mayflower Compact created the first formal government in New England.
- The most revolutionary aspects of the declaration were its statements that people have natural rights to life, liberty, and the pursuit of happiness; that governments derive their power from the consent of the governed; and that people have a right to overthrow oppressive governments.

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SUMMARY (2 of 2)

- The final version of the Constitution provided for the separation of powers, checks and balances, and a federal form of government.
- The Bill of Rights, which includes the freedoms of religion, speech, and assembly, was initially applied only to the federal government.
- An amendment to the Constitution may be proposed either by a two-thirds vote in each chamber of Congress or by a national convention called by Congress of two-thirds of the state legislatures.

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