

CHAPTER 9

U.S. Constitution and the Rebirth of Government

Under the Articles of Confederation, states managed their affairs well enough, but relations between states began to get out of hand. Some national leaders thought the Confederation government incapable of solving such issues as interstate trade conflicts, unreliable currencies, social unrest, and worsening foreign relations.

George Washington feared that the United States might break into 13 separate nations. He and New Yorkers John Jay and Alexander Hamilton favored a stronger national government that could address common needs.

Many citizens disagreed. They feared that a strong national government would empower the rich and influential. Governor George Clinton of New York, Patrick Henry of Virginia, and Samuel Adams of Massachusetts led this opposition.



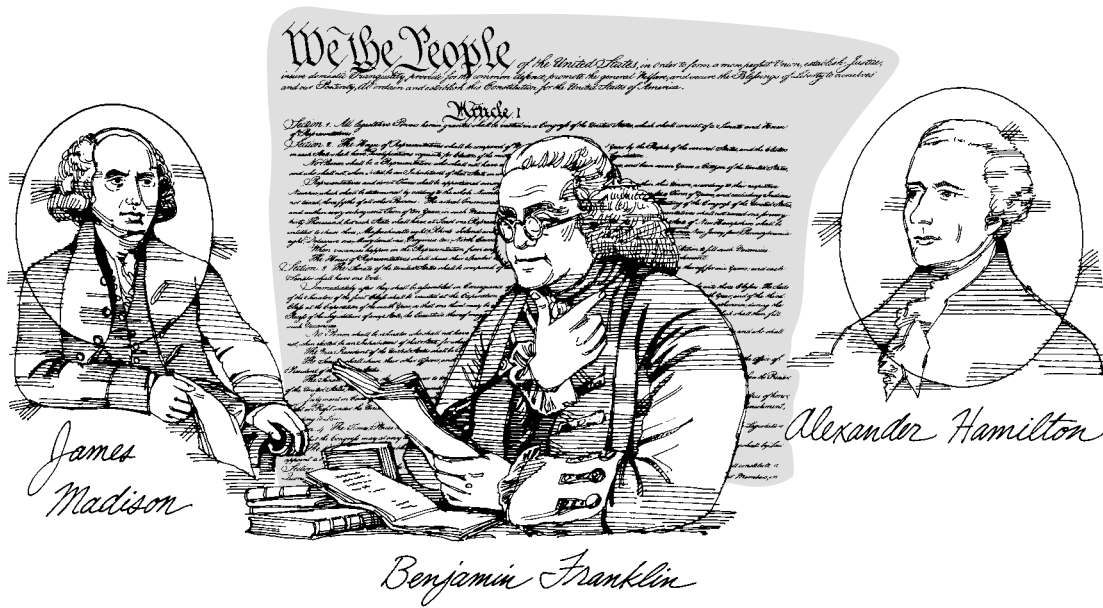
NEW PLAN FOR FEDERAL GOVERNMENT

The weak Confederation government could do nothing to regulate domestic or foreign trade or failing currencies. Foreign nations—some of them creditors—distrusted the new United States.

In 1786, Virginia invited all the states to meet in Annapolis, Maryland, to discuss commerce and shipping. Only New York and four others attended. At Alexander Hamilton's suggestion, the delegates asked Congress to arrange an all-states conference the following year. The **agenda** (order of business) would be how to strengthen the Articles.

Signers of the U.S. Constitution, Philadelphia, 1787





CONSTITUTIONAL CONVENTION

On May 14, 1787, the group—soon to be called the *Constitutional Convention*—met in Philadelphia. The delegates were able, intelligent, and politically experienced. The most honored among them, George Washington of Virginia, was elected president of the Convention. Much admired for his wisdom and tact was 81-year-old Benjamin Franklin, statesman, printer, publisher, scientist, and originator of the Albany Plan of Union (see pages 61–62). Other renowned delegates included John Randolph and James Madison of Virginia.

Two New York delegates, Robert Yates and John Lansing, stood for **states' rights** (doctrine favoring state over national authority). Alexander Hamilton, on the other hand, wanted a new, stronger national government.

Constitutional Compromises The delegates first *agreed* on three key points:

1. To create a new constitution rather than to revise the Articles.
2. To remain a **republic** (government in which the people choose who will govern them).
3. To specify three branches of government—executive, judicial, and legislative.

The delegates *disagreed* on three key points as well:

1. Representation of large and small states in the national legislature.
2. Slavery.
3. Congress's power to regulate interstate and foreign commerce, including the slave trade.

These issues were resolved by **compromises** (agreements in which each faction gives up something it wants). It soon became clear, however, that differences over slavery and economic needs would make Northern and Southern states uneasy partners.

Great Compromise The *Virginia Plan* determined the number of a state's representatives by its population, which favored large states. The *New Jersey Plan* favored small states by calling for one representative per state. The *Great Compromise*, or *Connecticut Plan*, outlined representation acceptable to all:

1. There was to be a **bicameral** (two-house) legislature.
2. In the Senate, all states would be equal, with two representatives apiece.
3. In the House of Representatives, the number of a state's representatives would reflect its population.

Thus, large states, which had the heaviest tax burdens, would dominate the House, where tax bills originated.

Three-Fifths Compromise Southern states wanted their slaves counted along with free citizens for purposes of representation in the House (maximum representation), but not counted at all for purposes of national taxation (minimum taxation).

The *Three-Fifths Compromise* allowed five slaves to be counted as three free people both for representation and taxation.

Commerce and the Slave Trade Northern states wanted the national government to regulate interstate and foreign trade, including the slave trade. A national tax on imports would protect Northern industries from foreign competition; an end to the slave trade was the goal of Northern **abolitionists** (antislavery faction).

Southern states wanted to make their own trade rules and thus prevent any national tax on exports from lowering sales of Southern cash crops to foreign buyers. And the entire region opposed any national interference in the slave trade.

To partially satisfy these conflicting positions:

1. Congress was empowered to regulate interstate and foreign trade.
2. Congress could set **tariffs** (taxes on imports).
3. Congress could not tax exports.
4. Congress could not interfere with the slave trade for 20 years (until 1808).




INFO CHECK

1. Identify: states' rights, republic, bicameral legislature, abolitionist, tariff.
2. What points of disagreement led the delegates to the Constitutional Convention to draw up three important compromises?
3. Summarize the positions of the Northern and Southern states concerning foreign trade.



STRUCTURE OF FEDERAL GOVERNMENT

The U.S. Constitution is based on three major principles: **federalism** or **division of powers**, **separation of powers**, and **checks and balances**.

 FEDERALISM: CONSTITUTIONAL DIVISION OF POWERS		
Delegated Powers (<i>federal government only</i>)	Concurrent Powers (<i>federal and state governments</i>)	Reserved Powers (<i>state governments only</i>)
Conduct foreign relations.	Levy and collect taxes.	Regulate trade within state.
Declare war.	Borrow money.	Establish local governments.
Regulate interstate/foreign commerce.	Establish superior and inferior courts.	Protect public health, safety, and morals.
Regulate immigration; establish laws for naturalization (granting citizenship to aliens).	Enforce laws.	Ratify constitutional amendments.
Raise and maintain armed forces.	Apprehend and punish lawbreakers.	Determine qualifications of voters.
Govern territories and admit new states.	Charter banks and other corporations.	Conduct elections.
Print and coin money.	Exercise eminent domain (take land for public use).	Change state constitutions and forms of state and local governments.
Establish post offices and post roads.	Provide for the general welfare.	Establish and support schools.
Grant patents (exclusive rights to inventions) and copyrights (exclusive rights to original writings, music, and artwork).		License occupational specialties.
Make all laws “necessary and proper” to carry out constitutional responsibilities. (For details about this elastic clause , see page 112.)		Exercise “reserved powers” (those not granted to the federal government nor prohibited to states).

Federalism The new government was a federal system; its power was divided between federal and state governments, as shown in the table above. This division of powers, however, posed no threat to individual liberties. That is why the *Preamble* to the Constitution states that the federal government was established by “We the people,” not by the states.

Separation of Powers The U.S. Constitution divides federal powers among three branches of government:

- Congress, the legislative branch, makes laws.
- The president, head of the executive branch, enforces laws.
- The judicial branch, the Supreme and lower federal courts, interprets (explains) laws, decides guilt or innocence of accused persons, and settles lawsuits.

Except for some differences in powers and responsibilities, the same three-branch system had been incorporated into the New York State Constitution of 1777 (see pages 92–93).

Checks and Balances The accompanying three tables show the system of checks and balances by which the U.S. Constitution ensures that no branch of the government grows too powerful.

CHECKS ON PRESIDENT	
Spheres of Activity	Checks by Other Branches
Spending	Congress must approve president’s requests for money to run the government.
Appointments	Senate must approve appointments of judges/officials nominated by president.
Treaties	Senate must approve treaties with foreign nations by two-thirds vote.
War	Congress must make declarations of war.
Executive authority	Federal courts may declare president’s actions unconstitutional by judicial review .*
Veto	Congress may, by a two-thirds vote, override (set aside) president’s vetoes of laws passed by Congress.
Misconduct	House may vote for impeachment of president (accusation of wrongdoing). Senate conducts trial of president and acts as jury.

*Established in 1803 by *Marbury v. Madison*, a **landmark case** (precedent-making court decision).

CHECKS ON CONGRESS	
Spheres of Activity	Checks by Other Branches
Lawmaking	President may veto bills passed by Congress. President may exert influence on Congress to pass bills into law. Federal courts may declare laws unconstitutional by judicial review.
Attendance	President may call Congress into special session.

CHECKS ON JUDICIAL SYSTEM	
Spheres of Activity	Checks by Other Branches
Judicial service	President appoints all federal judges. Senate approves appointments of all federal judges. Congress may impeach federal judges for wrongdoing.
Judicial convictions	President may pardon (forgive) persons convicted in federal courts.

~ "LIVING DOCUMENT"

The Constitution has been called a "living document" because it can be changed both formally and informally, as follows:

- **Amendment process** (formal): As provided in Article V, the Constitution may be amended whenever three-fourths of the states agree.
- **Elastic clause** (informal): Article I of the Constitution gives the federal government power to make all laws "necessary and proper" for carrying out its responsibilities. This so-called elastic clause grants Congress **implied powers** (in addition to delegated powers) so that it may make laws about matters that had not arisen when the Constitution was drafted (for example, airplane traffic).

Unwritten Constitution The **unwritten constitution** comprises traditional parts of the American political system that are not mentioned in the Constitution. They include:

- **Political parties:** Most elected officials are either Republicans or Democrats.
- **Two-term tradition:** George Washington chose to serve only two terms, as did later presidents. Franklin D. Roosevelt, however, won a third term (1940) and a fourth term (1944). The Twenty-second Amendment (1951) limited future presidents to two terms.
- **Cabinet:** George Washington met with four key advisers. Since then, each president has relied on such a cabinet and added new positions over time. At present, there are 14 members.



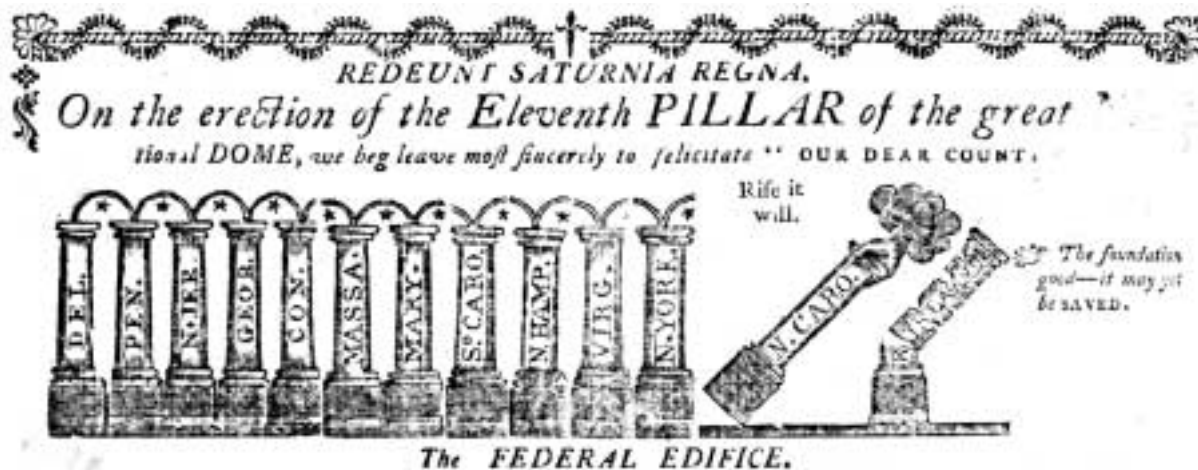
INFO CHECK

1. Identify: federal system, eminent domain, judicial review, impeachment, landmark case, implied powers, cabinet.
2. Name one way in which the judicial branch may be checked by the executive branch? the legislative branch?
3. In your opinion, are the checking powers of each of the federal branches of government equal? Why or why not?
4. In what way did the formal amendment process of the Constitution differ from that of the Articles of Confederation?

~ RATIFYING THE U.S. CONSTITUTION

Although the Articles said that any changes in government had to be approved by all 13 states, the Convention delegates provided that the new government would go into effect after **ratification** (formal approval) by nine states.

On September 17, 1787, the Convention sent the Constitution to the Confederation Congress. Melancton Smith, representative from New York, urged that Congress do nothing until a bill of rights ensuring civil liberties and individual rights



New York was the 11th state to ratify the Constitution—"The Eleventh Pillar of the Great National Dome." This pro-Federalist cartoon was published in 1788.

was added. Nevertheless, on September 18, Congress sent the Constitution without a bill of rights to the states for ratification.

Pros and Cons The ratification process set off a great political debate. As states organized ratifying conventions, two political groups emerged—*Federalists* and *Anti-Federalists*.

Federalists, who supported ratification, drew strength from merchants, traders, large landowners, creditors, and professionals. Their conservative interests would be protected best by strong national government.

Arguing against ratification, the Anti-Federalists—small farmers, artisans, shopkeepers, working people, debtors—feared losing local power and independence. They viewed strong federal government as a threat to the liberties that Americans had just fought to protect. How, they asked, could government have the consent of the people if only the House was elected by direct vote. (Until 1912, federal senators were elected by state legislatures.) Moreover, under the proposed government, people would be taxed once by their state and again by the federal government.

Federalists argued that only strong federal government could save the nation. The Constitution's plan of government would encourage growth of commerce, protect property, pay the national war debt, establish a safe money supply, and allow the United States to deal with foreign nations as a respected equal. And, Federalists assured people, the same Constitution did indeed limit federal power by the division-of-power plan.

Federalist Papers New York had a large Anti-Federalist majority, and ratification seemed in doubt. To win support for Federalists, Alexander Hamilton, John Jay, and James Madison wrote a series of articles to explain how well the Constitution would work. Their articles, published in New York newspapers, were then collected in a book, *The Federalist*.

Ratification in New York The New York ratifying convention met in Poughkeepsie in June 1788. Governor Clinton presided. The leading Anti-Federalist speakers were Melancton Smith and John Lansing. Hamilton and Jay argued for the Federal-

Page from Jefferson's copy of *The Federalist*

THE FEDERALIST. 217

Nothing remains but the landed interest; and this in a political view, and particularly in relation to taxes I take to be perfectly united from the wealthiest landlord to the poorest tenant. No tax can be laid on land which will not affect the proprietor of millions of acres as well as the proprietor of a single acre. Every land-holder will therefore have a common interest to keep the taxes on land as low as possible; and common interest may always be reckoned upon as the surest bond of sympathy. But if we even could suppose a distinction of interest between the opulent land-holder and the middling farmer, what reason is there to conclude that the first would stand a better chance of being deputed to the national legislature than the last? If we take fact as our guide, and look into our own senate and assembly we shall find that moderate proprietors of land prevail in both; nor is this less the case in the senate, which consists of a smaller number than in the assembly, which is composed of a greater number. Where the qualifications of the electors are the same, whether they have to choose a small or a large number their votes will fall upon those in whom they have most confidence; whether these happen to be men of large fortunes or of moderate property or of no property at all.

It is said to be necessary that all classes of citizens should have some of their own number in the representa-

ists. On July 26, 1788, the convention ratified the U.S. Constitution by the slim majority of 30 to 27. However, the Anti-Federalists had first insisted that a bill of rights be added.

Bill of Rights Congress reviewed a package of amendments to protect certain rights and limit federal power. The states then ratified ten of them, which became known as the *Bill of Rights*.

Some people still felt that the amended Constitution did not sufficiently protect individual liberties. For example, it granted no rights to enslaved African Americans. Abolitionists and supporters of women's rights continued to attack the Constitution as an instrument of oppression.



INFO CHECK

1. If you had been alive in 1787, would you have been a Federalist or Anti-Federalist? Explain.
2. In 1788, what special condition did the New York ratifying convention make before approving the U.S. Constitution?
3. Summarize the position of Americans critical of the Constitution even as amended by the Bill of Rights.



CHAPTER REVIEW

Multiple-Choice Questions

1. The U.S. Constitution gives power to declare war to
 1. the states only
 2. both the federal government and the states
 3. the people only
 4. the federal government only.
2. Most of the opposition to the U.S. Constitution of 1788 came from
 1. bankers
 2. small farmers
 3. lawyers
 4. merchants.
3. The Bill of Rights was added to the Constitution chiefly because of the people's distrust of
 1. strong central government
 2. political parties
 3. banks and corporations
 4. strong state government.
4. *The Federalist* was a
 1. newspaper in colonial New York
 2. series of articles explaining the Constitution and arguing for its adoption
 3. famous warship during the Revolutionary War
 4. pamphlet written by Thomas Paine to promote independence.
5. At the Constitutional Convention, the Three-fifths Compromise dealt with
 1. amendments to the Constitution
 2. women's rights
 3. representation and taxation
 4. rights of the accused.
6. The Great Compromise settled the issue of representation in Congress by
 1. giving each state two senators and representatives based on state population
 2. allowing all states to have equal representation
 3. requiring an equal number of members in each house
 4. limiting the populations of large states.
7. The constitutional ban on interference in the slave trade for 20 years was a concession to
 1. Northern merchants
 2. Western farmers
 3. Southern merchants and planters
 4. British abolitionists.
8. Federalism
 1. favors a central government
 2. divides powers between central and state governments
 3. promotes states' rights
 4. guarantees trial by jury.
9. The president's main check on Congress is
 1. judicial review
 2. the power of impeachment
 3. the veto
 4. the right to declare war.
10. Refer to the bulleted list on page 110. A legal dispute between New Jersey and New York would be decided by the
 1. executive branch
 2. New York State Assembly
 3. judicial branch
 4. legislative branch.
11. Of the following, the only item that is now a part of the unwritten constitution is
 1. ratification of amendments
 2. the two-term presidency
 3. the elastic clause
 4. the party system.

Constructed-Response Questions

Refer to the illustration on page 107 and answer questions 1 and 2.

1. What does this picture show?

2. What kinds of people are missing from the picture? Why?

Refer to the drawing on page 108 and answer questions 3–5.

3. Who are the people in the drawing? Why do you think they were selected?
 4. Based on the drawing, do you think that these people were ordinary citizens? Why or why not?
 5. According to the Preamble to the Constitution, shown in the background, were all people given the same rights? Explain.
- Refer to the cartoon on page 113 and answer questions 6 and 7.*
6. What do the pillars represent?
 7. Why would this cartoon be considered pro-Federalist?

Document-Based Question

Part A: Short Answer

*Refer to each document, and answer the question(s) following it. Then read the **Task** and write your essay. It should include references to most of the documents, along with additional information based on your knowledge of social studies.*

HISTORICAL CONTEXT: To replace the Articles, the Founders developed a new plan of government after debate and compromise on a number of issues—selecting a president, federalism, representation, safeguarding democracy, taxation, slavery, and trade. Because of these issues, the U.S. Constitution was labeled a “bundle of compromises.”

DOCUMENT 1. Reread the selections “Great Compromise,” “Three-Fifths Compromise,” and “Commerce and the Slave Trade,” on page 109.

1. On which issues was compromise necessary. Explain.

DOCUMENT 2. Refer to the table “Constitutional Division of Powers” on page 110.

2. What conclusion can you draw about how power was divided?

DOCUMENT 3. Refer to the section “Checks and Balances” and the accompanying table on page 111.

3. Identify one way in which the president can check Congress’s lawmaking powers.
4. May Congress still pass a law after the president has checked it? Explain.

Part B: Essay

TASK

- Identify *three* issues over which the delegates disagreed, and explain why they disagreed.
- Describe the solution that resolved these issues.
- Explain why the U.S. Constitution is considered a “bundle of compromises.”