

Topic 3.9

The Constitution

The Constitution is the guide which I never will abandon.

George Washington, letter to the Boston city leaders, 1795

Learning Objective: Explain the continuities and changes in the structure and functions of the government with the ratification of the Constitution.

The men who wrote the newly ratified Constitution hoped it would both follow the ideals of the Enlightenment and provide a working system to guide the new republic. They wanted to correct the weaknesses of the Articles of Confederation without creating a government with excessive power. To guard against tyranny, they divided power vertically—between the federal and state levels. They also divided federal power horizontally—among three branches. As a further step toward keeping government power in check, and to fulfill a promise made during the ratification debates, one of the first tasks of the new Congress was to propose a Bill of Rights.

Federalism

The writers of the Constitution (or Framers) divided power between the federal government and state governments. The federal government would handle issues that affected the entire country, such as national defense and foreign affairs, and issues that crossed state boundaries, such as interstate commerce and a postal service. States would be in charge of issues that affected only their state, such as schools and local elections.

As changes in transportation, communication, and the economy have increased the interactions among people across state lines, the federal government has become more powerful. Further, constitutional amendments added specific powers to the federal government. For example, the 19th Amendment, ratified in 1920, gave Congress the power to protect the right of women to vote.

By the 21st century, the government accounted for around 40 percent of the gross domestic product of the country. The federal government was usually responsible for over half of all public expenditures, paying for programs such as Social Security, Medicare, and the military, and transferring money to state and local governments. However, most public employees worked for state or local governments, with the largest number employed in schools and universities.

Separation of Powers

The Framers also divided powers among three main branches of government:

- legislative: Congress makes laws, passes taxes, and allocates spending
- executive: led by the president, it recommends and carries out laws and federal programs
- judicial: it consists of the Supreme Court and all lower federal courts; it interprets the laws and the Constitution

The Constitution provided each branch of government ways to limit the power or at least influence the other two branches:

- Congress can pass laws, but the president can veto laws and the Supreme Court can rule them unconstitutional.
- The president can make treaties, but they must be ratified by Congress.
- The president can enforce the laws, but the Supreme Court can stop those actions if it finds that they violate the Constitution.
- The Supreme Court interprets the laws, but Congress can write new laws.
- The Supreme Court can order a president to enforce a law, but a president has the power to appoint justices.

The Bill of Rights

In 1789, the first Congress acted quickly to approve **amendments** to defend individual liberty. Drafted largely by James Madison, the ten ratified by the states in 1791 are known as the **Bill of Rights**. Originally, they protected against abuses by the central (or federal) government. Since the ratification of the 14th Amendment in 1868, most of the protections have been extended to apply to abuses by state governments as well. Below is the text of the Bill of Rights.

First Amendment “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Second Amendment “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

Third Amendment “No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner prescribed by law.”

Fourth Amendment “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Fifth Amendment “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.”

Sixth Amendment “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

Seventh Amendment “In suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

Eighth Amendment “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

Ninth Amendment “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.”

Tenth Amendment “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

REFLECT ON THE LEARNING OBJECTIVE

1. Explain what stayed the same and what changed in the form and the workings of the government under the new Constitution compared to government under the Articles of Confederation.

KEY TERMS BY THEME

Founders (NAT, SOC)
federalism
separation of powers

amendments
Bill of Rights

Founders (NAT, SOC)
James Madison

MULTIPLE-CHOICE QUESTIONS

Questions 1–3 refer to the following excerpt.

“It is not denied that there are implied [existing but not clearly stated] as well as express [clearly stated] powers, and that the former are as effectually delegated as the latter.

It is conceded that implied powers are to be considered as delegated equally with express ones. Then it follows, that as a power of erecting a corporation [such as a bank] may as well be implied as any other thing, it may as well be employed as an instrument or means of carrying into execution any of the specified powers. . . . But one may be erected in relation to the trade with foreign countries, or to the trade between the States . . . because it is the province of the federal government to regulate those objects, and because it is incident to a general sovereign or legislative power to regulate a thing, to employ all the means which relate to its regulation to the best and greatest advantage.”

Alexander Hamilton, Letter on the National Bank, 1791

1. Hamilton’s constitutional argument was based on which of the following types of powers?
 - (A) Employed
 - (B) Expressed
 - (C) Implied
 - (D) Regulated
2. Hamilton’s position expressed in the excerpt most clearly reflected his dissatisfaction with which of the following?
 - (A) The Declaration of Independence
 - (B) The Articles of Confederation
 - (C) The Northwest Ordinance
 - (D) The Bill of Rights
3. Which of the following would best serve as the basis for modifying or refuting Hamilton’s position expressed in the excerpt?
 - (A) The ideals of the Enlightenment, such as the emphasis on reason
 - (B) The theory of the separation of powers, which divided power among three branches of government
 - (C) The purpose of the 10th Amendment, which reserves powers to the states
 - (D) The writings of Thomas Paine, which supported revolution

SHORT-ANSWER QUESTION

1. “The contest over the Constitution was not primarily a war over abstract political ideals, such as states’ rights and centralization, but over concrete economic issues, and the political division which accompanied it was substantially along the lines of the interests affected—the financiers, public creditors, traders, commercial men, manufacturers, and allied groups, centering mainly in the larger seaboard towns, being chief among the advocates of the Constitution, and the farmers, particularly in the inland regions, and the debtors being chief among its opponents. That other considerations, such as the necessity for stronger national defense, entered into the campaign is, of course, admitted, but with all due allowances, it may be truly said that the Constitution was a product of a struggle between capitalistic and agrarian interests.”

Charles A. Beard, historian, *Economic Origins of Jeffersonian Democracy*, 1915

“It is easy to accept the general proposition that ideas and interests are somehow associated. . . . But there are some dangers in working with any such formula. The first is that ideas—or all those intangible emotional, moral, and intellectual forces that may roughly be combined under the rubric of ideas—will somehow be dissolved and that we will be left only with interests on our hands. . . . Then there is the danger that interests will be too narrowly construed: that we will put too much emphasis on the motives and purposes of individuals and groups, not enough on the structural requirements of a social system or on the limitations imposed on men by particular historical situations . . . that the way in which men perceive and define their interests is in some good part a reflex of the ideas they have inherited and the experiences they have undergone. . .

For the generation of the Founding Fathers, the central, formative, shattering, and then reintegrating experience of civic life was the Revolution, which recast the pattern of their interests and galvanized their inherited store of ideas.”

Richard Hofstadter, historian, *The Progressive Historians*, 1968

Using the excerpts, answer (a), (b), and (c).

- Briefly explain ONE major difference between Beard’s and Hofstadter’s interpretations of the influences on the Constitution.
- Briefly explain how ONE historical event or development in the period 1776 to 1789 that is not explicitly mentioned in the excerpts could be used to support Beard’s interpretation.
- Briefly explain how ONE historical event or development in the period 1776 to 1789 that is not explicitly mentioned in the excerpts could be used to support Hofstadter’s interpretation.