

Ratifying & Amending The U. S. Constitution

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In 1787, a group of exceptional men, called the Framers, met in Philadelphia to propose a framework for a new government. This framework would address the weaknesses in the Articles of Confederation. It required a series of compromises, but in the end, the Framers designed a framework for a government of separated powers and checks and balances.

Realizing that changes would be necessary as the nation grew, they included a process to amend the Constitution. They purposely made this process difficult in order to prevent political factions from making changes that were not carefully thought out.

This chapter is about the constitutional design of the American government, why the Framers fashioned the sort of constitution they did, and how the meaning of the Constitution has evolved to address the problems of a changing nation.

The Constitution

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During the debate over whether to ratify the Constitution, those who favored the new strong national government were called Federalists. Opponents of ratification, who favored stronger states governments and a weaker national government were called Anti-Federalists.

The ratification process was marked by fervent debates between the two sides.

Federalists Versus Anti-Federalists

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- Federalists favored strong national government.
- Anti-Federalists favoured strong state governments.
- Ratification process was contentious



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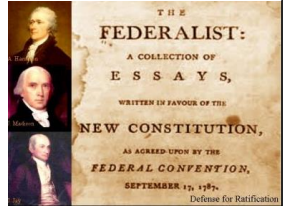
Three of the most prominent Federalists, Alexander Hamilton, James Madison, and John Jay, penned 85 essays in New York newspapers under the pseudonym "Publius." These essays were a bit theoretical and scholarly to have much impact on the public during the ratification debate at the time, but they have survived as explanations for later generations of the Framers' intentions.

The Anti-Federalists responded with essays of their own, expressing their fear that the national government would run roughshod over the liberties of the people and the New York ratification vote was close.

The *Federalist Papers*

2.5

- 85 essays by Federalists
 - Alexander Hamilton (51)
 - James Madison(26)
 - John Jay(3)
 - Appeared in New York newspapers
 - Theoretical, scholarly
- Anti-Federalists responded with critique of Constitution



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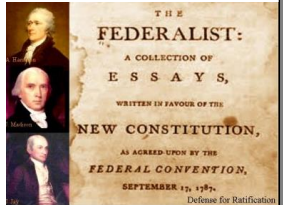
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The *Federalist Papers*

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- Federalist Paper #10
 - Factions
- Federalist Paper #51
 - Checks & Balances
- Anti-Federalists responded with critique of Constitution



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In Federalist No. 10, Madison argues that partisanship in a democracy is dangerous and offers various options on how to control it. Madison claims that the strongest roots of factions lie in the unequal distribution of property. However, this is an essential part of democracy. He says, therefore, that if factionalism cannot be eliminated, its effects must be controlled, and this can best be done with a representative form of government as delineated in the new constitution.

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In Federalist No. 10, Madison , explains and defends the checks and balances in the proposed constitution. Each branch is framed so that its power checks the power of the other two branches.

“It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.”


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Led by Patrick Henry of Virginia, Anti-Federalists worried, among other things, that the position of president, then a novelty, might evolve into a monarchy. Though the Constitution was ratified and supplanted the Articles of Confederation, Anti-Federalist influence helped lead to the passage of the Bill of Rights. Topics included Adoption of The Constitution Will Lead to Civil War, A Consolidated Government Is a Tyranny, and Federalist Power Will Ultimately Subvert State Authority.

The Anti-Federalist Papers

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- Let by Patrick Henry of Virginia
- Penned by Brutus
- Warned of too much power by a large federal government.



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In Anti-Federalist #7, Adoption of the Constitution will lead to Civil War, the author, identified as “Brutus,” writes, “In the most limited governments, what wranglings, animosities, factions, partiality, and all other evils that tend to embroil a nation and weaken a state, are constantly practiced by legislators. What then may we expect if the new constitution be adopted as it now stands? The great will struggle for power, honor and wealth; the poor become a prey to avarice, insolence and oppression. And while some are studying to supplant their neighbors, and others striving to keep their stations, one villain will wink at the oppression of another, the people be fleeced, and the public business neglected.”

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The Anti-Federalists insisted that a Bill of Rights be added as a condition of ratification. The Bill of Rights comprise the first ten amendments to the Constitution and prevent the federal government from infringing on a range of civil liberties including freedom of speech, of the press, religion and assembly.

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This table compares the background, political philosophy, type of government favored, and alliances of the Federalists and Anti-Federalists.

The Bill of Rights

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- Condition of ratification
 - Sought by Anti-Federalists to protect civil liberties
- First ten amendments to Constitution



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TABLE 2.2 What Were the Differences Between the Federalists and the Anti-Federalists?

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TABLE 2.2 WHAT WERE THE DIFFERENCES BETWEEN THE FEDERALISTS AND THE ANTI-FEDERALISTS?

| | Federalists | Anti-Federalists |
|----------------------------|---|--|
| Who were they? | Property owners, landed rich, merchants of Northeast and Mid-Atlantic | Small farmers, shopkeepers, laborers |
| Political philosophy | Elitist; saw themselves and those of their class as most fit to govern (others were to be governed) | Believed in the decency of "the common man" and in participatory democracy; viewed elites as corrupt; sought greater protection of individual rights |
| Type of government favored | Powerful central government; two-house legislature; upper house (six-year term) further removed from the people, whom they distrusted | Wanted stronger state governments (closer to the people) at the expense of the powers of the national government; sought smaller electoral districts, frequent elections, referendum and recall, and a large unicameral legislature to provide for greater class and occupational representation |
| Alliances | Pro-British, anti-French | Anti-British, pro-French |

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Article V of the Constitution creates a two-stage amendment process: proposal and ratification. There are two ways to accomplish each stage.

Formal Methods of Amending the Constitution

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- Proposal
 - Two-thirds members of both houses
 - Two-thirds of state legislatures
- Ratification
 - Vote of Congress
 - Vote in state legislature
 - Vote in ratifying convention



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In 1803, the Supreme Court declared in *Marbury v. Madison* that federal courts had the power to nullify acts of the nation's government when the courts found such acts to conflict with the Constitution. Today, some analysts argue that the original intent of the Framers should govern judicial interpretation of the Constitution. Others argue that the Framers knew a changing society needed an elastic, flexible document that could adapt to the ages.

Informal Methods of Amending the Constitution

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- Judicial interpretation
 - Supreme Court can decide if laws are unconstitutional.
- Social and cultural change
 - Legislation can alter balance of power between government and states.
- Technological change
 - Media is redefining free speech.



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Even the most far-sighted of the Framers could not have anticipated the vast changes that have occurred in the United States. The Constitution has evolved to accommodate such social and cultural changes. The federal government has taken on more powers and responsibilities in relation to the states, as we will discuss later in this course.

Technological advances of the twenty-first century bring up new questions concerning privacy and our rights under the Constitution.

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For all its moral support from local prayer bands and groups such as the Woman's Christian Temperance Union (WCTU), whose members blockaded bars to protest the sale of alcoholic beverages, the Eighteenth (Prohibition) Amendment was a disaster. Among its side effects was the rise of powerful crime organizations responsible for illegal sales of alcoholic beverages. Once proposed, it took only ten months to ratify the Twenty-First Amendment, which repealed the Prohibition Amendment.

Which is the only constitutional amendment to be repealed?

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