Chapter 3
THE CONSTITUTION:
Limiting Governmental Power
Creating a Constitution
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, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.
Articles of Confederation (1781-1789)

- Goal: to bring the thirteen states together while allowing each state to remain independent

- Adopted on March, 1, 1781

- Under the Articles, each state was essentially a sovereign country
Troubles Confronting a New Nation

- Financial Difficulties
- Commercial Obstacles
- Civil Disorder

Shay’s Rebellion (1786)
Consensus in Philadelphia

- Right to Liberty and Property
- Representative Government
- Limited Government
- Nationalism
Conflict in Philadelphia

• **Representation**
  (big v small states; southern v northern states)

• **Slavery**
  (do they vote?; what if they escape?; what about the slave trade?)

• **Voter Qualifications**
  (who votes and who can hold public office?)
Washington’s prestige helped hold the Constitutional Convention of 1787 together and later won support for the new Constitution.

“First in war, first in peace, first in the hearts of his countrymen”
The Constitutional Convention of 1787: Conflict and Compromise

**Two competing plans**

<table>
<thead>
<tr>
<th>The Virginia Plan</th>
<th>The New Jersey Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principle author:</strong> James Madison</td>
<td><strong>Principle author:</strong> William Patterson of New Jersey</td>
</tr>
<tr>
<td>National government would be supreme over the states</td>
<td>“Confederation model”</td>
</tr>
<tr>
<td>Favored by populous states</td>
<td>Favored by smaller states</td>
</tr>
</tbody>
</table>
The Constitutional Convention of 1787: Conflict and Compromise

The Conflict

State-based approach versus an individual-based approach

The Conflict

The fact that Northerners hated slavery worried Southerners who feared that their greater representation in Congress would be used to end slavery

The Compromise

House of Representatives: Proportional; Senate: equal number of representatives from each state

The Compromise

The Constitution was to protect the Atlantic Slave Trade for at least twenty years
The Conflict

If representation is proportional in the House of Representatives, how should slaves be counted?

The Compromise

Three-Fifths of the slaves in each state would be counted
Resolving the Economic Issues

- Levying Taxes
- Regulating Commerce
- Protecting Money
An Economic Interpretation of the Constitution

• Charles Beard, *An Economic Interpretation of the Constitution of the United States* (1913)

• Delegates represented 5 economic interest groups:
  1. Public security interests
  2. Merchants and manufactures
  3. Bankers and investors
  4. Western land speculators
  5. Slave owners
# The Structure of the Government

## Decision-Making Bodies in the Constitution of 1787

<table>
<thead>
<tr>
<th>House of Representatives</th>
<th>Senate</th>
<th>President</th>
<th>Supreme Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members allotted to each state “according to their respective numbers,” but each state guaranteed at least one member.</td>
<td>“Two senators from each state” (regardless of the size of the state).</td>
<td>Single executive.</td>
<td>No size specified in the Constitution, but by tradition nine.</td>
</tr>
<tr>
<td>Two-year term. No limits on number of terms that can be served.</td>
<td>Six-year term. No limits on number of terms that can be served.</td>
<td>Four-year term (later limited to two terms by the Twenty-second Amendment in 1951).</td>
<td>Life term.</td>
</tr>
<tr>
<td>Directly elected by “the People of the several States.”</td>
<td>Selected by the state legislatures (later changed to direct election by the Seventeenth Amendment in 1913).</td>
<td>Selected by “Electors,” appointed in each state “In such Manner as the Legislature thereof may direct” and equal to the total number of U.S. senators and House members to which the state is entitled in Congress.</td>
<td>Appointed by the president, “by and with the Advice and Consent of the Senate.”</td>
</tr>
</tbody>
</table>
A Bill of Rights

Guaranteeing Freedom of Expression
First Amendment prohibits the government from abridging freedoms of speech, press, assembly, and petition.

Guaranteeing Religious Freedom
First Amendment prohibits the government from establishing a religion or interfering with the free exercise of religion.

Affirming the Right to Bear Arms and Protecting Citizens from Quartering Troops
Second Amendment guarantees the right to bear arms.

Third Amendment prohibits troops from occupying citizens’ homes in peacetime.

Protecting the Rights of Accused Persons
Fourth Amendment protects against unreasonable searches and seizures.

Fifth Amendment requires an indictment by a grand jury for serious crimes; prohibits the government from trying a person twice for the same crime; prohibits the government from taking life, liberty, or property without due process of law; and prohibits the government from taking private property for public use without fair compensation to the owner.

Sixth Amendment guarantees a speedy and public jury trial, the right to confront witnesses in court, and the right to legal counsel for defense.

Seventh Amendment guarantees the right to a jury trial in civil cases.

Eighth Amendment prohibits the government from setting excessive bail or fines or inflicting cruel and unusual punishment.

Protecting the Rights of People and States
Ninth Amendment protects all other unspecified rights of the people.

Tenth Amendment reserves to the states or to the people those powers neither granted to the federal government nor prohibited to the states in the Constitution.
Objections to the Constitution by an Anti-federalist

George Mason—leading opponent to the new constitution

“There is no declaration of rights; and the laws of the general government being paramount to the laws and constitutions of the several States, the declaration of rights in the separate States are no security.”

“The judiciary of the United States is so constructed and extended as to absorb and destroy the judiciaries of the several states; thereby rendering law as tedious, intricate and expensive.”
Constitutional Amendment Process

Amendments May Be PROPOSED
- Congress Two-Thirds Vote of Both Houses
- OR National Constitutional Convention Called by Congress upon Application by Two-Thirds of the States

Amendments May Be RATIFIED
- Paths used by all amendments except one
- Path used by 21st Amendment
- OR State Ratifying Conventions in Three-Fourths of States
Constitutional Change

Amendments to the Constitution since the Bill of Rights

Perfecting Constitutional Processes
Eleventh Amendment (1795) forbids federal lawsuits against a state by citizens of another state or nation.
Twelfth Amendment (1804) provides separate ballots for president and vice president in the Electoral Collage to prevent confusion.
Twentieth Amendment (1933) determines the dates for the beginning of the terms of Congress (January 3) and the president (January 20).
Twenty-second Amendment (1951) limits the president to two terms.
Twenty-fifth Amendment (1967) provides for presidential disability.
Twenty-seventh Amendment (1992) prevents Congress from raising its own pay in a single session.

The Experiment with Prohibition
Eighteenth Amendment (1919) prohibits the manufacture, sale, or transportation of intoxicating liquors.
Twenty-first Amendment (1933) repeals the Eighteenth Amendment.

The Income Tax
Sixteenth Amendment (1913) allows Congress to tax incomes.

Expanding Liberty
Thirteenth Amendment (1865) abolishes slavery.
Fourteenth Amendment (1868) protects life, liberty, and property and the privileges and immunities of citizenship and provides equal protection of the law.

Expanding Voting Rights
Fifteenth Amendment (1870) guarantees that the right to vote shall not be denied because of race.
Seventeenth Amendment (1913) provides for the election of senators by the people of each state.
Nineteenth Amendment (1920) guarantees that the right to vote shall not be denied because of sex.
Twenty-third Amendment (1961) gives the District of Columbia electoral votes for presidential elections.
Twenty-fourth Amendment (1964) guarantees that the right to vote shall not be denied because of failure to pay a poll tax or other tax.
Twenty-sixth Amendment (1971) guarantees that the right to vote shall not be denied to persons eighteen years of age or older.