Unit 2: The Constitution

The United States Constitution is the foundation of the American political system. Ratified in 1788, it is the world’s oldest Constitution and one of the shortest in length. It has been amended 27 times. The first ten amendments, ratified in 1791, are known as the Bill of Rights.

1. The Articles of Confederation

In the midst of the Revolutionary War against Great Britain, the fledgling states adopted the Articles of Confederation to bind them together in a “league of friendship.” Formally ratified in 1781, the Articles of Confederation served as the nation’s first constitution. Under the Articles, the national government did not derive its authority directly from the citizenry but from the thirteen states – members of Congress were selected, paid, and subject to recall by state legislatures. Each state had one vote regardless of population and the Articles could not be amended without unanimous consent. There was no national executive or judiciary, and Congress lacked the most basic powers of government: to tax, to raise an army or navy, and to regulate commerce. Congress relied on states to contribute funds and soldiers. All in all, these arrangements did not constitute a recipe for a robust, effective national government.

In the eyes of prominent figures like George Washington and Alexander Hamilton, the weakness of the national government posed real dangers to the new republic. They feared the states would enact a thicket of trade barriers against one another – e.g. higher port fees for out-of-state ships – and that such discriminatory practices would undermine any potential for a unified, prosperous national economy. Moreover, the United States could not negotiate effectively with larger European powers over matters of trade and commerce because each state had authority over its own tariff system. They were also alarmed by the inability of Congress to help Massachusetts put down Shays’s Rebellion, an armed revolt sparked by foreclosures against bankrupt farmers. A state militia, supported in part by private donations, ultimately suppressed the uprising. Nevertheless, nationalist elites – educated men of wealth and influence – looked upon Shays’s Rebellion as evidence that the preservation of order and property required a stronger national government.

With concerns of economic and political turmoil as a backdrop, Congress called a convention for the purpose of revising the Articles of Confederation. All states except Rhode Island sent a delegation to Philadelphia in May of 1787.

2. The Constitutional Convention

Led by James Madison, the delegates to the Convention ignored their charge to revise the Articles of Confederation and immediately set about to create a new system of government. They succeeded, and their handiwork remains the foundation of the American political system today – not to mention the world’s oldest constitution. The framers’ overriding goal at the Constitutional Convention was to create a more powerful and effective national government. To this end, Congress was given the great powers it lacked under the Articles: to tax, to raise an army and navy, and to regulate interstate and foreign commerce. The framers also designated
the Constitution and laws enacted by Congress as the “supreme law of land,” taking precedence over any state law to the contrary.

Fifty-five delegates attended the Convention, although some came and went during its proceedings; ultimately thirty-nine signed the Constitution. Collectively they were conservative, educated, relatively young (average age about forty-two), and wealthy; as one historian put it, the framers were “well-bred, well-read, and well-fed.” Meeting behind closed doors with a pledge to keep their deliberations confidential, the delegates hammered out the Constitution over a period of two months. Because the states had competing interests, their task was not an easy one, and it appeared on more than one occasion that the Convention might fall apart in failure.

3. Compromises at the Convention

To reach agreement, the delegates were compelled to compromise; indeed, the Constitution is sometimes characterized as a “bundle of compromises.” Two of the most important compromises concerned the representation of states in the national legislature.

The Great Compromise. At the opening of the Convention, the Virginia delegates introduced James Madison’s blueprint for a new government. The Virginia Plan envisioned a bicameral (two house) legislature with representation in both houses based on population. As the most populous state, Virginia would have the greatest number of representatives in the new Congress – and, presumably, the greatest political clout. The Virginia Plan sought to minimize the influence of states over the national government and proposed the national government should be empowered to veto state laws. Not surprisingly, delegates from smaller states such as Delaware and New Jersey feared they would be “swallowed up” if they surrendered the equal representation for states they enjoyed under the Articles of Confederation. New Jersey countered with a competing plan that maintained their status as equals in the national legislature. This debate proved to be the longest and most contentious of the Convention, and at times the delegates appeared hopelessly deadlocked. Finally, a committee brokered the “Great Compromise,” which based representation in the House of Representatives on population while giving each state two Senators. This agreement explains why California and Wyoming have the same number of Senators even though the former is about 65 times more populous than the latter.

Slavery. Seeking to maximize their number of seats in the House of Representatives, southern delegates argued that slaves were people and should therefore be counted in determining a state’s population. Northerners responded that slaves should not be counted at all because they were not citizens. After the southerners threatened to bolt the Convention over this issue, the delegates agreed to the “three fifths compromise”: slaves were counted as three-fifths of a person for the purpose of allocating House seats. The three-fifths compromise emerged from a dispute over representation, not over the morality of slavery or the worth of enslaved human beings. Although many delegates believed slavery was immoral, the Constitution protected this “peculiar institution” – as it was delicately referred to in the South – in two ways: the slave trade was allowed to continue for another twenty years and states were required to return escaped slaves to their legal owners.
4. Individual Rights

Although the most extensive set of protections for individual rights and liberties is the Bill of Rights, it is worth noting that the original, unamended Constitution also provided a few such protections as well. The most important is found in Article I, Section 9, which states that the “Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety requires it.” Habeas corpus – literally “you have the body” in Latin – is a fundamental legal right with roots extending back to medieval England. It permits an arrested person to challenge the legality of his or her detention before a judge, who may order the detainee’s release. A part of the system of checks and balances, habeas corpus empowers judges to invalidate unlawful arrests and detentions by the executive.

5. Constitutional Change

The framers set a difficult two-stage process for amending the Constitution: proposal and ratification. Constitutional amendments are first proposed by a two-thirds vote in both the House and the Senate (or by a convention called for by two-thirds of the states, but this has never happened.) The proposed amendment then becomes part of the Constitution upon ratification by three-fourths of state legislatures (or by three-fourths of state constitutional conventions, which has happened only for the Prohibition-repealing Twenty First Amendment). By requiring super-majorities in the House, the Senate, and among the states, the framers deliberately set a very high bar for those seeking to change the nation’s fundamental law. The Constitution has been amended only 27 times – and only 17 times since the Bill of Rights was ratified in 1791. As we will see in later units, the Constitution may change through judicial interpretation as well as through the formal amendment process.

6. Ratification and the Bill of Rights

Nine state conventions were required to ratify the Constitution before it could take effect. This led to a major political battle between the Constitution’s proponents, who proclaimed themselves Federalists, and its opponents who were called the Anti-Federalists. The basic argument of the Anti-Federalists was that democracy worked best on a smaller scale, with decentralized state governments holding most of the political power; a large national government, on the other hand, posed a threat to liberty. The Anti-Federalists also emphasized that the Constitution lacked a bill of rights. In response, Alexander Hamilton and James Madison, with a small contribution from John Jay, published a series of 85 essays that became known as the Federalist Papers. These essays sought to influence the delegates to the New York ratifying convention, where support for the proposed Constitution seemed shaky. The main purpose of the Federalist Papers was to allay fears of national authority. The essays are now regarded as a classic statement of the meaning of the Constitution and, more generally, of American political theory. What ultimately clinched the Federalist victory was their pledge to adopt a Bill of Rights in the first Congress. Holding true to that commitment, the Bill of Rights – the first ten amendments to the Constitution – was proposed and ratified in 1791.

7. Underlying Constitutional Principles
Although they appear nowhere in its text, three terms describe the Constitution’s general structure and design: federalism, separation of powers, and checks and balances. The authors of the *Federalist Papers* argue that these principles are essential to the preservation of republican government. Because the concentration of power in the hands of one person or institution is a recipe for tyranny, the Constitution divides political power horizontally (between the states and national government) and vertically (among three separate branches of the national government). With power thus widely dispersed, the argument goes, liberty is more secure.

*Federalism.* Federalism refers to the division of power between the national government and the states. We will consider federalism in greater detail in the next unit.

*Separation of Powers.* The separation of powers refers to the principle that the national government is comprised of three separate and independent branches: legislative, executive, and judicial. Each branch must exercise its constitutional powers free from the coercion or domination of the other two, and no branch can exercise powers belonging to another. For example, neither the President nor Congress attempts to coerce or dictate the outcome of cases before the Supreme Court – that would violate the independence of the judicial branch. Likewise, Congress never attempts to direct U.S. armed forces in battle because the Constitution assigns that task to the President acting as Commander-in-Chief. The separation of powers requires that each branch “stick to its own knitting” and avoid encroaching onto the turf of its institutional counterparts.

*Checks and Balances.* The three branches are not completely separate from one another. The Constitution’s “checks and balances” are mechanisms that give each branch some influence over the other branches. Thus, if any branch sought to overstep its authority, it might be blocked or “checked” by the others. For example, Presidents may veto legislation, Congress may impeach judges and executive officials and remove them from office, and the Supreme Court may declare laws or executive actions unconstitutional.