

The Constitution

"I doubt . . . whether any other Convention we can obtain, may be able to make a better Constitution From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does"

—Ben Franklin on the proposed Constitution, 1787

Essential Question: How have theory, debate, and compromise influenced the United States' system of government that balances governmental power and individual rights?

The United States Constitution is the document that provides the guidelines for the national government. Drafted in Philadelphia in 1787 and officially ratified in 1788, the Constitution defines governing principles, national offices, functions, and limitations. It created the legislative, executive, and judicial branches; defined federalism and the relationship among the states; and provided for a method to alter, or amend, the document. In 1791, the states ratified the first ten amendments to the Constitution, known as the Bill of Rights. Seventeen amendments have been added since.

Because the Constitution is the blueprint for our government, knowing and understanding this document is essential to this course and to understanding American government. The full text of the Constitution is printed in the back of this book and available online at <http://constitutioncenter.org/interactive-constitution>. When reading about particular provisions or clauses, turn to it for reference. Keep good notes on key passages and their importance. These practices will help you master the content and overall structure of the document.

American Independence and Early National Government

The Constitution and the new government it defines did not come into being easily. It took a war with Great Britain, a governing experiment, and a three-year struggle to create a more perfect union.

In the 1770s, after a century of British rule in the American colonies, the colonists and Britain's King George III came to an impasse after Parliament passed a series of tax laws. Leaders from the 13 colonies challenged British authority. They were inspired by philosophers from the Enlightenment who had argued for natural,

God-given rights and for a **social contract** between a democratic government and the people. They argued that if a government violated the understood compact between the state and the governed, then the people could take that power back. After a successful military campaign, the leading American revolutionaries became the founding fathers of the new nation. After a failed attempt to govern themselves during the 1780s under the Articles of Confederation, a stronger framework—the Constitution—became necessary for the United States to transition from a loose collection of sovereign states into a united republic.

TIMELINE

- 1764 – Parliament passes Sugar Act
- 1765 – Parliament passes Stamp Act
- 1770 – Boston Massacre
- 1773 – Boston Tea Party
- 1774 – First Continental Congress
- 1775 – Battles of Lexington and Concord
- 1776 – Declaration of Independence
- 1781 – Articles of Confederation ratified
- 1783 – Treaty of Paris
- 1786 – Shays's Rebellion
- 1787 – Constitutional Convention
- 1789 – President Washington, Congress elected
- 1789 – Congress proposes Bill of Rights
- 1790 – Rhode Island, the 13th state, ratifies Constitution
- 1791 – Bill of Rights ratified



Source: Allyn Cox, *Architect of the Capitol*

The First Continental Congress



Source: archive.org

Shays's Rebellion



Source: Library of Congress
Constitution

The Road to Revolution

Britain's King George III and Parliament passed laws that restricted the colonists' freedoms and taxed them to help finance the Crown's empire. With plentiful land and resources, the North American colonies were among Britain's most financially successful properties in an otherwise financially challenging time. Decades of wars and imperial endeavors had ravaged the British treasury. The British empire controlled colonies throughout the world, and maintaining such a far-flung empire required revenue. The Sugar Act was Britain's first attempt at increasing revenue. Soon the Stamp Act, which taxed colonists who transacted legal documents, the Tea Act, and other acts followed.

The colonists organized to oppose the acts. Some colonists opposed the taxes on a practical, economic basis, but most outspoken American leaders took a principled position against the laws because Parliament created these without any colonial representation. No colonist expected the democratic representation Americans value today. At the time only white men with property could cast votes in English and in American elections, but colonists felt the Crown's complete disregard for any representation at all violated the Enlightenment philosophies they so revered.

"No taxation without representation!" demanded the colonists. The British government responded unapologetically and declared the colonists were "virtually represented." They reminded colonists that most citizens residing throughout the British Isles, about 90 percent, could not vote. Members of Parliament insisted they still considered the colonists' best interests.

Tensions increased as protesters refused to abide by the new laws and the British government doubled down to enforce them. Royal courts tried and convicted protesters unfairly. The British government violated the ideas of free speech, free assembly, and free press by exacting punishments when colonists spoke, gathered, or published in opposition. Colonial leaders attempted at first to negotiate a peaceful relationship through the Olive Branch Petition to King George, a symbolic act of peace in which they pledged loyalty but also made clear their grievances. The King rejected that petition, and the colonies mobilized for revolt.

Influence of Enlightenment Thought

The Sons of Liberty and other advocates for freedom drew on Enlightenment political theory. It had been developed when the principles of rationalism that had unlocked doors to the natural world during the Scientific Revolution were applied to the social world as well. Especially influential were the writings of English philosopher John Locke (1632–1704) and Swiss-born philosopher Jean-Jacques Rousseau (1712–1778).

John Locke and Natural Law Locke argued that **natural law** is the law of God and that this law is acknowledged through human sense and reason. He proposed that under natural law—in a state of nature—people were born free and equal. According to this law, Locke reasoned, "No one can be . . .

subjected to the political power of another, without his own consent.” Locke argued further that natural law not only entitled but obligated people to rebel when the rule of kings did not respect the consent of the governed.

Jean-Jacques Rousseau and the Social Contract Rousseau was much influenced by Locke. He spoke for those “intending their minds” away from an irrational and oppressive political order, away from a governmental theory that rested in divine right of kings and clergy to rule and misrule. The opening sentence of his influential treatise, *The Social Contract*, dramatically lays out a key human problem: “Man was born free, and he is everywhere in chains.” The social contract Rousseau describes is the agreement of free and equal people to abandon certain natural rights in order to find secure protections for society and to find freedom in a single body politic committed to the general good. He envisioned **popular sovereignty**—the people as the ultimate ruling authority—and a government of officials to carry out the laws.

French philosopher Montesquieu (1689–1755), like Rousseau, recognized both the sovereign and administrative aspects of governmental power. He argued for the separation of powers in the administrative government, comprised of the executive, legislative, and judicial branches.

Enlightenment thought was well known among English colonists in North America. According to historian Carl Becker, “Most Americans had absorbed Locke’s works as a kind of political gospel.” The American revolutionaries believed that men were entitled to “life, liberty, and property” and that these cannot be taken away except under laws created through the consent of the governed. These beliefs formed the bedrock of the political ideology known as **republicanism**. The lack of colonial representation in Parliament, taxation without consent, and subsequent infringements of liberty violated fundamental rights and the values of republicanism and would, in time, be remedied by an independent, limited, and representative government based on the ideas of natural rights, popular sovereignty, republicanism, and social contract.

Three Kinds of Representative Democracies

Representative democracies based on the values of republicanism can take at least three forms.

Participatory Democracy This form of democracy depends on direct participation of many, if not most, people in a society, not only in government but in public life as well. In a participatory democracy, people vote directly for laws and other matters that affect them instead of voting for people to represent their interests. The democracy in 5th-century Athens was participatory, though only adult male citizens could vote. More recently, a group of college students in the 1960s started a movement in participatory democracy. Protesting wars abroad and inequality at home, they formed Students for a Democratic Society. In 1962 some of the members met in Port Huron, Michigan. They modeled participatory decision-making as they collaboratively drafted their beliefs in the “Port Huron Statement.” This document calls for the direct involvement of ordinary citizens, especially through civil disobedience. One of the founders

of the organization and drafter of the statement, Tom Hayden, explained years later that “the concept arose . . . in response to the severe limitations of an undemocratic system that we saw as representing an oligarchy [a system in which a small number of people hold most of the power].”

In the 21st century, participants in the Occupy Wall Street movement, which spread to many locations in the United States partly through social media sharing, camped out in financial districts to protest wealth inequality, the corporate influence on government, and political corruption. Occupy Wall Street designed itself along the guidelines of participatory democracy, using a bottom-up rather than top-down approach to formalizing policy, encouraging each member to participate both in person and on social media. However, its participatory nature made decision-making difficult and slow and action agendas hard to develop.

A number of states use a form of participatory democracy when citizens who gather sufficient signatures place issues on the ballot for the people to decide. Twenty-six states allow some form of ballot measures. On Election Day 2016, some of the issues voters were deciding through ballot measures related to gun control, the death penalty, a minimum wage, and bilingual education. (See pages 487–488 for more on ballot measures.)

Pluralist Democracy In a **pluralist democracy**, nongovernmental groups organize to try to exert influence on political decision-making. *Interest groups*, as these groups are called, such as organized labor unions or gun advocates, are one of the most influential types of groups. They interact with government officials searching for consensus among competing interests. They raise and spend money in elections to ensure that people friendly to their ideas are elected. These groups send professional researchers and experts to testify at congressional committee hearings in hopes of shaping or stopping a bill. They monitor the government as it enforces existing law, and they buy advertisements and other media products to influence public opinion. (See Chapter 15 for more on interest groups.)

Pluralist theorists believe that the ideas and viewpoints in the United States are so scattered and so varied that no single view can control the shaping and administration of policy. We live in a world of so many policymakers putting into effect so many rules and procedures at the local, state, and federal levels that no single input shapes our body of law. We are a nation of immigrants, both ethnically and ideologically diverse, and the large variety of viewpoints results in public policy that is usually established and accepted by a consensus.

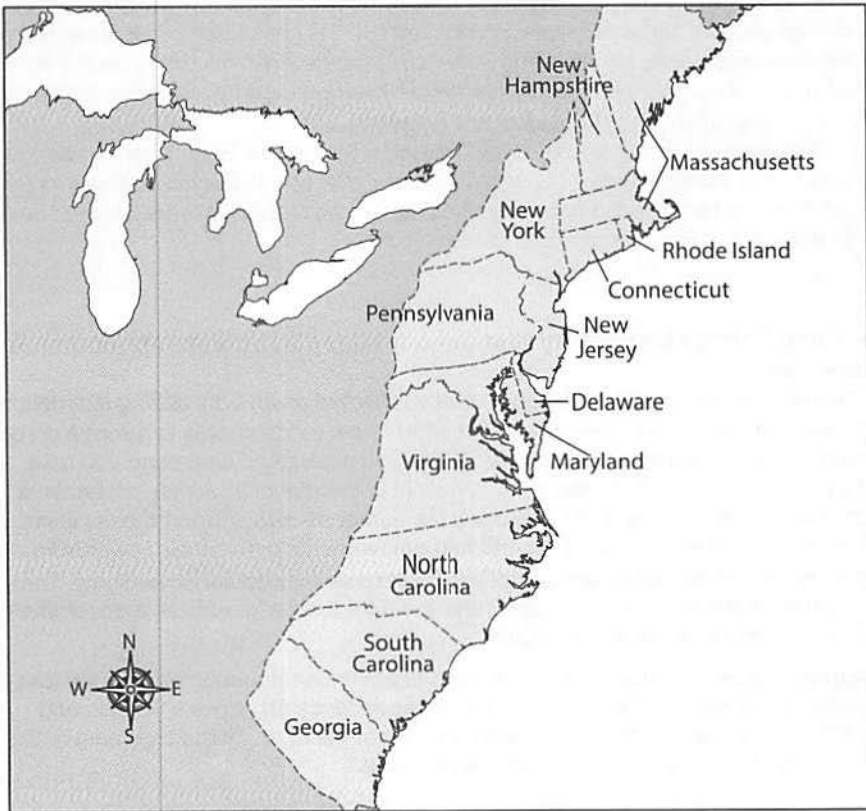
Elite Democracy In an **elite democracy**, elected representatives make decisions and act as trustees for the people who elected them. Elite democracy recognizes an inequity in the spread of power among the populace and that the elites—people with resources and influence—dominate. Dominating influence by the elites, a trait of the United States when it was founded, weakened somewhat in the Progressive Era (1890–1920) when the masses became more involved in politics. Yet in many ways, elite-dominated politics prevail today.


Individuals with the most time, education, money, and access to government will take more action than the less privileged, and because of their resources, they will be heard. People who serve in the leadership of a political party, whether on the local or national level, are usually of a higher socioeconomic level, better known, and better educated than the rank and file, the many members of a group who constitute the group's body.

Declaring Independence

Before Americans knew exactly what their representative democracy would look like, American-British tensions rose to new heights. By the summer of 1776, the Continental Congress commissioned a committee of five men—Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert Livingston—to draft an official statement to summarize the colonists' views. In that document, which became the **Declaration of Independence**, these men justified the break from Britain and proclaimed to the world the reasons for independence. The declaration, signed on July 4, 1776, created a moral and legal justification for the rebellion.

THE 13 ORIGINAL COLONIES





FOUNDATIONAL DOCUMENTS: DECLARATION OF INDEPENDENCE

The Declaration of Independence drew from Locke and other Enlightenment philosophers, upholding popular sovereignty. It explained how abuses by the too powerful British Crown violated individual rights, justified the colonists' separation from Britain, and defined the newly independent states' relationship. Following are key excerpts from the declaration.

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another . . . they should declare the causes which impel them to the separation. We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it

The history of the present King of Great Britain is a history of repeated injuries and usurpations He has refused his Assent to Laws, the most wholesome and necessary for the public good He has called together legislative bodies at places unusual, uncomfortable, and distant He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people

[For these reasons], these United Colonies are, and of Right ought to be Free and Independent States And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

Political Science Disciplinary Practices: Analyze the Declaration of Independence as Argument

The Declaration of Independence is widely regarded as an outstanding example of classic argument—a written or spoken effort to persuade people to adopt a certain point of view or take a certain action. When you analyze an argument, you take it apart to understand its elements. You identify the author's *claims*—statements asserted to be true—and the reasoning the author uses to support those claims. For example, the declaration asserts that governments derive their power from the consent of the governed, establishing the basis for popular sovereignty. The declaration also claims that people have the right to alter or abolish a government that is destructive to people's rights.

Apply: Explain how these claims relate to Enlightenment thought and republican ideals. Then read the full Declaration of Independence on pages 619–622, and answer the questions that follow it for an in-depth analysis of the argument in this founding document. You may also read it online.



Source: *Library of Congress*
The Declaration Committee
(left to right: Thomas
Jefferson, Roger Sherman,
Benjamin Franklin, Robert R.
Livingston, and John Adams)

During the war, Americans instituted the Continental Congress to govern the American states collectively, and they began to formalize their ideas for a permanent government. The war raged on until General George Washington's army defeated the British at Yorktown, Virginia, in 1781. An official peace was negotiated in 1783 with the Treaty of Paris.

The Articles of Confederation

As soon as the states declared independence, they realized a more formal relationship among them could only assist their cause. The Continental Congress created a committee of 13 men to draft the **Articles of Confederation**, a series of statements that defined the initial national government and redefined the former colonies as states. Though the Articles of Confederation were not officially ratified by the states until 1781, the Continental Congress legislated during wartime with a wide array of powers to adopt commercial codes, establish and maintain an army, define crimes against the United States, and negotiate foreign affairs abroad. This document defined "the firm league of friendship" that existed among the states, which had delegated a few powers to the national government.

How to apportion states' representation in the newly designed Confederation Congress was beset with controversy. Some leaders recognized the merits of giving greater representation to the more populated states, something the Virginia delegation advocated. Leaders from smaller states opposed representation based on population. After a furious debate, the authors of the Articles created an equal representation system—each state received one vote in the Congress.

The Confederation Congress continued to meet in New York. States appointed delegations of up to seven men that voted as a unit. National legislation required the votes of at least nine states to pass. A unanimous vote was required to alter or amend the Articles of Confederation. The Articles entitled the Congress to engage in international diplomacy, declare war, and acquire territory. They provided protection of religion and speech. They provided for **extradition**—that is, states were expected to extradite, or return, fugitives to states where they had committed crimes and runaway slaves to states they had fled. The document encouraged a free flow of commerce among the states. It required that states provide a public, fair government and that Congress could sit as a court in disputes between states.



FOUNDATIONAL DOCUMENTS: *THE ARTICLES OF CONFEDERATION*

The Articles of Confederation provide that “each state retains its sovereignty, freedom, and independence.” This provision was essential, since the states were wary of a centralized power that might wield the same influence over them that the British government wielded. Following are some of the key provisions of the Articles of Confederation.

Each state retains its sovereignty, freedom, and independence, and every Power, [not] . . . expressly delegated to the United States, in Congress assembled. . . .

In determining questions in the United States, in Congress assembled, each State shall have one vote. . . .

The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war. . . .

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State. . . .

Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States.

Political Science Disciplinary Practices: Relate the Articles of Confederation to Political Principles and Institutions

Apply: Review the three types of democracies described on pages 5–7. Based on the provisions above, identify the type of democracy that the Articles of Confederation created. Describe two provisions of the Articles of Confederation that demonstrate that type of democracy.

Then read the full Articles of Confederation on pages 622–628, and answer the questions that follow it. You may also read it online.

An Ineffective Confederation and a Call for New Government

The Articles of Confederation provided a weak system for the new United States and prevented leaders from making much domestic progress. The system had rendered the Confederation Congress ineffective. In fact, the stagnation and a degree of anarchy threatened the health of the nation. The country faced a high war debt, and foreign creditors lost faith in this new nation. States quarreled over boundary disputes. Interstate trade was chaotic.

The chart on the next page summarizes some of the weaknesses.

WEAKNESSES IN THE ARTICLES OF CONFEDERATION

- The requirements that at least nine states must agree in order to enact national law and that all states must agree unanimously in order to amend the system of government proved daunting.
- The Congress could not tax the people directly.
- The national government could not raise or maintain an army.
- There was no national court system or national currency.
- The Congress encouraged but could not regulate commerce among the states.

Shays's Rebellion and Response

The lack of a centralized military power became a serious problem when a regional rebellion broke out. In western Massachusetts in 1786, a large group of impoverished farmers, including many Revolutionary War veterans, lost their farms to mortgage foreclosures and failure to pay taxes. Daniel Shays, a former captain in the Continental army, led the group, who demanded that the government ease financial pressures by printing more money, lightening taxes, and suspending mortgages. They grabbed their muskets and challenged the Massachusetts government. Massachusetts raised a small army with donations from the wealthy citizenry in an attempt to put down the uprising, but without a centralized military power, the Confederation could not muster a national army. Several skirmishes occurred, and three of Shays's men were killed. The movement soon collapsed, but Shays's Rebellion, along with irregularities in commerce, made leaders realize the need to revise government. A small group convened in Annapolis, Maryland, to discuss the concerns. This convention addressed trade and the untapped economic potential of the new United States. Little was accomplished, however, except to secure a recommendation for Congress to call a more comprehensive convention.

Congress scheduled the much larger convention for May of 1787 in Philadelphia. By then few Americans viewed the Articles of Confederation as sufficient. John Adams, who was serving in Congress, argued that a man's "country" was still his state and, for his Massachusetts delegation, the Congress was "our embassy." There was little sense of national unity.

Debate and Compromise at the Constitutional Convention

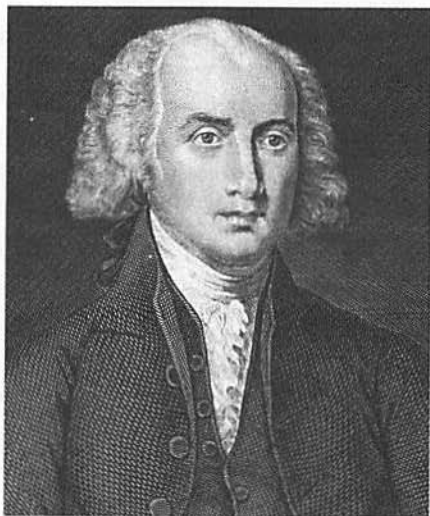
The Confederation Congress called the convention in Philadelphia "for the sole and express purpose of revising the Articles of Confederation." By the time the process was over, critics pointed to the extralegal manner—outside the law—in which the Articles were instead completely replaced by a new system of government. In May 1787, delegates from neighboring states began to arrive at Independence Hall (the Pennsylvania State House) to get an early start on improving national governance. Among the first to arrive was thirty-six-year-old Virginia lawyer **James Madison**, and he was well prepared for the deliberations. His friend Thomas Jefferson was serving in Paris as the U.S. ambassador to France, and he sent Madison books from Europe on ancient

governments, both successful and failed examples. Though Madison was not the most vocal at the convention, he kept detailed records of the Convention, including debate speeches and the votes of the delegates present. His influence in creating the plan for the new government and his stalwart support of it during the ratification process (see pages 21–25) earned him the nickname Father of the Constitution.

Other noteworthy delegates included George Washington, who served as a cooling force during heated debate. In fact, Washington's participation alone elevated the validity of the meeting and the endeavor to enhance government. Another influential founder, Alexander Hamilton, Washington's aide-de-camp during the war, proved annoying at the meetings for his long-winded speeches. Benjamin Franklin, the elder statesman at age eighty-one, offered his experience as one who had participated in the drafting of the Declaration of Independence, the Articles of Confederation themselves, and the Treaty of Paris with Britain. He also held distinction in discovery, invention, and civic endeavors.

In addition to these leading statesmen, others in attendance included representatives with significant experience in public affairs, some of whom would become future Supreme Court justices, cabinet members, and notable congressmen. Nearly three-fourths of the delegates had served in the Continental Congress. Several had helped draft their state constitutions. Eight had also signed the Declaration of Independence. Twenty-one had fought in the Revolutionary War.

As soon as the quorum (enough present to conduct business) of seven states arrived, the convention established some basic ground rules. The delegates unanimously elected General Washington, the most revered man in



Source: *Thinkstock*

James Madison, the Father of the Constitution

the room, as president of the convention. All delegates had an opportunity to speak uninterrupted but then had to wait for any other delegates responding before speaking again. States would vote as units, and a simple majority would carry each state's vote. Perhaps the most controversial rule was that those attending the convention had to keep everything secret during the proceedings until the entire plan was ready to present to the public. The controversy and intense viewpoints had the potential to incite exaggerated rumors. Opponents of the convention would feed on any information, or misinformation, to dismantle this plan. To protect convention proceedings, and despite the heat and the annoyance of flies, the delegates kept the windows closed and the proceedings quiet for the duration of the convention.

The Virginia Plan Numerous plans were presented to the convention to improve the workings of the national government. Virginia's governor Edmund Randolph introduced what was later dubbed the **Virginia Plan**. Written largely by Madison, the plan created a three-branch system of government defined by 15 resolves. It called for a national executive to administer the business of state, a judiciary, and a **bicameral**, or two-house, legislature. The people would elect a lower house that would then elect members of an upper house. This plan became the blueprint for the Constitution. The Virginia Plan also made the national government supreme over the states and offered the ideas for a multitiered court system and the **separation of powers**, defining the distinct responsibilities and limits of each branch to keep any one branch from becoming too powerful. Delegates discussed and intensely debated the plan, as the smaller states began to fear the overwhelming representation larger states would have.

The New Jersey Plan William Paterson of New Jersey introduced a counterproposal for government. The **New Jersey Plan**, as it came to be known, differed from Randolph's proposal in important ways. It assured that states would retain sovereignty; it proposed that the national legislature would have only limited and defined powers; and it included no provision for national courts. Two other distinct differences between Paterson's plan and the Virginia Plan lay in how representation would be apportioned and whether or not the new government would be "federal," a collection of sovereign states gathered to govern, or "national," a unified authority with absolute sovereignty over the entire nation as well as the individual states.

The Great Compromise Representation had been the frustration of the Americans since they began seeking independence. The more populated states believed they deserved a stronger voice in making national policy decisions. The smaller states sought to retain an equal footing. The matter was referred to a committee made up of one delegate from each of the states represented at the convention, a committee that became known as the **Grand Committee**. George Mason, William Paterson, and Benjamin Franklin were among those on the Grand Committee. When Roger Sherman of Connecticut joined the

committee, taking the place of Oliver Ellsworth who became ill, he took the lead in forging a compromise that became known as the **Great Compromise** (or the Connecticut Compromise). Sherman's proposal created a two-house Congress composed of a **House of Representatives** and a **Senate**. His plan satisfied both those wanting population as the criteria for awarding seats in a legislature, because House seats would be awarded based on population, and those wanting equal representation, because the Senate would receive two senators from each state, regardless of the state's size.

Slavery and the Three-Fifths Compromise Another compromise would be necessary before the question of representation was settled, however. Delegates from nonslave states questioned how slaves would be counted in determining representation. Since slaves did not have the right to vote, those who were able to vote in slave states would have more sway than voters in nonslave states if slaves were counted in the population. Roger Sherman once more put forward a compromise, this time with Pennsylvania delegate James Wilson. They introduced and the convention accepted the **Three-Fifths Compromise**: the northern and southern delegates agreed to count only three of every five slaves to determine representation in the House.

SUMMARY OF MAJOR COMPROMISES	
Virginia Plan	Three branches, bicameral legislature, supremacy of national government, separation of powers
New Jersey Plan	Sovereignty of states, limited and defined powers of national legislature
Great Compromise	Members of the House of Representatives apportioned by population; each state given two senators
Three-Fifths Compromise and Importation of Slaves	Only three of every five slaves would be counted for the purpose of representation in the House of Representatives Congress could not stop the importation of slaves for 20 years after ratification
Electoral College	States decide how their electors are chosen, with each state having the same number of electors as they had representatives in Congress

Two other issues regarding slavery were also debated then addressed in the Constitution, although the words “slave” and “slavery” do not appear in the document. Delegates questioned whether the states or the federal government should have the power to control or regulate slavery. They also debated how to handle slave insurrection, or runaways. Delegates resolved the first matter by prohibiting Congress from stopping the international slave trade for twenty years after ratification of the Constitution. They resolved the second debate with an extradition clause that addressed how states should handle runaway slaves.

Other compromises would be necessary during the summer-long convention in Philadelphia. For example, delegates debated whether or not the United States needed a president or chief executive and how such an officer should be elected. Some argued that the president should be elected by members of Congress. Others argued for the election of the president to be done by the state governors or state legislatures, and some thought the people themselves should directly elect the president. The **Electoral College** was the compromise solution. Under this plan, states could decide how their electors would be chosen. Each state would have the same number of electors that they had representatives in Congress, and the people would vote for the electors. Having electors rather than the popular vote choose the president represents one way in which the elite model of democracy helps shape government today.

Still other compromises were needed to resolve what powers the federal government would have and what powers the states would retain. This debate went back to the debates when the Articles of Confederation were drafted. The delegates who desired stronger states’ rights and feared a national centralization of power wanted a limited list of powers granted to the national government. They wanted a confederal system—a loose collection of sovereign states gathered for a common purpose—the very relationship defined under the Articles of Confederation. A national government, however, would make the national lawmaking body supreme and create a stronger union instead of a loose collection of states. Delegates also considered what types of laws the Congress could make and what citizen rights to protect. What resulted from “a bundle of compromises” was the U.S. Constitution.

The table on the next page shows the relationship of key provisions of the Articles of Confederation to the debate over granting the federal government greater power formerly reserved to the states; it also shows how the debate was resolved in the new Constitution.

ARTICLES OF CONFEDERATION	DEBATE ABOUT STATE POWERS	RESOLUTION IN CONSTITUTION
<p>"Each state retains its sovereignty, freedom, and independence, and every Power, [not] . . . expressly delegated to the United States, in Congress assembled."</p>	<p>After their struggle with the British government, members of the Confederation Congress were reluctant to turn over any but the most essential powers to the national government.</p>	<p>States retain sovereignty; the powers of national legislature are limited and defined. (New Jersey Plan)</p>
<p>"In determining questions in the United States, in Congress assembled, each State shall have one vote."</p>	<p>Leaders of populous states wanted representation based on population. Leaders from smaller states did not. One vote per state was a compromise. Representatives from more populous states would have to vote unanimously as one vote.</p>	<p>Members of the House of Representatives are apportioned by population; each state is given two senators. (The Great Compromise)</p>
<p>"Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State."</p>	<p>The states were unsure how their records, laws, and judgments would be regarded in other states and how they would regard those of other states.</p>	<p>Article IV's "full faith and credit" clause guarantees that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."</p>
<p>"Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States."</p>	<p>To resolve differences among states, leaders at the Confederation Congress determined the federal government would have the final word.</p>	<p>Article VI's "supremacy clause" establishes the Constitution and the laws of the United States as the "supreme law of the land."</p>

The Proposed Constitutional Structure

On September 17, 1787, 39 delegates put their signatures to the Constitution. Once the plan for national government was complete, the proposed Constitution contained seven articles with a host of provisions. The document opens with the **Preamble**, a sort of mission statement, that begins with “We the people” and outlines the purposes of the new government, such as “establishing justice” and providing for a “common defense.”


BIG IDEA: The plan for government included three separate branches—legislative, executive, and judicial—each having unique powers and each able to block the other from gaining too much power. It included an executive president to serve as commander in chief and a Congress that could tax, borrow, and regulate commerce. It also called for a Supreme Court and a plan to create lower courts and the Electoral College system to elect the president.

Policy: How Government Business Gets Done The plan the framers created included a complex and competitive policymaking process to assure that the people’s will would be well represented and freedom would be maintained. *Policy* means “the laws the government creates and the manner in which they are carried out.” Under the framers’ plan, Congress, as the most representative branch, writes and passes most laws. Those laws constitute the chief policies of the United States. The president and his or her administrative agencies, however, carry out and enforce those laws. There might be leeway or room for interpretation, and different presidents will carry out the law with different methods.

For example, the policy on marijuana held by the administration of President Barack Obama (2009–2017) differed from that of his predecessor, President George W. Bush (2001–2009). Bush’s administration raided a California cannabis dispensary, even after medical marijuana had been legalized in the state. That raid resulted in a conviction, later upheld by the Supreme Court. A few years later, President Obama’s attorney general signaled an easing of federal enforcement in states where the people had voted to legalize marijuana. The administration of President Donald Trump (2017–) supported the use of medical marijuana but in early 2018 ended a policy that provided legal shelter for businesses selling marijuana for recreational use in states where recreational marijuana had been legalized. (See pages 393–396.)

In another example, the way in which a president and the State Department interact with other countries and the treaties the United States enters help define foreign policy. Indeed, some of the agencies in the executive branch, such as the Food and Drug Administration or the Environmental Protection Agency, have authority to create and shape industry regulations. And of course when the Supreme Court interprets law and sets new precedents, it redefines what government can or cannot do, making law anew and shaping policy.

In this book, policy and the policymaking process will be explained in both the main text and in the Policy Matters features, where examples of policy set by the institutions of government will be explored.



FOUNDATIONAL DOCUMENTS: THE CONSTITUTION OF THE UNITED STATES

The Constitution, written in the hot summer of 1787, emerged from the debate about the weak Articles of Confederation and created the legislative, executive, and judicial branches defined in the first three articles, a separation of powers among the branches, and the qualifications and terms for offices. It also included articles regarding the relations among the states, the amendment process, national supremacy, and the procedure for ratification. Below, key excerpts from each article are followed by explanatory text.

Article I

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives . . . Each House may determine the Rules of its Proceedings . . .

Article I defines the basic setup and operation of Congress. House members are elected by the people every two years. In contrast, state legislatures would elect senators, who were then beholden to state governments (this provision was later changed by the Seventeenth Amendment). The House became the more representative, or more democratic, institution.

Article I has ten sections and is the longest article—about half of the entire Constitution—revealing the framers' concern for representative lawmaking and their reverence for the legislative branch. Sections 8, 9, and 10 detail the powers and limitations of Congress and the powers of the states. The framers identified a limited list of **enumerated powers**, named in Section 8, which include the powers to tax, borrow money, raise an army, create a postal system, address piracy on the seas, and define the immigration and naturalization process and a few others. The **commerce clause** empowers the Congress to “regulate commerce with other nations, and among the several states.”

The final clause in Section 8 is the **necessary and proper clause**, or **elastic clause**. This provision states, “The Congress shall have power . . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers . . .” Since this power goes beyond the explicitly enumerated powers, the elastic clause is said to grant *implicit* powers. After a fierce debate, the framers included this to assure the Congress some flexibility in legislating.

Section 9 lists what Congress *cannot* do. For example, the federal legislature cannot tax exported goods. Congress cannot take away the right of habeas corpus (the right to be formally charged after an arrest), cannot pass bills of attainder (legislative acts declaring one guilty of a crime) or

ex post facto laws (making an act illegal after one has committed it). Nor can Congress grant any title of nobility. Section 10 lists powers the states are denied. States cannot, for example, enter into treaties with other countries, coin money, or tax exports.

Article II

The President shall be Commander in Chief of the Army and Navy He shall from time to time give to the Congress Information of the State of the Union . . . he shall take Care that the Laws be faithfully executed

How to create and define the office of president in Article II stirred one of the more heated discussions in Philadelphia. The rebellion against a monarch made the populace concerned about one-person rule. However, the lack of leadership under the Articles of Confederation and the need for an executive to take care of the nation's business made the creation of the presidency inevitable. Article II lays out the requirements to assume this office and the executive's role. As commander in chief, the president oversees and manages the U.S. military. As head of state, the president receives foreign ambassadors and sends U.S. ambassadors abroad.

Article III

The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

The need for national courts led to Article III, which defines the judiciary. The framers mentioned only one actual court, the Supreme Court, but they empowered Congress to create inferior courts. The federal courts have jurisdiction over cases involving federal law, disputes between states, and concerns that involve government officials. The president appoints Supreme Court justices and other federal judges, with approval of the Senate. These judges serve "during good behavior," which in practice means for life.

Article IV

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State A Person charged in any . . . Crime, who shall flee from Justice, and be found in another State, shall . . . be delivered up, to be removed to the State having Jurisdiction of the Crime.

Article IV defines relations among the states. It includes the **full faith and credit clause** that requires states to be open about their laws and encourages states to respect one another's laws. It also requires that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." In other words, on most issues states cannot play favorites with their own citizens or exclude outsiders from basic privileges and immunities. For example, if a Nebraska police officer pulls over an Oklahoma driver, the Nebraska officer will honor the Oklahoma driver's license. If a California man is accused of a crime in Alabama, he'll get the same protections and immunities as an accused Alabama defendant. Article IV also guarantees that each state shall have a republican form of government, and it addresses the extradition process for fugitives who have committed state crimes.

Article V

[W]henever two thirds of both Houses shall deem it necessary, [they] shall propose Amendments to this Constitution . . . which . . . shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States

Delegates in Philadelphia realized the Constitution would prove imperfect and that it would occasionally require some changes. That is why Article V defines the amendment process. There are two different ways to propose an amendment, and two different ways to ratify amendments. Congress can propose an amendment with a two-thirds vote in each house. Two-thirds of state legislatures can also vote to call a national convention to propose an amendment. To ratify the proposal, three-fourths of the state legislatures must agree to it, or three-fourths of state conventions. All successful amendments have been passed by Congress, and all but one, the Twenty-First Amendment to repeal prohibition of alcohol, were ratified by state legislatures. The framers included the alternative method to propose or ratify in case sitting governments refused the people's wishes.

Article VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land

To avoid the lack of unification experienced under the Articles of Confederation and to unite the nation under stronger national policy, Article VI was included to establish **national supremacy**. The **supremacy clause** quoted above makes certain that all states must adhere to the Constitution. Article VI also states that no religious test will be required for a person to take a government office.

Article VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution

In this article, the framers outlined the process by which this new plan would be put into place. Rather than relying on existing state legislatures that might refrain from giving up power or delay the ratification process, Article VII declares the Constitution would go into effect when the ninth state convention approved it.

THE ORIGINAL U.S. CONSTITUTION	
Article I	The Legislative Branch
Article II	The Executive Branch
Article III	The Judiciary
Article IV	Relations Among States
Article V	Amendment Process
Article VI	National Supremacy
Article VII	Ratification Process

Political Science Reasoning Processes: Compare the Articles of Confederation with the U.S. Constitution

Often, comparing documents aids understanding the political concepts of each of them. When you compare, you look for similarities and differences.

Apply: Based on the information on the previous pages, write an essay in which you compare political principles as you identify and explain similarities and differences between the Articles of Confederation and the Constitution. To help you gather your thoughts, you may want to make a chart for the Articles of Confederation like the one above for the Constitution. Then read the full text of the Constitution on pages 628–644, and answer the questions within it. You may also read the Constitution online.

Ratification

When the framers finished the final draft of the Constitution, not all were present in Independence Hall. As most remaining men attached their names to the document, three stood by and refused to sign it. Edmund Randolph was one. He had watched as the convention altered the Virginia Plan he introduced in May. George Mason, the chief author of Virginia's Declaration of Rights, was another. He refused to sign because the Constitution had no federal bill of rights. The Constitution's lack of a detailed list of rights became the national debate over the following year.

The FEDERALIST, No. 10.

To the People of the State of New-York.

AMONG the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail therefore to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice and confusion introduced into the public councils, have in truth been the mortal diseases under which popular governments have every where perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American Constitution on the popular

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States: A religious sect, may degenerate into a political faction in a part of the confederacy; but the variety of sects dispersed over the entire face of it, must secure the national Councils against any danger from that source: A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union, than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican Government. And according to the degree of pleasure and pride, we feel in being Republicans, ought to be our zeal in cherishing the Spirit and supporting the character of Federalists.

PUBLIUS.

The Federalist Papers were published in three New York newspapers from 1787 to 1788.

Finally, Massachusetts delegate Elbridge Gerry did not agree to the new plan. The delegates departed Philadelphia wondering what the future held and if their months of work, debate, and detailed plans were for naught. Leaders and citizens fell into two camps: those for and those against the new plan.

James Madison headed for New York to serve in the Confederation Congress and immediately began working toward ratification, which looked promising early on. During December 1787, three states quickly voted to ratify. Two more states joined in January 1788. Of the first five state ratifying conventions, three approved the Constitution unanimously. The other two did so with strong majorities. Nonetheless, the future of the republic was uncertain. Massachusetts proved reluctant, and leading opponents of the Constitution criticized the plan in newspapers and in circulating pamphlets.

Support for the Constitution With the insistence of fellow pro-Constitution Virginians, Madison named himself a candidate for his state's ratifying convention to be held in Richmond. From New York, he began writing a series of essays for publication to argue in favor of this new plan. He soon joined fellow delegate Alexander Hamilton and New York governor John Jay in writing a series of essays that explained the framers' intentions. These authors, writing under the pen name Publius, published *The Federalist* to assure citizens that they had created a federal system and that states had not lost their importance (today these essays are called the **Federalist Papers**). The so-called Federalists also wanted to allay fears that their plan would subject people in the states to abuses by this new national government.

Of the 85 essays that Madison, Hamilton, and Jay penned, one of the most cited is *Federalist No. 10* because it addresses the concern over special interests. *Federalist No. 10* speaks of the “mischiefs of faction,” or interest groups in government, whether a majority or a minority, “united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens” Publius, the “voice” of the Federalist authors, stated that men of like mind might begin to dominate government for their own ends rather than for the public good. He explained how no plan for government can eliminate factions entirely but noted that the framers had created a system to stall and frustrate factions and thus limit their effects. They created not a pure, participatory democracy at the national level but rather a representative and pluralist republic that had to consider the interests of varied people from across many miles of land. America even at its birth was one of the most expansive countries in the world, and varied factions arriving from New England and from Georgia would neutralize one another. Following are some key quotes from *Federalist No. 10*.

A zeal for different opinions concerning religion, concerning government, and many other points, . . . [and] an attachment to different leaders ambitiously contending for pre-eminence and power . . . have . . . divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good

The inference to which we are brought is, that the causes of faction cannot be removed, and that relief is only to be sought in the means of controlling its effects. . . .

Hence, it clearly appears, that the same advantage a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic, and is enjoyed by the Union over the States composing it.

Political Science Disciplinary Practices: Interpret *Federalist No. 10*

When you *interpret* a source, you explain how the *implications* within the text—conclusions conveyed even if they are not stated directly—may affect political principles (state vs. federal power, for example), processes (the best way to elect a president, for example), behaviors, and outcomes. (Implications are the mirror image of inferences. Implications are conveyed; inferences are received.) Further, you explain how the source you are interpreting relates to those same concepts—political principles, processes, behaviors, and outcomes.

Apply: Publius actually identifies an inference in the second quote above. Rewrite that inference in your own words, and explain how Publius uses it to advance the cause of adopting a republican government. Then read the full text of *Federalist No. 10* on pages 644–649, and answer the questions that follow it. You may also read *Federalist No. 10* online.

Opposition to the Constitution Opponents of the Constitution, including Virginia's Patrick Henry and George Mason, desired a federal government more like the one under the Articles. Madison and his colleagues' attaching the "Federalist" name to their cause preempted opponents from claiming the label. Opponents then became known as **Anti-Federalists** for lack of a better term. The irony was that the Anti-Federalists argued for a truly federal government as defined, while the Federalists advocated a national system with some loss of state sovereignty. The Anti-Federalist concerns came from the recent experience with an autocratic ruling country. Some feared a single executive might replicate a monarchical king, potentially limiting state and individual rights. Congress's power to tax, to control a standing army, and to do anything else it felt "necessary and proper" made the Anti-Federalists wary. The thick veil of secrecy in which designing men had conspired to draft the document made Anti-Federalists and much of the general public suspicious.



FOUNDATIONAL DOCUMENTS: *BRUTUS* No. 1

The Anti-Federalists had their spokespersons in the newspapers as well. The *New York Journal* and *Weekly Register* published a series of 16 articles written under the pseudonym Brutus and appearing at the same time as the Federalist Papers.

"Brutus" writes for the purpose of dissuading readers from supporting the new Constitution. He argues that the necessary and proper clause and the supremacy clause give the federal government unlimited power, risking personal liberty. He argues that in a free republic, people have confidence in their rulers because they know them, and the rulers are accountable to the people who have the power to displace them. He posits that "in a republic of the extent of this continent, the people . . . would be acquainted with very few of their rulers: [they] would know little of their proceedings, and it would be extremely difficult to change them." He also specifically counters Publius's view that a large country and government prevent the rise of controlling factions.

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these increasing in such rapid progression as that of the whole United States. . . .

In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government.

Political Science Disciplinary Practices and Reasoning

Processes: Compare *Brutus No. 1* and *Federalist No. 10*

Both Brutus and Publius convey the conviction that factions and constant clashing are givens in a large country, yet the two sides come to nearly opposite conclusions.

Apply: Identify and explain the similarities and differences in the political beliefs, ideologies, and principles of Brutus and Publius based on the implications conveyed in their writing. Also, explain how each position may have affected the ratification of the Constitution.

Then read the full text of *Brutus No. 1* on pages 649–656, and answer the questions that follow it. You may also read *Brutus No. 1* online.

Newspapers published the text of the Constitution and essays for and against it, such as the Federalist Papers and the articles by Brutus, giving citizens of the newly independent nation the opportunity to read and digest views for and against the ratification of the Constitution. Some state conventions had remarkably close votes, but the Federalists won the day, with New Hampshire becoming the ninth state to ratify. Yet most agreed that without New York and Virginia, the new republic might stumble. Both of these states did ratify, but only after contentious debate and close votes and after nine states had already ratified. The government under the new Constitution was underway by 1789—Congress began meeting and President Washington took office. North Carolina and then Rhode Island ratified, resulting in ratification by all 13 states.

BY THE NUMBERS: RATIFYING THE CONSTITUTION

State	Date	For	Against
Delaware	December 1787	30	0
Pennsylvania	December 1787	46	23
New Jersey	December 1787	38	0
Georgia	January 1788	26	0
Connecticut	January 1788	128	40
Massachusetts	February 1788	187	168
Maryland	April 1788	63	11
South Carolina	May 1788	149	73
New Hampshire	June 1788	57	47
Virginia	June 1788	89	79
New York	July 1788	30	27
North Carolina	November 1789	194	77
Rhode Island	May 1790	34	32

What do the numbers show? Which states ratified early, and which states took longer? Which states ratified the Constitution by slim margins? Which were unanimous? Which state's ratification put the Constitution into effect?

A Bill of Rights

George Mason's concern that the original Constitution had no bill of rights disturbed many others as well. Those who fought for independence argued that a bill of rights was necessary to secure the liberties earned through the revolution. The document framed in Philadelphia lacked a guarantee of free speech in Congress. There were no protections against aggressive prosecution and no promise against cruel and unusual punishments. The Constitution did, however, include a few basic rights.

RIGHTS IN THE ORIGINAL CONSTITUTION

- No religious tests to hold federal office
- Right to jury trials in criminal cases
- Neither Congress nor the states can pass a bill of attainder
- Neither Congress nor the states can pass ex post facto laws
- Congress cannot suspend habeas corpus rights except in wartime

The Anti-Federalists and some pro-Constitution leaders believed a list of rights was needed to complete the Philadelphia mission. There was opposition, however. One leading opponent was James Madison. He called bills of rights "parchment barriers," mere paper blocks to injustices and tyranny that could prevail if the government itself did not have provisions to prevent such tyranny. He offered as examples minorities who had suffered at the will of majorities in states that did, in fact, have bills of rights. He also believed that by listing all the rights the federal government could not take away, a right could be inadvertently overlooked and the new federal government *could* later take it away. He believed the Constitution never entitled the new federal government to take away any rights in the first place, so why was it necessary to list those that could not be taken away in the future?

The debate for or against adding a bill of rights overlapped the series of ratifying conventions that occurred throughout 1787–1790. With the efforts of the Federalists, as well as assurances that amendments protecting personal rights would be added, the large, later states ratified and joined the Union. Additionally, as the new Congress began meeting in 1789, delegates petitioned for these rights. Madison and the Congress compiled the many concerns into the amendments that became the **Bill of Rights**. The Bill of Rights was fully ratified by 1791.

SELECTED RIGHTS IN THE BILL OF RIGHTS	
Amendment I	Freedoms of religion, speech, press, assembly, and protest
Amendment II	Right to bear arms
Amendment III	No quartering of troops
Amendment IV	No unreasonable searches or seizures
Amendment V	Indictment, no double jeopardy, protection against self-incrimination, due process
Amendment VI	Speedy, public trial by jury of peers; cross-examination; right to defense counsel
Amendment VII	Lawsuits and juries
Amendment VIII	No cruel or unusual punishments, no excessive fines
Amendment IX	Listing rights in the Constitution doesn't deny others
Amendment X	Delegated and reserved powers

The Bill of Rights includes many essential rights, most of which were violated under the oppressive British regime. The First Amendment declares freedoms of religion, speech, press, and peaceable assembly and the right to petition the government. Congress and the people put a high priority on the right to express political ideas, even if unpopular. (For much more on the First Amendment, see Chapter 7.) Other amendments protect private property, due process, and fair trials and prevent cruel and unusual punishments. The Tenth Amendment prevents the federal government from taking any powers that are reserved to the states. The text of the Bill of Rights begins on page 637.



POLICY MATTERS: *INDIVIDUAL RIGHTS AND SEPTEMBER 11*

Like states' rights, the individual rights guaranteed by the Bill of Rights have sometimes seemed in conflict with federal law. Knowing where individual rights end and governmental authority begins has been the subject of many legal cases and will be covered in depth in Unit 3. One vivid example here—surveillance resulting from the federal government's response to the 9/11/2001 terrorist attacks that killed nearly 3,000 Americans and brought down the towering World Trade Center—will illuminate a key constitutional issue about democracy and governmental power.

BIG IDEA Government surveillance following 9/11 and the responses to it show how multiple political processes, actors, and institutions create solutions to address the concerns of citizens.

Not long after al-Qaeda terrorists hijacked four U.S. commercial aircraft to fly them into selected targets in New York and Washington, President George W. Bush addressed a joint session of Congress, stating, "Whether we bring our enemies to justice or bring justice to our enemies, justice will be done." Faced with an adversary that generally operated

underground and not under the flag of any sovereign nation, the United States modified its laws and defense operations to create a series of federal policies to eradicate threats. These policies fueled an ongoing debate about proper recognition of the Bill of Rights.

USA PATRIOT Act Administration officials began to deliberate about how the United States might locate the perpetrators of the September 11 attacks and, further, how to prevent future attacks. By late October 2001, the Congress passed the **USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism)**. The law covered intelligence gathering and sharing by executive branch agencies, points of criminal procedure, and border protection. It allowed government agencies to share information about significant suspects, and it widened authority on tapping suspects' phones. Government can now share grand jury testimony and proceedings, detain illegal immigrants for longer periods, and monitor email communications. The new bipartisan law passed with strong majorities in both houses.

Soon after its passage, however, people began to question the law's constitutionality and its threat to civil liberties, especially the rights protected by the Fourth Amendment. Muslim communities were especially affected, but every American experienced a loss of some degree of privacy. Many communities and states passed resolutions opposing sections of the Act, but supporters argued that the ability to tap phones and seize information was critical to the prevention of future terrorist attacks.

Until 2013, when Edward Snowden leaked a document that proved the government was engaged in widespread collection of information, many Americans were unaware of the extent of the government's reach. Protests against what were believed to be incursions into rights guaranteed in the Bill of Rights kept the practice in the spotlight. In 2015, after evidence showed that the bulk call record collection was not necessary to prevent terrorist attacks, Congress passed the USA Freedom Act, which upheld certain portions of the USA PATRIOT Act but phased out bulk collection of phone and Internet data and set limits for its collection in certain circumstances.

You will read more about individual liberties in Unit 3. With the Bill of Rights in the Constitution, these liberties are as much a part of the nation's power structure as the federal and state governments and, like issues related to state and federal power, will no doubt continue to be matters for debate.

Constitutional Principles

The framers included several governing principles. They ensured a level of democracy by mandating elections for members of Congress and the president. Yet instead of creating a democracy, the Constitution creates a representative

republic that limits government and tempers hasty, even if popular, ideas. Further, the framers called for a separation of powers, with each of the three branches responsible for different governmental functions. The separation of powers and the provisions for how laws are made and enacted establish a system of checks and balances that prevents one branch from becoming too powerful. Under federalism, the national and state governments divide and share power as well, though the principle of national supremacy gives the federal government the power to decide “the supreme law of the land.” The Constitution’s flexibility has empowered the government to face unforeseen circumstances.

A Democratic Republic

The framers wanted the citizen representation of a democracy, but on the national level, they created a **representative republic**, a collection of sovereign states gathered for the national interest, national needs, and national defense. To promote popular sovereignty, the framers required popular elections every two years for House members, but those were the only popular elections they put in the original Constitution. State legislatures elected their senators until 1913. The states name their electors to the Electoral College, and then the Electoral College elects the president.

Separation of Powers

The framers made the legislative, executive, and judicial branches distinct in their own powers and responsibilities to dilute power among the three branches. Earlier in school, you might have learned that “the legislature makes the law, the executive branch enforces the law, and the judicial branch interprets the law.” This simplification overlooks the fact that all three branches can establish law and policy, but it does highlight the basic function of each branch. The legislature is the most numerous and representative branch, and it ultimately makes the public’s will become public policy. The powers of Congress are further separated between the two chambers. Neither house can pass a bill into law without the consent of the other chamber. The president is ultimately the authority to enforce the law and to carry out Congress’s policies, so the president and his administration shape policy in doing so. Members of the Supreme Court and the federal courts, appointed by the president and approved by the Senate, hear disputes and interpret laws and their application.



FOUNDATIONAL DOCUMENTS: *FEDERALIST* No. 51

In *Federalist No. 51*, Publius writes, “If men were angels, no government would be necessary.” He points to the separation of powers outlined in the Constitution as a guard against tyranny. He also states that the best protection of the minority is that “the society itself will be broken into so

many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.”

The following excerpt addresses the separation of powers.

In order to lay a due foundation for that separate and distinct exercise of the different powers of Government . . . it is evident that each department should have a will of its own; and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others. . . .

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments [earnings] annexed to their offices. . . .

In framing a Government which is to be administered by men over men, the great difficulty lies in this: you must first enable the Government to control the governed; and in the next place oblige it to control itself. A dependence on the People is, no doubt, the primary control on the Government; but experience has taught mankind the necessity of auxiliary precautions. . . .

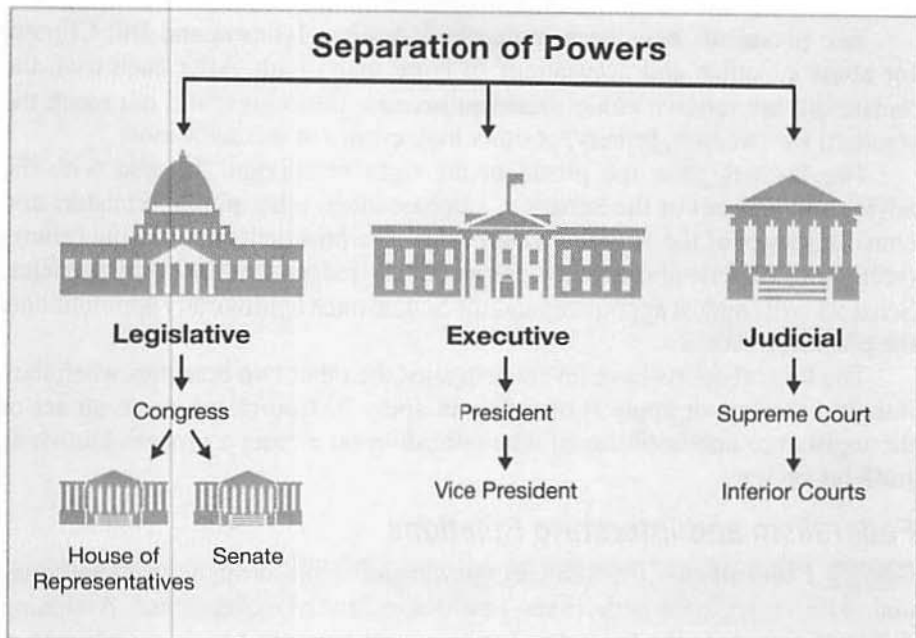
In republican Government, the Legislative authority necessarily predominates. The remedy for this inconveniency is to divide the Legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit.

Political Science Disciplinary Practices: Explain How the Source Relates to Political Institutions

When you explain how a source relates to political institutions (or principles, processes, and behaviors), you test the degree to which the source accurately describes those features of government. When *Federalist No.*

51 was published, the institutions referred to in this article—the executive, legislative, and judicial branches and the two chambers of Congress—had not yet been formed. Now, however, the nation has more than two centuries’ experience with these institutions, and the ideas expressed in *Federalist No. 51* can be related to actual government institutions.

Apply: Research the 2017 efforts of members of the Republican Party to “repeal and replace” the Affordable Care Act, President Obama’s signature accomplishment. Explain how *Federalist No. 51* relates to those efforts and the various institutions of government involved in them. Then read the full text of *Federalist No. 51* on pages 656–659, and answer the questions that follow it. You may also read the text online.



Checks and Balances

The limiting powers each branch can use on the others are known as **checks and balances**. They are especially clear in the lawmaking process. A bill (a proposed law) can originate in either the House or Senate and must pass both bodies with a simple majority (50 percent plus 1). Then the bill is presented to the president, who may sign it into law if he agrees with the proposal. Or, exercising executive checks and balances, the president may reject it with a **veto**. If after ten days (excluding Sundays) the president has done neither, the bill becomes law. If the president receives the bill at the end of a legislative session, however, refusal to sign is known as a **pocket veto** and kills the bill.

After the president consents to a law, it is entered into the United States Code, our body of federal statutes. If the president vetoes a bill, the Congress, each house acting separately, can reverse the veto with a **two-thirds override**, requiring a two-thirds super majority vote in each house.

The framers placed additional checks on power, such as the impeachment process and the Senate's right to provide **advice and consent**—formal approval—on presidential appointments. An **impeachment** is an accusation, an indictment of wrongdoing. Article I, Section II claims the House “shall have the sole power of impeachment” and can impeach the president, a federal judge, or another official of wrongdoing. The Senate then holds a trial for the accused official. The Chief Justice presides as the judge if the president is on trial. The Senate must vote by a two-thirds majority to find an official guilty or not guilty.

BIG IDEA: The system of checks and balances, including impeachment, is based on the rule of law (see page 352).

Two presidents have been impeached, Andrew Johnson and Bill Clinton, for abuse of office and accusations of lying under oath. After each trial, the Senate did not remove either president because the charges did not reach the standard for “treason, bribery, or other high crimes or misdemeanors.”

The framers gave the president the right to appoint “by and with the advice and consent of the Senate . . . ambassadors, other public ministers and consuls, judges of the Supreme Court . . .” The president appoints the cabinet (secretaries of state and defense, for example), judges, and heads of agencies. Senators will suggest appointees and the Senate must approve any appointments the president makes.

The federal courts have leverage against the other two branches when they interpret the law or apply it or refuse to apply it. Courts can deem an act of the legislature unconstitutional when deciding on a case, a process known as **judicial review**.

Federalism and Interstate Relations

BIG IDEA: **Federalism**—the balance of power among a central, national authority and state or regional authorities—assures a limited government. Assigning different powers to the federal and state governments had been a vital issue at the Constitutional Convention. Congress and the president have unique powers defining their responsibilities and limits. The states are denied certain powers. And the Tenth Amendment ensures that the states have delegated to the federal government only those powers listed in the document. All other powers are reserved to the states.

Flexibility

Limited government was important, but the framers had the foresight to ensure flexibility. These men had seen much change in their generation and suspected that unforeseen events and changes in society might require revolutionary changes in national policy and in the Constitution. That’s why they included the necessary and proper clause and the amendment process. The first allows Congress to legislate on matters closely related to the expressed powers. The amendment process has allowed for the Bill of Rights, women’s suffrage, a redefined presidency, and national income taxes, among other changes.

National Supremacy

To avoid the lack of unification experienced under the Articles of Confederation and to unite the nation under stronger national policy, Article VI was included to establish national supremacy, the authority of the federal government to be “the supreme law of the land.” The Anti-Federalists heavily questioned this provision. Included to assure compliance with the acts of Congress and treaties with other nations, the supremacy clause has placed the national government in some respects above the states in the areas of law delegated to the federal government. For example, in coining or printing money, international diplomacy, or national defense, the federal government is the exclusive authority. Yet Congress cannot claim national supremacy on distinctly **reserved powers** (see pages 44–45).

Limited Government

The Constitution reveals the framers' commitment to limited government. The lawmaking process is slow and designed for gridlock among the branches to discuss, debate, and rewrite legislation before it is fully passed. Bicameralism ensures an extra step within the chief lawmaking branch. A president can veto popular ideas that may pass both houses too quickly without full consideration of the proposed law. The Bill of Rights serves as a broad limitation over an array of issues. Congress cannot establish a religion, abridge free speech, or arrest suspects without following a particular due process procedure. And the Tenth Amendment ultimately prevents Congress from actions beyond those limited in Article I, Section 8.

The Three Branches in Practice

The legislative, executive, and judicial branches operate mostly in the nation's capital and remain busy creating and refining national policy. A busy and divisive Congress, a president and his large administration, and a court system stretched across the land are all part of the policymaking process.

Legislative

Congress operates on Capitol Hill, where 435 House representatives and 100 senators make the nation's laws, determine how to fund government, and shape the nation's foreign policy. On opposite sides of the Capitol, the House and Senate operate in separate chambers and with different rules of procedure. Citizens elect these officials periodically and can contact them to express their views or to favor or oppose a bill. All Congress members have an office near the Capitol and multiple offices in their home districts. The two senators from each state represent the state at large and have staggered terms.

The two houses have differing age requirements, twenty-five years old for representatives and thirty for senators. That age difference, the size and scope of each body, and the number of citizens each represents create a unique dynamic in each house.

To carry out their duties, legislators in both houses have staffers—legislative research aides—and a communications chief. They have a budget to run their office, free use of the mail, and free travel back and forth to their home states. Experienced members have their areas of expertise in lawmaking, perhaps based on their careers before becoming a politician or a subject of law that is dear to them. Both the House and Senate have an array of committees, usually between 10 and 30 members on each, that oversee certain topics of law or policymaking. Congress has thousands of employees that write the bills, gather research data, take the pulse of the citizens in each district, and let the voters know about all the good things their Congress member has done, especially near election time.

In addition to contacting their legislators, citizens can gain understanding of proposed bills through the Congressional Research Service through the Library of Congress, where they can read synopses of bills. Also, the media reports on and analyzes proposed laws and critiques laws after they've taken effect. The House and Senate are aired live on C-SPAN television.

Executive

Article II lays out the requirements for office and the executive's role. The president must be thirty-five years old, a natural born citizen, and a resident of the United States for at least fourteen years. The president serves a four-year term and, since passage of the Twenty-Second Amendment, can serve only two full terms.

The presidency has grown in both scope and power. President George Washington had a four-person cabinet and no more than a few hundred government employees. Today, the cabinet has grown to about 20 members, and the federal executive branch has more than 2.7 million employees to carry out the nation's laws today.

The president's immediate staff in the West Wing of the White House advises the executive daily and provides the chief link to other institutions of government and to the public. Entire offices of aides shape the president's message and connect with Congress at the staff level. Large executive branch departments and agencies oversee entire wings of our government, such as the military, and govern entire national industries, such as the Federal Communications Commission, which regulates radio and television broadcasts and Internet communications. These offices and institutions below the president are part of the bureaucratic machinery that carries out the law or that defends the United States. Congress creates these entities, checks on their performance, determines their funding, and occasionally reshapes their mission. Congressional committees keep an eye on them.

Some agencies exist to protect citizens, who can file a complaint to assure enforcement of or fairness in the law. For example, the Equal Employment Opportunity Commission investigates complaints of discrimination in the workplace. Of course, citizens can report federal crimes to the FBI or the Drug Enforcement Administration. And a voter can find where a federal candidate's donations come from at the Federal Election Commission's website.

Judicial

Judicial review (see page 32) has often become a major step in determining and sometimes in finalizing law. The Supreme Court and lower courts have exercised judicial review to protect liberties and to properly initiate policy. Courts can use this power to check the legislature, the executive, or state actions in order to shape overall policy in the United States.

Citizens have often found the federal courts the place to challenge unfair government action, to appeal wrongful convictions, and to question actions of schools and state governments. Because of citizen lawsuits in these courts, Americans can now say and print unpopular and even antigovernment ideas,

challenge convictions made in unfair trials, attend equal schools without limitations based on race, and marry whom they want regardless of gender. The Supreme Court is where such national policies have been established.

At least five of the nine justices who serve today must agree on a *majority opinion* for a decision to uphold (or overturn) law. Members who agree with the majority opinion but who have differing or additional reasons for reaching that conclusion can issue *concurring opinions*. Justices who disagree with the majority opinion issue *dissenting opinions*. As with concurring opinions, justices can dissent from the majority opinion for different reasons, so there may be several dissenting opinions. Throughout this book, you will encounter the Must-Know Decisions, those landmark Supreme Court cases that will likely be the basis of questions on the AP Government and Politics exam.

REFLECT ON THE ESSENTIAL QUESTION

Essential Question: *How have theory, debate, and compromise influenced the United States' system of government that balances governmental power and individual rights?* On separate paper, complete a chart like the one below to gather details to answer that question.

Political Philosophy of the Time

Example or Application

KEY TERMS AND NAMES

advice and consent/31	full faith and credit clause/20	pocket veto/31
Anti-Federalists/24	Grand Committee/13	popular sovereignty/5
Articles of Confederation/9	Great Compromise/14	Preamble/17
bicameral/13	House of Representatives/14	representative republic/29
Bill of Rights/26	impeachment/31	republicanism/5
checks and balances/31	James Madison/11	reserved powers/32
commerce clause/18	judicial review/32	Senate/14
Declaration of Independence/7	national supremacy/20	separation of powers/13
Electoral College/15	natural law/4	social contract/3
elite democracy/6	necessary and proper (elastic) clause/18	supremacy clause/20
enumerated powers/18	New Jersey Plan/13	Three-Fifths Compromise/14
extradition/9	participatory democracy/5	two-thirds override/31
Federalist Papers/22	pluralist democracy/6	USA PATRIOT Act/28
federalism/1, 32		veto/31
Federalists/1		Virginia Plan/13

MULTIPLE-CHOICE QUESTIONS

1. Which is the most democratic institution of government that represents the framers' commitment to a limited republic?
 - (A) U.S. Senate
 - (B) Supreme Court
 - (C) House of Representatives
 - (D) Electoral College
2. Which of the following is a chief argument in James Madison's *Federalist No. 10*?
 - (A) A Bill of Rights is necessary to secure liberty.
 - (B) Free speech should be added to the Constitution.
 - (C) Judicial review will prevent harsh laws against the citizenry.
 - (D) A large, diverse republic will tame factions.

Questions 3 and 4 refer to the passage below.

The objection to the plan of the convention, which has met with most success in this State . . . is . . . the want of a constitutional provision for the trial by jury in civil cases. The disingenuous [insincere] form in which this objection is usually stated has been repeatedly [commented on] and exposed, but continues to be pursued . . . The mere silence of the Constitution in regard to civil causes, is represented as an abolition of the trial by jury [in an effort] to induce a persuasion that this pretended abolition is complete and universal, extending not only to every species of civil, but even to criminal causes. . . .

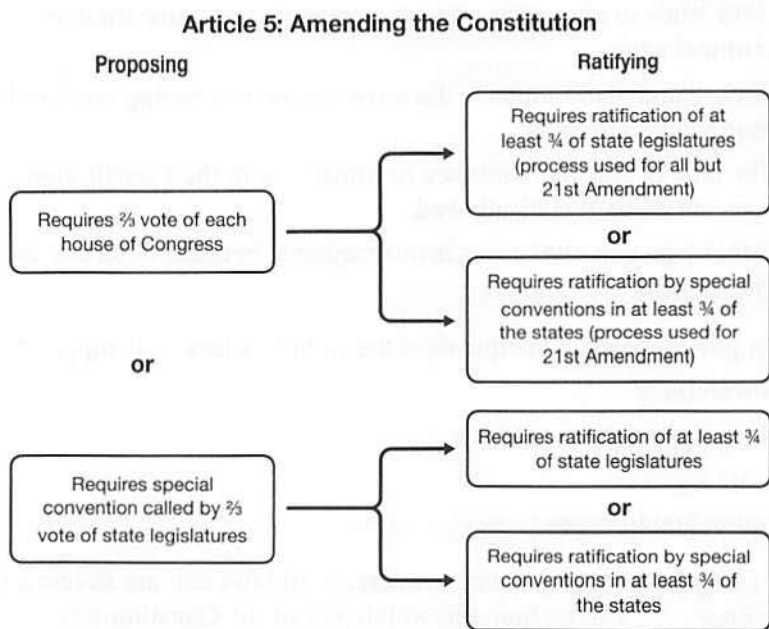
Every man of discernment must at once perceive the wide difference between silence and abolition. . . .

The maxims on which [the opponents' argument] rely are of this nature: "A specification of particulars is an exclusion of generals"; or, "The expression of one thing is the exclusion of another." Hence, say they, as the Constitution has established the trial by jury in criminal cases, and is silent in respect to civil, this silence is an implied prohibition of trial by jury in regard to the latter.

—Alexander Hamilton, *Federalist No. 83*, 1788

3. Which of the following statements is most consistent with Hamilton's argument in this passage?
- (A) Jury trials in civil cases are not as important as jury trials in criminal cases.
 - (B) Silence and abolition have the same essential meaning and can be used interchangeably.
 - (C) The lack of specific reference to something in the Constitution does not mean it is disallowed.
 - (D) Trial by jury in civil cases is unacceptable because of jurors' lack of expertise.
4. Which governmental principle does the right to a jury trial support?
- (A) Sovereignty
 - (B) Representative lawmaking
 - (C) State rights
 - (D) Individual liberties
5. "The Congress has the power . . . to create all laws that are necessary and proper . . ." can be found in which part of the Constitution?
- (A) Article I
 - (B) Article II
 - (C) Article III
 - (D) The Bill of Rights
6. Shays's Rebellion highlighted which of the following weaknesses of the national government under the Articles of Confederation?
- (A) Lack of power to declare peace and war
 - (B) Lack of power to tax the people directly
 - (C) Lack of power to keep a standing army
 - (D) Lack of power to regulate interstate commerce
7. Which statement about impeachment under the Constitution is true?
- (A) An impeachment is the removal of a president.
 - (B) The Senate has the sole power of impeachment.
 - (C) The House can impeach presidents but not other federal officials.
 - (D) The House can impeach officials for "high crimes or misdemeanors."

Questions 8 and 9 refer to the infographic below.



8. Which of the following conclusions is best supported by the infographic above?
- (A) Once a proposed amendment passes the first round of approval, there are four ways it can be ratified.
 - (B) Amendments are proposed more often by Congress than by special conventions.
 - (C) Only a few amendments were ratified by special conventions in at least 34 of the states.
 - (D) Amending the Constitution is a relatively easy process.
9. Which concern of the framers does the method illustrated in the infographic address?
- (A) National security
 - (B) Individual rights
 - (C) Flexibility
 - (D) Fair representation

10. Which of the following is an accurate comparison of the New Jersey Plan and the Virginia Plan?

	NEW JERSEY PLAN	VIRGINIA PLAN
(A)	Included a layered system of national courts	Made the states supreme over the national government
(B)	Created a bicameral legislature	Assured states would retain sovereignty
(C)	Gave the national legislature only defined and limited powers	Included a three-branch system and a bicameral legislature
(D)	Made the national government supreme over the states	Allowed importation of slaves for 20 years after ratification

FREE-RESPONSE QUESTIONS

1. "I know the name of liberty is dear to . . . us; but have we not enjoyed liberty even under the English monarchy? Shall we . . . renounce that to go and seek it in I know not what form of republic, which will soon change into a licentious anarchy and popular tyranny? In the human body the head only sustains and governs all the members, directing them . . . to the same object, which is self-preservation and happiness; so the head of the body politic, that is the king, in concert with the Parliament, can alone maintain the union of the members of this Empire . . . and prevent civil war by obviating all the evils produced by variety of opinions and diversity of interests."

—John Dickinson, July 1, 1776

After reading the excerpt, respond to A, B, and C below:

- (A) Describe the political institution Dickinson wants to maintain.
- (B) In the context of the passage, explain how the political institution identified in part A affected the behavior of the colonists.
- (C) Explain how the passage relates to representative democracy.

RESULTS OF EARLY PRESIDENTIAL ELECTIONS			
Election Year	Top Candidates	Party	Electoral College Votes
1792	George Washington	Federalist	132
	John Adams	Federalist	77
	George Clinton	Democratic-Republican	50
1796	John Adams	Federalist	71
	Thomas Jefferson	Democratic-Republican	68
	Thomas Pinckney	Federalist	59
	Aaron Burr	Anti-Federalist	30
1800	Thomas Jefferson	Democratic-Republican	73
	Aaron Burr	Democratic-Republican	73
	John Adams	Federalist	65
	C. C. Pinckney	Federalist	64
1804	Thomas Jefferson	Democratic-Republican	162
	C. C. Pinckney	Federalist	14

2. Use the information graphic above to answer the questions.
- Describe the information conveyed in the table.
 - Describe a trend in the information, and draw a conclusion about the reasons for that trend related to people's views on the policies of the Federalist Party.
 - Explain how the information in the table demonstrates a difference between the U.S. Constitution and the Articles of Confederation.
3. A student in your school has recently immigrated to the United States from a country run by an authoritarian government. He is afraid to speak his mind and worries that his new home country also runs the risk of becoming authoritarian.
- After reading the scenario, respond to A, B, and C below:
- Describe a difference between the political institutions of your friend's home country and the political institutions of the United States.
 - In the context of the scenario, explain how one provision in the government of the United States protects your friend's freedoms.
 - In the context of the scenario, explain an action citizens could take if the U.S. government denied those freedoms.

4. Develop an argument that explains whether or not the Bill of Rights was a necessary addition to the U.S. Constitution. In your essay you must do the following:
- Articulate a defensible claim or thesis clearly stating your position
 - Support your claim with at least TWO pieces of accurate and relevant information:
 - ♦ At least ONE piece of information must be from one of the following foundational documents:
 - The Declaration of Independence
 - *Brutus No. 1*
 - ♦ Use a second piece of evidence from the other document in the list above or from your study of the nation's constitutional foundation
 - Use reasoning to organize and analyze evidence, explaining its significance to justify your claim or thesis
 - Address opposing or alternative perspectives through refutation, concession, and rebuttal



WRITING: ARTICULATE A DEFENSIBLE CLAIM

A *claim* is a statement asserted to be true. It is not a fact, such as “The Constitution has a Bill of Rights.” It is instead a debatable point, something about which people may reasonably disagree. You could assert a claim, for example, related to health care for Americans, such as “The federal government, state governments, and private companies should work together to provide health care.” When you develop a claim, be sure that it goes beyond mere fact and asserts a viewpoint that you can defend with evidence.