

THE CONSTITUTIONAL CONVENTION

I. Constitutional Convention (25 May-17 Sept. 1787)

A. 12 states elected delegates to the convention.

1. Rhode Island did not send any delegates.

B. 55 men attended the convention in Philadelphia.

1. All 55 not there at the same time.

2. The 55 were NOT representative of the typical American of the time - Elites of society.

3. The typical American of 1787: Small farmer, Owned his own land.

4. Only 1 of 55 was a small farmer. Other 54 were: Merchants, Lawyers, Large landowners

C. Convention lasted 5 months.

D. 1st thing convention did: Hold meetings in secret.

1. No public or press allowed to view proceedings.

2. Why hold the meetings in secret?

a. Task at hand too important to be influenced by their constituents.

b. Did not want to have to worry about voters looking over their shoulder.

E. 2nd decision, Throw out Articles of Confederation.

If they had to go through the Articles amending process, the Convention wouldn't work.

F. James Madison came to Philadelphia with a plan: The Virginia or Randolph Plan.

G. The Virginia Plan (James Madison).

1. Replace the existing unicameral congress, with a true national government of three independent branches.

2. Government of true national sovereignty.

II. MAIN POINTS OF THE VIRGINIA PLAN:

A. New Congress would be based upon free population or the amount of taxes that a state paid into the Treasury of the Central government.

B. The New Congress would be a bicameral legislature

C. The lower house would be elected directly by the people, the upper by the lower from delegates recommended by the state legislatures

D. New Congress would have broad, undefined powers: To legislate in areas in which states were incompetent.

E. Congress given an absolute veto over all state laws.

F. National Government would have power to coerce states to obey the national laws.

G. This new plan of government provided a means for adding new states to the Union, for guaranteeing a republican form of government for each state, and for amending the new government.

III. Virginia Plan approved by a majority of the delegates

- A. Virginia Plan used as starting point for a new government.
- B. Delegates from smaller states objected and came up with an alternate plan.
- C. The Patterson or New Jersey Plan.
 - 1. Continued the Articles of Confederation.
 - 2. Gave Confederation Congress power to tax.
- D. Convention overwhelmingly rejected New Jersey Plan.
- E. However, raises a warning flag.
 - 1. Made convention leaders realize they would have to compromise to get overwhelming support.
 - 2. The Virginia Plan re-worked to placate two groups:
 - a. Small states.
 - b. People who feared power of Central Governmentt.

IV. The Great Compromise

- A. The Virginia Plan is too strong for many: Fear loss of power of small states.
- B. Problem: How to find a mutually satisfactory middle ground.
- C. The Connecticut Plan (or Roger Sherman Plan) solved the dilemma over representation in the Congress - which was clearly the most important branch in the mind of the framers. The representation issue was decided in favor of the large states in the case of the House of Representatives, where representation is based on population; in the case of the Senate, where representation is based on statehood, the representation issue was found in favor of the small states.

V. MAIN PROVISIONS OF THE CONSTITUTION:

- A. Legislative Branch (Congress) ARTICLE ONE
 - 1. House of Representatives (Lower House).
 - a. Represent the people ("People's Chamber").
 - b. Based on population.
 - c. Larger states get more delegates, smaller states get fewer.
 - d. Elected directly by the people.
 - e. Served 2-year terms.
 - 2. Senate (Upper House).
 - a. Represents the states..
 - b. Equal Representation of 2 Senators for every state
 - c. Senators elected by the state legislatures. (31 May 1913: 17th amendment is ratified, which established popular election of Senators).

3. Delegated or enumerated powers.
 - a. 2 powers added from Articles of Confederation.
 - 1) Power to tax.
 - 2) Control over interstate commerce.
4. Each house now operates under a simple majority.
5. "Necessary and Proper Clause" added.
 - a. Elastic clause.
 - b. Allows Congress to legislate on things not specifically mentioned in the Constitution. (Focus on word expressly).
6. Instead of making Congress review ALL state laws, Constitution stated that Federal law is the Supreme Law of the Land.
 - a. If conflict arises between State and Federal law, Federal law prevails.
 - b. Gave Federal Government power to enforce its laws through the creation of the Executive Branch: President.

B. Executive Branch (The President) ARTICLE TWO

1. Articles of Confederation had no President.
2. Surprising how powerful the Founding Fathers made the executive.
3. Framers realized:
 - a. Legislature can abuse power as well.
 - b. Legislature cannot provide strong leadership.
4. Delegates hoped George Washington would be 1st President.
 - a. Washington was presiding officer of the Constitutional Convention.
 - b. Helped to establish the legitimacy of the convention.
5. Presidential office.
 - a. Made it elective.
 - b. Had a set term: 4 years.
6. Powers of the President:
 - a. See that laws are executed.
 - b. Commander-in-Chief of all land and sea forces.
 - c. Legislative powers.
 - 1) Could propose leg. (through intermediaries).
 - 2) Could veto legislation (limited power).

3) Can be overridden by 2/3 vote of each house of Congress.

d. Could appoint officials.

1) Cabinet.

2) Government officials.

3) Ambassadors, diplomats.

4) Judges.

e. Given absolute power to pardon.

f. Voting takes place through electoral college

C. Judicial Branch (The Supreme Court) ARTICLE THREE

1. Articles of Confederation had had no central judiciary

2. Judicial Article set up:

a. Supreme Court.

b. Lower Courts as Congress saw fit to establish

c. Gave to Supreme Court original jurisdiction.

d. Any issues between Federal and States to be resolved by the Supreme Court.

3. In theory (implied power) - no where is it expressly stated there is the creation of Judicial Review in Article III. First put into practice by John Marshall in *Marybury v. Madison* (1803) - though it is clear from a reading of Federalist 39 that Madison believed the Supreme Court had the power of judicial review.

D. Where does final authority lie in the Constitution?

1. Framers created a government of divided sovereignty.

a. National government sovereign in enumerated powers and some undefined powers.

b. State governments had whatever powers the national government did not have.

2. New name: *Federalism*

E. Separation of Powers, The Constitution

1. Clear-cut separation of powers into 3 distinct parts.

a. Executive.

b. Legislative.

c. Judicial.

2. Each part has different terms of service and constituencies

3. President serves for 4 years and is elected by the electoral college

4. House of Representatives is elected by people and each serves 2 years.

5. Senate elected by State Legislatures and each serves 6 years.

F. Checks and balances, The Constitution

1. Presidential veto check on Congress's power.
2. Senate confirmation check on President's power.
3. Impeachment.
 - a. Everyone connected with national government is subject to impeachment.
 - b. Can be impeached only for:
 - 1) Treason.
 - 2) Bribery.
 - 3) Other high crimes and misdemeanors.
 - c. The House of Representatives brings articles of impeachment - which must pass by a majority vote - then the Senate sits as jury. 2/3 of Senators present must return a guilty verdict to remove a person from office. If the President is being impeached, then the presiding officer in the Senate will be the Chief Justice of the United States Supreme Court.
 - d. Only two Presidents - Andrew Johnson and Bill Clinton - have been impeached. Neither was removed from office (Johnson escaped by 1 vote).
 - e. Only 56 government officers have been impeached in US history. The vast majority have been judges.

G. Choosing a President.

1. Framers did not want to leave the President to a popular vote. They feared rise of a demagogue or a military hero.
2. Neither did the Framers want the President to be chosen by State Legislatures, since they feared this would make him a pawn of the states.
3. Neither did the Framers want the President chosen by the Congress because this would violate the separation of powers.
4. The Framers solution was the electoral college.
 - a. Each state has electors equal to the number of Representatives and Senators it has. For example, Arkansas has 4 Representatives and 2 Senators, so we have 6 electoral votes.
 - b. The XXIII Amendment to the Constitution (1961) provided that the District of Columbia would have 3 electoral votes (one for population, two as if it was a state).
 - c. At present there are 100 electors based on the Senate, 435 based on the House (fixed number though it may be reapportioned), and 3 based on the District of Columbia. 538 total electors.
 - d. When you vote in a Presidential election, you are voting for a slate of electors - chosen by the political parties - to elect the President. The person who gets the largest number of votes (a plurality, not a majority) within the state, will get his slate of electors, who will then devote all their electoral votes to him.
 - e. In the Constitution - as written in 1787 - each elector would vote for 2 men. The man getting the most electoral votes (must be a majority, not a plurality) would be president, and the man coming in second would be vice president.
 - f. This system was changed by the XII Amendment (1804), which says that electors shall specify who they are selecting for President and who they are selecting for Vice President. This Amendment was ratified because in 1800 Thomas Jefferson and Aaron Burr (Jefferson's Vice Presidential candidate) had

the same number of electoral votes. When they tied the election - as provided for in Article II Section 1 - was thrown into the House of Representatives. There a majority of the States, each State having one vote, had to pick a president. There were enough Federalist states (the party against Jefferson's Republican Party) to force the ballot 34 times - that is the Federalist refused to vote for him, and so he could not get a majority. Finally, the Federalist relented, and Jefferson was elected.

H. How is the Constitution amended?

1. A proposed amendment must go through each house with a 2/3 vote of approval
 2. Then, it goes to the states, where 3/4 of the states must ratify the amendment, ususally done through the state legislature
 3. The Constitution was thus easier to ratify than the Articles of Confederation, but hard enough to ratify that changes would not frequently be made. Today, only 26 Amendments have been made to the Constitution. 10 of those came in the first Congress, and the XI and XII came by 1804.
- I. Ratification of the Constitution would not require unanimous consent - as the Articles of Confederation did of its amendments - but would require the approval of 9 states. It would still be a hard fight.