

# Lesson 13—Writing and Ratifying the Constitution

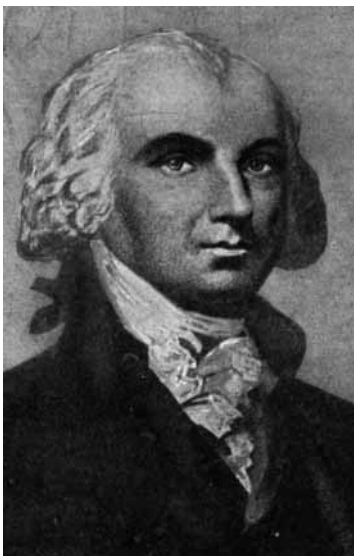
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*Doctr. FRANKLIN looking towards the Presidents Chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters had found it difficult to distinguish in their art a rising from a setting sun. I have, said he, often and often in the course of the Session, and the vicisitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting Sun.*

—James Madison, Debates in the Federal Convention of 1787,  
notes on the last day of the convention, September 17, 1787

The gathering of men that crafted our Federal Constitution was a remarkable assemblage of talent, accomplishment, and political leadership. Thomas Jefferson once referred to them as “an assembly of demigods.” In all, the twelve state legislatures (Rhode Island did not participate) chose 73 men to be delegates, but only 55 attended some part of the deliberations. At the close of their efforts, 39 signed the finished Constitution. Most of the delegates were wealthy lawyers, planters, merchants, and the like; and many were well-educated. Seven had served as state governors, eight had signed the Declaration of Independence eleven years earlier, and twenty-one had fought in the war for independence. Their average age was forty-two.

The work of crafting a revision to the Articles of Confederation did not go easily. When the convention opened on May 14, 1787, not enough states were represented for the convention to begin its work. That had to wait until May 25. The delegates agreed to keep their deliberations secret, which meant that they worked in closed rooms through the hot Philadelphia summer. The men even had conflicts over their basic purpose. They agreed that the Articles of Confederation needed revision, but some wanted as few revisions as possible while others desired to scrap the Articles and write an entirely new document. The decision to go forth with a new document pleased most of the delegates but not all of them. At one point, two of the three delegates from New York went home in frustration.



President James Madison

*Because the delegates to the Convention agreed to work in secret, no record was kept of the proceedings except shorthand notes by James Madison, who transcribed his notes in the evenings. Except for scattered comments by delegates in letters and other writings, Madison’s notes are our only record of what happened in the Convention. To promote unity in the new nation and to protect the reputations of the participants, Madison prevented the publication of his notes until the death of the last delegate, which turned out to be Madison himself in 1836.*

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The third, Alexander Hamilton, had to go home also even though he approved of the plan. Hamilton later returned and signed the finished Constitution.

### A Series of Compromises

The delegates to the Convention had not accomplished what they had in their lives by being passive and silent. The group included many strong personalities, and as a result the debates were often lively and sometimes heated. James Madison was a brilliant, scholarly, and eager thirty-six-year-old. Benjamin Franklin was eighty-one and contributed little except his wisdom and widely-respected presence. George Mason of Virginia was suspicious of all governmental power. Elbridge Gerry of Massachusetts found fault with just about every idea that was put forth. Mason and Gerry refused to sign the Constitution when deliberations were finished.

War hero George Washington was chairman. His presence gave legitimacy to the proceedings, but he participated little in the discussions. Two leading minds of the Revolution were not present. John Adams was serving as the new nation's minister to Great Britain, and Thomas Jefferson was in the same role in France.

Because of their sharply differing points of view, the delegates crafted a series of compromises to get things accomplished. Usually compromises are agreements that leave all the parties feeling as though the end product is less than what any of them wanted. This was true with some of the compromises the convention made. A better way for those who have differences to come to an agreement is by collaborating on a solution that is better than what any one party wanted. With collaboration, everyone feels as though they got more than what any one of them could have accomplished by himself. The completed Constitution turned out to be a good collaboration, even though several delegates and a significant portion of state leaders and the general population had serious reservations about the document.

### Strength of the Central Government

Just how strong should the central government be? Most Americans agreed that it ought to be strong enough to do what it needed to do, but not so strong that it threatened the rights and freedoms of the states and of individuals. Where that precise balance lay was the subject of debate. Many Americans feared a strong central government because of their experience as colonies of Great Britain. They wanted most political power to remain with the states. Others, however, focused on the weaknesses of the Confederation system (as outlined in the last lesson) and argued for stronger powers for the central government. Both sides wanted an effective system of government that avoided tyranny and domination by a few, but they differed on the best way to accomplish this goal. The outcome of the convention addressed the issue in several ways.

*Delegated Powers.* First, the Constitution gave only specific, enumerated, delegated powers to the national government. The Constitution was not an open invitation for the Federal government to take over and do whatever Congress or the president wanted. The



*Benjamin Franklin*

Federal government was not to go beyond its enumerated powers, and the states retained the powers not expressly given to the Federal government.

A key word in understanding American government is *federal*, the word that describes a system of government with divided sovereignty but unity of purpose. The national government is sovereign in some areas of governmental activity and state governments are sovereign in other areas, but the two levels work together in a unified system.



*Separation of Powers.* Second, within the operation of the Federal government, the Constitution called for a separation of powers among the three branches of government (legislative, executive, and judicial) and for checks and balances among the branches to keep one branch from dominating the government. One example of the separation of powers is that the president is commander in chief of the armed forces but only Congress has the power to declare war. The separation of powers has often been described in this way: the legislature makes laws, the executive carries out laws, and the judiciary applies and interprets laws. (This ideal distinction has not always been maintained. For instance, executive orders by the president, administrative rules by government agencies, and rulings by the Supreme Court are not laws passed by Congress but all carry the force of law in practice.)

*Checks and Balances.* The system of checks and balances that the branches have on each other is illustrated by the following examples: the president executes treaties and makes appointments, but the Senate has to approve them; Congress passes laws, but the president can veto those laws—but then Congress can override the veto; the Supreme Court interprets laws, but its members are nominated by the president and must be approved by the Senate; the president is chosen by popular vote through the electoral college and Federal judges can hold office for life, but Congress has the power to impeach and remove from office the president, the vice president, Federal judges, and all civil officers of the United States government.

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### The Composition of Congress

The larger states had the most people and the biggest economies, and they wanted to have the most power in the new government. Smaller states feared that they would become irrelevant if the larger states had the preponderance of power. Smaller states generally preferred the system under the Articles that gave each state one vote.

The proposal put forth by the Virginia delegation called for representation in the lower house of Congress to be chosen by population, with an upper house chosen by the lower house from nominees submitted by state legislatures. In response, the New Jersey delegates wanted to retain equal representation for the states in a unicameral (one-house) legislature.

The compromise that resolved this difference was suggested by Roger Sherman of Connecticut. He proposed that the House of Representatives be based on population (which pleased the large states) while the Senate should be made up of two senators from each state,

to be chosen by the state legislatures. The senators would vote as individuals, but each state would have the same power in the Senate (which pleased the smaller states).

The arrangement made for the Senate reflected the importance that state governments had at the time. The state legislatures had named representatives to the Continental Congress, to Congress under the Articles, and to the Constitutional Convention; and now they would directly name the members of one of the two bodies of Congress. This provision was also an attempt to win the support of state government leaders for the new Constitution, even though the state legislatures would not vote on the document. Many state political leaders served in both the state legislatures and in the state ratifying conventions.

## The Presidency

The proposal for a national executive also caused sharp debate. The idea of a national executive who would have any significant power was a major departure from state practices and from the experience under the Articles where there was no popularly elected executive. Some delegates feared the power that might accrue to a single person, while others thought that an executive would help bring about a more effective government and better relations with other countries.

The compromise regarding the office of president involved strictly enumerating and limiting his powers, allowing his veto to be overridden by Congress, and making him subject to impeachment and removal from office. A few delegates wanted a nationally elected president, but the majority of delegates were not ready for that. James Wilson of Pennsylvania proposed a system of presidential electors, that has come to be called the electoral college, to select the president. Electors would be chosen in the manner that each state legislature decided. The purpose of the electoral college was for a few leading men to choose the president. However, over time state legislatures decided to choose electors by popular vote, and the electors almost always voted for the candidate endorsed by their political party. Thus the electoral college became a semi-democratic method for choosing the chief executive.

## Compromises on Slavery

Opinions of the delegates differed on slavery, though not as sharply as opinions would differ seventy-five years later. Northern states had abolished slavery, while the states from Maryland south had retained it. Although some northern delegates considered slavery a moral evil, it was generally agreed that slavery was an issue for the states, not the national government, to deal with. This perspective also deftly allowed the Constitutional Convention and Congress to avoid dealing with a potentially explosive subject.

Slave state delegates wanted slaves to be counted as part of the population that determined representation in the House, even though no state gave slaves the right to vote for those representatives. Northerners thought that this position was

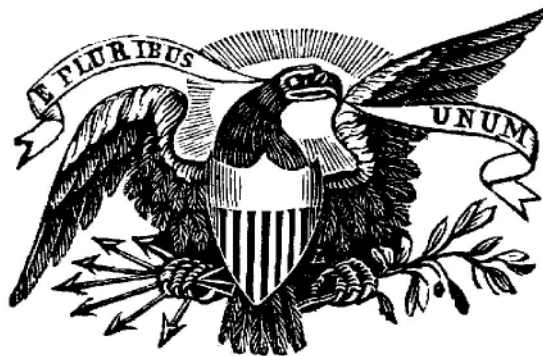


*Slaves Working in a Cotton Field*

hypocritical, and they insisted that slaves also be counted in the census figures that would determine direct taxes Congress could impose on the states. (A direct tax was revenue that Congress would requisition from the states based on population. Since slaves helped produce a state's wealth, Northerners thought that slaves should be counted to determine what a state owed to the Federal government.) Slave state delegates resisted this idea, hoping that they could thus lessen the burden of Federal taxes on their states. The compromise reached in the convention called for three-fifths or sixty percent of the slave population to be counted for both representation and taxation.

Another issue involving slavery was the continued importation of slaves. Slave state delegates wanted to be able to continue importing slaves, while other delegates wanted to stop the inhuman practice on a national basis (some state governments had already outlawed importing slaves). The compromise reached called for the slave trade to end no sooner than 1808 (when it was in fact outlawed), twenty years after the expected adoption of the Constitution. Congress reserved the right to tax all slaves that were imported until the slave trade ended.

The compromises that the delegates reached on the issue of slavery are examples of how compromise does not really satisfy the parties involved. Supporters of slavery thought that the provisions in the Constitution went too far, while opponents of slavery thought the final document did not go far enough. Sensitivity over the issue is reflected in the fact that the word slavery is not used in the Constitution. The document merely refers to free persons and other persons. The term slavery was not used in the Constitution until the passage of the Thirteenth Amendment in 1865, which banned slavery.



## Ratification

The framers of the Constitution decided that approval by conventions in nine of the thirteen states would be sufficient for the new government to take effect. This decision addressed two significant issues. First, approval did not have to be unanimous, which eliminated a weakness of the Articles of Confederation. Second, the ratification vote would take place in conventions, not state legislatures. The delegates feared that the legislatures might resist what they saw as a relinquishment of their power, so the Constitution called for conventions chosen directly by the people. The framers hoped that a majority of voters would see the need for the Constitution and support its adoption.

The convention submitted its work to the states on September 28, 1787. Approval by enough states was not a foregone conclusion. Those favoring adoption,

*A popular story says that, when the convention adjourned and Benjamin Franklin walked out into the street, a woman asked him what kind of government they had devised. "A republic, madam, if you can keep it," was supposedly his reply. Many people in that day feared the danger of tyranny by a single leader or a small group.*

called nationalists or Federalists, were better organized and communicated their vision of government well. Their outstanding effort was a series of newspaper articles published in New York and circulated to other states. The eighty-five articles, all signed “Publius” (or Public Man), were actually written variously by James Madison, Alexander Hamilton, and John Jay. The thoughtful and literate articles presented the authors’ appeal for a strong national government and tried to calm the fears of those suspicious of the proposed Constitution. These articles were eventually collected and published as *The Federalist* or *The Federalist Papers*. Opponents generally were called Antifederalists. In speeches, articles, and state conventions, they warned of what they saw as the dangers of the proposed change. Sam Adams of Massachusetts and Patrick Henry of Virginia are the best-known opponents of ratification.

The ratification process moved slowly, extending on into the summer of 1788. The conventions of only three states (Delaware, New Jersey, and Georgia) ratified the Constitution unanimously. The ninth state convention, that of New Hampshire, gave its approval by a 57-46 vote on June 21, 1788. However, the New York and Virginia conventions still had not taken a vote; and their approval was seen as vital to the Constitution’s success. The Virginia convention approved 87-79 later in June, and New York assented 30-27 in July.

The process for creating the new government began, elections were held, and the first Congress met in March of 1789. However, another month passed before a quorum of members of Congress arrived in New York, the first national capital. With Congressional approval of the electoral college, George Washington was sworn in as the first President. Then North Carolina approved the Constitution 194-77 in November of 1789, and finally defiant Rhode Island (dubbed “Rogue” Island by its critics) gave its approval in the closest ratification vote of any state, 34-32, in late May of 1790. Despite strong opposition and several close convention votes, the Constitution went into effect without serious further opposition.



*George Washington's Presidential Inauguration*

## A Lasting Document

The Constitution was a product of its times. It was the result of the Enlightenment view that reasonable men could peacefully form a government that operated responsibly and that respected the rights of individuals. It was not a truly democratic document because the framers mistrusted democracy (what many called mob rule). The Constitution accepted the practice of slavery and did not provide for women and non-whites in the political process.

Yet the Constitution has lasted well beyond its own time and has guided our country admirably for over two hundred years. It has served as the model for constitutions in many other countries. The Constitution has been successful for a number of reasons. First, the framers tried to look past their own personal and contemporary interests to create a document that could continue to work even in changing circumstances. Second, they tried to make the will of the people (as best they understood it) paramount and to limit what government could do. Third, the Constitution is based on ideals of fairness and equality under the law and does not single out one group or class as privileged. Fourth, it has the flexibility that has allowed it to be amended when needed.

Perhaps most importantly, though, the American people have not wanted to change their basic form of government. Small movements for secession arose in New England during the War of 1812 and again during the Mexican War, but little came of them. The country did suffer a major division with the secession of southern states in 1860-61 and the resultant Civil War. The horror of that period has all but completely eliminated revolution and rebellion as viable options in the American political system. Our differences have been many and sometimes deep, and our failings have been serious; but most people most of the time have been willing to play by the rules set forth in the United States Constitution.

*“Come now, and let us reason together,” says the Lord.  
Isaiah 1:18a*

## Reading

- *The Federalist* Number 2 by John Jay (WHTT, p. 56)
- Speech by Patrick Henry Opposing Ratification of the Constitution (WHTT, p. 60)



*The Constitution*