

The Constitution of the United States

A Computer Database & Handbook

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Note: This work was used in a constitutional law course at Evangel College, Missouri.

INTRODUCTION

The Constitution of the United States is the Supreme Law of the Land, the blueprint for the American form of government, the guarantee of civil rights for the American people, and America's historically most important export.

The U.S. Constitution is ultimately concerned with the distribution of power.

Between 1781 and 1789, the thirteen newly independent United States of America were governed by the Articles of Confederation. Distrusting a strong central authority—after their tragic experiences as subjects to the British Crown—each state was fiercely independent, indeed sovereign unto itself.

The governing body of the allegedly United States under the Articles of Confederation was simply the Congress of the Confederation, deciding issues on the basis of one vote per state (akin to the modern U.S. Senate): There was no body akin to the modern House of Representatives, legislating with more regard to the concerns of the more populous states; no executive authority, to enforce the laws; and no

federal judicial system, to settle interstate and international disputes.

The Congress of the Confederation did, at least in theory, have the power to declare war, conduct foreign affairs and relations with the Native Americans, establish the U.S. Army and Navy, and issue and borrow money. However, many states had their own, worthless currencies; and the Congress had no power to raise the taxes needed to pay off the massive Revolutionary war debt, of over \$100 million, let alone to establish sufficient credit to borrow what was required to rebuild the young war-torn nation.

In contrast, the states exercised powers of levying taxes and regulating trade that were unfettered by almost anything but their own self interest—therein laid the perhaps most dire problem. Not only did standards of money and weights-and-measures vary from state to state, but interstate trade was ruthlessly taxed in accordance with interstate rivalries and a lack of extradition encouraged profiteers to escape justice by merely crossing state lines.

What's more, the invaluable trade with Britain was being strangled by the bitter Mother Country.

In 1786, Shays' Rebellion, by disgruntled Massachusetts's farmers vs. their ineffectual state government, sent shock waves throughout the troubled young nation.

The popular Revolutionary War hero George Washington and his previous aide-de-camp Alexander Hamilton, an administrative genius, spoke publicly about the shortcomings of the Articles of Confederation and the need for a strong, constitutionally empowered and limited national government.

Although amendments to the Articles of Confederation required unanimous approval, in 1786 the "Annapolis Convention" of five states called for a convention to reform the articles; and on May 25, 1787, what was supposed to be a convention to rewrite the Articles of Confederation—but would quickly turn into a convention to write an entirely new and more profound constitution of national government—convened in the Pennsylvania State House (today called "Independence Hall," where the Declaration of Independence had been forged), in Philadelphia.

Fifty-five delegates represented all the states, except Rhode Island—which refused to recognize a national authority over its internal affairs.

The President of the Constitutional Convention was George Washington. Although all the delegates were accomplished statesmen, who contributed to the final outcome, the great debate was championed by James Madison, of Virginia, the "Father of the Constitution," who spoke, wrote, and cajoled throughout the

proceedings that "would decide forever the fate of republican [that is, representative] government."

The creation of the Constitution of the United States drew upon the wisdom of the Ages, from concepts of human rights, established in Western Civilization by the ancient Jewish prophets and Jesus Christ; traditions of democratic institutions, from ancient Greece and Rome; and demands for civil rights as propounded in the English Magna Carta, of A.D. 1215, to the liberal charters and constitutions of the American colonies and states and the political philosophies of the Age of Reason, in which the Founders lived and learned.

In 1776, Thomas Jefferson had expounded in the Declaration of Independence the themes that had motivated Americans to risk their all in the Revolutionary War against the most powerful empire on Earth: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Jefferson himself had called upon the best and brightest ideas from the Age of Reason. John Locke, the English author of *An Essay Concerning Human Understanding* (1690), had written: "The great and chief end ... of men's uniting into commonwealths, and putting themselves under government, is the preservation of their ..." ["life, liberty, and

estate"]." "The natural [my emphasis] liberty of man is to be free from any superior power on Earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man in society [my emphasis] is to be under no legislative power but that established by consent in the commonwealth." "Political power ... I take to be a right of making laws with penalties ... for the regulating and preserving of property, and of employing the force of the community in the execution of such laws, and in defense of the commonwealth from foreign injury, and all this only for the public good." "The greatest question which, in all ages, has disturbed mankind, and ... ruined cities, depopulated countries, and disordered the peace of the world, has been, not whether there be power in the world, nor whence it came, but who should have it."

The creators of the Constitution of the United States recognized this need to allocate power wisely. Like others in the Western World, they were deeply influenced by the Baron de Montesquieu, the French author of *The Spirit of the Laws* (1748), who had written: "Law in general is human reason." "[T]here is no liberty if the judiciary be not separated from the legislative and executive. ... There would be an end to everything, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals." Thus was established the foundation for a constitutional system of "checks and balances" between powerful, yet independent branches of government.

Not trusting in any one person or small group of people (especially those unanswerable to the rest of the people) to behave with the perfect wisdom and goodness of the Almighty, the Constitution divided the powers of government, not only for efficiency but also for our mutual protection: The "federal" system established by the Constitution divides power between the national government and the state governments; and the federal (national) government distributes balancing powers amongst the "legislative" branch (the Congress, which makes the laws), the "executive" branch (headed by the President, who enforces the laws), and the judicial branch (federal courts up to and including the Supreme Court, which judge cases and even the laws themselves, based on the Constitution and its amendments, as the Supreme Law of the Land).

The powers authorized by the Constitution can be considered on the basis of how they are distributed. "Expressed" (or "delegated") powers are explicitly listed in the Constitution, "implied" powers stem from them, "reserved" powers are unlisted and thus (at least by virtue of Amendments 9 and 10) belong to the states or the people, and "concurrent" powers are exercised by both the federal and state governments (although the federal authority is constitutionally superior, by Article VI).

Just as interstate rivalries had crippled the interstate alliance under the Articles of Confederation, the passionate concerns of individual states and groups of states challenged their union under a constitution. Compromise was the saving grace: Large states and small states compromised on a "bicameral" legislature

(See the notes for Article I, Section 1), Northern states and Southern states compromised on the thorny issue of slavery (as in Article I, Section 2), and every state compromised on its rights vis-à-vis the federal government (especially in the "Supremacy Clause," in Article VI).

Thirty-nine of the 55 delegates eventually signed the final document, on September 17, 1787. However, in many respects, the great debate had just begun. The signed Constitution was forwarded to constitutional conventions in each state—the "ratification" (approval) of nine states was required for implementation of the Constitution. Delaware was the first to ratify, on December 7, 1787; and New Hampshire was the ninth, on June 21, 1788: Although this officially activated the Constitution, it was not until the large and powerful states of Virginia, on June 25, 1788, and New York, on July 26, 1788, ratified the Constitution that the union was truly secured; but the road to agreement had been rocky indeed.

The "Federalists," who supported the Constitution, had been vigorously opposed by the "Anti-Federalists," including some of the delegates to the national convention (An unintended consequence was the two-party political system that has survived, in various forms under various names, throughout American history).

The Anti-Federalists had attacked the Constitution for having no bill of rights (See the discussion of the historical context of the first ten amendments to the Constitution), for making the Senate too much like the aristocratic British "House of Lords" (Amendment 17 would

eventually provide for the popular election of senators), for giving the Congress too much latitude in legislation (as with the "elastic clause," of Article I, Section 8), for giving one man—the President—too much power (Benjamin Franklin, in particular, had argued for an Executive Council but eventually dropped his opposition in the national convention, which prompted others to drop their objections, on other grounds), and for generally granting so much more power to the national government than had been allowed under the Articles of Confederation.

Ultimately, the Federalists won the national debate—carried out state-by-state—especially with such arguments as those published anonymously (by Hamilton, Madison, and John Jay) in the Federalist Papers (later published in book form as *The Federalist*).

In the Federalist Papers, Alexander Hamilton argued for a strong central authority: "Why was government instituted at all? Because the passions of men will not conform to the dictates of reason and justice without restraint." However, Hamilton tempered such arguments by pointing to the power to amend the Constitution as needed: The "fundamental principle of a republican [representative] government ... admits the right of the people to alter or abolish the established constitution whenever they find it inconsistent with their happiness."

Starting on a very pragmatic level, James Madison argued: "The most common and durable source of faction has been the various

and unequal distribution of property." "The regulation of these various and interfering interests forms the principle task of modern legislation." "The appointment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality." "Justice is the [desired] end of government." Although his support for the Constitution demonstrated faith in the ability of the democratic-republic to be created to live up to this awesome responsibility, Madison also uttered this ominous prophecy: "We are free today substantially, but the day will come when our Republic will be an impossibility. It will be an impossibility because wealth will be concentrated in the hands of a few. A Republic cannot stand upon bayonets, and when the day comes, when the wealth of the nation will be in the hands of a few, then we must rely upon the wisdom of the best elements in the country to readjust the laws of the nation to the changed conditions." (For example, see Amendment 16, establishing a progressive federal income tax) In short, even the "Father of the Constitution" acknowledged the need for the Supreme Law of the Land to continue to be a living document, not just some dusty relic of a time long past.

What then is the legacy of the Constitution of the United States, besides governing us still, two centuries later? Well, the sometimes very specific, sometimes intentionally ambiguous, typically timeless wisdom embodied in the Constitution of the United States has made it America's most important export to the world: Its influences can be seen—in the forms of government and sometimes in the actual wording—within national constitutions drawn-

up especially in the 19th Century throughout Western Europe and Latin America.

The rule of law in our democratic-republic—not the all-too-often tyrannical whim of a hereditary monarch—that is the Constitution of the United States has much more often than not fairly distributed powers and, thus, protected individual rights and enforced collective responsibilities for millions of people for hundreds of years. Carefully selected amendments, "necessary and proper" laws, Supreme Court decisions, creative legislators and Chief Executives, and—underpinning it all—the devotion of the American people to the grandest experiment in democracy that the world has ever undertaken have all contributed to making the Constitution of the United States surely the most important secular document ever created in human history. Good reading!