Chapter 2

Constructing a Government: The Founding and the Constitution

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The First Founding

• There was a variety of interests in colonial America.
• They included:
  – New England merchants
  – Southern planters
  – Royalists
  – Shopkeepers, artisans, and laborers
  – Small farmers
Beginning in the 1750s, the British Crown began imposing a series of modest taxes on the colonists, in part to pay some of the costs of imperial defense.

The particular types of taxes—levies on stamps and commercial goods, like sugar and molasses—caused several of the colonial interests to begin to organize against the Crown.
Clicker Question: Rationality Principle

Which of the following interests in colonial society was mostly likely to organize in opposition to taxes on commerce such as the Stamp Act and the Sugar Act?

A. New England merchants
B. Southern planters
C. Royalists
D. Shopkeepers, artisans, and laborers
E. Small farmers
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# Political Strife and the Radicalizing of the Colonists

- A series of provocative acts and counter-acts radicalized the colonists and led to the Declaration of Independence.
  - Boston Tea Party (1773)
  - First Continental Congress (1774)
  - Lexington and Concord (1775)
  - Second Continental Congress (1776)

- This is the Collective Action Principle in action.
The Declaration of Independence

• “All men are created equal.”
• Governments derive their legitimacy from the consent of the governed.
• Declares that when a government no longer serves the needs of the people, the people have a right to revolt.
• Does not create a government.
The Revolutionary War

- The War of Independence was long and bloody, with tens of thousands of casualties among colonists, British soldiers, and native Americans who fought on both sides.

- The colonists ultimately prevailed because it was so long, so bloody, and so expensive and, for the British, there was no end in sight.
The Articles of Confederation

• The first American Constitution
• America is really 13 sovereign states with a weak central government
  – No standing army
  – Weak executive
  – No ability to tax and spend
  – Problems of international standing
  – Shays’s Rebellion
Constitutional Convention (1787): Key Issues

- Key Issues:
  - Revise or scrap the Articles of Confederation
  - National Power vs. State Power
  - How much democracy?
  - Slavery

- Some answers:
  - The Great Compromise
  - The Three-Fifths Compromise
The Convention produced a Constitution with seven articles.

- The first three articles outline the structure and power of the legislative, executive, and judicial branches.
- Other articles relate to national power, the amendment process, and the ratification process.

It is a brief document.
Article I: Legislative Branch

• Bicameralism – Division of a legislative assembly into two chambers or houses
• Expressed Powers of Government
• Necessary and Proper Clause – Also referred to as the “elastic clause”
Article II: Executive Branch

• Provides for an independent, stronger, and more “energetic” executive than in the Articles of Confederation.
• The president is commander in chief, chief executive, and chief diplomat.
• Other powers include the nomination of executive and judicial officials and the power to grant reprieves and pardons.
Article III: Judicial Branch

• Provides for a Supreme Court and other federal courts Congress can establish.
• Justices and judges have lifetime terms and are nominated by the president and confirmed by the Senate.
• Does not explicitly provide for judicial review—the power of the courts to declare actions of the legislative and executive branches invalid or unconstitutional.
Clicker Question: Articles I, II, and III

Which of the first three articles is longest and most specific in its grant of governmental power?

A. Article I – Legislative Branch
B. Article II – Executive Branch
C. Article III – Judicial Branch
Clicker Question: Articles I, II, and III

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A. Article I – Legislative Branch
B. Article II – Executive Branch
C. Article III – Judicial Branch
Articles I, II, and III:
The Separation of Powers

**LEGISLATIVE**
- Passes federal laws
- Controls federal appropriations
- Approves treaties and presidential appointments
- Regulates interstate commerce
- Establishes lower-court system

**EXECUTIVE**
- Enforces laws
- Serves as commander in chief of armed forces
- Makes foreign treaties
- Nominates Supreme Court justices and federal court judges
- Pardons those convicted in federal court

**JUDICIAL**
- Reviews lower-court decisions
- Decides constitutionality of laws
- Decides cases involving disputes between states
Articles IV and VI: National Unity and Power

• Article IV provides reciprocity among the states through the “full faith and credit” clause and the “privileges and immunities” clause.

• Article VI promotes national power through the national supremacy clause.
Article V: Amending the Constitution

- Sets forth the procedures for amending the Constitution

![Diagram showing the processes of amending the Constitution at the national and state levels.](image)
Article VII: Ratification

- Calls for ratifying conventions in each of the 13 states
- The Constitution is deemed ratified when 9 of the 13 states vote to ratify.
Constitutional Limits on the National Government’s Power

- Separation of Powers – Division of governmental power among several institutions
- Federalism – Divides power between a central government and regional governments
- Bill of Rights – Ensures certain rights and liberties to the people
The Fight for Ratification: Federalists vs. Antifederalists

- Federalists favored ratification and a stronger national government.
- Antifederalists opposed ratification but disagreed among themselves about what the alternative should be.
- At issue:
  - Nature of representation
  - Danger posed by tyranny of the majority
  - Scope and location of governmental power
## The Fight for Ratification

<table>
<thead>
<tr>
<th></th>
<th><strong>FEDERALISTS</strong></th>
<th><strong>ANTIFEDERALISTS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Who were they?</strong></td>
<td>Property owners, creditors, merchants</td>
<td>Small farmers, frontiersmen, debtors, shopkeepers</td>
</tr>
<tr>
<td><strong>What did they believe?</strong></td>
<td>Elites are best fit to govern and “excessive democracy” is dangerous</td>
<td>Government should be close to the people and the concentration of power in the hands of the elites is dangerous</td>
</tr>
<tr>
<td><strong>What system of government did they favor?</strong></td>
<td>Strong national government; believed in “filtration” so that only elites would obtain governmental power</td>
<td>Retention of power by state governments and protection of individual rights</td>
</tr>
<tr>
<td><strong>Who were their leaders?</strong></td>
<td>Alexander Hamilton, James Madison, George Washington</td>
<td>Patrick Henry, George Mason, Elbridge Gerry, George Clinton</td>
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</tbody>
</table>
Discussion/Clicker Question

Which contemporary group’s ideas do the Antifederalists’ ideas resemble?

A. Occupy Wall Street
B. Tea Party
C. Green Party
D. Libertarian Party
The Fight for Ratification: The Bill of Rights

- The Bill of Rights is one key result of the fight for ratification

<table>
<thead>
<tr>
<th>AMENDMENT</th>
<th>PURPOSE</th>
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<tbody>
<tr>
<td>I</td>
<td>Limits on Congress: Congress is not to make any law establishing a religion or abridging the freedom of speech, press, or assembly or the right to petition the government.</td>
</tr>
<tr>
<td>II, III, IV</td>
<td>Limits on the executive: The executive branch is not to infringe on the right of people to keep arms (II), is not to arbitrarily take houses for use by a militia (III), and is not to engage in the search or seizure of evidence without a court warrant swearing to a belief in the probable existence of a crime (IV).</td>
</tr>
<tr>
<td>V, VI, VII, VIII</td>
<td>Limits on the courts: The courts are not to hold trials for serious offenses without provision for a grand jury (V), a petit (trial) jury (VII), a speedy trial (VI), presentation of charges, and confrontation of hostile witnesses (VI). Individuals may not be compelled to testify against themselves (V) and are immune from trial more than once for the same offense (V). Neither bail nor punishment can be excessive (VIII), and no property can be taken without just compensation (V).</td>
</tr>
<tr>
<td>IX, X</td>
<td>Limits on the national government: All rights not enumerated are reserved to the states or the people.</td>
</tr>
</tbody>
</table>
Federalists vs. Antifederalists: Limiting Governmental Power

- Representation – Antifederalists wanted more representatives and greater representation of various interests.
- Threats Posed by the Majority – Federalists worried about the tyranny of the majority.
- Governmental Power – Federalists wanted more centralized power. Antifederalists wanted more local control.
The Federalists and Antifederalists agreed that governmental power had to be checked; they also agreed that “mere parchment barriers” would not be enough.

In *Federalist 10*, James Madison outlines the strongest argument from the Federalist camp for why popular government will succeed in the new United States.
Beyond the Constitution: Limiting Governmental Power

• In *Federalist 10*, James Madison argues:
  – The key problem of democracy is instability and factionalism.
  – Factions are sown into the nature of man.
  – So we must control the effects of faction:
    • Representation and “filtering” of public opinion
    • “Extend the Sphere” – Take in a greater variety of interests
• The American “solution” is that we’ll agree to disagree!
Amending the Constitution

- There have been just 17 amendments to the Constitution since 1791.
- Two of these cancel each other out (Prohibition).
- The remaining 15 amendments can be broken down into 3 categories.
# Expansion of the Electorate

<table>
<thead>
<tr>
<th>AMENDMENT</th>
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<th>YEAR PROPOSED</th>
<th>YEAR ADOPTED</th>
</tr>
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<tbody>
<tr>
<td>XIV</td>
<td>Provided, in Section 1, a national definition of citizenship</td>
<td>1866</td>
<td>1868</td>
</tr>
<tr>
<td>XV</td>
<td>Extended voting rights to all races</td>
<td>1869</td>
<td>1870</td>
</tr>
<tr>
<td>XIX</td>
<td>Extended voting rights to women</td>
<td>1919</td>
<td>1920</td>
</tr>
<tr>
<td>XXIII</td>
<td>Extended voting rights to residents of the District of Columbia</td>
<td>1960</td>
<td>1961</td>
</tr>
<tr>
<td>XXIV</td>
<td>Extended voting rights to all classes by abolition of poll taxes</td>
<td>1962</td>
<td>1964</td>
</tr>
<tr>
<td>XXVI</td>
<td>Extended voting rights to citizens ages 18 and over</td>
<td>1971</td>
<td>1971</td>
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## Changing Elections

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<tr>
<td>XII</td>
<td>Provided a separate ballot for the vice president in the electoral college</td>
<td>1803</td>
<td>1804</td>
</tr>
<tr>
<td>XIV</td>
<td>Penalized states for depriving freed slaves of the right to vote</td>
<td>1866</td>
<td>1868</td>
</tr>
<tr>
<td>XVII</td>
<td>Provided for the direct election of senators</td>
<td>1912</td>
<td>1913</td>
</tr>
<tr>
<td>XX</td>
<td>Shortened the time between elections and inauguration of the new president and Congress</td>
<td>1932</td>
<td>1933</td>
</tr>
<tr>
<td>XXII</td>
<td>Limited the presidential term</td>
<td>1947</td>
<td>1951</td>
</tr>
<tr>
<td>XXV</td>
<td>Provided for presidential succession in case of disability</td>
<td>1965</td>
<td>1967</td>
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## Expanding and Limiting the Power of Government

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<tr>
<td>XI</td>
<td>Limited the jurisdiction of federal courts over suits involving the states</td>
<td>1794</td>
<td>1795</td>
</tr>
<tr>
<td>XIII</td>
<td>Eliminated slavery and the rights of states to allow property in the form of persons</td>
<td>1865*</td>
<td>1865</td>
</tr>
<tr>
<td>XIV</td>
<td>Established due process of law in state courts for all persons; later used to apply the entire Bill of Rights to the states</td>
<td>1866</td>
<td>1868</td>
</tr>
<tr>
<td>XVI</td>
<td>Established the national power to tax income</td>
<td>1909</td>
<td>1913</td>
</tr>
<tr>
<td>XXVII</td>
<td>Limited Congress’s power to raise its own salary</td>
<td>1789</td>
<td>1992</td>
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Clicker Question:
Lincoln, King, & Rule of Law

Should a law be followed if it is immoral or unjust?

A. Yes
B. No
Lincoln argues for the rule of law.

The perpetuation of our political institutions requires that citizens must not tolerate any violation of the law, no matter how small.

We should work to change unjust laws, but they must be observed while they are in force.
King, “Letter From a Birmingham Jail”

- King argues for civil disobedience in the face of unjust or immoral laws.
- Individuals have a moral duty to break an unjust law.
- Individuals must accept the consequences “openly and lovingly” in order to arouse the conscience of the community.
Clicker Question: Lincoln, King, & Rule of Law

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A. Yes  
B. No