The US Constitution

The Constitutional Convention of 1787

In the summer of 1787, delegates from nine of the thirteen former colonies gathered in Philadelphia. Although they were only authorized to consider possible revisions of the Articles of Confederation, the delegates quickly concluded that the baby should be thrown out with the bath water, discarding both the positive and negative components of the Articles. They began drafting an entirely new Constitution that would dramatically alter the balance of power between the states and the national government in favor of the latter. While all delegates understood the need for a more effective central government, they disagreed on what exactly such a government should look like and what powers it should have.

Governmental Power

Three major issues divided the delegates at the Constitutional Convention. The first issue involved how much power should be assigned to the national government. The draft Constitution that emerged provided some clear corrections to perceived defects in the Articles of Confederation. It provided for a stronger central government adding an executive (the Presidency) and judicial branch (the Supreme Court) to the legislative branch. The national government was given a monopoly on foreign policy, the exclusive power to create a national currency, the power to regulate commerce with foreign countries and, as important, among the states themselves. Crucially, the new Constitution also remedied a critical weakness of the national government under the Articles by specifically providing it the power to tax.

Of great significance, the draft Constitution included a specific reference to the power of the national government vis-à-vis the states. The supremacy clause found in Article VI of the Constitution provides that the national government is supreme in its legitimate areas of authority. In the event of a conflict between national law and state law, national law must prevail. While the proposed Constitution greatly strengthened the authority of the national government, it also provided safeguards against a national government that might be too powerful. In pursuit of this objective, the new national government was organized around the principle of separation of powers, the division of government into three separate branches selected in different ways and
accountable to different constituencies. Governmental power was further limited by a system of checks and balances that gave each branch the ability to block actions of the other branches.

**Representation**

A second critical issue at the Philadelphia convention concerned how states should be represented in the national legislature. Larger states favored representation based on the size of a state's population as proposed in the Virginia Plan. This would give more populous states a clear advantage in shaping legislative outcomes and would have created a parliamentary-style government with the executive selected by a bicameral legislature. Smaller states, for equally obvious reasons, preferred a system of equal representation as described by the New Jersey Plan with each state having one vote regardless of population in a single-chamber legislature and an independent judiciary. The issue was ultimately resolved by the Great Compromise, the decision to create a bicameral legislature (one with two chambers). Representation in the lower chamber, the House of Representatives, was based on a state's population with larger states having a larger delegation. The advantage of the large states in the House, however, was counter-balanced in the upper chamber, the Senate, where each state received two delegates regardless of population. This bicameral legislature shared power with an independently elected executive branch and appointed judiciary.

**Slavery**

The third issue resolved by the delegates in Philadelphia involved a compromise of a more sinister nature. The former colonies remained deeply divided over the institution of slavery. Northern states generally opposed slavery while southern states stubbornly defended their peculiar institution. Southern states wished to count slaves as citizens for the purpose of determining their representation in the Congress but did not want them counted for the purposes of taxation. Northern states resisted the admittedly cynical attempt by southern states to count slaves for representation but with equal ethical opportunism wanted slaves counted for apportionment of national taxes. The resulting compromise remains a notorious (though now irrelevant) feature of the US Constitution but doubtless saved the United States as a unified nation. The Three-Fifths Compromise determined that slaves would be counted as three-fifths of a person for both representation and taxation. It was also agreed that Congress could not ban
the importation of slaves until 1808 and that northern states would be obligated to return fugitive slaves. Ironically, however, the words "slave" and "slavery" are not mentioned in the Constitution. The Thirteenth Amendment's ratification in 1865, outlawing slavery, makes the Three-Fifths Compromise legally void.

Video: Behind Closed Doors

Many leaders of the new nation agreed the Articles of Confederation were insufficient and needed revision. During the summer of 1787, delegates to the Constitutional Convention met secretly to create a new blueprint for the federal government. This video examines the political issues addressed by the Constitutional Convention and the contentious debate over representation that almost brought the Convention to a standstill.

Video Focus Points

Look for answers to these questions when watching the video:

- What were the Great Compromise and the Three-Fifths Compromise?
- According to James Madison, why is a national government necessary?
- What is the role of the judiciary?

Video script:

Music introduction

Narrator: In the summer of 1787, the Constitutional Convention got underway in the same room in Philadelphia where many of the same men had signed the Declaration of Independence. Their passionate debate took place under a shroud of secrecy. Even the windows were covered and sealed to ensure privacy, despite the intense heat.

Mel Yazawa: They would keep it private so that members would be free to speak their own minds without fear of any sort of retribution and by keeping it private, the public outside would not be continuously assembling to protest or come out in support of certain actions that were being debated in the halls of the convention.
Narrator: For James Madison, the vow of silence was a function of the magnitude of the event. Madison was the first delegate to arrive in Philadelphia, and he quickly took his place at the center of the drama. Although he was only thirty-five years old, Madison had been preparing for this moment for a long time.

Jack Rakove, Stanford University: I think he understands or he has come to believe that there really is a deep crisis of the union that requires a kind of comprehensive resolution. We know that he worked his way through a couple truckloads or more of books, that Jefferson had shipped him from Paris. Where he goes through a number of classic works and tries to figure out what had gone wrong with this confederation or that confederation and to try to draw some conclusions on that. So Madison was the kind of politician who understood that most of his colleagues in any legislative assembly were likely to be lazier and less energetic and probably less farsighted than he was. And I think Madison understood the importance of what we now call agenda control, or the ability to kind of shape an agenda from the outset. And so that’s why I think he goes into the convention exceptionally well-prepared in terms of all the issues that he thought needed to be canvassed.

Actor, James Madison: “The great difficulty lies in the affair of representation, and if this could be adjusted, all others would be surmountable. The people should have as little to do as may be about the government. They lack information and are constantly liable to be misled. The popular election of one branch of the national legislature is essential to every plan of free government.”

Mel Yazawa: There are two sort of huge issues dealing with representation which lead to two grand compromises in the convention. The first deals with large and small states, specifically how these states would be represented in the new legislature to which they were going to give enormous powers. The small states wanted the procedure that had been used in the Articles of Confederation to persist and that is each state gets an equal vote regardless of size. The large states thought this was unfair. I mean how could it be that if you had a half a million inhabitants, you would have the same clout as Delaware with fifty some odd thousand inhabitants?

Narrator: The proceedings soon bogged down in seemingly irreconcilable differences.

Actor, Benjamin Franklin: “Their ideas are so different, their prejudices so strong and so various, and their particular interests seeming so opposite, that not a move can be made that is not contested.”
Narrator: Differences over representation were finally resolved by “The Great Compromise.” Each state would have an equal number of votes in the Senate, while in the House, members would be apportioned by population.

Narrator: Meanwhile, the delegates had come to another, more ominous agreement. The so-called Three-Fifths Compromise allowed that slaves be counted as three-fifths of a person when calculating population for representation.

Jack Rakove: I think it has to be understood as a sectional compromise and it’s offensive to us for lots of reasons. But the alternative that you have to think about is if the South doesn’t get some additional benefit or some kind of coefficient to increase its representation, why should it stay in the union? That’s the issue here. If you want to have a union and the South is demanding, your Southern delegates are saying, precisely because we’re going to be a minority and we know that antislavery sentiment is already growing in the North. We would be nuts to come into this arrangement if we don’t have some means of protecting ourselves. So that’s kind of the ugly truth about it.

Actor, John Rutledge of South Carolina: “Religion and humanity have nothing to do with this question. Interest alone is the governing principle with nations.”

Narrator: Once the deadlock was broken, the work proceeded at a brisker pace, and the structure of the new government began to take shape.

Jack Rakove: The most important change the Framers made really comes right out of Madison’s analysis of what’s wrong with the Confederation which is you can’t have a confederation that’s going to rely on the states to carry out national policy. You need a national government that’s going to be able to enact, execute and adjudicate its own laws. You need the whole array of institutions that Americans then thought of as being the full expression of what a government ought to be. So that means a legislature divided bicamerally, with two houses. You need an independent executive and then, I guess, also equally interestingly, you need some kind of an independent judiciary. I think the Framers understood that the judiciary would be the institution most responsible for mediating or working out conflicts in those areas where national government and state government or national law and state law overlap or came into conflict or were somehow in tension with each other.

Narrator: When the delegates finished their work in September, they agreed to preserve the secrecy of their debates. But Madison carefully saved his notes, letters, and memos, and his
papers form the basis of much of what we know about the creation of the Constitution.

Jack Rakove: He did want people to know how the deliberations had unfolded and I think that was because he himself had tried to figure out what had happened in the formation of previous governments and he couldn’t come up with a coherent story. We don’t really know how most nations began. So I think Madison was very sensitive to the needs of historians like myself. I mean, I owe him a lot. We all owe him something as citizens. But I owe him a lot, I suppose, as a historian.

End of video.

**Activity: Check Your Understanding**

Covers elements of the U.S. Constitution. Explains that the supremacy clause established the national government as supreme; if a conflict between national and state law occurs, national law prevails. Describes how the Great Compromise and the Three-fifths Compromise resolved issues of representation. Points out that the new Constitution fixed critical weaknesses of the national government under the Articles by granting the government the power to tax, and adding an executive and judicial branch to the legislative branch, making for a stronger central government.

**Additional Resources**

**Websites**

**History of the Constitutional Convention**
http://www.archives.gov/exhibits/charters/constitution_history.html

The National Archives’ website provides a detailed account of the Constitutional Convention of 1787 as part of the history of the US Constitution.

**The Founding Fathers**
http://www.archives.gov/exhibits/charters/constitution_founding_fathers.html

The National Archives’ website has a biographical index of all the delegates to the Constitutional
Convention.

Notes on the Debates at the Constitutional Convention
http://avalon.law.yale.edu/subject_menus/debcont.asp

The Avalon Project at Yale Law School maintains a website that provides the text of James Madison's record of the daily debates held by delegates at the Philadelphia Convention.

Independence Hall
http://www.nps.gov/inde/index.htm

The National Park Service’s website has information about the historic site of the Constitutional Convention of 1787, including photos of the Assembly Room where the delegates met and an illustrated history of the events surrounding the Constitutional Convention.

Books

Founding Brothers: The Revolutionary Generation, by Joseph J. Ellis.

A popular historian makes the case that many of those truths we hold “self-evident” were actually fiercely contested in the early days of the republic. Throughout the text, Ellis portrays the personal, face-to-face nature of early American politics.


This book traces the struggles within the Philadelphia Convention as the delegates hammered out the charter for the world's first constitutional democracy. Relying on the words of the delegates themselves to explore the Convention's sharp conflicts and hard bargaining, David O. Stewart lays out the passions and contradictions of the often painful process of writing the Constitution.