

CHAPTER 3

The Constitution

PARALLEL LECTURE 3.1

This lecture reviews the historical, political, and intellectual setting from the colonial period through Shays's Rebellion.

- I. What is the Constitution?
 - A. The Constitution is the document that defines the basic structure of government.
 1. It creates a **national** government while recognizing the authority of **state** governments.
 2. It divides the power of the national government into three parts. It describes the powers of each part, its relationship to the other parts, and the relationships among the national government, the state governments, and the people.
 - B. Most Americans revere the Constitution, and this strengthens its authority as the basis for American government.
- II. The Constitution is rooted in revolution.
 - A. The American colonists enjoyed freedoms that were denied to most people at that time; colonial Americans fought the Revolution to **preserve** these freedoms.
 - B. The road to revolution began with the issue of taxation.
 1. Since Americans benefited from British protection and administration, Americans were asked to shoulder the cost.
 2. The colonists, like most people, disliked taxation, but they disliked taxation all the more because they had no representation in the distant government that imposed it.
 3. Opposition to such taxation was immediate and widespread.
 - a) Citizens calling themselves the Sons of Liberty destroyed taxed items and forced official distributors to resign.
 - b) Young women calling themselves the Daughters of Liberty encouraged the boycotting of British goods.
 - c) In 1773, the colonists responded to a tax on tea by holding the Boston Tea Party.
 - d) Parliament replied by blockading Boston Harbor and authorizing the quartering of British soldiers.
 4. The colonists, drawn together, resisted the British demand for **order** in the defense of the American demand for **freedom**.
 - a) The colonies called for a **Continental Congress**, an assembly to speak and act collectively for all the colonies.
 - b) The Continental Congress met in 1774; it sought the restoration of harmony between the colonies and Britain.
 - C. Discussion ends; **revolution** begins.
 1. Massachusetts colonists fought the British at Concord and Lexington in early 1775.

2. The Second Continental Congress met later in 1776 and, after much debate, voted for independence and prepared a set of reasons in support of its action (the Declaration of Independence).
- D. The **Declaration of Independence** expressed the reasons for the colonies' act of independence.
1. Thomas Jefferson is credited with drafting the declaration. He wrote a simple, clear, and orderly argument in support of separation from Great Britain.
 2. The principles of the declaration were rooted in the writings of John Locke, who argued that people have natural rights and that those rights cannot be taken away by government.
 - a) Locke argued that all legitimate political authority exists for the preservation of natural rights and that such authority is based on the consent of the governed.
 - b) These ideas are derived from **social contract theory**, which states that the people agree to establish rulers for certain purposes, but they have the right to resist or remove rulers who violate these purposes.
 3. The major premise of the Declaration of Independence is that people have a right to revolt when they determine that their government is denying them their legitimate rights.
 4. Support of American independence constituted treason. If the Revolutionary War was unsuccessful, those who supported rebellion faced death by hanging and drawing and quartering.
 5. In the War for Independence, Americans fought for the defense of their liberty.

III. From Revolution to Confederation

- A. The Revolution established a **republic** in place of the British monarchy. In the strict sense, a republic is a government without a monarchy, but the term is used in the sense of government based on the consent of the governed, in which power is exercised by elected representatives who are responsible to the governed.
- B. The first try at government following the Revolution was designed by the Continental Congress. The Continental Congress planned a written agreement of government; it was called the **Articles of Confederation**.
 1. A **confederation** is a loose association of independent states that agree to cooperate on specified matters. Each state retains **sovereignty**; that is, each state has supreme power within its borders, and each has equal power in relation to its sister states.
 2. The Articles were adopted by the Continental Congress in 1777; they did not take effect until 1781, when they were ratified (approved) by all thirteen states.
 3. The Articles jealously guarded state power; the national government created by the Articles was largely powerless.
- C. The national government under the Articles was weak and ineffective.
 1. There were at least four reasons why the Articles failed.
 - a) They did not give the national government the power to tax.
 - b) They made no provision for an independent leadership position to direct the government; the president was merely the presiding officer of Congress.
 - c) They did not allow the government to regulate interstate and foreign commerce.
 - d) The amendment process allowed any state to veto any changes to the confederation.
 2. The government could not quell insurrections by farmers in Massachusetts in 1786 and 1787 (**Shays' Rebellion**).

3. The rebellion demonstrated the impotence of the confederation and the need to maintain order.

PARALLEL LECTURE 3.2

Recall that national government under the Articles of Confederation had proved ineffective. Shays' Rebellion demonstrated national impotence in the face of disorder. The Articles could be repaired or replaced. There were proponents to support either alternative.

- I. Dissatisfaction: From Confederation to Constitution
 - A. Dissatisfaction with the Articles led to a convention to explore revisions to the Articles. Only five states sent representatives to the meeting in Annapolis, Maryland. The delegates called for a new convention to be held in Philadelphia in the summer of 1787.
 - B. Twelve of the thirteen states sent delegates to the Constitutional Convention in Philadelphia. (Rhode Island was the exception.) The convention was directed by Congress to confine its task to the revision of the Articles of Confederation.
 - C. The delegates from Virginia submitted the **Virginia Plan**, a set of proposals that had the effect of writing a new charter of government. The Virginia Plan had several parts and called for a national government, which it outlined in some detail.
 1. Power would be divided among three separate branches:
 - a) A legislative branch for lawmaking
 - b) An executive branch for law enforcing
 - c) A judicial branch for law interpreting
 2. The legislative branch would be bicameral (divided into two parts, or houses): the (larger) House of Representatives and the Senate.
 - a) The House of Representatives would be chosen by the people; the Senate would be chosen by the House from candidates that the state legislatures had nominated.
 - b) Each state's representation in the legislature would be based on the taxes it paid to the national government or on its free population.
 - c) The legislature would be empowered to override state laws.
 3. The executive would consist of an unspecified number of people, be selected by the legislature, and would serve a single term of office.
 4. The Virginia Plan had the support of the large states.
 - D. The smaller states came up with an alternative, known as the **New Jersey Plan**. It called for amending the Articles, not replacing them, and it proposed three major changes.
 1. A single-chamber legislature with the power to raise revenue and regulate commerce would be established.
 2. The states would have equal representation in the legislature; the states would choose the members of the legislature.
 3. A multiperson executive branch would be elected by the legislature.
 4. The plan made no provision for a national judiciary.
 5. The acts of the legislature would be regarded as "the supreme law of the respective states"
 - E. Though the New Jersey Plan was defeated, the small states had enough support to force a stalemate. A member of the Connecticut delegation proposed a compromise to break the stalemate. Known as the **Great Compromise**, the plan proposed that representation in the House of Representatives would be based on population

(amenable to large states) and that states would be represented equally in the Senate (amenable to small states).

- F. Delegates to the convention agreed on a one-person executive—a president—but disagreed on the method of selection and term of office.
 - 1. The delegates agreed to a cumbersome presidential election system now known as the **electoral college**.
 - a) The college would consist of electors chosen for the sole purpose of selecting the president and vice-president.
 - b) Each state would have as many electors as the sum of its representatives and senators.
 - c) Each elector would vote for two people; the person with the most votes (at least a majority) would become president, and the person with the next-highest number of votes would become vice-president.
 - d) If no candidate won a majority, the House of Representatives would choose the president, with each state’s delegation having one vote.
 - e) The electoral college eliminated the fear of a popular vote while satisfying the small states’ desire for a voice in the selection process.
 - 2. The delegates agreed that a president should be eligible for reelection and that the term of office should be four years.
 - 3. Removing a president from office was seen as a very serious political matter; the House of Representatives, the Senate (which could convict and thus remove a president only by a two-thirds vote – **an extraordinary majority**), and the chief justice of the United States would take part in the proceedings.
- II. The Constitution was the final product of political compromise. The twenty-three resolutions debated and approved by the convention were reorganized into a Preamble, followed by seven articles.
 - A. The Preamble to the Constitution contains four elements that serve as the basis of the American political tradition.
 - 1. The Constitution creates a people from a loose confederation of states.
 - 2. The Preamble explains that the reason for the Constitution was the inadequacy of the Articles of Confederation.
 - 3. The Constitution articulates a set of goals: the promotion of order and freedom.
 - 4. The Constitution fashions a government.
 - B. The Constitution embraces four basic political principles.
 - 1. **Republicanism** is a form of government in which power resides in the people and is exercised by their elected representatives.
 - 2. **Federalism** is the division of sovereignty—and hence power—between two or more governments. The Constitution vested powers in the national and state governments, but these powers are derived from the people, who are the ultimate sovereign.
 - 3. **Separation of powers** is the assignment of the lawmaking, law-enforcing, and law-interpreting functions to separate the independent legislative, executive, and judicial branches of government.
 - 4. **Checks and balances** is a means of giving each branch some scrutiny and control over the other branches.
 - C. The structure of the Constitution includes details about governments.
 - 1. Article I describes the legislative power. The most detailed of all the articles, it describes a bicameral legislature, expresses the principle of **enumerated powers**, and provides for **implied powers** by means of **the necessary and proper clause**.

2. Article II describes the qualifications for president, the procedures for electing the president, and the president's duties and powers.
 3. Article III creates one Supreme Court and describes the powers of the judiciary. The Constitution left the composition of the Supreme Court and the need for a national judiciary generally to the Congress. It does not explicitly give the courts the power of **judicial review**.
 4. Articles IV through VII cover a lot of ground.
 - a) Article IV requires that each state give *full faith and credit* to the judicial acts, criminal warrants, and contracts of other states. It also allows the addition of new states, and stipulates that the national government will protect states threatened with foreign invasion or domestic violence
 - b) Article V specifies the amendment process (further discussion follows).
 - c) Article VI contains the **supremacy clause**, which asserts that the Constitution and national laws made in accordance with it take precedence over state and local laws when they conflict.
 - d) Article VII provides that ratification by conventions in nine states shall be sufficient to establish the Constitution.
- D. What were the framers' motives?
1. A noted economic historian argued that the Constitution was crafted to protect the economic interests of many of the founders.
 2. A generation of historians pored over the financial records of the framers to test the validity of this economic argument. The conclusion they reached is that economic motives did not appear to directly influence those who were most influential in drafting the Constitution.
 3. Currently, scholars argue that maintaining order—including economic order—was probably the single most important factor leading to the Constitutional Convention.
- E. The Slavery Issue
1. The institution of slavery was well ingrained in American life at the time of the Constitutional Convention, though slavery is not directly mentioned anywhere in the Constitution itself.
 2. The closest the Convention came to directly dealing with the slavery issue was in discussing the question of representation in the House of Representatives. The delegates agreed that, for the purposes of representation and taxation, "all other persons" (slaves) would count as three-fifths of "free persons."
 3. Other compromises provided for fugitive slaves to be returned to their masters and forbade the elimination of the slave trade until twenty years had elapsed.
 4. In essence, the Framers had condoned slavery, though economic forces (and, in some cases, moral and religious arguments) had led some states to abolish slavery by the time of the Constitutional Convention. Of course, this issue would be revisited in eighty years.
- III. Ratification: Selling the Constitution
- A. The proponents of the proposed Constitution called themselves Federalists. James Madison, Alexander Hamilton, and John Jay (under the pen name *Publius*) wrote a series of newspaper articles, called the ***Federalist Papers***, arguing in favor of ratification.
1. In *Federalist* No. 10, Madison argued that the purpose of the Constitution was to "break and control the violence of faction."
 - a) Madison's idea of a faction corresponds well to modern interest groups or even political parties.

- b) The conflicts he was most concerned about controlling stemmed from inequalities of wealth. The wealthy were a minority, and those who lacked wealth constituted the majority.
 - c) *Federalist* No. 10 demonstrated that the proposed government was not likely to be dominated by any particular faction.
 - (1) Majority tyranny could be checked through representation. Elected representatives, not the people, would control government.
 - (2) Elected representatives would possess the wisdom to serve the larger interests of the nation.
 - d) Publius also argued that federalism would impede majority tyranny by requiring that majorities form within each state and then organize at the national level, and that given the vastness of the United States, there was little probability that a majority would invade citizens' rights.
2. In *Federalist* No. 51, Madison argued that separation of powers and checks and balances would control tyranny. Federalism further divided power among the states, thus insuring protection against tyrants.
- B. The opponents of the proposed Constitution called themselves Antifederalists.
- 1. They attacked the Constitution on the ground that it centralized power in a strong national government that would wipe out the states and destroy liberty in the process.
 - 2. They argued for additional separation of powers and additional checks and balances among the three branches because they wanted to eliminate the threat of tyranny.
- C. The chief obstacle to the Constitution's adoption, despite the powerful reasoning of the *Federalist Papers*, was that many prominent citizens were concerned that the Constitution lacked a list of individual freedoms that would be guaranteed to citizens.
- D. Ratification was secured only with the assurance that a list of fundamental rights and liberties would be added to the Constitution by amendment. We know this list today as the Bill of Rights, the first ten amendments to the Constitution. (See Table 3.2 in the text for a conceptual grouping of these guarantees.)
- IV. The Constitution can be changed in three ways, but only one way is spelled out in the Constitution.
- A. Article V specifies the requirements for formally amending the Constitution. This has occurred only twenty-seven times since 1787. There are two stages to the process; both are required.
- 1. The **proposal** stage—Amendments may be proposed in either of two ways:
 - a) By a two-thirds vote of the House and the Senate.
 - b) By a national convention summoned by Congress at the request of two-thirds of the state legislatures. (*Note:* This option has never been used.)
 - 2. The **ratification** stage—Congress chooses the ratification route. Amendments may be ratified in either of the two following ways:
 - a) By a vote of the legislatures of three-fourths of the states
 - b) By a vote of the state conventions held in three-fourths of the states
 - 3. The framers made amending the Constitution difficult to ensure that only the most significant issues would lead to constitutional change.
 - 4. The first ten amendments were adopted as the price for ratification.
 - 5. The last seventeen amendments fall into three main categories:
 - a) Amendments correcting perceived deficiencies in government structure (for example, residential succession)
 - b) Amendments advancing equality (for example, equal protection)
 - c) Amendments legislating public policy (for example, Prohibition)

- B. The second way the Constitution can be amended is by the process of **judicial review**.
 - 1. The judiciary's power to interpret the law makes the Constitution fair game for judicial interpretation. *Marbury v. Madison* (1803) established the courts' power to nullify government acts that conflict with the Constitution.
 - 2. There is substantial controversy about how best to interpret the Constitution: should the standard be the intent of the founders, or contemporary notions about the meaning of constitutional provisions? There is no clear answer.
- C. The third way the Constitution can be amended is by **political practice**.
 - 1. The Constitution is silent on some aspects of government that are now quite important (e.g., the President's cabinet).
 - 2. Political practice has changed how some institutions actually work; for example, the electoral college was supposed to exercise independent judgment in voting for president and vice-president, but now electors simply rubberstamp the election outcomes in their states.
- V. Evaluating the Constitution
 - A. Where are the values of freedom, order, and equality in the Constitution?
 - 1. The Constitution created a new form of government—a federal government in which power would be distributed between the nation and the states.
 - 2. The Constitution was to be strong enough to maintain order, but it would not be so strong that it could dominate the states or interfere with individual freedom.
 - 3. The Constitution struck a careful balance between **order** and **freedom**. As it was originally written, the Constitution paid virtually no attention to **equality**.
 - 4. Political and social equality have been addressed in the Constitution through the amendment process. Several amendments (such as the 14th, 15th, 19th and 26th) have addressed political equality; the 16th amendment gave progressive taxation a constitutional basis.
 - B. The Constitution defines a government framework well suited to the pluralist model of democracy.
 - 1. Madison characterized government as a means of managing the inevitable conflict among factions. This definition fits perfectly with the idea of competing groups in pluralist theory.
 - 2. Madison also argued that the Constitution guarded against majority tyranny through separation of powers and the system of checks and balances. This distinction fits perfectly with pluralist democracy, which avoids any single center of power that might fall into majority hands.
 - 3. The framers succeeded in creating a republic, a government resting on majority consent. They did not intend to create a majoritarian democracy, but they managed to produce a government that became a democracy. It conforms to the pluralist model of democracy.