

The Constitution: A More Perfect Union

Overview and Objectives

Overview

In a Social Studies Skill Builder, students explore the key features and guiding principles of the U.S. Constitution by assuming the role of law students taking a final exam on the Constitution.

Objectives

In the course of reading this chapter and participating in the classroom activity, students will

Social Studies

- identify the main features of the Constitution and describe the basic lawmaking process.
- analyze how the Constitution divides powers among various levels and branches and preserves individual rights.
- explain how the guiding principles of the Constitution have created “a more perfect Union” and resulted in a government that can adapt to changing times.

Language Arts

- create a composition that has a coherent thesis, supports that thesis, and achieves an effective balance between researched information and original ideas.

Social Studies Vocabulary

Key Content Terms popular sovereignty, legislative branch, executive branch, judicial branch, judicial review, checks and balances, interstate commerce, federalism, majority rule, interest group

Academic Vocabulary ingenious, domestic, diverse, discriminate, function

The Constitution: A More Perfect Union

How has the Constitution created “a more perfect Union”?

Section 1 - Introduction

More than 200 years after the Constitution was created for a new nation, a vastly different United...

When the delegates left Independence Hall in September 1787, they each carried a copy of the Constitution. Their task now was to convince their states to approve the document they had worked so hard to write.

Writing the Constitution involved many compromises. Most of all, the framers wanted to create a central government that would be strong and lasting but not so strong that it endangered citizens' freedoms. In this chapter, you will see how the Constitution met these goals.

The delegates wanted ordinary citizens to understand and support the Constitution. For this reason, they organized its contents very clearly. After a short introduction, they divided the Constitution into parts called articles. Then they split each article into numbered sections that present topics in a careful order.

This structure can help you find information in the Constitution. For instance, the first section in the article on the president describes how the president is chosen. The second section lists the president's powers. The third section lists presidential duties, and the fourth explains how the president can be removed from office.

One of the marvels of the Constitution is the way it combines flexibility with a strong framework for the government. In general, the delegates allowed Congress, the president, and the courts to add details to the basic framework. They also included procedures for changing the Constitution.

Life-size bronze statues at the National Constitution Center commemorate the drafting of the Consti...

This combination of strength and flexibility makes the Constitution an enduring document. The Constitution keeps its basic nature, yet the framers created it so it could also change with the times. In this chapter, you will learn more about the enduring quality of this ingenious document.

Section 2 - The Preamble Tells the Goals of Government

The delegates who crafted the Constitution chose each word carefully. Some of their best-known words are in the introduction, which is called the Preamble. The Preamble explains the reasons for the new government.

The Constitution begins with the memorable phrase “We the People.” With these words, the delegates announced that the Constitution based its authority on the people themselves. The power to form the government did not come from the states or the existing government. It did not come from a sovereign (ruler) appointed by God. Instead, the power came from ordinary Americans. This concept is known as popular sovereignty.

The Preamble then lists the goals of the new government. First, the delegates wanted to “form a more perfect Union.” What did the delegates mean by this? They wanted the states to cooperate with each other. They also wanted to create a strong relationship between the states and the national government.

The Constitution also aims to “establish Justice.” Americans wanted to be ruled by laws, not by the might of soldiers or the decisions of kings. The same laws would apply to all people.

The delegates hoped that the new government would “insure domestic Tranquility.” By domestic, they meant within the country. By tranquility, they meant peace and order. It was the government’s job to keep peace and maintain order within the country.

The new government would “provide for the common defence.” In other words, the national government would be responsible for protecting the nation against foreign enemies. This would allow for stronger protection than would be possible if each state had its own army and navy.

The delegates wanted the new government to “promote the general Welfare.” This meant that the government could support an economy and a society in which people could prosper.

Finally, the delegates hoped to “secure the Blessings of Liberty to ourselves and our Posterity.” By “posterity,” the delegates meant the generations that would come after them. They wanted the government to protect the freedoms gained in the American Revolution and preserve them for Americans to enjoy in the future.

The delegates knew that these goals required a national government. However, based on their experience with a king, many people were suspicious of a strong central government. For this reason, the delegates tried to create a balanced framework that people could trust.

Section 3 - The Legislative Branch Makes Laws

The Constitution establishes a government of three branches, with separate powers for each branch....

For the framers of the Constitution, the first step in building a trusted government was to create a fair way to make laws. Article I of the Constitution gives the power to make laws to the legislative branch of government.

The Structure of Congress The Constitution creates a bicameral, or two-part, national legislature called Congress. The two parts, or houses, of Congress are the House of Representatives and the Senate.

Members of the Senate serve six-year terms so that they can enjoy some independence from the day-to-day opinions of voters. In contrast, members of the House serve two-year terms. As a result, they have to face the voters much more often. In this way, the framers tried to balance the independence and thoughtfulness of the Senate with the House's responsiveness to the changing wishes of the voters.

The framers also designed Congress to balance the rights of large and small states. Thus, while every state gets two senators, representation in the House is based on population. States with more people have more representatives in the House. To determine the number of representatives for each state, the Constitution calls for a census (a count of the population) to be conducted every ten years. In time, the number of representatives in the House was set at 435, divided among the states based on their population.

The framers considered the Senate to be the "upper house" of the legislature. Its members are supposed to be wiser and more experienced than members of the "lower house." Senators must be at least 30 years old, while House members must be 25. Senators must have been citizens for nine years, House members for just seven years.

Originally, the Constitution allowed state legislatures to choose the two senators to represent their state. Today, however, senators are elected by popular vote (direct vote by the people).

How Congress Makes Laws The primary job of Congress is to make laws. Any member of the House or Senate can submit a proposal for a new law, called a bill. However, only the House can propose new taxes. If a majority in one house votes in favor of the bill, it is sent to the other house for debate. If both houses approve the bill, it goes to the president. The bill becomes a law if the president signs it.

The president can veto any proposed law. Congress can override the president's veto, which means passing the bill over the president's objections. But to do so requires a two-thirds majority in both houses.

The Powers of Congress Article I spells out other powers of Congress. For example, only Congress can decide how to spend the money raised through taxes. Other congressional powers include the power to raise an army and navy, to declare war, to pay government debts, and to grant citizenship.

In addition, Congress may “make all Laws which shall be necessary and proper” to carry out its other powers. This power, known as the elastic clause, gives Congress the flexibility needed to do its job. Over the years, the elastic clause has been stretched to allow Congress to do many things that were never listed among its powers in the Constitution.

Section 5 - The Judicial Branch Interprets the Law

The framers intended for the Constitution to be the “supreme Law of the Land.” That means no other laws or actions by the government or by any state can conflict with the Constitution. Protecting the Constitution is one of the principal responsibilities of the third branch of government, the judicial branch. The judicial branch consists of the system of federal courts and judges.

Article III of the Constitution gives the basic framework of the judicial branch. It establishes the country’s highest court, the Supreme Court. It also gives Congress the power to create inferior (lower) courts to meet the nation’s needs.

Federal courts also have the power to resolve disputes that involve national laws, the federal government, or the states. People accused of breaking national laws can be tried in federal courts.

Federal Court System Congress has authorized two main sets of inferior federal courts. These lower courts are called district courts and appellate courts.

Most cases involving federal laws are first heard in district court. The United States is divided into large geographic districts. Each district covers several states. Citizens can appeal decisions given in district court, which means asking a higher court to review the case. Courts that review cases are called courts of appeal or appellate courts. An appellate court only considers whether the original trial was fair and legal. A decision by an appellate court can be appealed to the Supreme Court.

The Powers of the Supreme Court The Supreme Court is the last stop in the judicial system. Its decisions are final, and they are binding on all lower courts. The Constitution does not specify the size of the Supreme Court. Congress has set the size at nine members, who are called justices. The Constitution says that all federal judges, including Supreme Court justices, serve for “good Behaviour.” Once they are appointed, justices usually serve on the Court for life.

A dispute goes directly to the Supreme Court only if it involves a state or an ambassador from another country. Any other case comes to the Supreme Court after a trial and an appeal in lower courts. Participants in either national or state courts may eventually appeal cases to the Supreme Court.

Every year, lawyers ask the Supreme Court to review thousands of cases, but the Court agrees to consider only about a hundred. The Supreme Court usually reviews a case only if the justices think the decision made by a lower court might conflict with the Constitution or a federal law. After hearing statements from both sides, the justices debate among themselves and vote. Supreme Court decisions are announced and explained in writing. These decisions then guide later decisions in lower courts.

Early in its history, the Supreme Court defined the power of judicial review. This is the power to decide whether laws and acts made by the legislative and executive branches conflict with the Constitution. Courts all over the country rely on the Supreme Court for guidance about what is constitutional. Judicial review gives the Supreme Court great power in its role of protecting the “supreme Law of the Land.”

Section 6 - Checks and Balances Between the Branches

~~Checks and balances— one of the most significant features of the Constitution— prevent one branch of~~

The framers of the Constitution were very concerned about achieving a balance between a strong national government and protection for individual freedoms. They hoped that dividing the federal government into three branches was one way to limit the government's power. But what would keep one branch from dominating the others? As one delegate to the Constitutional Convention pointed out, "From the nature of man, we may be sure that those who have power in their hands . . . will always, when they can . . . increase it."

Because of this concern, the framers developed a system that would enable each branch of the government to limit the power of the other two branches. This system is called checks and balances.

Checking the Power of Other Branches Checks allow one branch to block the actions of another branch. For instance, Congress has the power to pass laws. But the president can check this power by vetoing a bill before it becomes law. In turn, Congress can check the president's power by overriding the veto by a two-thirds majority vote in each house.

Similarly, the judicial branch can check the actions of the other two branches. Through its power of judicial review, the Supreme Court can declare that a law, a treaty, or an executive action is unconstitutional.

Balancing the Power of Other Branches Balances allow each branch of the government to have some role in the actions and power of the other branches. For instance, judges, ambassadors, and cabinet members are appointed only if the president nominates them and the Senate approves the nomination. Similarly, the president has the power to sign treaties, but they take effect only if the Senate approves them.

The powers of the judicial branch are also balanced against the powers of the other two branches. Even though the Supreme Court can declare laws unconstitutional, it is the president who chooses federal judges—and the Senate must approve these appointments. In addition, Congress can impeach federal judges. In these ways, the legislative and executive branches have some role in the actions of the judicial branch.

These checks and balances keep any one branch of the federal government from being too strong. This balance of powers is one of the most important features of the U.S. system of government.

Section 7 - The Amendment Process

~~This chart shows the four ways that amendments to the Constitution can be proposed and approved.~~

The framers knew that the Constitution would need to be changed over time. As Thomas Jefferson said, "the earth belongs to the living and not to the dead." At the same time, they wanted the Constitution to provide a lasting and stable framework for the government. To maintain that stability, the framers made changing the Constitution possible but difficult.

Changing the Constitution Article V describes how changes, called amendments, can be made to the Constitution. An amendment may be proposed in one of two ways. Congress may propose an amendment by a vote of at least two-thirds of each house of Congress. Or, a national convention called by Congress at the request of at least two thirds of the state legislatures may propose an amendment. Thus, either Congress or the states can start the process of amending the Constitution.

Proposing an amendment is only the first step. Before an amendment can become part of the Constitution, it must be ratified. The Constitution gives two ways of ratifying an amendment. An amendment may be approved by the legislatures in at least three-fourths of the states, or it may be ratified by special conventions in at least three-fourths of the states. Once an amendment is approved, it becomes part of the Constitution.

Amendments So Far Over the years, people have suggested more than 10,000 amendments to the Constitution. Only 27 have been approved. The first 10 amendments were added almost immediately after the Constitution was ratified. These amendments were demanded by many Americans in exchange for their support of the Constitution. Called the Bill of Rights, these 10 amendments primarily guarantee specific rights to citizens.

The other 17 amendments became part of the Constitution one at a time. Some of them changed the way certain public officials are elected. Others guaranteed the rights of certain groups of Americans. The Thirteenth Amendment made slavery illegal. The Nineteenth Amendment guaranteed women the right to vote. The Twenty-sixth Amendment gave the right to vote to all citizens over the age of 18.

Section 8 - The Federal System Connects the Nation and the States

Article I of the Constitution gives the national government sole authority to print and coin money.

The framers of the Constitution wanted a strong national government, but they also wanted the states to keep significant powers. They accomplished both goals by creating a federal system of government in which power is shared between the national and state governments.

Powers Belonging to the National Government The Constitution gives some powers only to the national government. In general, these are powers best exercised by one central authority, such as declaring war and making treaties. The Constitution also says that only the national government can print and coin money. The framers had learned from experience that separate state currencies made no sense.

Similarly, Article I gives Congress the power “to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” Known as the commerce clause, this provision gives the national government the power to regulate interstate commerce. For example, a state cannot try to protect its own businesses and industries by taxing goods imported from other states. Under the Articles of Confederation, many states had done just that. As a result, interstate trade threatened to grind to a halt. In effect, the commerce clause made the entire United States a common market, or free-trade zone.

There were several advantages to giving states a common market. First, goods and resources could flow more easily across the country. This is important because different regions do different things well. New Englanders might be very good at making cloth, but their region is not good for growing cotton. Southerners might have lots of cotton but few factories for turning it into cloth. Making interstate trade easier for cloth makers and cotton growers helps both businesses thrive.

Second, the common market made it easier to create large businesses that crossed state lines. This was very important to companies like those that built the nation’s railroads in the 19th century.

Third, the common market helped to create a single national economy. Under the Articles of Confederation, it was almost as if the country had 13 small economies. These could never have grown as diverse or powerful as the U.S. economy did.

Notice that the commerce clause also gives the national government the right to regulate trade with Indian tribes. In effect, the Constitution treats native tribes as foreign governments. Relations with these “nations within a nation” are the responsibility of Congress, not the states.

The Constitution divides power between the federal and state governments. The idea behind the sepa...

Powers Belonging to the States The Constitution does not spell out specific powers of the states. Instead, it says that the states retain, or keep, any powers that are not given to the national government. For instance, the Constitution says nothing about schools, marriage, establishing local governments, owning property, licensing doctors and lawyers, or most crimes. The states make the laws in these areas of life.

The Constitution does, however, outline the responsibilities of states to each other. Article IV says that each state must give “full Faith and Credit” to the laws and court decisions of other states. This means accepting other states’ laws and court decisions as legal. For example, a driver’s license issued in one state is legal in every state. Similarly, states must obey legal contracts that people have made in other states. Like the commerce clause, the full faith and credit provision brings stability to business dealings. States are also required to help each other track down fleeing criminals. Criminals cannot escape justice by fleeing to another state.

Finally, the Constitution does not allow one state to discriminate unreasonably against a citizen of another state. A state may not, for example, refuse to let a child who was born in another state attend its public schools.

Shared Powers Federal and state governments also share some powers. For example, both levels of government can collect taxes, build roads, borrow money, and regulate education.

If you think federalism, or the sharing of power, sounds complicated, you are right. Consider presidential elections. Congress sets the date for national elections, while the states register voters and run the elections. States count the ballots, while the national government organizes the Electoral College vote, which determines who will be president.

Federalism is also complicated because the Constitution provides only a general framework for the sharing of powers. There was no way for the framers to spell out rules for every possible situation. The federal system continues to evolve through new laws, court decisions, and constitutional amendments.

The Law of the Land Americans may disagree about how to interpret the Constitution, but they may not ignore it. Article VI states that the Constitution and the laws flowing from it are the “supreme Law of the Land.” This means that a state’s constitution, laws, and judicial decisions must agree with the Constitution. They also must not conflict with any other federal laws or treaties. In addition, everyone who holds a state or federal office must promise to support the Constitution.

Section 9 - Popular Participation in Government

~~Political parties are not mentioned in the Constitution, but they have become a central part of the...~~

The framers of the Constitution designed a government based on the will of the people. They expected people to take part in their own government and to hold leaders responsible for their actions.

For government to reflect the popular will, it makes sense for its decisions to be based on what most people want. The Constitution therefore establishes the principle of majority rule. Laws are passed in Congress by majority vote. Elections are decided by a majority of voters.

It is through elections that most people have a say in what the government does. Leaders must listen to the voters, or they will not be elected (or reelected). Elections serve the vital function of expressing the will of the people.

But who exactly are "the people"? The framers did not specify who would have the right to vote. Over the years, states established various requirements for voting. It took many years of struggle to establish the principle that all citizens should have the right to vote. Women, for example, were not guaranteed this right until the Nineteenth Amendment was ratified in 1920.

Popular participation in government has evolved in other ways that are not part of the Constitution. For example, the Constitution makes no mention of political parties. Today, parties select most candidates for political office. Becoming active in party affairs is another way that voters can help choose their leaders and influence the positions they take on issues.

People also take part in government indirectly through interest groups. There are interest groups for almost any issue that people might care about. Some interest groups represent businesses, industries, and workers. Some represent groups of people, such as churchgoers, women, or minorities. Some are organized around issues, such as the environment or health care.

Interest groups influence government in several ways. They rally public opinion, work to elect candidates who promise to listen to them, and try to persuade lawmakers and government officials to take actions they favor.

If the framers were alive today, they might be surprised to see the changes in the system they created. Yet the remarkable thing is how successful they were in building the basic framework of American democracy. As one historian has said, the Constitution "would become the rule of life for a country larger than any of the founders imagined, and would last longer than most of them dared hope."

Summary

In this chapter, you learned how the Constitution met the delegates' goal of creating "a more perfect Union."

The Preamble As the first words of the Preamble tell us, the Constitution's authority comes directly from the people, not the states. This concept is known as popular sovereignty. The Preamble goes on to list the goals of the new government.

The Legislative Branch Article I of the Constitution creates a bicameral Congress with a House of Representatives and a Senate. Every state is represented by two senators. Representation in the House is based on a state's population. Congress's primary job is to make laws.

The Executive Branch Article II creates the executive branch. The head of the executive branch is the president. The president serves a four-year term and may be reelected once. The president carries out laws passed by Congress. Other powers of the president include making treaties and appointing Supreme Court justices.

The Judicial Branch Article III establishes the Supreme Court and gives Congress the power to create lower courts. Supreme Court decisions are binding on all lower courts. The power of judicial review allows the Supreme Court to decide whether laws and actions by the legislative and executive branches are unconstitutional.

Checks and Balances The framers developed a system of checks and balances that enables each branch of government to limit, or check, the power of the other two branches. The Constitution provides checks and balances in the powers of each branch.

The Amendment Process Article V outlines the process by which amendments can be made to the Constitution. Twenty-seven amendments have been added. The first ten amendments form the Bill of Rights.

The Federal System The Constitution creates a federal system of government in which power is shared between the national government and the states.

Popular Participation in Government Elections serve the vital function of expressing the will of the people. People also participate in government by joining political parties and taking part in interest groups.

Creating the Constitution

Overview and Objectives

Overview

In an Experiential Exercise, students examine the factors that led to the creation of a stronger central government under the U.S. Constitution by re-creating a key debate from the Constitutional Convention.

Objectives

In the course of reading this chapter and participating in the classroom activity, students will

Social Studies

- analyze the effectiveness of the Articles of Confederation.
- explain how the Northwest Ordinance helped establish new territory for the United States.
- determine the causes of Shays's Rebellion and its effects on the new nation.
- identify the main points of contention during the development of the Constitution, the arguments surrounding them, and their resolutions.
- describe the role of such leaders as George Washington and Roger Sherman in the writing and ratification of the Constitution.
- describe the underlying political philosophy of the Constitution championed by such men as James Madison and Alexander Hamilton.

Language Arts

- deliver a persuasive presentation that makes a clear and knowledgeable judgment and supports arguments with evidence, examples, and reasoning.

Social Studies Vocabulary

Key Content Terms Articles of Confederation, Northwest Territory, Northwest Ordinance, Constitutional Convention, Enlightenment, republic, constitution, Great Compromise, Three-Fifths Compromise, Electoral College, ratify, *The Federalist Papers*

Academic Vocabulary committed, liberal, framework, contradiction

Setting the Stage - Forming a New Nation

The 13 states that independence brought together to form the United States of America had very different physical and human geographic features. Most of the Southern states were larger than most of the Northern states. However, as the map on the opposite page shows, a state's population often had little relation to its size. For example, the populations of tiny Rhode Island and the much larger Georgia were close to the same.

For the colonists, differences between the states' geographic features raised basic questions about what form the nation's government should take. Should a large state like Georgia have the same voice in government as a small state like Connecticut, which had a greater population? Should Connecticut have as much power as New York, which was larger and had more people, too? At first, the answer to both questions was yes. Under the nation's first constitution, called the Articles of Confederation, each state had one vote in Congress.

In time, however, some people began to question the fairness of this system. Yet, basing a state's political power on its population raised other questions. For example, should a state with both slaves and free people have as much power as a state with no slaves and the same total population? The populations of the Southern states contained a high percentage of slaves, as the maps on this page show. The maps also show that counting only free people would drop most of these states in the population rankings, compared to the Northern states.

Such geographic concerns arose in 1787, when representatives of 12 states met to write a new constitution for the United States. In this unit, you will learn how the delegates handled population-related disputes and other issues in framing the form of government we have today.

Section 1 - Introduction

When the American war for independence ended, no one was happier than a serious Virginia Patriot named James Madison. And no one was more worried about the future of the United States. While serving in Congress during the war, Madison had tried and failed to get the states to work easily together. He doubted that things would improve now that the war was over.

The Constitution was signed in Philadelphia on September 17, 1787.

After declaring independence in 1776, Congress had tried to unite the states under one national government. This proved to be a difficult task. Most members of Congress were nervous about creating a strong central government. They feared that such a government would trample the very rights they were fighting to preserve.

Their solution was a plan of government known as the Articles of Confederation. The Articles created "a firm league of friendship" in which "each state retains its sovereignty, freedom, and independence." This "league of friendship" was a loose union in which the 13 states cooperated for common purposes. It was run by Congress, in which each state had one vote.

On paper, the Articles of Confederation gave Congress several important powers. It could declare war, raise an army and a navy, print money, and set up a postal system.

In reality, however, these powers were limited by the inability of Congress to impose taxes. Instead, Congress had to ask the states for funds to do anything. All too often, the states ignored Congress's "humble requests." The result, said Madison, was that the Articles were no more effective at binding the states into a nation than "a rope of sand."

In this chapter, you will read about the new nation's shaky start under the Articles of Confederation. You will also learn how Madison and other leaders met in 1787 to revise the Articles and ended up compromising to form "a more perfect Union."

Section 2 - Early Quarrels and Accomplishments

Even before the American Revolution was over, the states began quarreling among themselves. Many of their quarrels were about taxes on goods that crossed state borders. New York, for example, taxed firewood from Connecticut and cabbages from New Jersey. The states also disagreed over boundaries. The inability of Congress to end such disagreements was one of the key weaknesses of the Articles of Confederation.

Developing Western Lands Congress did get the states to agree on one important issue: how to develop the western lands acquired in the Treaty of Paris. At that time, there was no orderly way to divide up and sell these lands. Settlers walked into the wilderness and claimed the land they liked. Disputes over who owned what clogged the courts.

To end this confusion, Congress passed the Land Ordinance of 1785. Under this law, western lands were divided into six-mile squares called townships. Each township was then divided into 36 sections of 640 acres each. One section of each township was set aside to support the township's public schools. The other sections were to be sold to settlers.

The Land Ordinance of 1785 organized the Northwest Territory into townships. ~~The Northwest Ordinance.~~

Surveyors proceeded to lay out townships in the Ohio Valley, then known as the Northwest Territory. By 1787, the government was ready to sell sections to settlers. This raised the question of how these areas should be governed. Were they to be U.S. colonies or new states?

The Northwest Ordinance Congress answered this question in the Northwest Ordinance of 1787. This law divided the Northwest Territory into smaller territories, each governed by a territorial governor. As soon as a territory had 5,000 free adult males, it could elect its own legislature, or lawmaking body. When the population reached 60,000, a territory could apply to Congress to become a state.

The Northwest Ordinance included a list of rights that gave settlers the same privileges as other citizens, except for one. Slavery was banned in the Northwest Territory.

This system of settlement served the nation well. Over time, the United States would continue to establish territories as it spread to the shores of the Pacific Ocean and beyond.

Section 3 - Shays's Rebellion and the Need for Change

~~Daniel Shays, at the top right, and his followers closed down courthouses in Massachusetts to~~
~~prev~~

Under the Articles of Confederation, the new nation had serious money problems. The paper money printed by Congress during the war was worthless. Congress had the power to make coins that would not lose their value. But it lacked gold or silver to mint into coins.

The states reacted to the money shortage by printing their own paper currency. Before long, bills of different sizes and colors were distributed from state to state. No one knew what any of these currencies was worth, but most agreed they were not worth much.

Massachusetts Farmers Rebel The money shortage was particularly hard on farmers who could not earn enough to pay their debts and taxes. In Massachusetts, judges ordered farmers to sell their land and livestock to pay off their debts. Led by Daniel Shays, a hero of the Battle of Bunker Hill, Massachusetts farmers rebelled.

In 1786, Shays and his followers closed down courthouses to keep judges from taking their farms. Then they marched on the national arsenal at Springfield to seize the weapons stored there. Having disbanded the Continental army, Congress was unable to stop them.

The Massachusetts government ended Shays's Rebellion in early 1787 by sending militia troops to Springfield to restore order. To many Americans, however, the uprising was a disturbing sign that the nation they had fought so hard to create was falling apart. "No respect is paid to the federal [national] authority," James Madison wrote to a friend. "It is not possible that a government can last long under these circumstances."

A Call for a Convention Shays's Rebellion shocked Congress into calling for a convention to consider "the situation of the United States." Each state was invited to send delegates to Philadelphia in May 1787 "for the sole and express purpose of revising the Articles of Confederation."

Madison was ready. For the past year, he had devoted himself to the study of governments, both ancient and modern. The lesson of the past was always the same. A nation that was made up of many groups needed a strong central government, or it would soon be torn apart by quarrels. The question was, would Americans heed this lesson?

evidently took the lead in the Convention." Indeed, Madison's influence was so great that later he would be called the "Father of the Constitution."

Madison addressed the convention numerous times. When he was not speaking, he took notes. Sitting near the front of the room so that he could hear everything that was said, Madison wrote down nearly every word. All together, his notes covered more than 600 printed pages. From this remarkable record, we know what went on inside the convention day by day.

The Rule of Secrecy At the time, however, no one outside the convention knew what was happening. After choosing a president, the delegates voted on rules for the convention. The most important of these was the rule of secrecy. The delegates wanted to feel free to speak their minds without causing alarm or opposition among the general public. They agreed to keep secret whatever was said in the meeting room until their work was done.

One day, Washington was handed some notes that had been dropped in the hall outside the east room. Washington pocketed the paper until the end of debate the next day. Then, in his sternest voice, he lectured the delegates on the importance of secrecy. "I know not whose paper it is," Washington said as he flung the notes on his desk. "But there it is, let him who owns it take it." The notes were never claimed. Instead, they lay on Washington's desk for days.

Like Washington, the delegates took the rule of secrecy seriously. During that long summer, not a single word about the convention debates appeared in any newspaper.

~~Delegates with opposing views were Pennsylvania's James Wilson (left) and New Jersey's William Pat...~~

Shared Beliefs and Clashing Views Once the convention was organized, the delegates got down to business. As a group, the delegates had much in common. But they also had very different views on many issues facing the new nation.

To be sure, all the delegates were committed to the ideals of the Declaration of Independence. The basic purpose of government, they believed, was to protect the rights to "life, liberty, and the pursuit of happiness." And they agreed, in the words of the Declaration, that the "just powers" of governments came from "the consent of the governed."

In part, these beliefs reflected the ideas of Enlightenment thinkers like England's John Locke. Human institutions, these liberal thinkers had argued, should be based on "laws of nature." Among these laws were the rights to liberty and equality. The best way to protect these rights, the delegates agreed, was through some form of republic.

From New England's town meetings to lawmaking bodies like the Virginia House of Burgesses, Americans had a long tradition of participating in their own government. After the American

Revolution, all the states had adopted constitutions that embraced republican ideals. Despite many differences in details, every state had some form of representative government. States had also expanded the rights to vote and to hold office. The state constitutions helped to shape the delegates' thinking.

Despite the delegates' broad agreement on a government "of the people," many questions were left unanswered. For example, who exactly should have a say in a truly "representative" government? Even in liberal Pennsylvania, only free, white males could vote. Some states allowed only wealthier citizens to vote or hold office. Women could not vote in any state except New Jersey. (New Jersey women would lose the right to vote in 1807.)

Perhaps the most troubling question of all was how powerful the national government should be. Many delegates wanted to keep government close to the people by preserving the rights of the states. They feared that a strong national government would threaten individual liberty. Others, including Madison, argued just the opposite. Look at what has happened under the Articles of Confederation, they said, referring to events like Shays's Rebellion. If the central government is too weak, it cannot do its job of protecting liberty and property.

As they met behind closed doors, the delegates wrestled with these and other issues. Tempers often flared. Several times it seemed the convention might collapse in failure. But in the end the delegates found ways to save the convention—and the nation.

Section 4 - Opening the Constitutional Convention

~~Benjamin Franklin, the oldest delegate to the Constitutional Convention, had doubts about the draft.~~

Philadelphia was already hot and humid when delegates began drifting into the city. On May 25, 1787, the Constitutional Convention met for the first time in the east room of the Pennsylvania State House (now known as Independence Hall). The Declaration of Independence had been debated in this very room just 11 years earlier. The delegates would meet in the east room all summer. On some days, temperatures rose well into the nineties.

The delegates' first action was to elect George Washington president of the convention. No man was more admired and respected than the former commander in chief of the Continental army. When the war ended, Washington could have used his power and popularity to make himself a king. Instead, he went home to Virginia to resume his life as an ordinary citizen. But despite his reluctance to return to public life, Washington would play a key role by presiding over the convention and lending it his prestige.

The Delegates Fifty-five delegates from 12 states attended the Constitutional Convention. Rhode Island, which prided itself as "the home of the otherwise minded" and feared a strong national government, boycotted the meeting.

Some leaders of the revolution were missing. John Adams and Thomas Jefferson were representing the United States in Great Britain and France, respectively. Others who did not attend included Sam Adams, John Hancock, and Patrick Henry. They feared that a strong national government would endanger the rights of states.

As a group, the delegates were, in the words of a modern historian, "the well-bred, the well-fed, the well-read, and the well-wed." Their average age was 42. At 81, Benjamin Franklin of Pennsylvania was the oldest. He arrived at the convention each day in a sedan chair carried by four good-natured prisoners from a nearby jail.

Most of the delegates brought extensive political experience to the meeting. More than two-thirds were lawyers. Most had served in their state legislatures or held a state office. Thomas Jefferson was so impressed by the ability and experience of these men that he called the convention "an assembly of demi-gods."

The delegates to the Constitutional Convention met on May 25, 1787, ~~in the same hall where the Declaration of Independence was signed.~~

The Father of the Constitution The best prepared of the delegates was James Madison of Virginia. One delegate wrote of Madison, "In the management of every great question he

Section 5 - Issue: How Should States Be Represented in the New Government?

~~A major issue confronting the Constitutional Convention was whether to give each state the same nu...~~

When the convention began, most delegates believed that their task was to revise the Articles of Confederation. To their surprise, the Virginia delegation presented them with a completely new plan of government. After a lengthy debate, the delegates made a bold move. They agreed to throw out the Articles of Confederation and write a new constitution.

While the delegates—later known as the framers—agreed to design a new framework of government, they were divided on a key issue. Where should the government’s power to rule come from? From the states? Or from the people? Under the Articles of Confederation, the answer was the states. James Madison’s answer was that the government’s power should come directly from the people.

The Virginia Plan Drafted by James Madison and proposed by Edmund Randolph, the Virginia Plan called for a strong national government with three branches, or parts. A legislative branch would make laws. An executive branch would carry out, or execute, the laws. A judicial branch, or system of courts, would apply and interpret the laws.

Under the Virginia Plan, Congress was to be made up of two houses, the House of Representatives and the Senate. The number of lawmakers that a state could send to Congress depended on the state’s population. States with large populations would have more representatives than smaller states would have.

Delegates from Virginia, Pennsylvania, and other large states liked the Virginia Plan. Having the new government represent people, not states, would give them more representatives and more power in both houses of Congress.

The New Jersey Plan Not surprisingly, delegates from the small states disliked the Virginia Plan. Just as the convention was about to vote on it, William Paterson of New Jersey introduced a rival proposal.

Like the Virginia Plan, the New Jersey Plan called for a government with three branches. However, the legislative branch would have just one house, not two. Each state would have an equal vote in Congress, no matter how big or small. This plan, Paterson argued, would keep the small states from being “swallowed up” by their more populous neighbors.

Section 6 - Resolution: The Great Compromise

~~Roger Sherman, a signer of the Declaration of Independence, helped construct the Great Compromise t...~~

The New Jersey Plan was warmly received by delegates from small states. The majority of delegates, however, saw William Paterson's plan as offering little improvement over the Articles of Confederation and rejected it. But they could not agree on what should replace it.

Tempers Rise The debate over representation in Congress continued into July, with tempers rising day by day. To most delegates from large states, representation based on population seemed both logical and fair. "Can we forget for whom we are forming a Government?" asked James Wilson of Pennsylvania. "Is it for men, or for the imaginary beings called States?"

To Wilson, the answer was obvious. But his logic could not overcome the fears of small-state delegates. One hot Saturday afternoon, Gunning Bedford of Delaware tore into the delegates from large states. "They insist," he said, "they will never hurt or injure the lesser states." His reply to his own concern was straightforward. "I do not, gentlemen, trust you!" If the large states continued in their efforts to "crush the smaller states," Bedford warned, "the small ones will find some foreign ally of more honor and good faith who will take them by the hand and do them justice."

Rufus King of Massachusetts was shocked at this reference to foreign powers. He said that he was "grieved, that such a thought had entered his heart." Still, every delegate knew that Great Britain, France, and Spain were just waiting for the United States to fall apart so they could pick up the pieces.

A Compromise Is Reached Finally, a compromise was proposed based on a plan put forward earlier by Roger Sherman of Connecticut. The compromise plan kept a two-house Congress. The first house, the House of Representatives, would represent the people. In this house, the number of representatives from each state would be based on the state's population. The second house, the Senate, would represent the states. Each state would have two senators, to be elected by their state legislatures. The vote was very close, but the compromise plan was approved. This plan saved the convention and became known as the Great Compromise.

Section 7 - Issue: How Should Slaves Be Counted?

~~How do you think delegates from each of the states shown in this graph would want slaves to be counted?~~

The Great Compromise kept the framers working together. But having agreed to base representation in one house of Congress on state population, they faced a new and difficult question. As Gouverneur Morris of Pennsylvania put it, "Upon what principle shall slaves be computed in the representation?"

People or Property? By the time of the convention, nine-tenths of the slaves in the United States lived in the South. Like everyone else, southerners wanted as many representatives in the House as possible. They argued that slaves should be counted the same as any other people in determining representation.

Delegates from the North challenged this idea. Were slaves to be considered people with a right to be represented in Congress? Or were they property? "Blacks are property and are used to the southward as horses and cattle to the northward," argued Elbridge Gerry of Massachusetts. Most northern delegates agreed. Slaves should be counted only as property that could be taxed like any other property. If slaves were to be counted as people in determining representation in Congress, said Morris, "then make them citizens and let them vote."

New Thinking on Slavery This argument signaled a growing division among white Americans. The Declaration of Independence and the American Revolution forced many whites to reexamine their views on slavery. Some became active in trying to end what they now saw as a great evil. Benjamin Franklin, for example, became president of an antislavery society in 1787. In the North, this new thinking led one state after another to pass laws ending slavery.

Although many southerners were uneasy about slavery, they were not yet ready to abolish it. The South's economy was still very dependent on the labor of enslaved African Americans. But some southern states did pass laws making it easier for owners to free their slaves.

Section 8 - Resolution: The Three-Fifths Compromise

After a bitter debate, Madison proposed a compromise. Count each slave as three-fifths of a person, he suggested, when determining a state's population for representation in the House of Representatives. The delegates approved this idea, which became known as the Three-Fifths Compromise, because it seemed the only way to keep the convention moving forward.

Another Slavery Issue A dispute over trade raised another issue about slavery. To help business in the North, northern delegates favored giving Congress broad power to control trade between the states and other countries. This proposal made southern delegates nervous. They worried that Congress might try to tax southern export crops such as rice and tobacco. Southerners also worried that Congress would use its power over trade to outlaw the slave trade—the importing of slaves from Africa.

Southerners had reason to be fearful. By 1787, several states had outlawed the slave trade within their boundaries. A majority of the convention's delegates favored ending the slave trade completely

South Carolina and Georgia, however, objected that their economies would collapse without a constant supply of new slaves. Neither state would agree to any constitution that threatened to end the slave trade

More Compromises on Slavery Again, the delegates settled on a compromise. Congress would have the power to control trade, but with two limitations. First, Congress could not place any tax on exports to other countries. Second, Congress could not interfere with the slave trade for 20 years, or until 1808.

To satisfy southerners, the delegates also agreed to a provision known as the fugitive slave clause. This clause said that escaped slaves had to be returned to their owners, even if they were caught in a free state.

Without such compromises, the states might never have come together in a single union. Still, the compromises only postponed the day when Americans would have to resolve the terrible contradiction between slavery and the ideals of liberty and equality. Meanwhile, generations of African Americans would spend their lives in bondage.

Section 9 - Issue: How Should the Chief Executive Be Elected?

Another major question facing the delegates concerned who would head the new government's executive branch. Early in the convention, Charles Pinckney urged the creation of a "vigorous executive." James Wilson followed with a proposal that a single person serve as the chief executive.

A sudden silence fell over the convention. A single executive? The very idea brought to mind unhappy memories of King George III.

Wilson broke the silence by explaining that good government depends on clear, timely, and responsible leadership. Such leadership, he said, is most likely to be found in a single person.

One Executive or Three? Edmund Randolph of Virginia disliked this proposal. He preferred a three-member executive drawn from different parts of the country. Three people, he argued, could lead the country better than one.

Benjamin Franklin opposed a single executive for different reasons. "The first man put at the helm will be a good one," said Franklin, thinking of George Washington. "Nobody knows what sort may come afterwards." The next chief executive, he warned, might be overly ambitious or too "fond of war."

In spite of these objections, the framers agreed to a single executive, to be called the president. To keep this leader from becoming too kinglike, they limited the president's term to four years. A vice president was also to be elected to fill that term if the president died in office.

Choosing the Chief Executive Equally troubling was the issue of how to choose the chief executive. Some delegates wanted Congress to appoint the president. Gouverneur Morris objected. The president "must not be made the flunky of the Congress," he argued. "It must not be able to say to him: 'You owe your appointment to us.'"

Several delegates thought that the people should elect the president. Madison, however, argued that voters would naturally vote for someone from their own state. As a result, this method would not be fair to candidates from small states.

Still others suggested that the president be elected by a specially chosen group of "electors" from each state. Such a group, they felt, would be able to look beyond state interests to make a wise choice for the entire country.

Section 10 - Resolution: The Electoral College

~~This is a copy of the Electoral College vote for the election of 1789. At that time, which states~~

After some 60 votes on the issue of how to elect the president, the framers reached another compromise. Neither Congress nor the people, they decided, should choose the president and vice president. Instead, a special body called the Electoral College would elect the government's leaders.

The Electoral College System The Electoral College is made up of electors who cast votes to elect the president and vice president every four years. Each state has as many electors in the Electoral College as the number of senators and representatives it sends to Congress. The votes cast by electors are called electoral votes.

The delegates left the method of choosing electors up to each state. Before 1820, state legislatures chose electors in most states. Today, the people choose their state's electors when they vote in presidential elections. The electors then cast their ballots for president and vice president on a date chosen by Congress.

Originally, the electors voted for two candidates without saying which one they preferred for president or vice president. The candidate receiving the most votes became president. The runner-up became vice president. This system caused great confusion in the election of 1800 and was later changed.

Political Parties and Elections The Electoral College system seems very odd to most Americans today. In our age of instant communication, it is hard to appreciate the framers' concern that voters would not know enough about candidates outside their own state to choose a president wisely.

The delegates could not have predicted how quickly communications would improve in the United States. Nor could they foresee the rise of national political parties. Within a few years of the convention, political parties were nominating candidates for president and educating voters in every state about those candidates.

The Electoral College system still affects presidential elections today. In most states, the candidate who gets the most votes—even if less than a majority—wins all of that state's electoral votes. As a result, a candidate can win a majority in the Electoral College without necessarily winning a majority of the votes cast across the country. In the presidential election of 2000, George W. Bush won the presidency over Al Gore by getting the most Electoral College votes, even though Gore received more votes than Bush in the popular election.

Section 11 - The Convention Ends

Only 39 of the original 55 delegates signed the Constitution on September 17, 1787. ~~Thirteen~~
~~deleg.~~

By the end of summer, the hard work of designing the Constitution was finished. But the new plan still had to be approved by the states.

Approving the Constitution The first question before the framers was how many states would have to ratify, or approve, the Constitution before it could go into effect. Should ratification require approval by all 13 states? By a majority of 7 states? The framers compromised on 9 states.

The second question was who should ratify the Constitution—the people or the state legislatures? Ratification by state legislatures would be faster and easier. James Madison, however, argued strongly that the people were “the fountain of all power” and should decide. The majority of delegates agreed. After the delegates signed the Constitution, the document was later ratified at special conventions by delegates elected by the people in each state. However, ratification did not come without difficulty.

Signing the Constitution On September 17, 1787, the delegates declared the Constitution complete. As this last meeting began, Franklin shared his final thoughts, which would be printed in more than 50 newspapers.

“I confess that I do not entirely approve of this Constitution,” Franklin began. Then he pointed out that no convention could produce a perfect plan. “It therefore astonishes me,” Franklin continued, “to find this system approaching so near to perfection . . . and I think it will astonish our enemies.” Franklin added that he approved the final plan “because I expect no better, and because I am not sure that it is not the best.” He urged every member of the convention to “put his name to this instrument.”

Not everyone was won over by Franklin’s words. Thirteen delegates left the convention before it ended and so did not sign the Constitution.

Three other delegates—Edmund Randolph and George Mason, both of Virginia, and Elbridge Gerry of Massachusetts—also did not sign. Mason believed it gave too much power to the national government. Gerry refused to sign because he believed the new plan did not protect the rights of the people.

When the signing was over, Franklin confessed that he had often looked at the sun carved on the back of George Washington’s chair and wondered whether it was about to rise or set. “But

now," he said, "I have the happiness to know that it is a rising and not a setting sun." A new day was dawning for the United States.

Section 12 - The Constitution Goes to the States

The Constitution had to be approved by nine states. This political cartoon shows 11 states, pictur...

Newspapers in every state printed the Constitution as soon as they could get it. What readers found was a plan that would create a "federal" system of government, in which a strong national government shared power with the states. Before long, the entire country was debating the same issues that had kept the convention in session for four long months.

The Federalists Supporters of the Constitution called themselves Federalists. The Federalists argued that the Constitution would create a national government that was strong enough to unite the quarreling states into a single republic.

James Madison, Alexander Hamilton, and John Jay led the Federalist campaign for ratification. In a series of newspaper essays, they recalled the weaknesses of the government under the Articles of Confederation. They showed how the Constitution would remedy those weaknesses by creating a stronger, more effective union of the states.

The Federalist leaders also addressed the fears of many Americans that a strong government would threaten their freedom or take away their rights. The powers given to the government, they pointed out, were strictly limited. In addition, those powers were divided among three branches so that no one branch could become too powerful. The influential articles written by Madison, Hamilton, and Jay were later collected and published as *The Federalist Papers*.

The Anti-Federalists Opponents of the Constitution were known as Anti-Federalists. They found much to dislike about the new plan. Congress, they feared, would burden the country with taxes. They claimed the president had power enough to rule like a king. The judicial branch, they said, would overpower state courts.

The Anti-Federalists also complained about what was missing from the plan. Their main complaint was that the plan listed the powers of the government but not the rights of the people. Most of all, the Anti-Federalists feared change. The idea of giving up any state power to form a stronger Union made them uneasy.

After listening to the arguments, Madison wrote that the question facing the nation was "whether the Union shall or shall not be continued. There is, in my opinion, no middle ground to be taken."

Summary

In this chapter, you read about the Constitutional Convention, the historic meeting that replaced the Articles of Confederation with a new plan of government.

Early Quarrels and Accomplishments Under the Articles of Confederation Congress did not have the power to solve disagreements among states over such issues as taxes. Congress passed laws on how to settle the Northwest Territory.

Shays's Rebellion Shays's Rebellion showed that under the Articles of Confederation, the government was too weak to keep order.

The Great Compromise In 1787, delegates met at the Constitutional Convention and agreed to revise the Articles. The Great Compromise established how states were to be represented in the legislative branch of government.

The Three-Fifths Compromise The Three-Fifths Compromise settled the question of how slaves were to be counted in determining a state's population.

The Electoral College A third compromise created a single chief executive, to be chosen by the Electoral College.

The Constitution Delegates signed the Constitution in September 1787. They agreed that 9 of the 13 states had to ratify the Constitution before it could go into effect.

The Bill of Rights

Overview and Objectives

Overview

In a Response Group activity, students learn about the important rights and freedoms protected by the Bill of Rights by analyzing a series of scenarios to determine whether the Bill of Rights protects certain actions taken by citizens.

Objectives

In the course of reading this chapter and participating in the classroom activity, students will

Social Studies

- compare their own desire for rights and the founders' work to add a bill of rights to the Constitution.
- identify key rights and freedoms protected by the Bill of Rights and explain why those freedoms are important in their own lives.
- research news articles that show the functions of a free press in a democracy.
- debate landmark Supreme Court cases to determine whether the rights and freedoms protected by the Bill of Rights relate to the issues involved.

Language Arts

- write a personal narrative that reveals the significance of the events conveyed, employs narrative strategies such as dialogue and specificaction, and relates events using well-chosen and interesting details.

Social Studies Vocabulary

Key Content Terms Bill of Rights, warrant, double jeopardy, self-incrimination, due process, defendant
Academic Vocabulary controversial, guarantee, deprive, compensation

The Bill of Rights

What freedoms does the Bill of Rights protect and why are they important?

~~John Hancock helped win approval for the Constitution and pushed for the inclusion of the Bill of~~

To James Madison, the creation of the Constitution seemed nothing less than “a miracle.” By 1788, however, it seemed that it would take another miracle to get it adopted.

The adoption of the Constitution depended on ratification, or approval, by 9 of the 13 states. Ratification started off smoothly, with Delaware, Pennsylvania, New Jersey, Georgia, and Connecticut all saying yes. Then came Massachusetts, where opposition ran strong.

When the Massachusetts ratification convention met early in 1788, defeat seemed certain. Opponents objected that the Constitution did not list the rights of the people. Many delegates said they would not vote in favor of ratification unless such a list were added.

In desperation, the Constitution’s supporters, the Federalists, looked to John Hancock, the governor of Massachusetts. Hancock had stayed away from the convention, pleading a painful attack of gout (a form of arthritis) in his feet. In fact, he was waiting to make an appearance until he could be sure he would be on the winning side.

This illustration represents the Bill of Rights at the time it was approved in 1791.

The Federalists tried to take advantage of Hancock’s vanity. Virginia, they hinted, might not ratify the Constitution. If it did not, then George Washington, a Virginian, could not run for president. And if Washington didn’t run, who was the best choice for the honor? Why, none other than the great governor of Massachusetts.

Hancock swallowed the bait. The governor was carried into the convention, his feet wrapped in bandages. In a dramatic speech, he urged the delegates to approve the Constitution as written. At the same time, he promised that the first task of the new Congress would be to amend the Constitution by adding a bill of rights.

The vote was close, but Massachusetts chose to ratify. The Federalists’ strategy, “Ratify now, amend later,” also worked well in other states. By the end of 1788, the Constitution was the law of the land.

In this chapter, you will learn how Federalists kept their promise to add a list of rights to the Constitution. You will also learn about the freedoms protected by the Bill of Rights and why they are important.

James Madison, who is often called the "Father of the Constitution," ~~helped craft the Bill of Rights~~

For all his hopes, John Hancock never got to be president. By a narrow vote, Virginia did ratify the Constitution. In the first presidential election, held in 1789, George Washington became the nation's first president. John Adams of Massachusetts became vice president.

When the first Congress met that year, no one seemed in much of a hurry to amend the Constitution. Representative James Madison, however, did not forget the promises made during the ratification debate. Originally, he had opposed adding a bill of rights to the Constitution. Such a listing seemed unnecessary to him. Thomas Jefferson helped change his mind. In a letter to Madison, Jefferson argued that "a bill of rights is what the people are entitled to against every government on Earth . . . and what no just government should refuse."

Debate and Approval in Congress While Congress debated other issues, Madison sifted through nearly 100 proposed amendments. He chose those that seemed least controversial, or least likely to cause conflict, and presented them to Congress on June 8, 1789.

Critics jumped on Madison's proposals as meaningless "milk-and-water" cures for imaginary problems. The debate that followed was, in Madison's words, "extremely difficult." As months dragged on with no agreement, he wrote to a friend that the task had become a "nauseous project." Still, he persevered until Congress finally approved 12 amendments.

Ratification by the States Under the Constitution, three-quarters of the states must ratify an amendment before it can become law. The states rejected the first two amendments, which dealt with the size of congressional districts and congressional pay raises. Both amendments were considered unnecessary. By 1791, the required number of states (nine) had approved the other ten amendments. Together, these ten amendments form the Bill of Rights.

When Madison first proposed the Bill of Rights, some people saw his amendments as useless "paper barriers" against abuses of government power. For more than 200 years, however, his "paper barriers" have proven far stronger than even Madison might have hoped.

Section 3 - First Amendment Rights

James Madison combined five basic freedoms into the First Amendment. These are the freedoms of religion, speech, the press, and assembly and the right to petition the government. Many people consider these basic freedoms to be the most important part of the Bill of Rights.

These First Amendment rights would have been meaningless, however, without some way to protect them. When a person believes that the government has violated these rights, he or she may challenge the government's action in court. The same is true of all other rights protected in the Constitution.

If the case reaches the Supreme Court, the nine Supreme Court justices decide how the Constitution applies to the situation. After hearing both sides, the justices vote on the case. One of the justices from the majority side then writes a majority opinion. This document explains how the Court interpreted the Constitution to reach its decision. Any justices who disagree with the majority decision may write minority opinions explaining their reasoning. As you read about First Amendment rights, you will see how the Supreme Court has applied these rights to real-life situations.

~~The beliefs of minority religious groups, like the Hare Krishna pictured here, are protected by the~~

The Right to Worship Freely The First Amendment has two guarantees of religious freedom. The first says, "Congress shall make no law respecting an establishment of religion." This means that Congress cannot make any faith the official religion of the United States. Nor can it make laws that favor any religion over another. As Thomas Jefferson explained in a letter to a friend, the amendment builds "a wall of separation between church and state."

How high should that wall be? The founders of the American republic disagreed about the answer to this question. For example, lawmakers in Virginia proposed using state taxes to help pay for teachers of religion. George Washington was among those who supported this idea as long as no particular church was favored. Opponents of the proposal, like Madison, argued that government and religion should be completely separate.

In a 1971 case known as *Lemon v. Kurtzman*, the Supreme Court sided with Madison's view. This case challenged a Pennsylvania law that used public tax money to pay for books and teachers' salaries at private religious schools. The Court held that the law was unconstitutional because it allowed too close a connection between government and religion.

The second religious guarantee in the First Amendment says, "Congress shall make no law . . . prohibiting the free exercise" of religion. This means that people can hold any religious beliefs, without fear of punishment. However, they cannot necessarily do whatever they want in the name of religious freedom. For instance, the Supreme Court has held that parents are not free to deny their children medical treatment or vaccinations because of their religious beliefs.

The Right to Free Speech and Press The First Amendment protects freedom of speech and freedom of the press. The Supreme Court often treats these rights together as the right of free expression.

Freedom of the press is important because of the vital roles that the press plays in a democratic society. Newspapers, magazines, and other media such as books and television act as watchdogs on the government. They also allow for the free flow of ideas, which citizens need to stay informed and to make up their own minds about important issues. Without a free press, democratic self-government would be impossible.

Americans had learned in colonial days that a free press was their best protection against abuse of government power. In 1735, John Peter Zenger was arrested for printing reports that the governor of New York had taken bribes. The prosecutors said that it was illegal to damage the governor's good name, even if Zenger had published the truth. Zenger's lawyer argued that no one should be jailed for "exposing and opposing arbitrary power by speaking and writing truth." The jury agreed, and Zenger was freed.

Freedom of the press also brings responsibilities, such as taking care not to spread false accusations or publish information that would be helpful to an enemy in wartime. Freedom of speech brings responsibilities as well. Although the First Amendment protects the right to speak freely in public places, like streets and parks, that right is not unlimited. The Supreme Court has allowed limits on some kinds of speech, such as speech that endangers public safety. As one justice said, "The most stringent [strongest] protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic."

The Supreme Court has held that speech means more than just words. Free expression includes symbolic speech, or actions people take to express their opinions.

Protection of symbolic speech was an issue in the case of *Texas v. Johnson* (1989). This case involved a man who had been convicted in Texas of burning an American flag as a form of protest. When he appealed his case to the Supreme Court, the justices overturned his conviction. No form of expression can be banned, the Court held, just because "society finds the idea itself offensive or disagreeable."

This Earth Day demonstration on the Mall in Washington, D.C., illustrates the right of assembly pr...

The Right to Assemble and Petition The final two rights protected in the First Amendment are the right to peaceably assemble (meet together with others) and to petition (appeal to) the government. The right to assembly means that citizens can use public property for meetings and demonstrations. Parades, protest marches, and political rallies are all forms of peaceful assembly protected by the First Amendment.

While the First Amendment protects peaceful meetings, it does not give people the right to close streets or buildings or to protest violently. Police can arrest a speaker who urges listeners to riot or to break the law.

What if an assembly is peaceful, but the people watching it are not? This question came up in the case of *Gregory v. Chicago* (1969). The case began when comedian Dick Gregory led a protest march to the home of Chicago's mayor. Residents in the neighborhood began throwing eggs and shouting insults at

the marchers. Fearful of a riot, police asked the marchers to leave. When the marchers refused, the police arrested them.

The marchers challenged their arrests in court, claiming that their protest was protected under the First Amendment's right of assembly. The Supreme Court agreed that the marchers had assembled peacefully. If anyone should have been arrested, it was the mayor's neighbors.

Section 4 - Citizen Protections

The next three amendments protect citizens from various kinds of government abuse. All three reflect the experience of American colonists under British rule.

Second Amendment: The Right to Bear Arms During colonial times, Great Britain had used a standing, or permanent, army to keep order in the colonies. After winning their independence, Americans were suspicious of standing armies. They preferred to rely on volunteer state militias to protect the new nation. The Second Amendment states that "A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed [limited]."

The meaning of this amendment has been much debated. Some people argue that it protects the right of people to own guns only if they are part of an organized militia. An example of such a militia is today's National Guard. Others believe that the Second Amendment protects the right of individuals to own weapons for their own self-defense. In 2008, the Supreme Court supported this view in the case of *District of Columbia v. Heller*. The Court held that the Second Amendment protects an individual's right to own a gun for personal use, including self-defense inside the home.

Third Amendment: Quartering Troops in Homes Before the American Revolution, Great Britain had forced colonists to house British soldiers. The Third Amendment gave Americans the right to refuse such requests.

Today, soldiers are not quartered in homes. The Third Amendment remains important, however, as a warning to the government to respect the privacy of people's homes. As Supreme Court justice Joseph Story said, "A man's house shall be his own castle, privileged against all civil and military intrusion."

Police must follow careful guidelines in searches and seizures of private property.

Fourth Amendment: Searches and Seizures The Fourth Amendment protects people and their belongings from "unreasonable searches and seizures." A seizure is the act of forcibly taking control of a person or property. Before arresting a person or searching someone's home, police must show a judge that there is good reason for such action. The judge then issues a warrant that says exactly who will be arrested or what will be searched.

Nowhere in the Fourth Amendment, however, does it say that a warrant is required for every government search. Many Supreme Court cases have held that warrants are not always necessary. But there must be probable cause, or a strong reason for the search.

The Fourth Amendment also does not define "unreasonable search." The Supreme Court provided a definition in 1967 when it held that the search must respect an individual's right to privacy.

Section 5 - Legal Rights and Protections

The next four amendments lay out the rights and protections that apply to people who are accused of crimes or are involved in other legal disputes.

Fifth Amendment: Legal Rights The Fifth Amendment is the longest amendment in the Bill of Rights. It lists five important rights of citizens involved with the justice system.

First, this amendment gives people who are accused of serious crimes the right to a grand jury hearing. A grand jury is a group of citizens who hear the government's evidence and decide whether a trial is justified. If so, the grand jury issues an indictment, or formal charge. If not, the accused person is released.

Second, the amendment protects citizens from double jeopardy. Jeopardy means risk. This protection ensures that a person who is tried for a crime and found not guilty cannot be tried again for that same crime.

Third, the amendment prohibits self-incrimination. This means that police cannot force people to say things that might be used against them in a trial.

Today, police are required to remind people of their right to remain silent before they start to question them. They must also warn people that anything they do say can be used against them at a trial. This reminder is known as the "Miranda warning," after the case in which the Supreme Court defined this requirement.

The protection against self-incrimination also applies to a defendant testifying in court. Defendants may refuse to answer questions that might damage their case. This refusal is called "taking the Fifth."

Next, the Fifth Amendment says that a person cannot be deprived of "life, liberty, or property, without due process of law." The government must follow clear rules and act reasonably as it carries out the law. This concept is known as due process. For example, the Supreme Court has held that every person should be presumed innocent until proven guilty. In addition, the government must prove its case against a defendant "beyond a reasonable doubt."

Finally, the Fifth Amendment says that the government cannot take someone's private property for public use "without just compensation." Just compensation means that the government must pay a fair price when it takes over a person's property for purposes such as building roads or parks.

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Sixth Amendment: Criminal Trial Rights The Sixth Amendment lists a number of rights that are designed to provide accused persons with fair trials. It begins with the right to "a speedy and public trial, by an impartial jury."

The right to a speedy trial means that people cannot be kept in jail for long periods before being judged at a trial. Speedy trials also ensure that witnesses testify while their memories of events are still fresh.

“Public” means that trials may not be held in secret. Citizens have a right to attend trials to make sure that justice is being done.

An accused person also has the right to be judged by a jury of people who live in his or her area. The jury must be impartial, which means that jurors are not prejudiced (influenced) against the defendant. Courts have also said that prosecutors cannot exclude potential jurors based on their race or gender.

Before a trial, the prosecutor must tell the accused person not only the charge, but also the time and place of the supposed crime. This information is essential to the accused person’s preparation of his or her defense.

A defendant also has the right to hear and question all witnesses who testify at the trial. In addition, the defendant can ask the court to order reluctant (unwilling) witnesses to testify against their wishes.

Lastly, a defendant has the right to an attorney to assist in his or her defense. The Supreme Court has called this the most important of all the rights of accused persons. Without legal help, an innocent person may all too easily be convicted of a crime. In the past, only people with money to hire lawyers enjoyed this important right. Today, people accused of crimes are provided with a lawyer if they cannot afford to pay for one.

A lawyer’s job is to convince the jury to decide in his or her client’s favor during a trial. ~~The~~

Seventh Amendment: Civil Trial Rights Not all trials involve criminal actions. Some trials decide civil cases, or disputes between people or businesses. Civil cases typically involve money, property, or family matters, such as divorce. The Seventh Amendment says that, in all but the most minor cases, people involved in a civil case have a right to a jury trial.

The Seventh Amendment also says that “no fact tried by a jury shall be otherwise reexamined.” This means that after a jury decides the facts of a case, no judge can overrule the jury’s decision.

Eighth Amendment: Bail and Punishments The Eighth Amendment protects an accused person’s rights both before and after trial. Before a trial, it forbids a judge from demanding “excessive” bail. Bail is money or property given to the court to hold until an accused person shows up at trial. If a defendant cannot pay bail, he or she stays in jail until trial. The Eighth Amendment prevents judges from using unreasonably high bail to keep someone in jail before his or her day in court.

After a trial, if the person is found guilty, the Eighth Amendment forbids “excessive fines” and “cruel and unusual punishments.” It does not say what such punishments are. In 1791, physical punishments like whipping and branding were common. Today, they are considered cruel. As Supreme Court justice Thurgood Marshall has written, “A penalty that was permissible at one time in our Nation’s history is not necessarily permissible today.”

The Supreme Court has interpreted this amendment to mean that punishments must be “proportionate” to the crime. Judges cannot, for example, impose long prison terms on people

convicted of minor crimes. The Court has also held that this amendment prohibits inhumane prison conditions, such as depriving prisoners of food.

Today, Americans continue to debate whether the death penalty should be banned under the Eighth Amendment. Opponents of the death penalty have argued that executing anyone is a cruel and unusual punishment, no matter how horrible the crime. The Supreme Court has disagreed. In the 1976 case of *Gregg v. Georgia*, the Court's decision stated that "the punishment of death for the crime of murder does not, under all circumstances, violate the Eighth" Amendment.

Section 6 - Other Rights and Powers

The last two amendments were included to help keep a proper balance of rights and power among the federal government, the people, and the states.

Ninth Amendment: Rights Retained by the People One argument raised against putting a bill of rights in the Constitution was that no such list could be complete. If some rights were listed and others were not, did this mean that people had only the listed rights?

The Ninth Amendment provides the answer. It says that even though “certain rights” are listed in the Constitution, other rights and liberties not listed there are also “retained [kept] by the people.” The rights protected under the Constitution are not the only rights people have. An example of this is the right to privacy.

Tenth Amendment: Powers Reserved to the States The Tenth Amendment was included to protect the states from excessive federal power. It says that powers not given to the national government by the Constitution are “reserved to the states . . . or to the people.”

This amendment is known as the reserved powers clause. Reserved powers are those that the Constitution does not specifically give to the national government or specifically prohibit the states from having.

So what are reserved powers? The examples are numerous, and they affect many areas of everyday life. States use their reserved powers to pass laws regulating speed limits for drivers. Reserved powers allow the states to determine how many days students attend public schools. States have the power to run elections, to regulate businesses inside their borders, and to set up local governments. Do you get your hair cut in a salon or barber shop? Do you visit the doctor when you are sick? The Tenth Amendment gives your state the power to issue business licenses to hair salons and the power to make sure your doctor is licensed to practice medicine in your state.

Summary

The Bill of Rights contains many of the rights that we think of as American freedoms.

In this chapter, you read about the Bill of Rights—the first ten amendments to the Constitution—and the important freedoms it protects.

Creating the Bill of Rights By 1791, nine of the 13 states had ratified ten amendments drafted by James Madison and approved by Congress. These ten amendments form the Bill of Rights.

First Amendment Rights The First Amendment protects five basic freedoms: the right to worship freely, freedom of speech, freedom of the press, and the rights of assembly and petition.

Citizen Protections The Second, Third, and Fourth Amendments protect people against the abuse of government power.

Legal Rights and Protections The Fifth through the Eighth Amendments are intended to guarantee fair treatment for people involved in legal actions.

Other Rights and Powers The Ninth and Tenth Amendments concern the relationships among the federal government, the states, and the people. The Ninth Amendment protects rights that are not expressly listed in the Constitution. The Tenth Amendment says that powers that are neither given to the national government nor forbidden to the states belong to the states and the people.