

# Conceived of Compromises: Creating the U.S. Constitution

By USHistory.org on 05.18.17

Word Count **2,210**

Level **MAX**



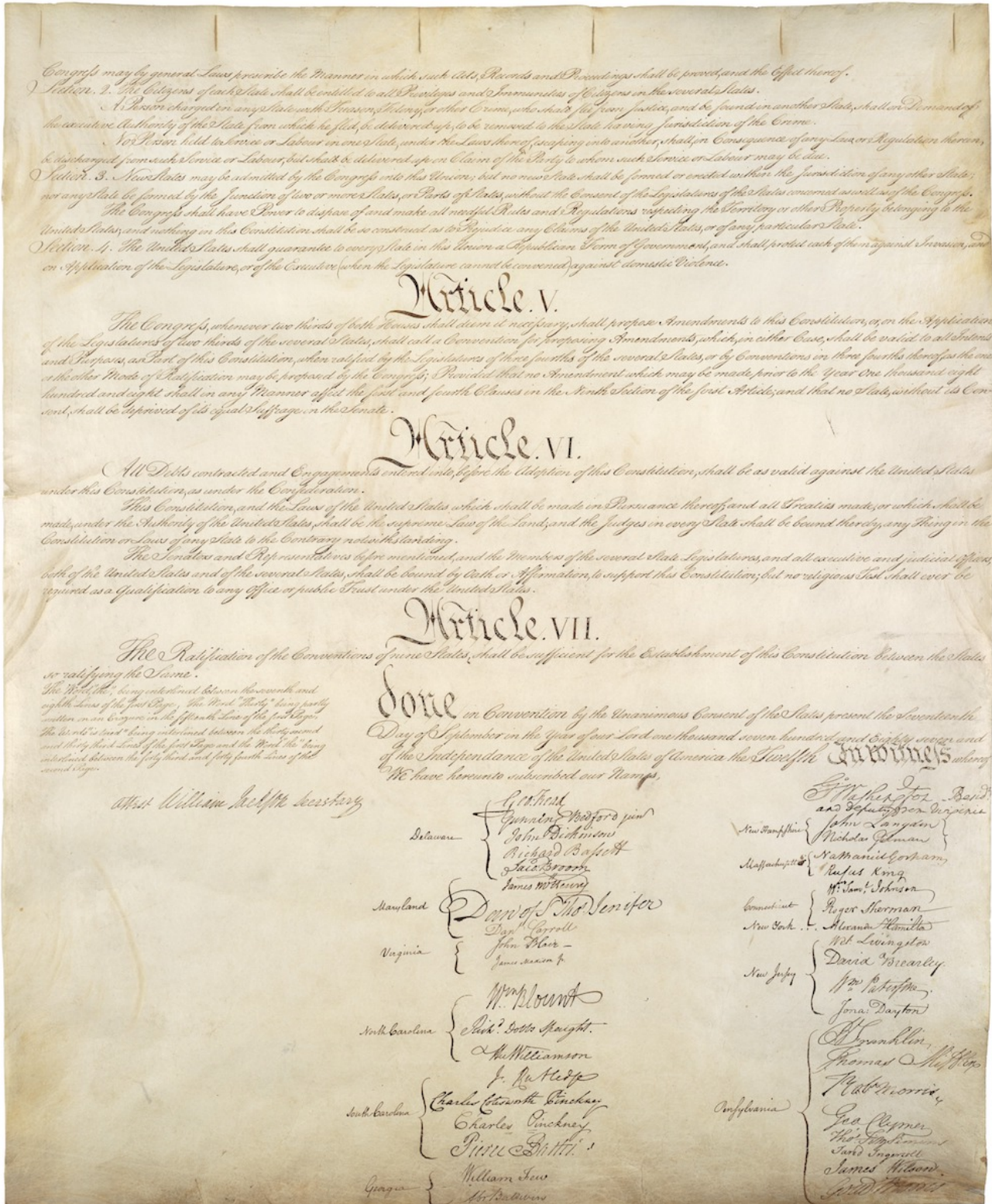
The signing of the Constitution at the Constitutional Convention in Philadelphia, Pennsylvania, on September 17, 1787. Photo from Wikimedia

"Nothing spoken or written can be revealed to anyone — not even your family — until we have adjourned permanently. Gossip or misunderstanding can easily ruin all the hard work we shall have to do this summer." -- George Washington, presiding officer, the U.S. Constitutional Convention

## The Constitutional Convention

Most of the delegates at the Constitutional Convention had already risked being hanged as traitors by the British. No wonder that they worried about their states' reactions to their decision to abandon the Articles of Confederation and create a whole new document.

Persuading the states to accept the Constitution was every bit as difficult as they predicted. It took two years for all 13 states to ratify it. But their product was a blueprint for a new kind of government based on the principles of separation of powers, checks and balances, and federalism.





## Separation of powers

The Constitution provided for the structure and powers of Congress in Article I. It created a bicameral legislature, set qualifications for holding office in each house, and provided for methods of selecting representatives and senators. It carefully enumerated powers, such as regulating interstate commerce and declaring wars. Article II vested the power to execute laws in a president of the United States. It set the president's term at four years, stated qualifications for office, and provided a mechanism to remove him from office.

The president's constitutional powers are very modest, but they include being commander-in-chief of the armed forces, negotiator of foreign treaties, and appointer of ambassadors, judges and other "officers of the United States." Article III established a Supreme Court and defines its jurisdiction. The founders disagreed on how much power to give the judges, but they ultimately gave judges appointments for life and forbid Congress to lower their salaries while they hold office.

## Checks and balances

The founders were ever mindful of the dangers of tyrannical government. So they built a system in which the powers of each branch would be used to check the powers of the other two branches. Additionally, each house of the legislature could check one another. For example, both houses of Congress must vote to enact laws, the president can veto legislation, and the Supreme Court can rule laws unconstitutional. Congress can override presidential vetoes. The president nominates Supreme Court justices, but the Senate can refuse to confirm the nominees. The Congress can impeach and remove the president or a member of the Supreme Court. As a result, a "balance" was created among the three branches.

Wide differences of opinion existed even among the 55 delegates concerning the proper balance between liberty and order. Alexander Hamilton, for example, valued order more than liberty and supported the creation of a very strong executive. James Madison, influenced by his mentor Thomas Jefferson, conceded that an executive was necessary, but he saw the legislature as the preserver of liberty and an important check on the power of the executive. Washington's experience as the head of the Continental Army during the revolution convinced

him that the chaotic government needed more structure. Jefferson did not attend the convention because he was serving as ambassador to France, but his belief that "a little rebellion now and then" was a good thing tilted his balance more toward liberty.

## **Federalism**

Article IV defined the relationship between the federal government and the states in a system of Federalism, which divides the power of government between national and state governments. This federal system was meant to correct the chaos of the country during the Articles of Confederation. However, it was still mindful of the threat of a tyrannical central government. This article included mechanisms for admitting new states to the Union.

The relationship between national and state governments was defined in many other parts of the Constitution. For example, Article 1, Section 10 forbids the states to form alliances or enter with foreign countries or to coin their own money. Federalism was further defined in Article VI in which the constitution was declared "the Supreme Law of the Land." This supremacy clause, as well as the "elastic" clause (Article I, Section 8) tilts the federalist balance toward national law.

Article V provides methods of amending the Constitution. Only 27 amendments have been added to the constitution since the ratification in 1789.

The founders acted boldly in 1787 when they threw out the Articles of Confederation and created the Constitution. The document they created has survived for more than 200 years. The risks that they took resulted in the longest lasting written constitution in world history.

## **Big and small states**

Despite the common vision and status that linked most of the delegates to the Philadelphia Convention, no obvious route existed for how to revise the Articles of Confederation to build a stronger central government.

The meeting began by deciding several important procedural issues that were not controversial and that significantly shaped how the Convention operated. First, Washington was elected as the presiding officer. They also decided to continue the voting precedent followed by the Congress where each state got one vote.

They also agreed to hold their meeting in secret.

There would be no public access to the Convention's discussions, and the delegates agreed not to discuss matters with the press. The delegates felt that secrecy would allow them to explore issues with greater honesty than would be possible if everything that they said became public knowledge.

In fact, the public knew almost nothing about the actual proceedings of the Convention until Madison's notes about it were published after his death in the 1840s.

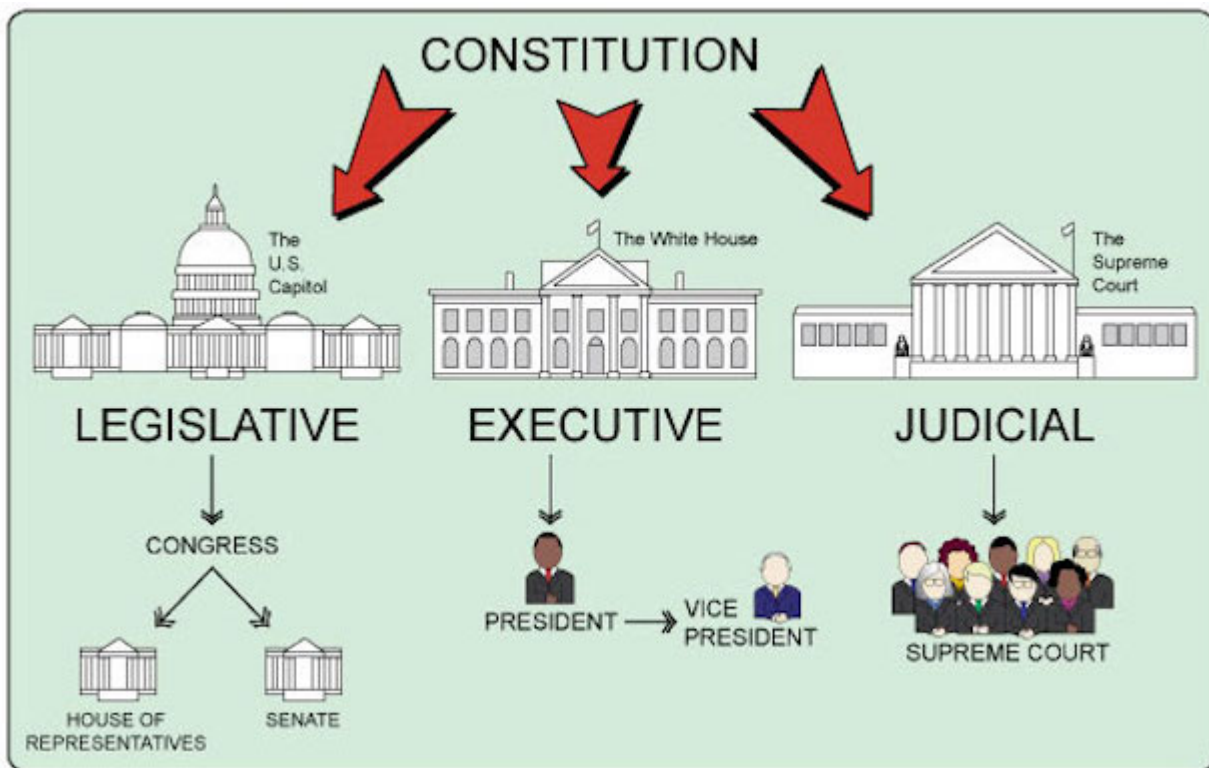
The delegates also made a final crucial and sweeping early decision about how to run the Convention. They agreed to go beyond the instructions of the Congress by not merely considering revisions to the Articles of Confederation but to try to construct a whole new national framework.

The stage was now set for Madison, the best prepared and most influential of the delegates at the Philadelphia Convention. His proposal, now known as the Virginia Plan, called for a strong central government with three distinctive elements.

First, it clearly placed national supremacy above state sovereignty.

Second, this strengthened central government would have a close relationship with the people, who could directly vote for some national leaders.

Third, Madison proposed that the central government be made up of three distinct branches: a bicameral legislature, an executive, and a judiciary. The lower house of the legislature would be elected directly by the people, and then the lower house would elect the upper house. Together they would choose the executive and judiciary.



By having the foundation of the proposed national government elected by the people at large, rather than through their state legislatures, the national government would remain a republic with a direct link to ordinary people even as it expanded its power. Madison's Virginia Plan was bold and creative. Further, it established a strong central government, which most delegates supported. Nevertheless, it was rejected at the Convention by opposition from delegates representing states with small populations.

These small states would have their national influence dramatically curbed in the proposed move from one-state one-vote (as under the articles) to general voting for the lower legislative house where overall population would be decisive.

The Virginia Plan was unacceptable to all the small states, who countered with another proposal, dubbed the New Jersey Plan, that would continue more along the lines of how Congress already operated under the articles. This plan called for a unicameral legislature with the one vote per state formula still in place.

Although the division between large and small states (really between high and low population states) might seem simplistic, it was the major hurdle that delegates to the Convention needed to overcome to design a stronger national government, which they all agreed was needed.

After long debates and a close final vote, the Virginia Plan was accepted as a basis for further discussion. This agreement to continue to debate also amounted to a major turning point. The delegates had decided that they should craft a new constitutional structure to replace the Articles.

This was so stunning a change and such a large expansion of their original instructions from the Congress that two New York delegates left in disgust.

Could the states ever form a more perfect union?

## **Constitution through compromise**

"Representation" remained the core issue for the Philadelphia Convention. What was the best way for authority to be delegated from the people and the states to a strengthened central government?

After a still more deeply divided argument, a proposal put forward by delegates from Connecticut (a small population state), struck a compromise that narrowly got approved. They suggested that representatives in each house of the proposed bicameral legislature be selected through different means. The upper house (or Senate) would reflect the importance of state sovereignty by including two people from each state regardless of size. Meanwhile, the lower house (the House of Representatives) would have different numbers of representatives from each state determined by population. Representation would be adjusted every 10 years through a federal census that counted every person in the country.

By coming up with a mixed solution that balanced state sovereignty and popular sovereignty tied to actual population, the Constitution was forged through what is known as the Connecticut Compromise. In many respects, this compromise reflected a victory for small states, but compared with their dominance in the Congress under the Articles of Confederation it is clear that negotiation produced something that both small and large states wanted.

Other major issues still needed to be resolved, however, and, once again, compromise was required on all sides. One of the major issues concerned elections themselves. Who would be allowed to vote? The different state constitutions had created different rules about how much property was required for white men to vote. The delegates needed to figure out a solution that could satisfy people with many different ideas about who could have the franchise (that is, who could be a voter).

For the popular lower house, any white man who paid taxes could vote. Thus, even those without property could vote for who would represent them in the House of Representatives. This expanded the franchise in some states. To balance this opening, the two senators in the upper house of the national government would be elected by the state legislatures. Finally, the president (that is, the executive branch) would be elected at the state level through an electoral college whose numbers reflected representation in the legislature.

To modern eyes, the most stunning and disturbing constitutional compromise by the delegates was over the issue of slavery. Some delegates considered slavery an evil institution, and George Mason of Virginia even suggested that the trans-Atlantic slave trade be made illegal by the new national rules. Delegates from South Carolina and Georgia where slavery was expanding rapidly in the late-18th century angrily opposed this limitation. If any limitations to slavery were proposed in the national framework, then they would leave the convention and oppose its proposed new plan for a stronger central government. Their fierce opposition allowed no room for compromise and as a result the issue of slavery was treated as a narrowly political, rather than a moral, question.

The delegates agreed that a strengthened union of the states was more important than the Revolutionary ideal of equality. This was a pragmatic, as well as a tragic, constitutional compromise, since it may have been possible (as suggested by Mason's comments) for the slave state of Virginia to accept some limitations on slavery at this point.

The proposed constitution actually strengthened the power of slave states in several important respects. Through the "fugitive clause," for example, governments of free states were required to help recapture runaway slaves who had escaped their masters' states. Equally disturbing was the "three-fifths formula," established for determining representation in the lower house of the legislature. Slave states wanted to have additional political power based on the number of human beings that they held as slaves. Delegates from free states wouldn't allow such a blatant manipulation of political principles, but the inhumane compromise that resulted meant counting enslaved persons as three-fifths of a free person for the sake of calculating the number of people a state could elect to the House of Representatives.

After hot summer months of difficult debate in Philadelphia from May to September 1787, the delegates had fashioned new rules for a stronger central government that extended national power well beyond the scope of the Articles of Confederation. The Constitution created a national legislature that could pass the supreme law of the land, could raise taxes, and with greater control over commerce. The proposed rules also would restrict state actions, especially in regard to passing pro-debtor laws. At the end of the long process of creating the

new plan, 38 of the remaining 41 delegates showed their support by signing the proposed Constitution. This small group of national superstars had created a major new framework through hard work and compromise.

Now another challenge lay ahead. Could they convince the people in the states that this new plan was worth accepting?



**Quiz**

- 1 Which sentence BEST summarizes the debate the founders had about creating a strong federal government?
- (A) Although some wanted the executive branch to have strictly defined powers, most agreed that having a strong system of federalism was necessary.
  - (B) Although most wanted to maintain the strong role of state governments, there was general agreement that state and federal government could work together.
  - (C) Although some had concerns about the role of a strong federal government, most came to agree that the Constitution would provide a balanced system.
  - (D) Although most agreed that the Articles of Confederation needed to be revised, some feared that a president's power could not be effectively restrained.
- 2 According to the article, each of the following contributes to the federalist system EXCEPT:
- (A) prohibition of states to enter into foreign alliances
  - (B) qualifications for elected office at the state level
  - (C) formal recognition of federal power over states
  - (D) mechanisms for admitting new states to the U.S.
- 3 Which of the following options BEST describes the structure of the article?
- (A) It provides brief summaries of each article in the Constitution, and discusses the positions of delegates as the convention proceeded.
  - (B) It discusses the challenges and achievements of the Constitutional Convention, and highlights the role of compromise involved in the process.
  - (C) It explains why the original Articles of Confederation failed, and describes how slavery became the central issue addressed at the convention.
  - (D) It emphasizes the historic nature of the Constitutional Convention, and explains how the new system limited the power of states.

4 Read the final two paragraphs of the article.

WHY does the author choose to conclude the article with these paragraphs?

- (A) to provide a complete summary of events and to highlight the celebrity status of the founders
- (B) to emphasize the challenges that the delegates had faced and to describe their achievement
- (C) to describe the scope of the agreement and to introduce a critical question
- (D) to emphasize positive aspects of the constitutional process and to explain their importance

## Answer Key

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