

Constitution/Bill of Rights, 1787-1791

In every organized society, important ideas and ways of acting are closely related to three questions:

- Who should govern?
- What should government do?
- What should government NOT do?

After the colonists won independence from England, these questions led to disagreement and debate. The United States Constitution came out of that dialog—the oldest written design for a government still in use—but arguments about the three questions above continue.

Keywords for Internet/library search: Articles of Confederation, Second Continental Congress, Shays' Rebellion, Constitutional Convention, Federalists

Investigation: Why Government? Why Power?

Work with others to develop answers to these questions:

Is government necessary? If so, what are its purposes?

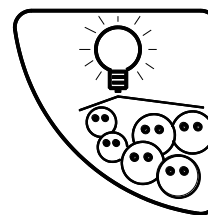
What is political power? How is power related to government?

Investigation: Debate about Government

Data in this section are words spoken and written by the “Founding Fathers” who developed the Constitution.

Work with others on this. As you study their opinions:

1. **Identify and list the problems (or possible problems) that each “founding father” is pointing out.**
2. **Look for the word “power,” and describe what each person means when they use that word. Identify similarities and differences in ideas about power.**
3. **List each function of government described in the data, and describe the power required to carry it out.**



This will not be easy. Take time to discuss everything in detail.

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Alexander Hamilton, an important New York lawyer:

States which are close to each other must either be strongly united under one government, or else they will quarrel. This is human nature. In a few years, some of the larger states will be populous, rich and powerful. Leaders within them will become ambitious. They will begin to think about separation and independence. Although it will always be to their advantage to preserve the Union, their conceit will probably be stronger. This will cause them to try to organize groups of states independently. Once this happens, differences over boundaries and competition for trade will provide plenty of excuses for going to war.

We already hear it whispered among those who oppose a stronger central government that the 13 states cover too much territory to be governed by one government. However, it seems obvious to me that if we do not strengthen the government, the Union will come apart.

If the powers of each state cannot be controlled, the powers of Congress will be defeated. There are times when acts necessary for the good of the whole nation will interfere with policies of individual states. It is too easy for the states to oppose whatever they do not like, and to form small alliances which work against larger union.

Part of a letter written to the governor of New York by Robert Yates and John Lansing, representatives to the Constitutional Convention:

We believe that a strong central government, regardless of how its constitution is worded, would very shortly begin to destroy the liberty of the citizens. The great size of the United States and the great distances separating the people, would make it almost impossible for those people to control the powerful men who hold offices in the central government.

These great distances, plus the fact that most officials would hold their positions permanently, would mean that concern for the welfare and happiness of the people would not be the same everywhere. It would also mean that obedience to the laws could not be enforced equally everywhere.

Finally, if the legislature of such a government had enough members to represent everyone, it would cost far too much to support it. If it were made up of fewer men, the interests of many citizens would be ignored.

From a pamphlet written by Richard Henry Lee:

A central government which can impose and collect taxes on the people within a state, organize a militia within a state, and settle legal questions between two citizens of a state, has the means for eventually taking over almost all other power. Combined with the power to raise armies and build navies, this seems to me to include about all power. What is left to the individual states is not very important.

A resident of Maryland wrote this in a letter to the newspaper *Maryland Gazette and Baltimore Advertiser*:

I don't doubt that a strong central government will add to the dignity and increase the splendor of the United States in other countries. I am not so sure however about the claim that a strong central government is necessary to keep us at peace with each other. I absolutely deny the claim that it is necessary in order to keep foreigners from dividing us.

We are vain, like other nations. We want to make a noise in the world. We want to cut a figure in history. Should we not consider the fact that happiness and quiet go together.

From a letter Samuel Adams wrote to Richard Henry Lee:

How can one central government make laws that are equally good for people who live so far apart in so many different environments, people whose habits and interests are so different? It is difficult, if not impossible. For this reason, the establishing of one strong central government will create unhappiness, distrust, suspicion of the government, and then revolt. This will make it necessary to keep a standing army.

If laws are made which consider local habits, feelings, and opinions in distant parts of the country, this favoritism will cause jealousy and envy which will also lead to war.

The view of several representatives from Massachusetts:

We must be careful that in strengthening the one or two weaknesses in Congress, we don't go to the other extreme. "More power in Congress" everyone seems to be saying. It is being said especially loudly by those who aren't interested in good government. These people want a big government that will pass out high-salaried jobs. They want to create a large bureaucracy. They would like a government which, once one gets on its payroll, would keep one secure for life.

The data that follow are words from debates at the Convention. For each debate, identify the issue being debated, then use the three questions on page 1 to analyze the data.

Issue A:

James Wilson, from Pennsylvania:

Since all political power comes from the people, equal numbers of people should have equal representation in Congress.

William Paterson, from New Jersey:

Our present government is a confederacy. In a confederacy all members are equal. There is no more reason for a large state to have more votes in Congress than there is a reason for a rich man to have more votes than a poor one... New Jersey will never agree to give large states more power. She would be swallowed up.

Which state's representatives are likely to agree with Wilson? With Paterson?

Population and Land Area 1787		
State	Population	Area (in sq. mi.)
New Hampshire	141,885	9,304
Massachusetts	378,787	8,257
Rhode Island	68,825	1,214
Connecticut	237,946	5,009
New York	958,632	49,567
New Jersey	340,120	7,836
Pennsylvania	434,373	45,333
Delaware	59,096	2,057
Maryland	319,728	10,577
Virginia	747,610	64,996
North Carolina	393,751	52,712
South Carolina	249,073	31,055
Georgia	82,548	58,876

By 1787 there were many more slaves living in the South than in the North.

Issue B:

William Paterson, from New Jersey:

Negro slaves are property. They have no personal freedom; they cannot enter into contracts; they cannot own property. They are themselves property and, like any other property, belong entirely to their owner. Property does not vote.

A legislature is merely a substitute—more convenient than getting all the people together. If all the people were gotten together, Negroes would not vote, so why should they be represented in Congress?

Pierce Butler, from South Carolina:

The main purpose of a government is to protect property. Property is the main support of government. Since the work of a slave can increase the value of property as well as the work of a freeman, the slave and the freeman are of equal value to property and should have equal representation.

Other issues:

Gouverneur Morris, from Pennsylvania:

I am against an executive chosen by Congress. He will be little more than a puppet of Congress, and will gain his office by secret bargaining.

Charles Pinckney, from South Carolina:

Election [of the executive] by the general population is obviously wrong. They will be led by a few influential men. Besides, a few heavily populated states could combine and choose their own man. Congress knows its own laws best, so they should choose whom they want to carry them out.

James Wilson, from Pennsylvania:

A national government should be created by all the people. If the lower house is elected by the people and the upper by state legislatures, arguments will naturally arise between them. The Senate should be elected by the people.

Gouverneur Morris, from Pennsylvania:

Appointment [of senators] by state legislatures is the better method. The Senate must serve as a control on the House of Representatives, so they should be unlike them. They should be rich, independent, full of pride, and serve for life. With this system the two houses will watch each other very carefully.

(Continued)

Roger Sherman, from Connecticut:

The legislature in each state should elect that state's representatives [to the House of Representatives]. The ordinary people lack information and are likely to be misled.

George Mason, from Virginia:

This house of the legislature [House of Representatives] should be democratic. It should be familiar with every feeling and idea in the country. It should serve the needs of every class of people. Therefore, the people should choose their representatives. The upper classes often ignore the needs of others, but they should support this idea because some of their descendants will probably end up in the lowest classes of society.

Benjamin Franklin, from Pennsylvania:

I move that the executive's necessary expenses be paid, but that he receive no salary, fee, or reward whatever.

Men are driven by a love of power and a love of money. Separately, these drive men to action. Add them together and the effect is violent. Place before a man a post both honorable and profitable and he will move heaven and earth to get it.

What kind of men are attracted to such positions? Not the wise, not the moderate, not the lovers of peace and order. The bold, the violent and the selfish will become the rulers.

An unpaid executive is also less likely to become a king, and this protection is needed. There is a human tendency toward kingly government. Citizens will often turn to it to avoid rule by an upper class. They would rather have one dictator than five hundred. It makes them feel more equal.

Gouverneur Morris, from Pennsylvania:

The vote [in national elections] should be confined to those who own land. Give it to those who have no property, and they will sell it to the rich. The time will come when this country will be filled with people working for wages. Will they be faithful guardians of liberty? Not likely. As for merchants, if they have money and value the right to vote, let them buy land.

George Mason, from Virginia:

We are borrowing old prejudices from England. In my opinion, any man who is attached to and affected by the government ought to have the vote. Are landowners the only ones who meet this qualification? Ought we to consider the merchants or the father of several children or others whose fortunes lie in this country as suspicious characters who can't be trusted with privileges their neighbors have?

Investigation: The Constitution

Answers to the questions raised at the Constitutional Convention were settled after four months of debate. As you know, the new written plan of government which the delegates developed came to be known as the Constitution of the United States.

A simplified, shortened version of the Constitution follows.

Identify the solutions adopted in the Constitution for the problems and issues raised during the debates described earlier.

Constitution of the United States of America

Preamble

We, the people of the United States, do now accept and adopt this Constitution for the United States of America. Its purpose is to establish justice, strengthen the bonds between our states, keep peace within the country, strengthen our defenses, improve our condition, and guarantee liberty to ourselves and our descendants.

Article I Legislative Branch

Section 1 Congress

All the power to make laws is given to a Congress made up of a Senate and a House of Representatives.

Section 2 House of Representatives

- a. The House of Representatives will be made up of members chosen every two years by a vote of the people. In each state, voters will be those who are already allowed to vote in state elections.
- c. The number of Representatives from a state will be based on the size of the population from that state. Indians not taxed will not be counted, and a slave will be counted as three fifths of a person.*

(omitted: b, d, e.)

*Parts of Constitution related to slavery were later changed by Amendment 13.

(Continued)

Constitution of the United States of America (Continued)

Section 3 Senate

- a. The Senate of the United States will be made up of two Senators from each state. They will be chosen by their state legislatures.* Senators will be elected to six-year terms.

One third of the Senate will be chosen every two years.

(Omitted: part of b, c through g, Sections 4 through 6)

Section 7 Method of Passing Laws

- a. All tax bills must come from the House of Representatives.
- b. Every bill passed by the House and Senate must be signed by the President. If he refuses, and the bill is reconsidered and approved by two thirds of each House, it will become law.

All orders and resolutions requiring approval by the House and Senate shall also require approval by the President.

Section 8 Powers Granted to Congress

Congress can:

- a. Set and collect taxes
- b. Borrow money
- c. Regulate foreign and interstate trade
- d. Pass naturalization and bankruptcy laws
- e. Coin money
- f. Punish those who counterfeit United States money
- g. Establish a postal service
- h. Issue patents and copyrights
- i. Establish courts lower in rank than the Supreme Court
- j. Punish crimes committed at sea
- k. Declare war
- l. Maintain an army
- m. Maintain a navy
- n. Regulate the army and navy
- o. Call out a state's militia
- p. Share with the states control of the militia
- q. Make laws for the District of Columbia
- r. Make any laws necessary to do any of the above.

*Election of Senators changed by Amendment 17.

(Continued)

Constitution of the United States of America (Continued)

Article II Executive Branch

Section 1 President and Vice President

- a. The President will be the executive officer of the United States. He and the Vice President shall be elected to four-year terms.
- b. Each state will appoint electors to meet in the State to vote for President and Vice President. The number of electors from each state shall equal the state's number of Senators and Representatives.

(Omitted: part of b, c, d, e)

- f. The President will be paid for his services, but his salary may not be changed while he is in office.

(Omitted: g)

Section 2 Powers of the President

- a. The President shall be the Commander in Chief of the armed forces. He can require written reports from the heads of the executive departments. He can grant pardons for offenses against the United States.
- b. The President can, with Senate approval, make treaties, appoint ambassadors and Supreme Court judges, and fill other positions established by law.

(Omitted: c)

Section 3 Duties of the President

The President shall make regular reports to Congress on the State of the Union, shall recommend to them laws that he thinks should be passed, and can call them into special session. He shall faithfully enforce the laws of the United States.

(Omitted: Section 4)

(Continued)

Constitution of the United States of America (Continued)

Article III Judicial Branch

Section 1 Federal Courts

Judicial matters shall be in the hands of a Supreme Court and other federal courts created by Congress. Judges shall hold office during their good behavior. They shall be paid.

Section 2 Authority of the Federal Courts

- a. Federal courts will handle all legal questions arising under this Constitution and under federal laws. Controversies between two or more states and between a state and citizens of another state will be handled by federal courts.
- b. Cases affecting ambassadors, ministers and consuls, and those in which a state is a party, will go directly to the Supreme Court. In all other cases under its authority, the Supreme Court will have power to review the actions of lower courts.
- c. All crimes (except in cases of impeachment) shall be tried by jury and the trial shall be held in the state where the crime was committed.

(Omitted: Section 3)

Article IV The States

Section 1 Official Acts

The official acts of each state shall be honored in all other states.

Section 2 Privileges of Citizens

- a. The citizens in each of the states shall have the same rights.
- b. Persons charged with crimes who flee to another state shall be returned.
- c. Persons who owe others their labor and flee to another state shall be returned.

Section 3 New States and Territories

- a. New states may be admitted to the Union by Congress.
- b. Congress shall control all United States territory and property.

(Continued)

Constitution of the United States of America (Continued)

Section 4 Guarantees to the States

Congress guarantees to every state a republican form of government, and shall protect them against invasion. If asked by a state, Congress will also provide protection against internal violence.

Article V Method of Amendment

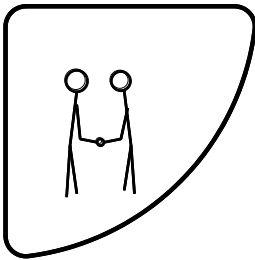
This Constitution can be amended in this way: Two thirds of the Senate and of the House of Representatives can propose changes, or two thirds of the states can request that a convention meet to make changes. Changes from either of these two sources become a part of this Constitution when they have been approved by three fourths of the States.

(Omitted: Article VI)

Article VII Ratification

This Constitution will go into effect when it has been ratified by nine States.

Action pattern categories from the Model are listed below. What, if anything, does the Constitution have to say about each of them?



Making Decisions
Controlling Deviance
Teaching/Learning
Exchanging Goods & Services
Distributing Wealth
Maintaining Boundaries
Owning
Working
Mobility
Communicating
Playing

Residing
Maintaining Members
Acquiring/Displaying Status
Expressing Emotion
Worshipping
Social Service
Socializing
Expressing Creativity
Special Days
Maintaining Environment

Investigation: The Bill of Rights

A major argument against the Constitution was that it didn't guarantee certain rights to ordinary people. With the promise that a list of rights would be added the Constitutional Convention, the Constitution was approved by the states, and went into effect in 1788.

A shortened version of the list of guaranteed rights—the “Bill of Rights”—appears below. The Bill of Rights were ten amendments (changes) to the constitution. Since then, 17 additional amendments have been added to the Constitution.

In a series of statements, describe the values which the amendments express.

Bill of Rights

Amendment 1

Congress will make no laws that interfere with religion. It will make no laws that prohibit freedom of speech or of the press. It will make no laws that prevent people from gathering peaceably to ask the government to correct wrongs.

Amendment 2

Because a well-regulated military force of citizens is necessary to make a state secure, the people shall have the right to keep and carry arms.

Amendment 3

In peacetime, no soldier shall stay in any house without the owner's permission. The rule applies in time of war also, except as changed by Congress.

Amendment 4

Persons, houses, papers, and property may not be unreasonably searched or seized. Before a search warrant is issued, an oath must be taken that the reason is a good one. It must specifically describe the place to be searched or the persons or things to be seized.

Amendment 5

To be held for a serious crime, a person must be accused in writing by a group of citizens (a grand jury) which has examined the evidence. Military cases in wartime are an exception.

(Continued)

Bill of Rights (Continued)

No person shall be tried twice for the same offense, or be forced to testify against himself. No person can have his life, liberty, or property taken away except through proper legal procedures. Private property taken for public use must be paid for at a fair price.

Amendment 6

In criminal cases, the accused has a right to a speedy, public trial. An impartial jury shall be chosen from the area where the crime was committed. The accused must be told the reasons why he or she is accused and must be allowed to meet the accusers. The accused must also have the power to obtain witnesses and have legal help in his or her defense.

Amendment 7

In suits involving values of more than 20 dollars, individuals have a right to a jury trial.

Amendment 8

Excessive bail will not be required. Excessive fines will not be required, nor will cruel and unusual punishment be given.

Amendment 9

The listing in this Constitution of specific rights does not mean that other specific rights are taken away or changed.

Amendment 10

Powers not given to the United States by this Constitution are to be kept by the states or by the people.

The questions we started with were:

- Who should govern?
- What should government do?
- What should government NOT do?

These are questions about power. ***In your opinion, what general attitude toward power is expressed in the Constitution? Which parts of the Constitution show this attitude?***

NOTE: For further information, see:

http://en.wikipedia.org/wiki/List_of_amendments_to_the_United_States_Constitution. This site summarizes all amendments, gives links to complete text, plus dates of ratification. Note that the Bill of Rights links give the full text of the original document, including the first two articles that were not approved by the states. Thus, Article 3 of that document became Amendment 1.

Follow-Up: Government Here and Now

According to those who wrote the U. S. Constitution, government has six purposes. They're listed in the Preamble:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

1. ***Identify at least 12 organizations or bureaus that are part of the U. S. Government. (Consult the library or Internet.)***
2. ***Rank these organizations or bureaus in order of importance, and give reasons for your ranking.***
3. ***Identify the mission of each organization or bureau, and decide which of the six purposes of government (as listed in the preamble) apply to that organization. Some organizations may fit more than one purpose.***
4. ***Pick three of the organizations, and identify the kinds of power they have been given to do their work, and identify ways in which their power is limited.***

Acknowledgements/Sources

Page 2t(1): H C. Lodge, ed., *The Works of Alexander Hamilton*. Volume I, 1904. **2t(2):** Alexander Hamilton, *Federalist Paper. No.1* **2t(3):** H C. Lodge, ed., *The Works of Alexander Hamilton*. Volume 1, 1904 **2b:** *Senate Documents*. Volume 15, 1909 **3t:** Richard Henry Lee, "Letters of the Federal Farmer to the Republican." reprinted in *Essays on the Constitution of the United States*. Paul L. Ford, ed.. 1892. **3c:** *Maryland Gazette and Baltimore Advertiser*. March 7, 1788. **3b:** William V. Wells, ed., *The Life and Public Services of Samuel Adams*. Volume 3, 1866. **4t:** Edmund C. Burnett. ed., *Letters of Members of the Continental Congress* (Washington, C.: Carnegie Institution of Washington, 1936), Vol. III. **4c to 6:** Max Ferrand ed., *The Records of the Federal Convention of 1787*. Volumes I and II, 1911.

Notes for Teachers and Mentors:

The subject matter in this unit is unavoidably abstract, so some preliminary focus on the necessary functions of government and the role of power is needed to help learners to see the significance of the primary sources.

(A simpler alternative to all or part of this unit on the Constitution is in our Civics Systems course, part 4: <https://www.marionbrady.com/Civics/04Patterns&Ideas.pdf>, p. 13ff.)

Although rarely stated, there's one fundamental shared idea or attitude that underlies much of the Constitution: ***A profound distrust of excessive power in the hands of one person or group.*** This attitude is a natural outgrowth of the experiences of those who gathered to frame the new government. If learners leave this unit understanding this single principle, they will have achieved more than many completing similar courses.

The familiar principle developed by the founding fathers to control power was, of course, separation of powers and "checks and balances," where each of the three branches of government have some control over the others.

The final step in the circle of control was the principal of judicial review. This power was not made explicit by the Constitution, but was inferred in what was perhaps the most important case ever heard by the Supreme Court, *Marbury v. Madison*, in 1803, which established the principle that the Federal judiciary could rule on the constitutionality of laws generated by Congress or other law-making bodies.

This is a difficult unit. Feedback from teachers with suggestions for dealing with it successfully are welcomed. See <https://www.marionbrady.com/Discussion-MoreInvestigationsinAmericanHistory.asp>. That webpage provides a way for you to comment, question, or provide helpful suggestions to other users.

Main American history webpage: <https://www.marionbrady.com/AHH.asp>

(HLB, minor changes 12/23/2019)