

Government in America

CHAPTER 2 OVERVIEW AND OUTLINE

CHAPTER OVERVIEW

INTRODUCTION

A **constitution** is a nation's basic law. It creates political institutions, allocates power within government, and often provides guarantees to citizens.

Constitutions thus establish who has power in society, and how that power is exercised. This chapter examines the background of the Constitution, and shows that the main principle guiding the writing of the Constitution was a concern for limited government and self-determination.

THE ORIGINS OF THE CONSTITUTION

The British king and Parliament originally left almost everything except foreign policy and trade to the discretion of individual colonial governments. However, Britain acquired a vast new territory in North America after the French and Indian War (1763). Parliament passed a series of taxes to raise revenue for colonial administration and defense of the new territory, and imposed the taxes on the colonists without their having direct representation in Parliament. The colonists protested, boycotted the taxed goods, and threw 342 chests of tea into Boston Harbor as a symbolic act of disobedience. Britain reacted by applying economic pressure through a naval blockade of the harbor, and the colonists responded by forming the First Continental Congress in September, 1774.

In May and June of 1776, the Continental Congress began debating resolutions about independence. Richard Henry Lee moved "that these United States are and of right ought to be free and independent states." On July 2, Lee's motion was formally approved. The **Declaration of Independence**—written primarily by Thomas Jefferson—was adopted two days later. The Declaration was a political polemic, announcing and justifying a revolution. Today, it is studied more as a statement of philosophy.

American political leaders were profoundly influenced by the writings of John Locke, especially *The Second Treatise of Civil Government* (1689). The foundation of Locke's philosophy was a belief in **natural rights**: before governments arise, people exist in a *state of nature* where they are governed only by the *laws of nature*. **Natural law** brings **natural rights**, including life, liberty, and property. According to Locke, the sole purpose of government was to protect natural rights. Government must be built on the **consent of the governed**, and it should be a **limited government**. In particular, governments must provide laws so that people know in advance whether or not their acts will be acceptable; government cannot take any person's property without his or her consent.

There are some remarkable parallels between Locke's thoughts and Jefferson's language in the Declaration of Independence. The sanctity of property was one of the few ideas

absent in Jefferson's draft of the Declaration: he altered Locke's phrase "*life, liberty, and property*" to read "*life, liberty, and the pursuit of happiness.*" Nevertheless, Locke's views on the importance of property figured prominently at the **Constitutional Convention**.

The **American Revolution** itself was essentially a conservative movement that did not drastically alter the colonists' way of life. Its primary goal was to restore rights that the colonists felt were already theirs as British subjects. They did not feel a need for great social, economic, or political changes. As a result, the revolution did not create class conflicts that would cause cleavages in society.

THE GOVERNMENT THAT FAILED: 1776-1787

In 1776, the Congress appointed a committee to draw up a plan for a permanent union of the states. That plan was the **Articles of Confederation**, which became the new nation's first governing document. The Articles established a government dominated by the states because the new nation's leaders feared that a strong central government would become as tyrannical as British rule. In general, the weak and ineffective national government could take little independent action. The Continental Congress had few powers outside of maintaining an army and navy, and had no power to tax or even to raise revenue to carry out that function. The weakness of the national government prevented it from dealing with the problems that faced the new nation.

Significant changes were occurring in the states—most significantly, a dramatic increase in democracy and liberty, at least for white males. Expanded political participation brought a new middle class to power. With expanded voting privileges, farmers and craftworkers became a decisive majority, and the old colonial elite saw its power shrink.

A postwar depression had left many small farmers unable to pay their debts and threatened with mortgage foreclosures. With some state legislatures now under the control of people more sympathetic to debtors, a few states adopted policies to help debtors (favoring them over creditors). In western Massachusetts, a small band of farmers led by Captain Daniel Shays undertook a series of armed attacks on courthouses to prevent judges from foreclosing on farms. **Shays' Rebellion** spurred the birth of the Constitution and reaffirmed the belief of the Philadelphia delegates that the new federal government needed to be a strong one.

MAKING A CONSTITUTION: THE PHILADELPHIA CONVENTION

The delegates who were sent to Philadelphia were instructed to meet "*for the sole and express purpose of revising the Articles of Confederation.*" However, amendment of the Articles required unanimous consent of the states; so the delegates ignored their instructions and began writing a new constitution. Although the men held very different views, they agreed on questions of human nature, the causes of political conflict, and the object and nature of a republican government. James Madison of Virginia (who is often called "*the father of the Constitution*") was perhaps the most influential member of the convention in translating political philosophy into governmental architecture.

Pennsylvania delegate Gouverneur Morris was responsible for the style and wording of the Constitution.

The 55 delegates at the Constitutional Convention were the *postcolonial economic elite*. They were mostly wealthy planters, successful lawyers and merchants, and men of independent wealth. Many were creditors whose loans were being wiped out by cheap paper money. Many were college graduates. As a result, it is not surprising that they would seek to strengthen the economic powers of the new national government. As property holders, these leaders could not imagine a government that did not make its principal objective the preservation of individual rights to acquire and hold wealth. A few (like Gouverneur Morris) were even intent on shutting out the propertyless altogether.

James Madison claimed that **factions** arise from the unequal distribution of wealth. One faction is the majority, composed of the many who have little or no property. The other is the minority, composed of the few who hold much wealth. The delegates thought that, if left unchecked, either a majority or minority faction would become tyrannical. The founders believed that the secret of good government is "*balanced*" government. A limited government would have to contain checks on its own power. As long as no faction could seize the whole of government at once, tyranny could be avoided. In Madison's words, "*ambition must be made to counteract ambition.*"

THE AGENDA IN PHILADELPHIA

Although the Constitution is silent on the issue of **equality**, some of the most important issues on the policy agenda at Philadelphia concerned the issue of equality. Three issues occupied more attention than almost any others: whether or not the states were to be equally represented, what to do about slavery, and whether or not to ensure political equality.

The delegates resolved the conflict over *representation for the states* with the **Connecticut Compromise**, under which a bicameral legislature would have equal representation for the states in the Senate and representation based on population in the House of Representatives. Although the Connecticut Compromise was intended to maximize equality among the states, it actually gives more power to states with small populations since it is the Senate that ratifies treaties, confirms presidential nominations, and hears trials of impeachment.

The delegates were bitterly divided over the issue of *slavery*. In the end, they agreed that Congress could limit future importing of slaves but did not forbid slavery itself in the Constitution. In fact, the Constitution stated that persons legally "held to service or labour" who escaped to free states must be returned to their owners. Northern and southern delegates also divided over the issue of how to *count* slaves. Under the **three-fifths compromise**, both representation and taxation were to be based upon the "number of free persons" plus three-fifths of the number of "all other persons." The delegates dodged the issue of **political equality**. A few delegates favored universal manhood

suffrage, while others wanted to place property qualifications on the right to vote. Ultimately, they left the issue to the states.

Economic issues were high on the policy agenda. The writers of the Constitution charged that the economy was in disarray. Virtually all of them thought a strong national government was needed to bring economic stability to the chaotic union of states that existed under the Articles of Confederation. The delegates made sure that the Constitution clearly spelled out the economic powers of the legislature. Consistent with the general allocation of power in the Constitution, Congress was to be the primary economic policymaker.

The delegates felt that they were constructing a limited government that could not threaten personal freedoms, and most believed that the various states were already doing an adequate job of protecting individual rights. As a result, the Constitution says little about personal freedoms. (It does prohibit suspension of the **writ of habeas corpus**, prohibits bills of attainder and *ex post facto* laws, prohibits the imposition of religious qualifications for holding office in the national government, narrowly defines treason and outlines strict rules of evidence for conviction of treason, and upholds the right to trial by jury in criminal cases.) The absence of specific protections for individual rights led to widespread criticism during the debates over ratification.

THE MADISONIAN MODEL

The founders believed that human nature was self-interested and that inequalities of wealth were the principal source of political conflict. They also believed that protecting private property was a key purpose of government. Their experience with state governments under the Articles of Confederation reinforced their view that democracy was a threat to property. Thus, the delegates were faced with *the dilemma of reconciling economic inequality with political freedom*.

Madison and his colleagues feared both **majority** and **minority factions**. To thwart **tyranny by the majority**, Madison believed it was essential to keep most of the government beyond their power. Under Madison's plan, voters' electoral influence was limited and mostly indirect. Only the House of Representatives was to be directly elected. Senators were to be elected by state legislatures (modified by the Seventeenth Amendment in 1913), presidents were to be indirectly elected by an electoral college, and judges were to be nominated by the president.

The Madisonian plan also provided for a system of **separation of powers**, in which each of the three branches of government would be relatively independent so that no single branch could control the others. However, the powers were not completely separate: a system of **checks and balances** was established that reflected Madison's goal of setting *power against power* to constrain government actions.

The framers of the Constitution did not favor a direct democracy. They chose a **republic**, a system based on the consent of the governed in which power is exercised by *representatives* of the public.

RATIFYING THE CONSTITUTION

In the battle over ratification, the **Federalists** supported the Constitution and the **Anti-Federalists** opposed it. John Marshall (later chief justice) suggested, "It is scarcely to be doubted that in some of the adopting states, a majority of the people were in opposition."

The position of the Federalists was strengthened by the *Federalist Papers*, written by James Madison, Alexander Hamilton, and John Jay as an explication and defense of the Constitution. Today, the *Federalist Papers* remain second only to the Constitution itself in symbolizing the ideas of the framers. The Anti-Federalists considered the Constitution to be a class-based document intended to ensure that a particular economic elite controlled the new government, and they believed that the Constitution would weaken the power of the states. They also feared that the new government would erode fundamental liberties. To allay fears that the Constitution would restrict personal freedoms, the Federalists promised to add amendments to the document specifically protecting individual liberties. James Madison did, indeed, introduce twelve constitutional amendments during the First Congress (1789); ten were ratified and have come to be known as the **Bill of Rights**.

The Constitution itself provided for ratification by special state conventions and required that nine states approve the document before it could be implemented. Delaware, the first, approved the Constitution on December 7, 1787. The ninth state (New Hampshire) approved only six months later.

CONSTITUTIONAL CHANGE

The Constitution may be modified either by formal amendment or by a number of informal processes. **Formal amendments** change the language of the Constitution in accordance with the procedures outlined in Article V. The Constitution may be **informally amended** in a variety of ways, such as through judicial interpretation or through custom and political practice. Political scientists often refer to the **unwritten constitution**—an unwritten body of tradition, practice, and procedure that, when altered, may change the *spirit of the Constitution*. For example, political parties and national conventions are not mentioned in the written document, but they are important parts of the unwritten constitution.

The Constitution was not intended to be static and unchanging. The founders created a *flexible system* of government, one that could *adapt to the needs of the times without sacrificing personal freedom*. The *brevity* of the Constitution also contributes to its flexibility: it is a very short document that does not attempt to prescribe the structure and functions of the national government in great detail. This flexibility has enabled the

Constitution to survive for more than 200 years. Although the United States is young compared to other Western nations, it has the oldest functioning Constitution.

UNDERSTANDING THE CONSTITUTION

The theme of the *role of government* runs throughout this chapter. This section examines the Constitution in terms of the theme of *democracy*, and looks at the impact of the Constitution on policymaking. The Constitution created a *republic*, a *representative form of democracy* modeled after the Lockean tradition of *limited government*.

One of the central themes of American history is the *gradual democratization of the Constitution*. While eighteenth-century upper-class society feared and despised democratic government, today few people would share the founders' fear of democracy.

The systems of separation of powers and checks and balances established by the Constitution allow almost all groups some place in the political system where their demands for public policy can be heard. Because many institutions share power, a group can usually find at least one sympathetic ear. These systems also promote the politics of bargaining, compromise, and playing one institution against another—to such an extent that some scholars even suggest there is so much "checking" that effective government is almost impossible.

CHAPTER OUTLINE

I. THE ORIGINS OF THE CONSTITUTION

A. A **constitution** is a nation's basic law that:

1. Creates political institutions
2. Assigns or divides powers in government
3. Often provides certain guarantees to citizens
4. Includes an unwritten accumulation of traditions and precedents
5. Sets the broad rules of the game of politics

B. The road to revolution.

1. The King and Parliament originally left almost everything except foreign policy and trade to the discretion of individual colonial governments.
2. Britain obtained a vast expanse of new territory in North America after the **French and Indian War** ended in 1763.
3. The British Parliament passed a series of taxes to pay for the cost of defending the territory, and also began to tighten enforcement of its trade regulations.
4. Americans resented the taxes, especially since they had no direct representation in Parliament.
5. The colonists responded by forming the First Continental Congress (September, 1774) and sent delegates from each colony to Philadelphia to discuss the future of relations with Britain.

C. Declaring independence.

1. The Continental Congress met in almost continuous session during 1775 and 1776.
2. In May and June of 1776, the Continental Congress began debating resolutions about independence; after two days of debate on the wording, the **Declaration of Independence** (written primarily by Thomas Jefferson) was adopted on July 4.

D. The English heritage: the power of ideas.

1. John Locke's writings, especially *The Second Treatise of Civil Government*, profoundly influenced American political leaders.
2. Locke's philosophy was based on a belief in **natural rights**, the belief that people exist in a state of nature before governments arise, where they are governed only by the *laws of nature*.
 - a. **Natural law** brings natural rights, which include life, liberty, and property.
 - b. Because natural law is superior to human law, natural law can justify even a challenge to the rule of a tyrannical king.
 - c. Locke argued that government must be built on the **consent of the governed**—the people must agree on who their rulers will be.
 - d. Government should also be a **limited government**, with clear restrictions on what rulers can do.
 - e. According to Locke, the *sole purpose of government was to protect natural rights*.
 - f. In an extreme case, people have a right to revolt against a government that no longer has their consent; but Locke stressed that people should not revolt *until injustices become deeply felt*.

E. Jefferson's handiwork: the American creed.

1. There are a number of close parallels between Locke's thoughts and Jefferson's language in the Declaration of Independence.
2. The sanctity of property was one of the few ideas absent in Jefferson's draft of the Declaration of Independence (but the Lockean concept of property figured prominently at the Constitutional Convention).
3. Jefferson altered Locke's phrase "*life, liberty, and property*" to "*life, liberty, and the pursuit of happiness*."

F. The "conservative" Revolution.

1. The **Revolution** was essentially a conservative movement that did not drastically alter the colonists' way of life.
2. The primary goal of the Revolution was *to restore rights the colonists felt were already theirs* as British subjects.

II. The Government That Failed: 1776-1787

A. The **Articles of Confederation** established a government dominated by the states.

1. The Articles established a national legislature (the **Continental Congress**) with one house.

- a. States could send up to seven delegates, but each state had only one vote.
 - b. The Continental Congress had few powers outside of maintaining an army and navy (and little money to do even that); it had no power to tax; and could not regulate commerce (which inhibited foreign trade and the development of a strong national economy).
- 2. There was no president and no national court.
- 3. The weakness of the national government prevented it from dealing with the problems that faced the new nation.
- B. Changes in the states.
 - 1. Important changes were occurring in the states, including a dramatic increase in democracy and liberty (for white males).
 - 2. Expanded political participation brought a new middle class to power, which included artisans and farmers who owned small homesteads.
 - 3. With expanded voting privileges, farmers and craftworkers became a decisive majority; members of the old colonial elite saw their power shrink, and they didn't like it.
- C. Economic turmoil.
 - 1. A postwar depression had left many small farmers unable to pay their debts; many were threatened with mortgage foreclosures.
 - 2. State legislatures were now under the control of people more sympathetic to **debtors**.
 - 3. A few states (notably Rhode Island) adopted policies to help debtors, favoring them over **creditors**—some printed paper money and passed "**force acts**," requiring creditors to accept the almost worthless money.
- D. Shays' Rebellion.
 - 1. In 1786, a small group of farmers in western Massachusetts led by Captain Daniel Shays rebelled at losing their land to creditors.
 - 2. **Shays' Rebellion** was a series of armed attacks on courthouses to prevent judges from foreclosing on farms.
 - 3. Shays' Rebellion spurred the birth of the Constitution.
- E. The Aborted Annapolis Meeting.
 - 1. In September, 1786, a small group of continental leaders assembled at Annapolis, Maryland, to consider the problem of commercial conflicts that had arisen among the states.
 - 2. Only five states sent delegates, and they issued a call for a full-scale meeting of the states in Philadelphia the following May.

III. MAKING A CONSTITUTION: THE PHILADELPHIA CONVENTION

- A. Delegates were given specific instructions to meet "*for the sole and express purpose of revising the Articles of Confederation.*"
 - 1. Amendment was not feasible since amending the Articles required the unanimous consent of the states.
 - 2. Twelve states sent representatives; Rhode Island refused to participate.

3. The 55 delegates ignored their instructions and began writing a new constitution.
- B. Gentlemen in Philadelphia.
1. A select group of economic and political notables.
 2. Men of wealth; many were college graduates.
 3. Most were coastal residents; a significant number were urbanites.
- C. Philosophy into Action.
1. Although very different philosophical views were represented, the group *agreed on questions of human nature, the causes of political conflict, and the object and nature of a republican government.*
 2. The delegates were united in their belief that people were self-interested and that government should play a key role in *checking and containing the natural self-interest* of the people.
 3. James Madison, who is often called "*the father of the Constitution*," was perhaps the most influential member of the Convention in translating political philosophy into governmental architecture.
 - a. Madison believed that *the distribution of wealth (property) is the source of political conflict.*
 - b. He claimed that **factions** arise from the unequal distribution of wealth: one faction is the majority (composed of the many who have little or no property); the other faction is the minority (composed of the few who hold wealth).
 4. The delegates believed that *either a majority or a minority faction will be tyrannical* if it goes unchecked and has too much power.
 - a. Property must be protected against the tyrannical tendencies of faction.
 - b. The secret of good government is "*balanced government*": as long as no faction could seize complete control of government, tyranny could be avoided.

IV. THE AGENDA IN PHILADELPHIA

- A. Although the *Constitution is silent on equality*, some of the most important issues on the policy agenda at Philadelphia concerned equality: representation of the states; what to do about slavery; and whether or not to ensure political equality.
- B. Representation of the states.
1. The **New Jersey Plan**, proposed by William Paterson of New Jersey, called for each state to be equally represented in the new Congress.
 2. The **Virginia Plan**, suggested by Edmund Randolph of Virginia, called for representation in Congress based on the state's share of the American population.
 3. The **Connecticut Compromise**, devised by Roger Sherman and William Johnson of Connecticut, was the solution adopted by the delegates that created a **bicameral legislature** in which the Senate would have two members from each state and the House of Representatives would have representation based on population.

C. Slavery.

1. The delegates agreed that Congress could limit future *importing of slaves* (they prohibited it after 1808), but they *did not forbid slavery* itself.
2. The Constitution stated that persons legally "held to service or labour" who escaped to free states had to be returned to their owners.
3. Under the famous **three-fifths compromise**, both representation and taxation were to be based upon the "number of free persons" plus three-fifths of the number of "all other persons."

D. Political equality.

1. Some delegates favored suffrage for all free, adult males; some wanted to put property qualifications on the right to vote.
2. Ultimately, they decided to leave the issue to the states.

E. Economic issues.

1. Economic issues played an important role at the Convention.
 - a. Advocates of the Constitution (Federalists) stressed the economy's weaknesses.
 - b. Opponents of the Constitution (Anti-Federalists, who opposed a strong national government) claimed that charges of economic weakness were exaggerated.
2. It is not surprising that the framers of the Constitution would seek to strengthen the economic powers of the new national government since delegates to the Constitutional Convention were the nation's postcolonial economic elite. Historian Charles Beard argued that the delegates primarily wanted these strong economic powers so that their own wealth would be protected; the best evidence does not support Beard's thesis.
3. The Constitution clearly spelled out the economic powers of Congress.
 - a. Congress was to be the chief economic policymaker.
 - b. Congress was granted power to tax and borrow, and to appropriate funds.
 - c. Congress was also granted powers to protect property rights—powers to punish counterfeiters and pirates, ensure patents and copyrights, to legislate rules for bankruptcy, and to *regulate interstate and foreign commerce*.
4. The framers also prohibited practices in the states that they viewed as inhibiting economic development.
 - a. State monetary systems.
 - b. Placing duties on imports from other states.
 - c. Interfering with lawfully contracted debts.
5. States were required to respect civil judgments and contracts made in other states, and to return runaway slaves to their owners (overturned by the Thirteenth Amendment).
6. The national government guaranteed the states "*a republican form of government*" to prevent a recurrence of Shays' Rebellion, and the new government was obligated to repay all the public debts incurred under the Continental Congress and the Articles of Confederation (\$54 million).

F. Individual rights.

1. The delegates felt that preserving individual rights would be relatively easy.
 - a. They were constructing a limited government that, by design, could not threaten personal freedoms.
 - b. Powers were dispersed so that each branch or level of government could restrain the others.
 - c. Most delegates believed that the various states were already protecting individual rights.
2. Although the Constitution says little about personal freedoms, it does include the following:
 - a. The **writ of habeas corpus** may not be suspended except during invasion or rebellion.
 - b. Congress and the states are prohibited from passing bills of attainder (which punish people without a judicial trial) and *ex post facto* laws (which punish people or increase the penalties for acts that were not illegal or were not as severely punished when the act was committed).
 - c. Religious qualifications may not be imposed for holding office in the national government.
 - d. Treason is narrowly defined, and strict rules of evidence for conviction of treason are specified.
 - e. The right to trial by jury in criminal cases is guaranteed.
3. The absence of specific protections for individual rights led to widespread criticism during the debates over ratification.

V. THE MADISONIAN MODEL

- A. The delegates were faced with the dilemma of reconciling *economic inequality* with *political freedom*.
- B. James Madison and his colleagues feared both majority and minority factions.
- C. To prevent **tyranny by the majority**, Madison believed that it was essential to keep most of the government beyond the control of the masses.
 1. Under Madison's plan that was incorporated in the Constitution, voters' electoral influence was limited and mostly indirect.
 2. Only the House of Representatives was directly elected; senators and presidents were indirectly elected, and judges were nominated by the president (modified by the Seventeenth Amendment, which provides for direct popular election of senators).
- D. Separation of powers and checks and balances.
 1. The Madisonian scheme provided for a system of **separation of powers** in which each of the three branches of government would be relatively independent of the others so that no single branch could control the others.
 2. Power was not separated absolutely, but was shared among the three institutions.
 3. Since power was not completely separate, each branch required the consent of the others for many of its actions—thereby creating a system of

checks and balances that reflected Madison's goal of setting *power against power* to constrain government actions.

- a. The president checks Congress by holding the veto power.
- b. Congress holds the "purse strings" of government, and the Senate has the power to approve presidential appointments.
- c. **Judicial review** (the power of courts to hold executive and congressional policies unconstitutional) was not explicit in the Constitution, but was asserted by the Supreme Court under John Marshall in *Marbury v. Madison* (1803).
- d. Since the framers thought much government activity would take place in the states, federalism was considered an additional check on the power of the national government.

E. The constitutional republic.

1. The framers of the Constitution established a **republic** (a system based on the consent of the governed in which power is exercised by representatives of the public).
2. This *deliberative democracy* established an elaborate decision-making process.
3. The system of checks and balances and separation of powers has a conservative bias because it favors the *status quo*; that is, people desiring change must usually have a *sizable majority* rather than a simple majority.
4. The Madisonian system encourages moderation and compromise, and retards change.

VI. RATIFYING THE CONSTITUTION

A. Federalists and Anti-Federalists.

1. A fierce battle erupted between the **Federalists** (who supported the Constitution) and the **Anti-Federalists** (who opposed it).
2. Federalists:
 - a. James Madison, Alexander Hamilton, and John Jay—writing under the name Publius—wrote a series of 85 articles (known as the *Federalist Papers*) in defense of the Constitution.
 - b. The *Federalist Papers* defended the Constitution detail by detail, but also represented *an important statement of political philosophy*.
3. Anti-Federalists.
 - a. The Anti-Federalists questioned the motives of the writers of the Constitution; they believed that the new government was an enemy of freedom.
 - b. Anti-Federalists believed that the new Constitution was a *classbased document*, intended to ensure that a particular economic elite controlled the public policies of the national government.
 - c. They feared that the new government would *erode fundamental liberties* and would *weaken the power of the states*.
4. In a compromise to assure ratification, the Federalists promised to add amendments to the document specifically protecting individual liberties.

- a. James Madison introduced twelve constitutional amendments during the First Congress in 1789.
- b. Ten of the amendments—known as the **Bill of Rights**—were ratified by the states and took effect in 1791.

B. Ratification.

1. The Federalists specified that the Constitution be ratified *by special conventions* in each of the states, not by state legislatures (a shrewd move since state legislatures were populated with political leaders who would lose power under the Constitution).
2. The Constitution itself specified that nine states approve the document before it could be implemented.
3. Delaware was the first state to ratify the Constitution (Dec. 7, 1787); New Hampshire became the ninth state six months later.
4. George Washington was the electoral college's unanimous choice for president and he took office on April 30, 1789.

VII. CONSTITUTIONAL CHANGE

A. Constitutional changes may occur either by formal amendments or by a number of informal processes.

B. **Formal amendments** change the written language of the Constitution.

1. Article V of the Constitution outlines procedures for formal amendment.
2. There are two stages to the amendment process (proposal and ratification), each with two alternative routes.
 - a. **Proposal** - an amendment may be proposed either by a two-thirds vote in each of Congress, or by a national convention called by Congress at the request of two-thirds of the state legislatures.
 - b. **Ratification** - an amendment may be ratified either by the legislatures of three-fourths of the states, or by special state conventions called in three-fourths of the states.
3. All of the amendments to the Constitution have been proposed by Congress (no constitutional convention has been convened since the original Constitutional Convention); all except one of the successful amendments have been ratified by the state legislatures.
4. The president has no formal role in amending the Constitution.

C. Effects of formal amendment.

1. Formal amendments have made the Constitution more egalitarian and democratic.
2. The emphasis on economic issues in the original document is now balanced by amendments that stress equality and increase the ability of a popular majority to affect government.
3. The most important effect has been to *expand liberty and equality* in America.

D. **Informal amendment** - the Constitution changes *informally* as well as *formally*.

1. The **unwritten constitution** refers to an *unwritten body of tradition, practice, and procedure* that—when altered—may change the *spirit of the Constitution*.
2. The Constitution may change informally through judicial interpretation, through political practice, through demands on policymakers, or as a result of changes in technology.
 - a. **Judicial interpretation** can profoundly affect how the Constitution is understood.
 - b. *Changing political practice* can also change the meaning of the Constitution.
 - (1) The development of political parties dramatically changed the form of American government.
 - (2) Changing political practice has altered the role of the **electoral college**, which today is often seen as a "rubber stamp" in selecting the president.
 - c. The Constitution has also been greatly changed by *technology*.
 - (1) The *mass media* plays a role unimaginable in the eighteenth century.
 - (2) The *bureaucracy* has grown in importance with the advent of technological developments such as computers.
 - (3) *Electronic communications* and the development of *atomic weapons* have enhanced the president's role as commander in chief.
 - d. The power of the presidency has grown as a result of *increased demands for new policies*.
 - (1) The United States' growth to the status of a *superpower* in international affairs has located additional power in the hands of the chief executive.
 - (2) Increased demands of domestic policy have placed the president in a more prominent role in preparing the federal budget and proposing a legislative program.

E. The importance of flexibility.

1. The United States has the *oldest functioning constitution* in existence today.
2. The framers of the Constitution created a *flexible system of government* that could adapt to the needs of the times without sacrificing personal freedom.
3. Even with 27 amendments, the Constitution is a very short document: it does not prescribe the structure and functioning of the national government in detail.

VIII. UNDERSTANDING THE CONSTITUTION

A. The Constitution and democracy.

1. Democratic government was despised and feared among eighteenth-century upper-class society.

2. The Constitution created a republic, a representative form of democracy modeled after the Lockean tradition of limited government.
 3. One of the *central themes of American history* is the *gradual democratization of the Constitution*, away from the elitist model of democracy and toward the pluralist one.
 4. Today, few people share the founders' fear of democracy.
- B. The Constitution and the scope of government.
1. Separation of powers and checks and balances allow almost all groups some place in the political system where their demands for public policy can be heard.
 2. Separation of powers and checks and balances also promote the politics of bargaining, compromise, playing one institution against another, and an increase of hyperpluralism.
 - a. Some scholars suggest that so much "checking" was built into the American political system that effective government is almost impossible due to gridlock.
 - b. The outcome may be non-decisions when hard decisions be needed.