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Chapter 1

Viewing the U.S. Constitution from a Broader Perspective

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Courts and legal scholars start with the Constitution's text when they want to figure out what it means, but the words didn't come out of nowhere. They're the product of historical events; political, economic, and geographical disputes; and a diverse new country's struggle to unify and build a government around its common values.

In this chapter, we look at the big picture, placing the Constitution in context. You can read about how historical events created momentum for a stronger federal government that would still honor state's rights and individual freedoms. We also talk about what was going on at the time the Constitution was drafted, introducing the Framers and reviewing how the Constitution was signed, amended, and ratified. You can also see how the Constitution fits into the broader U.S. government system, including its relationship to federal laws and state constitutions.

A CONSTITUTIONAL TIMELINE

Here's a brief timeline to help you keep track of the chronology of the events that we examine in this chapter (some of these events overlap):

- **1215:** *Magna Carta,* a charter requiring the King of England to grant civil rights to his barons, goes into effect in England.
- **1688–1789:** The Age of Enlightenment, an intellectual movement focused on the power of reason, occurs in Europe.
- **1775–1783:** The American Revolution is fought and won.
- **May 10, 1776:** The Continental Congress passes a resolution for independent state governments.
- **July 4, 1776:** The Continental Congress signs the Declaration of Independence.
- **March 1, 1781:** The Articles of Confederation are ratified and serve as the country's first constitution.
- **May 25–September 17, 1787:** The Constitutional Convention is held in Philadelphia.
- **September 17, 1787:** Delegates sign the Constitution.
- **June 21, 1788:** The Constitution becomes the law of the land (replacing the Articles of Confederation) when New Hampshire becomes the 9th state to ratify it (a number required by the Constitution itself).

Convention participants greatly debated the process for ratifying the Constitution. Although some members thought ratification should require all states to vote in favor (which the Articles of Confederation required for amendment), others advocated for a simple majority. Ultimately, the Framers agreed on Article VII stating that nine states needed to ratify to make the Constitution law. They chose nine because that was the number of states that the Articles of Confederation required to approve certain important matters.

Understanding the Constitution's Predecessors and Influences

TIP

Throughout this book, we use *Framers* (with a capital *F*) to refer to the individuals in attendance at the Constitutional Convention and those who substantially influenced the first seven articles. Our references to *framers* (with a lowercase *f*) refer generically to the Founding Fathers and those who were instrumental in drafting any part of the Constitution, including the amendments.

Three major influences guided the Framers in how they chose the features of the new constitutional democracy (for more on the Framers, see the section "Getting to Know the Framers," later in this chapter):

- Historical events — specifically, Magna Carta (Latin for *Great Charter*) and the Enlightenment (both discussed in the following section) — cemented the notion of inalienable rights.
- Drafting and living under state constitutions for nearly a decade gave the Framers an idea of what worked and what didn't. (We talk about this aspect in the section "Noting the influence of state constitutions," later in this chapter.)
- The failings of the Articles of Confederation demonstrated the need for a stronger federal government to manage areas of national concern (as discussed in the section "Reacting to the Articles of Confederation," later in this chapter).

TECHNICAL STUFF

Calling the document *Magna Carta*, instead of *the Magna Carta*, may sound weird, but it's correct because Latin phrases don't use definite articles.

Tracing back to Magna Carta

The foundations of the Constitution began centuries before the first American colony. In 1215, a conflict erupted between King John of England and his *barons* (wealthy landowners). The king's authoritarian methods, abuses of power, and imposition of high taxes to fund unsuccessful wars ultimately led to a rebellion. The barons captured London and threatened to start a civil war if the king refused to agree to their demands.

King John agreed. The king and his barons entered into a pact called Magna Carta that limited the king's powers and specified that the king himself was subject to the laws. Magna Carta became a symbol of the ideal that government exists to protect its people and that it can't infringe their fundamental rights. Provisions in Magna Carta

- Required the king to provide due process
- Guaranteed barons the right to a jury trial
- Protected barons from taxation without representation
- Prohibited the king from imposing excessive punishment on his barons

The Founding Fathers, American Civil Rights leaders, and voting rights activists considered Magna Carta an important symbol of universal human rights, but it actually benefitted only a small number of wealthy elite landowners in England. These rights didn't extend to most serfs who, under the feudal system, were forced to labor on their lords' estates.

Bringing forth the Enlightenment

Centuries after Magna Carta (see the preceding section), English philosopher John Locke advanced the theory of *inalienable rights* — that all individuals have rights to life, liberty, and property, not granted by the government, but inherent in human existence. His ideas caught on quickly. Locke was one of several philosophers who contributed to the *Age of Enlightenment,* an intellectual movement in the late 17th and early 18th centuries in Europe that grew out of the *Scientific Revolution* (the emergence of modern scientific method and thought). The Enlightenment was a pivot toward knowledge and reason, away from religion and cultural tradition, as the foundation of government. In England, France, and Colonial America, Enlightenment philosophers criticized the idea of an authoritarian state and promoted the concept of a democratic government.

The Enlightenment saw government as a social contract. The movement envisioned a government that ensured freedom of religion, freedom of the press, and freedom from torture and other cruel punishments. French philosopher Montesquieu advocated for three separate but equal branches of government, giving rise to the concept of checks and balances. The Enlightenment's core ideas of human rights and political democracy led to reforms in England and to the French and American revolutions.

Using the past to inform their positions

Magna Carta and the Enlightenment (discussed in the preceding sections) strongly influenced the American colonists' movement toward independence and the type of government that the Framers chose to create. For example, the principles embodied in Magna Carta formed the basis of the Continental Congress's 1774 declaration of rights and grievances against King George III and inspired the American Revolution. And the 1776 Declaration of Independence strongly echoes ideals from Magna Carta and the Enlightenment as justification for American independence from England.

TIP

In the *Federalist Papers*, a series of essays written under the pseudonym Publius by statesmen Alexander Hamilton, John Jay, and James Madison to persuade citizens to ratify the Constitution, the authors referenced Magna Carta to explain the importance of a stable government to ensure fair legal processes. And the Constitution itself includes several fundamental rights rooted in Magna Carta, such as the right to a jury trial, the prohibition against cruel and unusual punishment, and the concept of due process.

The Enlightenment also foreshadowed the controversy over slavery that took place at the Constitutional Convention. (We describe this controversy in Chapter 2.) Some Enlightenment philosophers opposed slavery on moral grounds, while others justified slavery as an economic necessity; and many Enlightenment advocates were slave owners. At the Constitutional Convention, similar moral undertones framed the debate over whether slaves would count as people or property for purposes of taxation and representation.

Noting the influence of state constitutions

Some scholars believe that state constitutions were the primary influence on the U.S. Constitution. On May 10, 1776, Congress passed a resolution directing the colonies to "adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general." This resolution served as a directive for states to work on writing their own constitutions.

Writing state constitutions was a daunting task because the colonists didn't have a template to work from. In England, the constitution was unwritten; it was a collection of laws amassed from tradition, acts of parliament, common law, and the monarchy. With no written constitution, the king could disregard or disobey the law without consequence. In America, government accountability was a priority that leaders believed could best be achieved by having written constitutions.

States spent the decade after the 1776 resolution creating various frameworks for constitutional democracy. State constitutions varied substantially based on the state's economy (agricultural or industrial), whether or not slavery was lawful, and variations in geography, size, and politics. Those years of writing and living under state constitutions served as an experiment of sorts to test drive the potential features of a new federal government. When the Framers gathered in Philadelphia in 1787, their collective experiences strongly informed their positions. State constitutions

- Were cited in debates at the convention, pointing out provisions in different state constitutions that worked or didn't work

- Provided the Framers with information about what was popular
- Gave Framers a starting point to compromise
- Allowed Framers to implement new ideas by combining features from different state constitutions

TECHNICAL STUFF

England granted self-governance to the colonies in charters, but it retained substantial power, especially over legislation and the judiciary. Some colonies created their own self-governing documents, called *colonial constitutions.* These charters and colonial constitutions influenced state constitutions in the same way that state constitutions later influenced the U.S. Constitution.

The 1780 Constitution of the Commonwealth of Massachusetts was one of the strongest influences on the U.S. Constitution. Drafted by John Adams, the Massachusetts Constitution followed the framework laid out in Adams's essay "Thoughts on Government," which called for three separate branches of government and a two-tiered legislature. The Framers of the U.S Constitution looked to the Massachusetts Constitution to decide many disputed issues. For example, in deciding whether the legislative or executive branch should appoint judges, it followed Massachusetts' lead by giving the power of appointment to the executive, with advice and consent of the legislature.

Reacting to the Articles of Confederation

The Articles of Confederation, ratified in 1781, served as the original constitution for the 13 states. But by 1787, the country was on the verge of economic and political failure.

In September 1786, delegates from five states met in Annapolis, Maryland, to discuss American trade policy. These representatives quickly realized the nation's commerce problems were too big to solve on their own. After the meeting, Alexander Hamilton wrote a report calling for a convention in Philadelphia the following May to amend the Articles of Confederation to give the federal government sufficient power to manage national affairs.

That meeting is what historians call the Constitutional Convention. Delegates at the convention quickly gave up on amending the Articles and spent the summer months hammering out the framework for a new government.

REMEMBER

The convention was held in secret, with no reporters or guests allowed, leading some at the time to suspect that delegates were plotting a conspiracy to overthrow the government.

The Constitution addresses the perceived weaknesses in the *Articles of Confederation*, the governing arrangement under which the states tried to operate starting in 1781. Most historical observers see the weak federal government created by the Articles as lacking sufficient power to unify the states; it couldn't

- Regulate trade (or prevent individual states from trying to provide advantages to their residents and business interests over those in neighboring states)
- Create a military
- Collect sufficient tax revenue

Trying to execute federal policy by a legislative committee, rather than a separate executive function, was cumbersome, as was the fact that every state had to agree before the articles could be amended.

Specific provisions in the 1787 Constitution responded to each of the perceived deficiencies in the Articles of Confederation. For example, Chapter 3 shows how the Article V constitutional-amendments process allows less-than-unanimous supermajorities to change the basic governing document. And Chapter 5 notes that the first power that the Framers gave to Congress in Article I, Section 8, was an independent federal power to tax.

Getting to Know the Framers

State legislatures chose 74 delegates to attend the Constitutional Convention in Philadelphia between May 25 and September 17, 1787, but only 55 showed up, including representatives from 12 of the 13 states (every state except Rhode Island). Most of these delegates had been involved in drafting their state constitutions. Here are some Framers who had particularly noteworthy roles:

- **George Washington (Virginia):** Previously commander-in-chief of the Colonial Army (and later the first United States President); selected to preside over the convention. Washington was one of seven from the Virginia delegation.
- **James Madison and Edmund J. Randolph (Virginia):** Proposed the Virginia Plan, advocating for representation based on population, which favored larger states.

  Madison also kept extensive notes about convention deliberations; made available after his death, modern interpreters use these notes to understand what the Framers did and didn't do, and why.

- **George Mason (Virginia):** Played a key role in the Great Compromise proposed by Oliver Ellsworth and Roger Sherman (we provide a more detailed look at the Great Compromise in Chapter 5).
- **William Paterson (New Jersey):** A New Jersey delegate who proposed a response to the Virginia Plan. The New Jersey Plan advocated for a one-house legislature and equal representation regardless of population, giving greater power to smaller states.
- **Oliver Ellsworth and Roger Sherman (Connecticut):** Proposed the Great Compromise to settle the differences between the Virginia Plan and the New Jersey Plan. It included a *bicameral legislature* (an elected assembly consisting of two chambers), with equal representation in one chamber and population-based representation in the other.
- **John Dickinson (Delaware):** Helped to craft the Great Compromise. He also advocated against slavery.
- **Benjamin Franklin (Pennsylvania):** An anti-slavery representative, Franklin was 81 years old and the oldest delegate. Franklin's family once owned slaves but, later in life, his views changed.
- **Gouverneur Morris and James Wilson (Pennsylvania):** Opposed slavery and participated extensively in the constitutional convention debates.
- **John Rutledge (South Carolina):** Served on many committees and advocated for Southern interests.
- **Charles Pinckney (South Carolina):** Instrumental in reaching a compromise to eventually abolish the international slave trade.

Not every delegate ended up supporting the Constitution as finally proposed. Both Mason and Randolph refused to sign the Constitution; Mason because it didn't include a bill of rights and Randolph because he objected to a one-person executive.

Adopting the Constitution

On September 17, 1787, the first draft of the Constitution was finalized and signed, but according to Article VII, it wouldn't become law until it was ratified by at least 9 states. Each of the 13 states called ratifying conventions to debate and vote on the Constitution.

On June 21, 1788, New Hampshire became the ninth state to ratify the Constitution, making it the law of the land.

The Constitution's *preamble*, or introduction, stated its noble goals: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

As important as the Preamble of the Constitution is in setting forth the ideals of the newly created government, it doesn't create enforceable limits. (You can't sue your least-favorite government official for disturbing the "domestic Tranquility" of your household, for example.) But the Preamble does provide useful guidance to what the enforceable limits in the remainder of the U.S. Constitution mean.

RATIFICATION CONTROVERSY AND THE MASSACHUSETTS COMPROMISE

The contrasting Federalist/Anti-Federalist views generated significant writings and debates while states grappled with whether to ratify:

- **Federalists:** Leaders tried to convince citizens in their states to ratify the Constitution. They thought a strong federal government was necessary to promote national interests where the Articles of Confederation had failed.
- **Anti-Federalists:** Opposed the Constitution. They feared that a strong federal government would subjugate individual freedoms, much like the oppressive British government that they had fought against.

Many Anti-Federalist concerns were allayed by the Massachusetts Compromise on February 6, 1788, when Anti-Federalist leaders John Hancock, Samuel Adams, and others convinced Massachusetts citizens to ratify the Constitution on the condition that it would be amended to add a bill of rights.

Following through on the Massachusetts Compromise, James Madison introduced 17 proposed amendments. Congress adopted 12 of those amendments on September 25, 1789. On December 15, 1791, Virginia became the 10th out of 14 states to ratify the first ten amendments, giving the Bill of Rights the two-thirds majority it needed to become law. (Vermont became the 14th state on March 4, 1791, before Virginia voted to ratify.)

Fitting the Constitution into the U.S. Legal and Governmental System

TIP

The Constitution (including amendments) contains only 7,591 words, about the length of a short story. It takes an average person about half an hour to read it from start to finish, and for the most part, it's accessible and understandable (which doesn't mean it's crystal clear — people have debated its meaning for more than two centuries!). Grab a cup of coffee or tea (or other favorite beverage), find a comfortable chair, and read the full text of the Constitution. You can find a good copy on the National Constitution Center website at `https://constitutioncenter.org/the-constitution/full-text`.

The following sections deal with how the Constitution fits into the legal and governmental pecking order in the United States. The U.S. government is based on constitutional supremacy, which means the Constitution stands above all other federal laws and policies. The U.S. Constitution also plays a role in how state and local officials can carry out state constitutions, laws, and policies.

Grasping federal constitutional supremacy

Article V of the U.S. Constitution declares that "This Constitution . . . shall be the supreme Law of the Land." This simple statement of *constitutional supremacy* is one of the document's most important design features. Judges and others use the U.S. Constitution as the basis for assessing the validity of all laws enacted, treaties made, presidential executive orders issued, lower court rulings handed down, federal regulations promulgated, and policy decisions announced.

Because the Framers opted for constitutional supremacy, the Constitution is sacrosanct; it sets limits on the power of even the highest ranking government officials in each of the three branches. Even in long-standing democratic countries that have *parliamentary supremacy* (meaning the legislative body holds absolute authority), such as England, the laws passed by the legislative body don't have to conform to any superior legal authority. What one parliament enacts, another can change or amend. (Hopefully, unwritten traditions may blunt that possibility.)

A notable feature of U.S. constitutional supremacy is that it promotes stability (or rigidity, depending on your point of view). Article V of the Constitution requires an extraordinary supermajority consensus over time to change the Constitution; two-thirds of both houses of Congress (a substantially higher margin than the simple majority needed to pass most ordinary legislation) must propose the same amendment text. After it gets proposed, three-fourths of the states have to ratify it. So, for better or worse, the enduring constitutional language can't change easily with any change in the majority.

AMENDMENT AS AN UPHILL BATTLE

The Framers designed the Constitution to last, allowing for change only upon the agreement of a *two-tiered supermajority* (two-thirds of both houses of Congress and three-fourths of the states). Modern efforts to amend the Constitution illustrate just how difficult officials find achieving the required level of bipartisan support in a politically diverse country. Take, for example, the 22nd Amendment, providing that "No person shall be elected to the office of the President more than twice."

For decades since the passage of the 22nd Amendment, most recently in January 2025, members of both political parties have proposed amending or repealing the 22nd Amendment to allow their party's incumbent president to remain in office after completing a second term. These proposals required

- Two-thirds of the House of Representatives voting in favor (290 votes)
- Two-thirds of the Senate voting in favor (67 votes)
- Three-fourths of all states ratifying (38 states)

It probably comes as no surprise that none of these proposals have even come close!

REMEMBER

In more than two centuries, only 27 amendments have been ratified. The first ten amendments (the Bill of Rights) were ratified as a package in 1791, and three amendments (discussed in Chapter 2) were enacted close in time in the immediate aftermath of the Civil War. The most recent was the 27th Amendment (preventing Congressional salary changes), which was ratified in 1992.

Reconciling the U.S. Constitution with the states

Constitutional supremacy has important implications for state laws. The Constitution imposes the obligation to follow its supreme provisions specifically on state judges — and implicitly on all other state and local officials — in the Supremacy Clause of Article VI, where it says "any Thing in the Constitution or Laws of any State to the contrary notwithstanding." All state and local officials "shall be bound" by the U.S. Constitution "and the Laws of the United States" made under the Constitution's authority.

Putting these clauses together establishes an important federal-versus-state hierarchy. The U.S. Constitution — and any constitutionally authorized federal statutes, presidential executive orders, court rulings, regulatory decisions, and policies — take precedence over state laws, and even the highest law of a state, its own constitution.

This supremacy means that the U.S. Constitution establishes a floor of constitutional protections below which states can't go (although they can build on top of that floor). For example, state constitutions and laws that racially segregated school children fell to the 14th Amendment Equal Protection Clause, as declared by the 1954 *Brown v. Board of Education* Supreme Court decision.