The Constitutional Convention

Inquire: How Did the Constitutional Convention Come to Be?

Overview

In 1786, Virginia and Maryland invited delegates from the other 11 states to meet in Annapolis, Maryland for the purpose of revising the Articles of Confederation. However, only five states sent representatives. Because all 13 states had to agree to any alteration of the Articles, the convention in Annapolis could not accomplish its goal. Two of the delegates, Alexander Hamilton and James Madison, requested that all states send delegates to a convention in Philadelphia the following year to attempt once again to revise the Articles of Confederation. All the states except Rhode Island chose delegates to send to the meeting, a total of 70 men in all, but many did not attend. Among those not in attendance were John Adams and Thomas Jefferson, both of whom were overseas representing the country as diplomats. Because the shortcomings of the Articles of Confederation proved impossible to overcome, the convention that met in Philadelphia in 1787 decided to create an entirely new government.

Big Question: What issues faced the Constitutional Convention of 1787, and how did the delegates overcome their differences?

Watch: Liberty, Equality, and Justice

Liberty and Equality

These words represent basic values of democratic political systems, including that of the United States. Rule by absolute monarchs and emperors has often brought peace and order, but at the cost of personal freedoms. Democratic values support the belief that an orderly society can exist in which freedom is preserved. But, order and freedom must be balanced.

The Influence of the Enlightenment

The American government has its roots in the 17th and 18th century Enlightenment in Europe: a movement that questioned the traditional authority of the monarch to rule. What gives one person the right to rule another? Enlightenment philosophes answered the question by acknowledging the importance of establishing order.

Two Kinds of Balance

Imagine a society in which everyone was perfectly free to do as he or she pleased. How long would it take for chaos to set in? Order implies a necessary loss of freedom if people are to survive. However, how far can order go? Democratic countries cherish individual freedom and generally believe that laws should not
be repressive; a little order can be sacrificed in the name of liberty. So, one kind of balance is between order and liberty.

Democratic societies also expect another kind of balance: a compromise between liberty and equality. Complete liberty logically leads to inequality. A strong or ambitious person might acquire more goods and property than another, and someone is bound to dominate. But, the line has to be drawn before an individual seizes power that greatly restricts the liberties of others.

Shouldn't governments help preserve some degree of equality for their citizens? But, if they overemphasize equality, won't they restrict their citizens' liberty? For example, governments can bring about more equality by taxing rich citizens more than the poor, but if they carry their policies too far, won't they restrict the individual's freedom to strive for economic success? The balance between liberty and equality is an important cornerstone of democratic government.

In the late 18th century, the founders created the blueprints for the United States government in an effort to achieve these delicate balances — between liberty and order, and between liberty and equality. Their success is reflected in the continuing efforts to refine them. The formula has changed with time, but the framework provided by the Constitution and the values expressed by the Declaration of Independence remain the same.

Read: Solving the Articles with a New Constitution

Overview

In 1786, Virginia and Maryland invited delegates from the other 11 states to meet in Annapolis, Maryland to amend the Articles of Confederation. Only five states sent representatives, but all 13 had to agree to amend the Articles, so two of the delegates, Alexander Hamilton and James Madison, requested that all states send delegates to a convention in Philadelphia the following year to try again. All the states except Rhode Island sent delegates to the second meeting, a total of 70 men in all, though some did not attend. Among those not in attendance were John Adams and Thomas Jefferson, both of whom were overseas representing the country as diplomats. Due to the difficulty in fixing the Articles, the convention that met in Philadelphia in 1787 decided to create an entirely new government.

Points of Contention

55 delegates arrived in Philadelphia in May of 1787 for the meeting that became known as the Constitutional Convention. Many wanted to strengthen the role and authority of the national government but feared creating a central government that was too powerful. They wished to preserve state autonomy, although not to a degree that prevented the states from working together collectively or made them entirely independent of the will of the national government. While seeking to protect the rights of individuals from government abuse, they nevertheless wished to create a society in which concerns for law and order did not give way in the face of demands for individual liberty. They wished to give political rights to all free men but also feared mob rule, which many felt would have been the result of Shays' Rebellion had it succeeded. Delegates from small states did not want their interests pushed aside by delegations from more populous states like Virginia. And everyone was concerned about slavery. Representatives from southern states worried that delegates from states where it had been or was being abolished might try to outlaw the institution. Those who favored a nation free of the influence of slavery feared that southerners might attempt to make it a permanent part of American society. The only decision that all could agree on was the election of George Washington, the former commander of the Continental Army and hero of the American Revolution, as the president of the convention.
Federal Supremacy vs. State Sovereignty

Perhaps the greatest division among the states split those who favored a strong national government and those who favored limiting its powers and allowing states to govern themselves in most matters. Supporters of a strong central government argued that it was necessary for the survival and efficient functioning of the new nation. Without the authority to maintain and command an army and navy, the nation could not defend itself at a time when European powers still maintained formidable empires in North America. Without the power to tax and regulate trade, the government would not have enough money to maintain the nation's defense, protect American farmers and manufacturers from foreign competition, create the infrastructure necessary for interstate commerce and communications, maintain foreign embassies, or pay federal judges and other government officials.

Others, however, feared that a strong national government might become too powerful and use its authority to oppress citizens and deprive them of their rights. They advocated a central government with sufficient authority to defend the nation but insisted that other powers be left to the states, which were believed to be better able to understand and protect the needs and interests of their residents.

Separation of Powers and Checks and Balances

Although debates over slavery and representation in Congress occupied many at the convention, the chief concern was the challenge of increasing the authority of the national government while ensuring that it did not become too powerful. The framers resolved this problem through a separation of powers, dividing the national government into three separate branches and assigning different responsibilities to each one. They also created a system of checks and balances by giving each of the three branches of government the power to restrict the actions of the others, thus requiring them to work together.

To prevent the national government, or any one group within it, from becoming too powerful, the Constitution divided the government into three branches with different powers. No branch could function without the cooperation of the others, and each branch could restrict the powers of the others.
Congress was given the power to make laws, but the executive branch, consisting of the president and the vice president, and the federal judiciary, notably the Supreme Court, were created to, respectively, enforce laws and try cases arising under federal law. Neither of these branches had existed under the Articles of Confederation. Thus, Congress can pass laws, but its power to do so can be checked by the president, who can veto potential legislation so that it cannot become a law. Later, in the 1803 case of Marbury v. Madison, the U.S. Supreme Court established its own authority to rule on the constitutionality of laws, a process called judicial review.

Another example of checks and balances includes the ability of Congress to limit the president’s veto: a two-thirds vote in the bill’s favor, and it becomes law even though the president has refused to sign it.

Congress is also able to limit the president’s power as commander-in-chief of the armed forces by refusing to declare war or provide funds for the military. To date, the Congress has never refused a president’s request for a declaration of war.

The president must also seek the advice and consent of the Senate before appointing members of the Supreme Court and ambassadors, and the Senate must approve the ratification of all treaties signed by the president. Congress may even remove the president from office. To do this, both chambers of Congress must work together. The House of Representatives impeaches the president by bringing formal charges against him or her, and the Senate tries the case in a proceeding overseen by the Chief Justice of the Supreme Court. The president is removed from office if found guilty.

Federal Power vs. State Power

The strongest guarantee that the power of the national government would be restricted and the states would retain a degree of sovereignty was the framers’ creation of a federal system of government. In a federal system, power is divided between the federal (or national) government and the state governments. Expressed powers, also called enumerated powers, were granted to the federal government to declare war, impose taxes, coin and regulate currency, regulate foreign and interstate commerce, raise and maintain an army and a navy, maintain a post office, make treaties with foreign nations and with Native American tribes, and make laws regulating the naturalization of immigrants.

All powers not expressly given to the national government, however, were reserved to the states as reserved powers. Thus, states remained free to pass laws regarding such things as intrastate commerce (commerce within the borders of a state) and marriage. Some powers, such as the right to levy taxes, were given to both the state and federal governments. Both the states and the federal government have a chief executive to enforce the laws (a governor and the president, respectively) and a system of courts.

The delegates who met in Philadelphia from May through September of 1787 set about drafting a new governing document. To satisfy the concerns of those who feared an overly strong central government, the framers of the Constitution created a system with separation of powers and checks and balances. Although such measures satisfied many, concerns still lingered that the federal government remained too powerful.
Reflect: Which Branch?

Poll

Having looked at the three branches of the government, executive (president), legislative (Congress), and judicial (courts) in the Read section above, which of the three branches do you think was intended to be the most powerful?

- executive
- legislative
- judicial

Expand: The Compromises

The Question of Representation: Small States vs. Large States

One of the first differences among the delegates to become clear was between those from large states, such as New York and Virginia, and those who represented small states, like Delaware. Virginia offered a plan calling for a bicameral legislature (two houses), with the number of each state’s representatives based on the state’s population. This would give the larger states more power and control, unlike the Articles of Confederation.

Delegates from small states objected to this Virginia Plan, and New Jersey proposed a plan with unicameral legislature (one house), in which each state would have one vote, just like in the Articles, to protect the smaller states. Thus, smaller states would have the same power in the national legislature as larger states. The larger states argued that because they had more residents, they should be allotted more legislators to represent their interests. The smaller states feared being ignored and run over by the large states.

![Diagram comparing Virginia Plan and New Jersey Plan]

The Virginia Plan called for a two-house legislature. Representation in both houses would be based on population. A state’s representatives in one house would be elected by the state’s voters. These representatives would then appoint representatives to the second house from among candidates chosen by the state’s legislature. The New Jersey Plan favored maintaining a one-house Congress with each state being equally represented.
Slavery and Freedom

Another fundamental division separated the states. The northern states wanted slavery ended. None of the southern states wanted the Constitution to interfere with the institution. In addition, the South wanted the slaves counted as population for purposes of a state’s representation in the government. The North argued that the South considered slaves as property, not people, and they could not have it both ways and count them in their population.

Compromise and the Constitutional Design of American Government

Beginning in May 1787 and throughout the long, hot Philadelphia summer, the delegations from 12 states discussed, debated, and finally — after compromising many times — by September had worked out a new blueprint for the nation.

The Great Compromise

After debating at length over whether the Virginia Plan or the New Jersey Plan provided the best model for the nation’s legislature, the framers of the Constitution had ultimately arrived at what is called the Great Compromise (or Connecticut Compromise). Suggested by Roger Sherman of Connecticut, Congress would be bicameral (two houses): the Senate and the House of Representatives. Each state, regardless of size, would have two senators, making for equal representation as in the New Jersey Plan. Representation in the House would be based on population. Senators were to be appointed by state legislatures, a variation on the Virginia Plan, and serve six year terms. Members of the House of Representatives would be popularly elected by the voters in each state and serve two year terms.

Congress had authority that the national government lacked under the Articles of Confederation. It was given the power to tax, maintain an army and a navy, and regulate interstate trade and commerce. It could also coin and borrow money, grant patents and copyrights, declare war, and establish laws regulating naturalization and bankruptcy. All bills to raise revenue (taxes) had to begin in the House of Representatives. Only those men elected by the voters to represent them could impose taxes upon them. There would be no more taxation without representation.

The Three-Fifths Compromise and the Debates over Slavery

The Great Compromise that determined the structure of Congress soon led to another debate, however. Southern states were adamant that slaves would be counted — this would give them more representation in the House. The northern states were vehemently opposed, arguing that the South could not call the slave property and then count them as people. If slaves were not counted, however, southern states would have far fewer representatives in the House than northern states did. For example, if South Carolina were allotted representatives based solely on its free population, it would receive only half the number it would have received if slaves, who made up approximately 43 percent of the population, were included.

The Three-Fifths Compromise resolved the impasse, although not in a manner that truly satisfied anyone. For purposes of Congressional apportionment, slaveholding states were allowed to count all their free population, including free African Americans and count each slave as three-fifths of a person.
The Commerce and Trade Compromise

Another compromise regarding the institution of slavery granted Congress the right to control international trade — and even tax imports — in exchange for a 20-year prohibition on laws attempting to ban the importation of slaves to the United States.

Lesson Toolbox

Additional Resources and Readings

Constitutional Compromises: Crash Course Government and Politics #5
- A Crash Course video covering the Articles of Confederation and the Constitutional Convention
- https://www.youtube.com/watch?v=kCCmuftyj8A&t=1s

The Constitution, the Articles, and Federalism: Crash Course US History #8
- A Crash Course video covering the Articles and the changes made in the Constitution
- https://www.youtube.com/watch?v=bO7FQsCcbD8&t=2s

The Constitutional Convention of 1787 for Dummies
- A deeper explanation of the Constitutional Convention
- https://www.youtube.com/watch?v=xXA4Ob3s-V0

Lesson Glossary

Articles of Confederation: adopted by the Continental Congress on November 15, 1777, this document served as the United States’ first constitution, and was in force from March 1, 1781 until 1789 when the present day Constitution went into effect

Constitutional Convention: a meeting between 55 delegates in May of 1787 meant to revise the Articles of Confederation, ultimately creating a new government and the new U.S. Constitution
separation of powers: the U.S. government is separated into the judicial, legislative, and executive branches; these branches each serve a different purpose and work together to check power on any one branch

checks and balances: a system that gives each of the three branches of government the power to restrict the actions of the others, thus requiring them to work together

veto: the presidential power to strike down a law passed by Congress

Great Compromise: an agreement that large and small states reached during the Constitutional Convention of 1787 that defined the legislative structure and representation each state would have under the United States Constitution

Three-Fifths Compromise: enslaved persons were counted as three-fifths of a free person for the sake of calculating the number of people a state could elect to the House of Representatives

Check Your Knowledge

1. The Constitutional Convention was intended to fix the Articles of Confederation but ended up creating an entirely new government.
   A. True
   B. False

2. One of the biggest concerns for the framers at the Constitutional Convention was the challenge of increasing the authority of the national government while ensuring it did not become too powerful. This was resolved by creating a separation of powers and system of checks and balances.
   A. True
   B. False

3. The creation of a federal system during the Constitutional Convention was the strongest guarantee that the power of the national government would be restricted.
   A. True
   B. False

Answer Key:
1. A  2. A  3. A

Citations

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