

4. Putting Ideas to Work: Framing New Constitutions

The Articles of Confederation was only one of many new plans of government drafted during the war. Each of the 13 states also needed a constitution. As leaders in each state set about this task, they found few models to guide them. England did not have a written constitution. Its system of government was based on an assortment of laws, policies, and customs developed over the centuries. When it came to writing formal constitutions, the Americans were on their own.

State Constitutions: Giving Power to the People

In framing their new plans of government, state lawmakers demonstrated their commitment to **constitutionalism**, or the idea that government should be based on an established set of principles. These principles included popular sovereignty, limited government, the rule of law, and **majority rule**. The lawmakers also separated the powers of government by creating executive, legislative, and judicial branches, just as Montesquieu had described.

In addition, all state constitutions began with a statement of individual rights. The first of these, the Virginia Declaration of Rights, was adopted in June 1776 as part of Virginia's constitution. It served as a model for other state constitutions and later for the U.S. Bill of Rights.

The governments created under the new state constitutions derived their power from the people. However, they were not completely democratic. The states typically limited voting rights to white men who paid taxes or owned a certain amount of property. None of the original 13 state constitutions specifically outlawed slavery, and all states south of Pennsylvania denied slaves equal rights as human beings.

Mending the Articles of Confederation	
Weaknesses of the Articles of Confederation	Weaknesses Fixed Under the Constitution
Congress could not levy or collect taxes, leaving the government starved for funds.	Congress has the power to levy taxes to support the government.
Congress could not regulate trade among the states or with other countries.	Congress has the power to regulate interstate trade and trade with foreign countries.
Congress had only one house, and each state had only one vote in Congress, regardless of population.	Congress has two houses, and representation in the House of Representatives is based on population.
Nine out of 13 states in Congress had to agree to pass a major law.	Laws are passed by a simple majority of members of Congress.
All 13 states had to agree to amend the Articles.	Amendments can be ratified by three-fourths of the states.
The government lacked an executive branch to enforce laws and a court system to settle legal disputes.	The government has a legislative branch, an executive branch, and a judicial branch.
Congress could not create a uniform currency. Money was issued by states.	Congress has the sole power to issue money.
The states could and did ignore laws passed by Congress.	The Constitution and laws passed by Congress are the "supreme Law of the Land."
The states were loosely joined in a "league of friendship."	The states are bound together in a permanent union.

Governing Under the Articles of Confederation

The national government created under the Articles of Confederation was much weaker than the governments established in the states. Although some members of Congress wanted a strong central government, the majority preferred a loose confederation, with most powers remaining at the state level. The Articles emphasized that each state would retain its “sovereignty, freedom, and independence.” Any power not specifically given to Congress was reserved for the states.

The government created under the Articles consisted only of a congress, with members chosen by the states. It had neither an executive to carry out laws nor a judicial branch to settle legal questions. On paper, at least, Congress did have several key powers. It could declare war, negotiate with foreign countries, and establish a postal system. It could also settle disputes between states. But it had no power to impose taxes, which meant it was often starved for funds.

Despite these limitations, Congress held the nation together through years of war. It also enacted at least one landmark piece of legislation, the Northwest Ordinance of 1787. This law established procedures for the creation of new states in the Northwest Territory, a region bounded by the Ohio and Mississippi rivers. The Northwest Ordinance served as a model for all territories that later entered the Union as states.

For the most part, however, the government created by the Articles of Confederation was a failure. Lacking the power to levy taxes, Congress could not raise the funds needed to support the Continental Army. It had to borrow heavily to fund the revolution. After the war, it had no way to raise funds to repay those debts.

Equally troubling, Congress lacked power to control trade among the states. After the war, states began setting up trade barriers and quarreling among themselves. Matters came to a head when farmers, led by Daniel Shays, attacked a federal arsenal in Springfield, Massachusetts. Although Shays' Rebellion was finally put down by state troops, it revealed how little Congress could do to hold together the increasingly unstable country.

By 1786, it was clear to many of the nation's leaders that the government formed under the Articles was not working. That fall, representatives from various states met at Annapolis, Maryland, to discuss trade issues. While there, they issued a call for a constitutional convention to meet the following year in Philadelphia.

In theory, the purpose of the convention was to revise the Articles of Confederation. Once the delegates met, however, they decided to scrap the Articles and create an entirely new constitution. The table below lists some of the weaknesses of the Articles and explains how they were eventually fixed under the new plan of government.

Convening the Constitutional Convention

On May 25, 1787, the Constitutional Convention began. Delegates from all the states except Rhode Island came together at the Pennsylvania State House in Philadelphia, later known as Independence Hall. They met in the same room where the Declaration of Independence had been signed 11 years before.

The 55 delegates were prominent in American political life. All were white men. Among them were former soldiers, governors, members of Congress, and men who had drafted state constitutions. Their average age was 42.

The delegates represented a wide range of personalities and experience. At 81, Benjamin Franklin was the senior member. The wisdom and wit of this writer, inventor, and diplomat enlivened the proceedings. George Washington lent dignity to the gathering, while his former military aide Alexander Hamilton brought intellectual brilliance. Other delegates, like Roger Sherman of Connecticut, contributed legal and business experience. James Madison of Virginia was perhaps the most profound political thinker and the best prepared of all the delegates.

Several key figures were not at the convention. Both Thomas Jefferson and John Adams were in Europe, serving as U.S. diplomats. On reading over the delegates' names, Jefferson described the convention as “an assembly of demigods.”

Other leaders, like Samuel Adams of Massachusetts and Patrick Henry of Virginia, were suspicious of efforts to strengthen the central government. They, too, did not attend.

During the convention, no one played a greater role than Madison. Although he was just 36 years old, he had already served in Congress and the Virginia legislature. He was a serious student of politics and democratic theory. As the meetings got underway, he took detailed notes of the discussions and worked tirelessly to promote the new plan. For his role in shaping the new framework, he is rightly called the Father of the Constitution.

Reaching a Compromise on Representation

The first thing the delegates did was elect George Washington as the convention's presiding officer. They also adopted rules of procedure, including a vow of secrecy. Although it was stiflingly hot and humid in Philadelphia that summer, they shut the doors and windows of their meeting room to keep the proceedings private. They knew that the public was intensely curious about their discussions, and they did not want public pressure to affect their decisions.

Next, the Virginia delegates, who favored a strong national government, put forth a plan for a new constitution. The Virginia Plan, written mainly by James Madison, was clearly designed to replace the Articles, not to revise them. It called for a government of three branches. The legislative branch would make the laws, the executive branch would carry out the laws, and the judicial branch would interpret the laws.

Under the Virginia Plan, the new government would have a **bicameral**, or two-house, legislature. The Virginia Plan proposed that representation in both houses should be based on the population of each state. This would give the more populous states more representatives, and thus more influence, than states with smaller populations.

For about two weeks, the delegates discussed the details of the Virginia Plan. Some thought it gave too much power to the national government. Some opposed a bicameral legislature. Moreover, the smaller states did not like their representation in Congress being tied to population.

On June 13, William Patterson of New Jersey introduced an alternative approach. The New Jersey Plan proposed a series of amendments to the Articles of Confederation. These changes would have created a somewhat more powerful national government with a **unicameral**, or one-house, legislature in which all states had equal representation.

Delegates from the smaller states welcomed the New Jersey Plan. But after several days of debate, the convention voted to reject this proposal and return to discussion of the Virginia Plan.

For the next month, the delegates debated the Virginia Plan point by point. They continued to argue about the critical issue of representation in Congress. The debate grew so heated at times that some delegates threatened to walk out.

Finally, Roger Sherman of Connecticut proposed a compromise designed to satisfy both sides. His plan called for a bicameral legislature with a different form of representation in each house. In the Senate, states would have equal representation. In the House of Representatives, states would have representation based on their populations. Sherman's plan, known as the Great Compromise, resolved the thorny issue of representation in Congress and allowed the convention to move forward.



Compromises on Slavery and Commerce

Other issues also divided the delegates. Those from northern states differed sharply with those from southern states on questions of slavery and commerce. Many northern delegates wanted the constitution to include a provision for abolishing slavery. But most southerners opposed ending a system of labor on which their agricultural economy depended.

These differences over slavery spilled into debates on representation and taxes. Since most slaves lived in the South, delegates from the South wanted slaves to be counted when determining representation in the House of Representatives.

Yet they did not want slaves counted when determining each state's share of taxes to support the national government. The graph above shows which states had large slave populations at that time.

In contrast, delegates from the North wanted slaves to be counted for taxation, but not when determining representation. After much debate, the delegates reached another important compromise. For purposes of both representation and taxation, a slave was to be counted as three-fifths of all “free persons.”

The Three-Fifths Compromise helped hold the new nation together. However, by treating a slave as less than a free person, this provision contradicted the basic ideal of equality set forth in the Declaration of Independence. This contradiction between democratic ideals and the cruel inequality of slavery would haunt the nation for decades to come and would eventually result in the Civil War.

Delegates from the North and South also argued over commerce. Northerners favored giving Congress broad powers to control trade. Southerners worried that Congress might outlaw the slave trade and place heavy taxes on southern exports of crops, such as cotton and tobacco. Again the delegates reached a compromise. Congress would have the power to regulate foreign and interstate commerce, but it could not tax exports, and it could not outlaw the slave trade until 1808.

Creating the Executive Branch: One Head or Many?

Another major issue concerned the formation of the executive branch. Some delegates wanted a single executive to head the government. Others were concerned that giving power to a single leader might give rise to a monarchy or tyranny. Instead they favored an executive committee made up of at least two members. In the end, however, the delegates voted for a single president.

The next question was how to choose the president. Some delegates thought Congress should do it, while others favored popular elections. They finally decided to set up a special body called the **Electoral College**. This body would be made up of electors from each state who would cast votes to elect the president and vice president. Each state would have as many electors as the number of senators and representatives it sent to Congress. Adding the two senators to the number of electors from each state boosted the influence of small states and of those with large slave populations.

On September 17, 1787, after months of hard work, the Constitution was signed by 39 of the 42 delegates present. The document they signed that day began with these ringing words:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, 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.

—Preamble to the Constitution, 1787

After that, it was up to the states to decide whether this plan of government would indeed establish “a more perfect Union.”