



## The Articles of Confederation and the US Constitution

By 1783, the Revolution was over, the British were defeated and evicted. A new nation emerged, comprised of the original 13 colonies, the United States of America. The first order of business was to “deliberate upon and choosing, the forms of government under which they shall live.” From the start, friction existed between those states and delegates who wanted a strong central government and those who wanted power to reside in the states. What they agreed to was a federal system of government with a division of powers between a national (federal) government and the states’ governments. In the spirit of the revolution they agreed to create a republic without a hereditary monarchy or system of royalty. They believed political power and the legitimacy of government and political power emanated from an electorate of free people not from an ancient birthright. The difficult part was the division of powers.

The first attempt, the Articles of Confederation of 1783, was unsatisfactory and in 1787, the 13 states gathered in Philadelphia to try again. The result was a new constitution. In this section students will examine and evaluate the weaknesses of the Articles of Confederation, the philosophical and political debate between the Federalists and Anti-Federalists, and the major compromise that paved the way for ratification and the important changes and revisions contained in the new constitution.

### Shay’s Rebellion and the Philadelphia Convention

Daniel Shay was a farmer and a patriot; an officer in the Continental army he fought bravely for his new country and was wounded. Returning to western Massachusetts, he came home to a bankrupt state that needed funds to pay war debts. New property taxes, that hit farmers hardest, were imposed ruthlessly and those unable to pay were tried in court. Shay watched helplessly as farms were foreclosed and the inhabitants sent to debtors’ prison. This was not what he and

*The Americans are the first people whom Heaven has favoured with an opportunity of deliberating upon, and choosing, the forms of government under which they shall live.*

John Jay, Continental Congress delegate (New York), 1777

#### Discussion point

An important question facing the men drafting the US Constitution was creating a satisfactory balance of powers between the federal government and the states.



Do you think the Constitution of 1787 achieved the right balance of powers?



his fellow countrymen had fought and died for—to have their property confiscated by their own government; it was worse than the British!

In Autumn 1786, Shay led about a 1,000 followers, who came to be known as Shayites; armed with pitchforks and carrying the “liberty tree”, they marched on the debtor courts. It was more protest than rebellion. No blood was spilled. For six months, Shay roamed the Massachusetts countryside shutting down the hated courts.

In February, the Shayites advanced on the federal arsenal at Springfield where the state militia was waiting. Two cannon shots dispersed the Shayites, killing two and wounding 20, the uprising was over. Shay had gone unchecked, critics argued, because the new republic did not have an army worth mentioning and it took several months to muster the state militia. Shay and his officers were captured and tried, many received the death sentence but most received amnesty and Shay was eventually forgotten but not before he had made his mark.

George Washington, like many in the United States, argued that the insurrection was a direct threat to the revolution’s ideals of “life, liberty and property.” He believed a political remedy was needed which meant amending the Articles of Confederation. The Articles had been approved by Congress and the state assemblies in March 1781. It contained 13 articles that set-out the division of powers between the federal and state governments. Fearful of an abusive federal government trampling the rights of individuals and the states, the states retained control over the federal government and this was reflected in the Articles. The federal government was virtually powerless, with limited taxation powers. The nation’s army and navy were non-existent. Washington and **the Virginians** Alexander Hamilton and James Madison led a group eventually known as “the Federalists” who argued from the start that the Articles did not give the federal government enough power. Events conspired to rapidly convince many citizens of the new republic that these men were right and that the Articles needed to be rewritten. Thomas Jefferson disagreed, arguing that the “Shay” incident was trivial and the Articles were working as intended. His followers were later called “the anti-Federalists”. Eventually, however, Washington’s views prevailed and the young nation would redraft the articles. Shay’s uprising had in the end provided the pretext for action.

James Madison (Virginia) and Alexander Hamilton (New York), joined forces and took centre stage. Hamilton had been questioning the articles even before they were adopted but with little success or support. Hamilton was charismatic and eloquent, Madison was thoughtful, hardworking and respected. The two men used their power and influence with the other states and organized an all-states convention in January 1787 to address the Articles’ shortcomings. Only five of the 13 states attended. Some progress on revising the Articles was made but Shay’s Rebellion tipped the scales. The next national convention was scheduled for Philadelphia in the spring and every state sent their best delegates. Hamilton wrote that the convention would take the steps “necessary to render the constitution of the Federal government adequate to the exigencies [requirements] of the Union.”

**The Virginians** No group of delegates exercised greater influence (and insight) on the constitutional debates than the Virginians. Educated and intelligent, ideological in outlook, pragmatic in application and from Virginia’s landholding and business elite, the delegation included Thomas Jefferson, George Washington and James Madison. There were disagreements over the Constitution. Washington, Hamilton and Madison campaigned for a more powerful federal government. Jefferson advocated for state power, some additional powers to the federal government and a Bill of Rights to protect the individual from the power of the government.



The delegates arrived in Philadelphia in May 1787 to decide the nation's future. It was a heavy burden with Thomas Jefferson in France, John Adams in England and Benjamin Franklin—the nation's conscience—who was in attendance, old and sickly and beyond his prime. The convention, however, brought together the brightest and best of a new generation of patriotic young citizens of the United States. It was a gathering of exceptionally talented, intelligent and like-minded men united in their shared destiny to make the revolution succeed and create in Washington's words "a Government under which life, liberty and property will be secured to us ..." They had been greatly influenced by the ideas of the Enlightenment and expressed growing confidence in reason and the principle of natural "inalienable" rights.

According to historian Hugh Brogan, the problem was difficult but not unsolvable: How to develop a permanent structure that would effectively and efficiently govern the nation and protect the republican ideals of life, liberty and property? The challenge was daunting and would nearly break the strongest delegates. Deliberations were intense and the days were long. The proceedings were kept secret so delegates could speak freely. Washington chaired and Madison took notes that accurately and fairly recorded the debate.



*The Signing of the Constitution of the United States*, painted by Howard Chandler Christy in 1940. The painting shows Washington standing, Franklin in front (in the grey suit), Hamilton on his left and Madison on his right.

Underscoring the convention were important national issues that many believed required a strong federal government to resolve. The nation's finances were a mess and the current economic crisis could only be resolved, many believed, by a strong central government that had the power to enact its will on the states and on individuals. The country owed Europe money, war debts and foreign loans that it could not repay. France was owed the most and it was important to remember that without the French the US Revolution would have failed. The United States still needed France as an ally and, therefore, needed to repay the debt.

The Articles did not contain the mechanisms necessary for the federal government to raise the funds to pay the debts or run the country.

## Activity

### Debate

#### Washington vs. Jefferson

Washington believed Shay's Rebellion showed conclusively that the Articles of Confederation were weak and needed revision. Jefferson disagreed and said the seriousness of the rebellion was being used as justification for giving more power to the federal government.



**Who do you support and why? Which level of government should have the most power?**

### The Influence of the Enlightenment

The Enlightenment movement challenged the religious and political belief systems of the 18th century. Jefferson, Franklin and other Americans were influenced by the French philosophers, Rousseau, Voltaire and Montesquieu, whom they had known personally. The main tenet of Enlightenment philosophy was the repudiation of the divine right of kings. This, in turn, accepted the truth of inalienable natural rights, extolled democracy and taught that political power came from the people, not a divinity. This led to the principle of the separation of powers between church and state and a system of checks and balances between the executive, legislative and judicial branches of government to insure no branch could supercede another. Most radical of all was the argument for abolishing the monarchy in favour of a republic. The Constitution of the United States gives testimony to the influence of the Enlightenment on the founding fathers.



Under the Articles the federal government requisitioned the states for money but had no authority to enforce payment. It was voluntary taxation. The states rarely paid in full if at all. As a result, foreign debts and war loans were in arrears. The army was a shambles, reduced to 80 soldiers at one point. No money, no guns, no security—this was the lesson of Shay’s Rebellion. The navy was in a similar boat. Coastal states fought pirates and smugglers with their own ships. The situation was untenable. What would they do if the British came back? The question was rhetorical but relevant in shaping the debate as Washington would remind delegates.

To make matters worse, a bitter trade war had erupted between the states. For example, New York taxed ships using its waterways to trade in New Jersey and Connecticut. It was the same story up and down the coast. The men who had forged the revolution, men like Madison, Hamilton, Franklin, Jay and Washington, feared they were witnessing the nation’s devolution into a loose-knit confederation of semi-independent states. And so they gathered in Philadelphia, unanimous in their desire to stop the drift from the revolution’s principles and save the union. What was needed was a new constitution that supported a federal system of government that the states would be keen to ratify.

## Federalists vs. anti-Federalists

The delegates attending the Philadelphia Convention had all clearly decided in advance which side they were on: Federalist or anti-Federalist. The Federalists believed the principles of the revolution required a strong federal government that could levy taxes, protect borders and recruit an army and navy. They opposed a **Bill of Rights** arguing that a list of rights could never include all the rights to be protected. Better to leave that work to the courts, similar to the British system. The anti-Federalists believed that any increase of the federal governments’ powers should be incremental. They feared a powerful government that could tax, and create a military and undermine the authority of the states. They wanted the states to retain the balance of power and they argued for a Bill of Rights to be enshrined in the constitution to protect the “inalienable” rights of individuals.

The Philadelphia Convention lasted four months, from May to September 1787, and the constitution that emerged was the result of a willingness by delegates to compromise their strongly held personal beliefs in order to advance the national interest. The critical debate centered on whether the states would retain an equal vote in one house of the national legislature, or whether schemes of proportional representation would be devised for both upper and lower chambers. When the small-state leaders like Roger Sherman from Connecticut proved unyielding in opposing the former, after seven weeks of debate, the large states agreed to compromise.

The Virginia caucus had met before the convention and presented their plan on May 29, 1787. It proposed a bicameral (two-house) legislature. Membership in the lower house (the House of Representatives) would be based on representation by population. Members would be selected and elected by the electorate of each

The **Bill of Rights** are the “inalienable” rights of all citizens protected/interpreted by the Supreme Court. An Example is the First Amendment stipulating freedom of speech.

### Discussion point

#### ? Who needs a Bill of Rights?

With reference to the US Revolution and philosophy of the Enlightenment period, why do you think Thomas Jefferson believed it essential that the constitution include a Bill of Rights? Do you agree with Jefferson?



### Roger Sherman (1721–1793)

Roger Sherman was born in Newton, Massachusetts. Self-educated, he was politically active from an early age. A man of considerable skill, natural intellect and ambition, he became a lawyer in 1754, and was later a judge, treasurer of Yale University and congressional delegate. Sherman was a key figure in the US Revolution and in shaping the nation afterwards. Elected to the Continental Congress in 1774, he worked so hard his health suffered. In 1783, he served on the committee that wrote the Articles of Confederation. At the Philadelphia convention he was one of the most vocal and persistent members.

Madison's convention notes credit him with speaking 138 times to defend the rights of the smaller states. He is credited with the "Great Compromise." Adams, Jefferson and Madison had great respect for Sherman. He lacked the charisma and eloquence of his peers but was renowned for being pragmatic, stern, taciturn, direct and, as Jefferson quipped, he never said anything foolish.



state. Members of the upper house (later the Senate) would to be nominated by the state legislatures and elected by members of the lower house. Each state received one vote.

The New Jersey Plan of June 15, 1787, offered a uni-cameral (single house) legislature with equal representation for all states regardless of population. The plan retained the Articles of Confederation with some increases in the powers of Congress (federal government). The plan was not popular with the big states. Fortunately, Roger Sherman had another plan.

The Connecticut Compromise, that came to be known as the "Great Compromise," was presented on July 16, 1787: the Connecticut delegation proposed a bicameral legislature with a lower and upper house. Similar to the Virginia plan, each state would elect members to the lower house (House of Representatives) based on a proposed ratio of 30,000 to one. The Upper house (Senate) was the key to Sherman's plan. Each state legislature would elect two members to the upper chamber who would vote independently, not by state. The Great Compromise broke the deadlock, after eleven days of debate, by the narrowest of margins—five to four.

The Philadelphia Convention spawned two sub-committees to write the constitution and the finishing touches were penned by Madison, Sherman and Hamilton. The constitution was almost done but one issue remained: slavery. The issue was how to count slaves when determining the allocation of seats to the lower house (representation by population). The five southern states with the majority of slaves wanted to include slaves in the head count. The northern states argued slaves were property and should be excluded. Of course, the slaves would not be allowed to vote which meant the votes of the electorate in slave states would be more valuable than in non-slave states.

After much debate the convention agreed to the "The three-fifths compromise": each slave was counted as three-fifths of a "free person". If a state had 50,000 slaves, applying the rule equalled 30,000 extra voters and the state received an additional seat in the lower house. The compromise was accepted and the slavery issue was shelved for 20 years but not forgotten. In the short-term,

### Discussion point

Roger Sherman was overshadowed by men like Washington, Hamilton and Madison. Does he deserve more credit?

### Discussion point



What does the "three-fifths compromise" tell us about the slavery question in the US in the 1780s?

To what extent does this compromise foreshadow the slavery debate and other slavery compromises such as the 1820 Missouri Compromise and the 1850 Nebraska-Kansas Compromise?



however, the southern states were won over. As predicted, the south was over-represented in the first congress with 45 percent of seats in the house with a voting population of 38 percent, but the advantage proved short-lived following an increase of immigration into the rapidly industrializing northern states that required large reserves of labor. The northern economy grew rapidly reflected in its major cities that became centres of industry, trade and commerce. Industrialization in the south was small by comparison.

## Ratification and the Federalist Papers

The language of the constitution was to be simple, precise and elegant. The opening phrase explained the document's purpose: "In order to form a more perfect union ..." Armed with the newly drafted constitution, the delegates returned to their respective state capitals to seek ratification. The ratification process called for each state to elect delegates and convene a ratification convention. Only Rhode Island refused.

In New York, the popular governor, Henry Clinton, stridently opposed the new constitution and without New York all would be lost. The Federalists launched a publicity campaign to convince New York to ratify. Writing under the name "Publius" Hamilton, Madison and John Jay published 85 essays known as the Federalist Papers. The anti-Federalists fired back, writing under names like "Brutus" and "Farmer". The exchange was nothing short of brilliant but in the end New York ratified largely because other states did so and not because of the Federalist papers.

Virginia was also reluctant but ratified after Thomas Jefferson received assurances from James Madison that a Bill of Rights would be added (which it was in 1791). Why, then, are the Federalist Papers considered important by historians and how much influence did they have during the ratification debates? Historians concur that the influence was more historical than contemporary and did not change the minds of those who opposed the constitution. Ratification came about because of political pressure and additional compromises, most importantly the inclusion of a Bill of Rights which was a key anti-Federalist demand. Nonetheless the Federalist Papers provide an invaluable window into the thoughts and minds of the men who penned the constitution and what they believed and why. It is clear that these beliefs shaped the constitution which, in turn, shaped the United States in years to come.

Between December 1787 and the summer of 1789, 11 of the 13 states ratified the new constitution. Federal elections were held in the fall and George Washington became the first president of the United States, setting out to establish the institutions of the new federal government. By the spring of 1790, the last of the 13 states, Rhode Island, had ratified and the Bill of Rights was added in 1791. The slavery question, was put on hold for two decades. The system of government worked but political issues—slavery and westward expansion—would continue to divide the nation. For the moment, the battle to build a "more perfect union" was over.



### Activity

#### Comparing the Articles of Confederation and the US Constitution

The Articles of Confederation and the Constitution of 1789	Articles of Confederation	US Constitution
Legislature	Unicameral Congress	Bicameral (House of Representatives and Senate)
Members of Congress	2–7 per state	Two per state (Senators) Representation by population (Congressmen)
Voting in Congress	One vote per state	A vote for each Senator and Representative
Selection of Congress:	Appointed by states legislatures in a manner each legislature directed	Congress elected. Senators appointed by State legislature.
Terms of office	One year	Representatives: 2 years Senators: 6 years
Compensation	Paid by states	Paid by federal government
Congress not in session	Powers conferred to a committee of states	President recalls Congress
Chair of Legislature	President	House of Representatives: Speaker Senate: Vice President
Constitutional disputes	Congress	Supreme Court
Admission of new states	Agreement of 9 states	Congress
Amendments	Unanimous agreement of states	Three quarters of the Senate
Armed forces	States fight pirates, Congress requisitions states for troops	Congress establishes and maintains the army and navy
Treasury (power to print money)	Federal government and states mint money	Federal government only
Taxes	Apportioned by Congress, collected by the states	Approved and collected by Congress
Ratification of Constitution	Unanimous consent	Consent by 9 states.
Bill of Rights	No Bill of Rights	Added 1791

### Activity

#### Research on the Enlightenment

Choose one of the following writers and analyze the contribution of their enlightened ideas to the Constitution of the United States.

- Montesquieu
- Jean-Jacques Rousseau
- Voltaire
- Jeremy Bentham
- Adam Smith

### Activity

#### Terminology

- Explain the following terms as they apply to a federal government:
- Legislative
- Executive
- Judiciary
- Separation of powers
- Checks and balances
- Separation of church and state
- Bill of Rights



**Activity****The Federalist Papers****Source A**

Federalist paper no. 10 by James Madison, published in *The Independent Journal*, 1787.

.... The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarranted partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens ... that our governments are too unstable, that the public good is disregarded in the conflicts of the rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true ... Other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factitious spirit has tainted our public administrations ...

**Source B**

Letter to James Madison from Thomas Jefferson, Paris, December 20, 1787.

... I like much the general idea of framing a government which should go on of itself peaceably, without needing continual recurrence to the state legislatures. I like the organization of the government into Legislative, Judiciary & Executive. I like the power given the Legislature to levy taxes, and for that reason solely approve of the greater house being chosen by the people directly ... I am captivated by the compromise of the opposite claims of the great & little states, of the latter to equal, and the former to proportional influence. I am much pleased too with the substitution of the method of voting by persons, instead of that of voting by states: and I like *the negative given to the Executive with a third of either house*, though I should have liked it better had the Judiciary been associated for that purpose, or invested with a similar and separate power. There are other good things of less moment. I will now add what I do not like. First the omission of a bill of rights providing clearly & without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies, restrictions against monopolies, the eternal & unremitting force of habeas corpus laws, and trials by jury in all matters of fact triable by the laws of the land & not by the law of nations ...





### Source C

Statement by Richard Henry, representative of Virginia, for the Philadelphia Convention debate concerning the ratification of the constitution, Monday, June 14, 1788.

—Mr. Chairman, the necessity of a bill of rights appears to me be greater in this government, than ever it was in any government, before. I observe already, that the sense of the European nations, and particularly Great Britain, is against the construction of rights being retained, which are not excessively relinquished. I repeat, that all nations have adopted this construction—that all rights not expressly and unequivocally reserved to the people, are impliedly and incidentally relinquished to ruler; as necessarily inseparable from the delegated powers ... let us consider the sentiments which have been entertained by the people of America in this subject. At the revolution it must be admitted, that it was their sense to put down these great rights which ought in all countries to be held inviolable and sacred. Virginia did so, we all remember. She made a compact to reserve, expressly, certain rights.

### Source D

Federalist paper no. 30, by Alexander Hamilton, published in the *New York Packet*, Friday, December 28, 1787.

The present Confederation, feeble as it is intended to repose in the United States, an unlimited power of providing for the pecuniary wants of the Union. But proceeding upon an erroneous principle, it has been done in such a manner as entirely to have frustrated the intention. Congress, by the articles which compose that compact ... are authorized to ascertain and call for any sums of money necessary, in their judgement, to the service of the United States; and their requisitions, if conformable to the rule of apportionment, are in every constitutional sense obligatory upon the States. These have no right to question the propriety of the demand; no discretion beyond that of devising the ways and means of furnishing the sums demanded. But though this be strictly and truly the case; though the assumption of such a right would be an infringement of the articles of Union; though it may seldom or never have been avowedly claimed, yet in practice it has been constantly exercised, and would continue to be so, as long as the revenues of the Confederacy should remain dependent on the intermediate agency of its members. What the consequences of this system have been, is within the knowledge of every man the least conversant in our public affairs, and has been amply unfolded in different parts of these inquiries. It is this which has chiefly contributed to reduce us to a situation, which affords ample cause both of mortification to ourselves, and of triumph to our enemies.







## Source E

Statement by Amos Singletery, the representative from Massachusetts, for the Philadelphia Convention debate concerning the ratification of the constitution. Friday, January 25, 1788.

... Mr. President, and I say, that if anybody had proposed such a constitution as this in that day it would have been thrown away at once. It would not have been looked at. We contended with Great Britain—some said for a three penny duty in tea; but it was not that—it was because they claimed a right to tax us and bind us in all cases whatever. Any does not this constitution do the same? Does it not take away all we have—all our property? Does it not lay all taxes, duties, imposts and excise? And what more have we to give? They tell us congress won't lay dry taxes upon us, but collect all the money they want by impost [something imposed or levied] ... and there will always be the same objection; they will be able to raise money enough by impost, and then they will lay it on the land and take all we have.

### Complete this chart

On a chart list in point form the origin, purpose, value and limitations of these documents

Sources	A	B	C	D	E
Origin					
Purpose					
Value					
Limitation					

### Questions

- 1 With reference to source B:
  - a What is Jefferson referring to? "I like the negative given the executive by a third of either house."
  - b What does Jefferson dislike about the new constitution?
- 2 Compare and contrast source D and E in their views on taxation.
- 3 Evaluate source A and D as justification for the Federalist positions.
- 4 With reference to all the sources and your own knowledge, explain why and for what reasons these authors differed on the role and powers of the federal government.