



## Scholar Exchange: Principles of the American Constitution 1776-1787

# Briefing Document

### INTERACTIVE CONSTITUTION RESOURCES

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- Resources for [Principles of the American Constitution 1776-1787](#)

### INTRODUCTION

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#### BIG IDEA

The Founders were children of the Enlightenment. When crafting a new Constitution, they learned from history and from their own experiences. Between the Declaration of Independence and the U.S. Constitution, the American people were governed at the national level by the Articles of Confederation and at the state level by state constitutions. With the U.S. Constitution, the Founding generation established a new national government. This new government was more powerful than the national government established by the Articles of Confederation, but also one of limited powers.

#### ESSENTIAL QUESTIONS

- Why did the Founding generation decide to write a new Constitution?
- What was the Articles of Confederation, and what sort of national government did it establish?
- What did the Founding generation learn from the state constitutions that the American people wrote before the U.S. Constitution?
- What was Shays' Rebellion, and how did it influence the Founding generation?
- What key principles underlie the U.S. Constitution, and what sort of system of government did the Founding generation establish?

### THE ROAD TO THE CONVENTION

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How did the post-independence experience of governing—in other words, of actually being in charge—influence the Founding generation and shape the U.S. Constitution? One way of framing this question is as follows: *How did we get from the Declaration of Independence (and the American Revolution) to the U.S. Constitution?*

- What changed?
- What remained the same?
- And how did this experience—and the debates of the period—shape the push to create a new national government in just a little over a decade?

Let's begin by reviewing some of the key events (and factors) leading to the push for a new Constitution.

## THE ARTICLES OF CONFEDERATION

When the Constitutional Convention met in Philadelphia in 1787, our nation already had a framework of government—the [Articles of Confederation](#). And the Constitutional Convention itself was—in many ways—a response to the weaknesses of this form of government.

- **The One Thing to Remember about the Articles of Confederation:** The Articles created a weak central government—a “league of friendship”—one that largely preserved state power (and independence).

The Articles created a **national government centered on the legislative branch**, which consisted of a single house. There was no separate executive branch or judicial branch. There was no separate House and Senate. The delegates in the legislative branch voted by state—with each state receiving one vote, regardless of its size.

The **powers of the national government were limited**. The national government didn’t have the power to tax or to regulate commerce between the states. It couldn’t force states to provide troops or send the government money.

Any proposed amendment to the Articles required *unanimous* approval from all thirteen states. As a result, no amendment was ever ratified. Congress couldn’t exercise the powers that it *did* have without support from *nine* of the thirteen states.

In other words, it couldn’t declare war, enter into treaties with other nations, spend money, or appoint a commander-in-chief without the support of *nine* states. This supermajority requirement made it difficult for the national government to govern.

These limits **created several problems** for the young nation. Without the power to tax, Congress struggled to fund that national government and to pay its soldiers. It depended on *voluntary* contributions from state governments. And many states simply refused to pay their fair share. The national government struggled to defend the frontier. And many states raised trade barriers against one another—imposing taxes on one another’s goods, spurring unhealthy competition between the states, and harming the new nation’s economy.

Congress was powerless to stop this.

## STATE CONSTITUTIONS

The Constitutional Convention was also a response to the nation’s experience with revolutionary-era state governments. Prior to the American Revolution, the American colonies were ruled by royal governments linked to the British Empire. With the outbreak of the American Revolution, these royal governments fell.

Informal patriot assemblies assumed the duties of governance throughout America. In May 1776, Congress agreed to a resolution, proposed by John Adams—calling for the colonies to set up new state governments. The American colonies responded with new charters of government: **state constitutions**. This was a constitutional revolution in itself—a decisive turn towards written constitutions.

In the years between the Declaration of Independence in 1776 and the new Constitution in 1789, the United States was governed primarily by thirteen separate governments. During this period, the state constitution makers looked to translate their vision of an ideal American republic into concrete **written constitutions**.

Most states built their constitutions within the confines of the **theory of mixed government**.

This is the traditional idea that constitutions should model themselves after the British Constitution and include traces of three key sources of political power: the one (monarchy), the few (aristocracy), and the many (democracy). The one was traditionally embodied by an executive. Within the states this was usually called a “Governor” and the few and the many were usually represented in the two houses of the state legislature. The few in the upper house—often called a senate. And the many in a lower house—often called an assembly.

Interestingly, Pennsylvania’s state constitution—the most radical and democratic at the time—included a state legislature with only one house (rather than two).

In 1776, John Adams wrote his [\*Thoughts on Government\*](#)—which offered his own guide to state constitution-makers. The pamphlet circulated widely in the states and it was one of the most influential pamphlets of the period. In it, Adams tried to outline the proper mode of constitution-writing for states. He framed the question as follows: *how might constitution-makers write a constitution that strikes the right balance between the one, the few, and the many?*

Americans divided over how best to strike this balance.

Conservatives were accused of giving too much power to the monarchical (the one) and aristocratic (the few) elements—in other words, the Governor and the upper house of the legislature. At the same time, Radicals were thought by their critics to give too much power to the democratic branch (the many)—the lower house of the legislature.

Adams argued that history suggested that a constitution must create a mediating institution—one that might negotiate conflicts between the two most extreme branches: the lower house and the executive. He argued that the key mediating institution should be the upper house—embodying the aristocratic element.

- This “**Senatorial part,**”—filled with men of property and a natural meritocratic elite—would bring with it wisdom, civic republican virtue, and devotion to the common good.
- For Adams, this was essential because even as the body of people “**no doubt possessed common sense, honesty, and virtue,**” few of them “**much read in the history, laws or politics . . . from whose rises, revolutions and declensions the great landmarks of legislation and government are taken.**”

Generally speaking, America’s early state constitutions created governments led by a strong legislature—responsive to each state’s voters—and a weak executive branch and judiciary.

These state governments pushed laws to relieve debtors (those who owed money). They set up trade barriers to protect their own businesses from competing with businesses from other states.

During this period, the American economy cratered—with many leaders blaming the downturn on the economic policies advanced by the states’ democratically elected legislatures. With the new Constitution, the Framers were looking, in part, to respond to—what they perceived to be—the weaknesses of the powerful, democratic state legislatures.

Many took the Massachusetts Constitution—written in response to some of the perceived flaws of the other state constitutions—as a model. The Massachusetts Constitution looked to check the powers of the lower house of the state legislature. It created a powerful and independent Governor—elected directly by the people and equipped with a veto that could check unwise legislation. It created a powerful and independent judiciary and tried to create an upper house with a property qualification designed to represent the wealthy and elite in Massachusetts. In the Massachusetts Constitution, we see important constitutional principles like separation of powers (dividing the powers of government

between three co-equal branches of government) and checks and balance (providing each branch of government with the powers to check the other branches).

### SHAYS' REBELLION

Finally, there was the danger of mob rule—and **Shays' Rebellion**.

The economic situation grew dire by 1786. Revolutionary war debt ravaged the budgets of the national government and some states. States tried a variety of measures to address the debt crisis—including debt relief. Businesses were failing, and trade suffered. And under the Articles of Confederation, the national government could do little to help.

In late 1786, farmers in Western Massachusetts—facing high land taxes (and growing debt) and feeling that the economic (and governing) class in Boston didn't represent them—took matters into their own hands.

Under the leadership of Daniel Shays—a thirty-nine-year-old farmer who had fought in the American Revolution, including at Lexington and Bunker Hill—the farmers organized themselves into an armed fighting force and marched through the western part of the state. The farmers seized control of court buildings—preventing the state government from taking possession of their farms. They forced debtors' prisons to close. And they attempted to commandeer the arsenal at Springfield, Massachusetts. Their plan was to march to Boston and confront the Massachusetts government.

Under the Articles of Confederation, Congress had no power to raise an army. They could ask the states for help—but they couldn't force them to raise troops. As a result, a Massachusetts militia eventually put down the rebellion. For many in the Founding generation—including George Washington, Alexander Hamilton, and James Madison—Shays' Rebellion was proof that the Articles were too weak to govern the country.

They feared that this might be the first of many violent uprisings. The national government had no real power to stop them or to address the underlying problems through a good policy.

Eventually, these key leaders concluded that the nation needed to hold a convention—one that might work to propose a strong national government, whether through revisions to the Articles of Confederation or even through a new Constitution. Key figures like James Madison and Alexander Hamilton pushed to ensure that the nation called that convention and that America's most beloved leader—George Washington—would be there when it happened.

On February 21, 1787, the Confederation Congress *did* agree to call for a convention of state delegates to meet in Philadelphia for the **"sole and express purpose of revising the Articles."**

However, the Framers instead crafted an entirely new framework of government—the U.S. Constitution.

### PRINCIPLES OF THE AMERICAN CONSTITUTION

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We are going to focus on some of the key principles underlying the U.S. Constitution: popular sovereignty, federalism, separation of powers, checks and balances, and republicanism.

#### POPULAR SOVEREIGNTY

What do we mean by popular sovereignty? "Popular sovereignty" is just a fancy way of saying that the U.S. Constitution establishes a government that's driven by *us*—not a monarch, not the elites, not an aristocracy—but by us, the American people. As with most things, Abraham Lincoln may have said it best in the Gettysburg Address: popular sovereignty means **"government of the people, by the people, for the people."**

Where do we see popular sovereignty in the U.S. Constitution?

Think about the opening words of the Constitution: **“We the People.”** Generally speaking, when we refer to “popular sovereignty,” we are talking about “rule by the people” and the idea that ultimate power and authority rests not with the government itself, but with the people themselves. The President, Congress, and the courts are limited by this. We are the boss. And they work for us.

Where does this idea come from?

*Social Contract Theory:* All legitimate governments are based upon the consent of the people. Governments had the responsibility to protect individual natural rights in return for the obligations of responsible citizenship.

We also pull this idea from the Enlightenment—*e.g.*, John Locke and Rousseau. They describe theoretically how people enter into society. We give up some rights. But the government owes us duties, too. For example, security and follow the rule of law.

At its core, popular sovereignty is the idea that the people are the source of the government’s authority and, in turn, can alter the government whenever they deem it appropriate—whether in response to tyrannical misrule or smaller-scale deficiencies in the Constitution’s design. These can be *big* changes like a Revolution, or *small* changes like new laws or new constitutional amendments. The principle of popular sovereignty has been the engine of American constitutional development since the Founding and remains the ultimate source of our Constitution’s legitimacy.

As the Constitution’s Preamble—“We the People”—suggests, popular sovereignty was important to key delegates at the Constitutional Convention. We also see this principle in the Constitution’s ratification—or approval—process. As we discussed earlier, in September 1787, the United States already had a national framework of government—the Articles of Confederation. The new Constitution was the Framers’ proposal for replacing *that* government. But it was only that—a *proposal*. The Framers left the question of ratification—whether to say “yes” or “no” to the new Constitution—to the American people.

In the Framers’ view, only the American people themselves had the authority to tear up the Articles of Confederation and establish a new government. James Madison explained this well—describing the Constitution (in [Federalist No. 40](#)) as **“of no more consequence than the paper on which it was written” unless ratified by the American people.**

In other words, it didn’t matter that the new Constitution was signed by America’s two most beloved figures—George Washington and Benjamin Franklin—and written by some of the nation’s best constitutional (and political) thinkers. It wasn’t up to them. It was up to the American people themselves.

The ratification process was the Framers’ attempt to make popular sovereignty a reality—a living, breathing thing in the world. For them, the foundation of all political power—the very legitimacy of our Constitution and the national government itself—rested with us: the American people.

We also see the principle of popular sovereignty in the Constitution’s amendment process. Article V sets out the process for amending the Constitution.

The Founding generation didn’t believe that they had a monopoly on constitutional wisdom. Therefore, the Founders set out a formal amendment process that allowed later generations to revise our nation’s charter without the need to resort to violence or revolution.

But the Founders limited new amendments to those that could actually secure broad support from the American people—support that transcended factional (and, later, party) interests. This helped to ensure that the American people remained the main engine for constitutional reform.

Throughout American history, reformers *have* succeeded. “We the People” *have* amended our Constitution 27 times—transforming it in important ways and often making it a “**more perfect**” document.

Finally, elections ensure a connection between the American people and their elected representatives.

## FEDERALISM

What is federalism? “Federalism” is the word used to describe the Constitution’s system of dividing political power between the national government and the states.

When we look for [Federalism in the Constitution](#), where can we find it? The Constitution itself doesn’t say “federalism” anywhere. But it’s in there! It’s everywhere!

*Examples Include:* Article I, Section 3 (the original Senate); Article I, Section 8 (the powers of Congress—especially the Commerce Clause and the Necessary and Proper Clause); Article I, Section 10 (limitations on the powers of the states); Article IV (Privilege and Immunities Clause and Fugitive Slave/Rendition Clause); Article VI (Supremacy Clause); the Tenth Amendment; and/or the Enforcement Clauses of the Reconstruction Amendments.

Why so many layers? What would be a benefit of having lots of layers of government? Why did the Founding generation value federalism? For the Founding generation, federalism was an important way of bringing government closer to the American people themselves—to the level of government closest to them.

We are a country that was founded (as Lincoln said) on the promise of “government of the people, by the people, for the people.” By breaking the powers of the government up and not just having ONLY a national government, this gives a ton of power to the state governments—the governments that the Founders believed were closest to the people.

Furthermore, by empowering states to shape policy in important ways, federalism permits states to shape a range of policies in ways that serve our diverse nation. This lets the people in the state that they live in—and their elected officials—write laws that fit their community best. Over time, these diverse approaches to different issues—from education to health to safety to the environment to whether people are treated equally to how much people are paid—sometimes benefit the nation as a whole.

In 1932, Justice Louis Brandeis offered his famous vision of the states as “**laboratories of democracy.**”

- On this view, state governments often lead the way in trying out new laws and policies.
- When those ideas work out well, they can spread to other states and even bubble up to the national level—changing the way that things work all across the nation. Ideas that are tested out as state laws sometimes lead to larger changes in how our country works as a whole.

A famous example is women’s suffrage.

Women began voting in Western states long before the [Nineteenth Amendment](#). And this experiment worked out so well that other states extended voting rights to women, as well—including (eventually) large states like New York and Michigan. Finally, this experiment culminated in the Nineteenth Amendment—banning gender discrimination in voting.

But not all national laws bubble up from the states. The same thing can happen in the opposite direction, too.

By giving the national government the power to override the states in certain of areas, the Constitution permits the national government, to stop the states from doing certain things. The national government can set laws that apply to the entire nation—to everyone.

A key example is the national government's response to Jim Crow segregation.

Beginning in the late 1800s, many Southern states set up systems of laws that discriminated against African Americans. In response, the national government eventually passed new laws—like the Civil Rights Act of 1964 and the Voting Rights Act of 1965—that applied to the entire country.

What should we remember about the Founding generation's approach to federalism?

Even though the Founders established a new national government, they preserved a central role for the states in our constitutional system. To that end, they set up a system of federalism—dividing power between the national government and the states. While future amendments granted the national government new powers, the states retained substantial powers to promote the health, safety, and welfare of their citizens.

## SEPARATION OF POWERS AND CHECKS AND BALANCES

Through the [separation of powers](#), the Constitution distributes political power between three branches of government.

- The legislative branch—Congress—makes the laws.
- The executive branch—led by the President—enforces the laws.
- And the judicial branch—headed by the Supreme Court—interprets the laws.

At the same time, through its system of checks and balances, the Constitution grants each branch of government the power to check abuses by the other branches. Perhaps the best way to understand this system is through one of the most famous essays in American history, James Madison's [Federalist No. 51](#). This essay was part of *The Federalist Papers*. Today, scholars and ordinary Americans alike recognize *The Federalist Papers* as some of the finest works of political theory.

But it's also important to understand them in context—as political documents written during the fight over the ratification of the U.S. Constitution. *The Federalist Papers* were printed primarily in New York to rally support for the new Constitution during the debates over ratification. Alexander Hamilton, James Madison, and John Jay wrote these essays under the pen name "Publius."

Madison published *Federalist* No. 51 on February 8, 1788. He titled it: **"The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments."**

In this powerful essay, Madison explained how the Constitution's structure checked the powers of the elected branches and protected against possible abuses by political elites. For Madison, the solution was a combination of *both* separation of powers *and* checks and balance.

With the **separation of powers**, the Framers divided the powers of the national government into the three separate branches. The goal was to prevent any single branch of government from becoming too powerful.

At the same time, each branch of government was also given the power to check the other two branches. Again, this is the key principle of **checks and balances**.

Madison explains this system in one of the most famous passages in American history:

- “Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature?”
- “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.”

But as Madison and Framers knew, men were *not* angels. How did this system of checks and balances work? Take one simple example.

- Congress was given the power to make our nation’s laws.
- But the President was given the power to veto any law passed by Congress, and federal judges were given the power to declare any law unconstitutional. (This is known as the power of judicial review.)

For Madison, ambition must be made to counteract ambition because the Constitution assumes that human nature is imperfect and that all political elites (and factions) will seek greater political power. As a result, the best way to control the national government was to harness the political ambitions of each branch of government and use them to check the other branches.

## REPUBLICANISM

For the Founding generation, the American Revolution created a new republican world. This shift wasn’t just about getting rid of a King and holding elections.

There was a moral dimension to the American Revolution—one that got at the character of American society. Classical antiquity—in other words, Ancient Greece and Rome—were the model. The new government—and American society—had to commit to (what the Founders referred to as) civic republican virtue.

Americans had to choose virtue over vice, reason over passion, and the public good over private self-interest.

What were some of the key traits of the good, republican citizen in America? Restraint, temperance, fortitude, dignity, and independence. Think: George Washington!

At the same time, Americans were concerned about corruption and decline. The Founders were children of the Enlightenment. They often used history as their guide. For them, history taught a clear (and scary) lesson: *Republics were fragile—and they all seemed destined to fall.*

For the revolutionary generation, the key historical example was the decline and fall of the Roman Republic. The key lesson there?

Republics rise or fall based on the character and spirit of their people. For republics to survive, citizens must sacrifice individual self-interest and commit to the public good.



The Founding generation was critical of luxury and greed. Furthermore, the Founders believed that the government itself must work to promote the good of everyone—helping the many, not the well-connected few. This was the idealistic goal of the American Revolution (and the American republic itself). This is what the Revolution was all about.

And for the revolutionary generation, this is what its new governments *should* be all about. To realize this vision, the people themselves should have a key voice in the government. For the revolutionary generation, the people were generally honest and able to discern their interests. But they could make mistakes.

Given the size of America, the American people themselves couldn't literally run the government. The Framers were tasked with designing a government that might translate the people's considered judgments into sound policy for the republic. On this view, policy should serve their collective interests—even if it ran counter to their immediate preferences at a given moment. Policy should be driven by reason, not passion. It shouldn't benefit the powerful and well-connected over the rest of us.

Furthermore, to succeed, the system itself had to produce elected officials committed to serving the public good—not their own self-interest. At the same time, it had to guard against the people's own pathologies.

This was no easy task.

#### FIVE KEY CONSTITUTIONAL PRINCIPLES

How did these key principles combine into a broader vision for the national government under the new Constitution?

While it's always dangerous to generalize, Madison, Hamilton, and Jay set out a compelling vision in *The Federalist Papers*. In designing their new government, the Framers were no doubt concerned about the threat of tyranny. After all, the American revolutionaries rebelled against an abusive, distant, and out-of-touch Parliament and King.

Therefore, it's of little wonder that the Founders were concerned with designing a national government with limited powers—one that would secure the blessings of liberty to themselves and their posterity.

However, the Founders were also interested in forming a national government that worked.

If the tyranny of George III was fresh in their minds, so, too, were the failures of the Articles of Confederation—a government incapable of raising revenue, promoting cooperation between the states, or securing our infant nation. By drafting and ratifying our Constitution, the Founding generation sought to create a national government more powerful than one created by the Articles of Confederation, but also one of limited powers.

This was no simple task.

In [\*The Federalist Papers\*](#), Madison, Hamilton, and Jay envisioned a constitutional system driven by reasoned debate and principled compromise.

In part, they feared majority and minority factions as enemies of public reason, and, in part, they sought to build a system that guarded against majoritarian tyranny, making it hard for (as James Madison put it) **“stronger factions [to] readily unite to oppress the weaker.”**

This is the familiar American constitutional story: separation of powers, checks and balances, factions counteracting factions.

However, that's only part of the story.

The Founders also sought to design a system that worked—one that promoted public reason and filtered the views of the American people through representative bodies filled with America’s best and brightest.

Of course, while House elections were intended to align the government with the views of the American people, the Framers also designed a **“complicated”** system—one that was not simply driven by the immediate preferences of the people themselves.

Through the new Constitution, Madison sought to limit the dangers of party passion and factional unreason. For Madison, **“the aim of every political constitution was . . . , first, to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of society.”** (Fed. 57)

While states often had a limited pool of quality candidates for their legislatures, the national government would have, in John Jay’s words, **“the widest field of choice.”** (Fed. 3)

Since the Framers **“extended . . . the spheres of elections,”** a larger universe of potential candidates would be available for each position in the national government, and only those with well-established reputations would win. (Fed. 27, Hamilton)

This would result in elected officials who were **“temperate and cool,” (Fed 27, Ham) congressional deliberations filled with “moderation and candor,” (Fed 27, Ham), and decisions that were “more wise, systematical, and judicious, than those of the individual states.”** (Fed. 3, Jay)

This form of representative government would **“refine and enlarge the public’s views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the interest of their country, and whose patriotism and love of justice, would be least likely to sacrifice it to temporary or partial considerations.”** (Fed. 10, Madison)

So, the Framers’ goal was to build a positive feedback loop of civic republican virtue: Build a system likely to attract great leaders, attract those leaders, build the public’s affection for the national government, and rinse and repeat. The system as a whole was designed to slow the political process down, filter public opinion, and lead to good decision-making.

The people would elect the members of the House directly and indirectly play a role in the selection of the new government’s President and Senators.

Any idea or piece of legislation would face considerable obstacles before succeeding, such as competitive elections, bicameralism, the presidential veto, and judicial review. This process would kill bad ideas, revise flawed ones, and refine good ones.

Over time, by slowing our politics down, national policy would promote the common good. Or at least, that’s the Federalists’ broader theory of government.

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