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Chapter **1**

Designing a New Country and a New Constitution

Throughout the 17th and 18th century, thousands of people migrated to North America. Most came for greater economic opportunities than they could find in Europe; others came for religious freedom. The British Empire took interest in the American continent in the 16th century. In 1587, the first English settlement was set up at Roanoke Island in North Carolina. It was established by Sir Walter Raleigh and disappeared under mysterious circumstances. In 1607, the English tried again, and this time established a colony in Jamestown, Virginia. The colony developed for almost a century but had to live under harsh conditions, constantly fighting the native population. Jamestown did leave the country an important legacy. The colonists established a representative assembly to govern their own affairs, a precedent the country later followed.

Creating Colonies

By 1732, all 13 colonies were in place. There was local self-government, but the colonies were controlled by the British crown. With the British little interested in the colonies, they enjoyed quite a bit of self-rule. Soon, the 13 colonies had their own legislatures set up, and passed laws and even levied taxes. Each of them also had a document similar to a constitution in place.

For example, Pennsylvania had a document called a Frame of Government and Massachusetts had one entitled the Body of Liberties. Great Britain did not stop the colonies from self-rule as long as they remained a part of the empire and were economically profitable to trade with.

Relations between the British Empire and the colonies remained friendly until the middle 1750s, when the French and Indian War broke out. Britain not only had to fight the French Empire but also various Indian tribes in the war over control of parts of North America. Even though the British won the war, it almost bankrupted the country. Being broke, the British needed revenue badly, so they turned to the American colonies for money. They decided to tax the colonies directly, which had never been done before.

Fighting the French and cracking down

The French and Indian War, fought between Britain and France and various Indian tribes from 1754 until 1763, changed everything. The French, headquartered in Canada, fought the British for control of North America. The Treaty of Paris, which settled the conflict in 1763, gave Britain control over most of North America. However, the war had cost Britain \$130 million pounds, which it now had to recoup.

Britain decided to make the colonies help pay for the war by imposing taxes on them. The Sugar Act, passed in 1764, increased the tax on refined sugar and molasses. The colonists were outraged; how could they be taxed if they were not represented in the British Parliament? So, between 1765 and 1766, the colonists attacked tax agents of the British and boycotted British goods. Suddenly, British merchants were hurt by the boycotts and protested to their home government, and the whole Act was repealed by 1766.

Taxing the colonies

Beginning in 1763, the British Parliament began imposing a series of taxes on the colonies and placed new import duties (tariffs) on textiles, coffee, wine, and other goods.

Among these taxes were the Sugar Act, the Townshend Acts, and the Quartering Act. The taxes culminated with the Stamp Act of 1765, which raised taxes on all printed materials, including newspapers, legal documents, and even playing cards. In other words, the British Empire began taxing the colonies heavily.

To make matters worse, many Americans had fought with the British against the French and now expected to claim free land in the west, which used to be owned by the French Empire. The British blocked them by passing the Proclamation of 1763, prohibiting settlers from moving westward to prevent a new war with Indian tribes. The settlers figured they could just ignore the British, like they had for decades, but this time it was different. After fighting the French, the British army was now in the U.S., and thousands of soldiers stayed. The British now had the manpower to enforce British law. To take care of its soldiers, the British Parliament had passed the Quartering Act in 1765, which required colonial assemblies to house British troops in barns and warehouses. Finally, the British allowed the Americans to trade only with the British Empire and no other empire, such as France or Spain. So profitable trade with the French and Spanish Empires became illegal. The colonists were furious.

Not surprisingly, the colonies reacted to the imposition of taxes. The rallying cry became “No taxation without representation.” The colonists began to boycott British products, and the British government gave in and repealed the Stamp Act. However, the colonists had now seen that the British Empire was not as powerful as they had thought. They would give in to the colonists’ demands if the colonies resisted. This resulted in the infamous Boston Tea Party in 1773.

Responding to tyranny

The same day it repealed the Stamp Act, the British Parliament passed the Declaratory Act, which stipulated that the king and Parliament had full power to enact laws binding on the colonies. So, Parliament continued to pass acts raising revenue from the colonists for the British crown.

The Townshend Acts passed in 1767, imposing duties on items such as tea, glass, and paper, created a Board of Customs Commission to enforce the new tax laws and collect the duties. Britain was now able to collect taxes instead of having to rely on the colonial governments to raise taxes on their behalf and then hand over the money, which rarely happened. The Townshend Acts further suspended the New York State Assembly for refusing to house British troops. Riots broke out in Boston, and the British brought in thousands of troops to quell them. In the subsequent Boston Massacre, panicked British troops started shooting at demonstrators, killing several. Now more and more colonists started to support a rebellion against the British Empire.

Again, the colonists at first boycotted British goods, and the British Parliament responded by repealing parts of the taxes imposed by the Townshend Acts in 1770; with one exception: the tax on tea.

Then, in 1773, the Tea Act was passed by the British Parliament. It was passed to help the British East India Company, which was about to go bankrupt. The Tea Act allowed for the East India Company to have a monopoly over the tea trade globally, which put small colonial traders out of business. The East India Company further started to sell tea in the colonies at a lower price than native merchants, in turn destroying native tea merchants. On December 16, 1773, colonists disguised as Mohawk Indians boarded three British ships in Boston Harbor and threw their cargo, 342 chests of tea, overboard in turn destroying it. This event is pictured in Figure 1-1.



REMEMBER

Tea was one of the most sought-after products in the world back in the 18th century. The 342 chests of tea had a market value of 9,600 British pounds. That would be about \$2.5 million today.



FIGURE 1-1:
The Boston
Tea Party.

N. Currier/Library of Congress/Public domain

The outraged British Parliament in turn passed the Intolerable Acts in 1774. These were designed to punish the colonists. The Acts closed Boston Harbor until the colonists paid for the products they had destroyed, weakened the Massachusetts colonial government by abolishing town meetings, and required that colonists not only harbor British soldiers in their own homes but also feed them. Massachusetts was now under British military control. This was the last straw for the colonists.

Inciting a rebellion

In September 1774, 56 leaders from 12 colonies got together in Philadelphia to respond to the British actions. This was called the First Continental Congress. It denounced British policy and organized a boycott of British goods. It further called upon the colonial militia to arm itself and began to hoard weapons in an arsenal in Concord, Massachusetts. The British governor of Massachusetts sent troops to seize the weapons stored in Concord. The troops were attacked by a small militia of colonists. They called themselves minutemen, because they claimed that they could be ready for military duty at a minute's warning. They were subsequently defeated by the British troops. The British did reach Concord and destroyed the weapons cache, but on the way back they were attacked by more militia. By the time they made it back to Boston, they had lost several hundred men. A revolution had begun.

Fighting a Revolution

In the beginning, most colonists figured that a solution with the British was possible. They assumed that the colonies would receive some local autonomy but remain part of the British Empire. However, things soon changed. At the Second Continental Congress held in 1775, a delegate for Virginia called for the first time for independence from Great Britain, and the Congress commissioned a declaration to discuss not only the grievances against the British but also a reason for independence from Britain. A committee was appointed, and a Declaration of Independence was commissioned. A small committee was formed, consisting of Thomas Jefferson, John Adams, Roger Sherman, Robert Livingston, and Benjamin Franklin. Jefferson was asked to compose the declaration.



TECHNICAL
STUFF

The Second Continental Congress was a convention of members from all 13 colonies. It became the national government during the Revolutionary War.

On July 2, 1776, the committee presented its draft of a declaration of independence to the full Congress. After a few small changes, the Congress adopted the Declaration of Independence on July 4, 1776, as depicted in Figure 1-2. The Declaration stated:

“We hold these truths to be self-evident, that all men are created equal, that they are all endowed by their creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness.”



FIGURE 1-2:
Signing of the
Declaration of
Independence.

Asher Brown Durand/Library of Congress/Public domain

Based on the ideas of John Locke, the document then continued to argue that whenever government fails its people, the people have the right to change or even abolish a government.



REMEMBER

The Declaration of Independence accomplished three things:

- » It provided a justification for independence by outlining the concept of individual rights and stated that governments receive their power from the consent of the governed.
- » It listed grievances against King George III and the British Empire.
- » It severed ties with the British Empire.

Now having declared its independence, the colonies knew that a war with the British Empire was about to start.

Winning a war

At first the British government dismissed the Declaration of Independence. There was no concern; what could a few thousand disorganized militiamen do against Britain's well-trained professional army? In the beginning, they seemed to be proven right. The U.S. militia, consisting of farmers and small shopkeepers, suffered one defeat after another. The British army was better trained and equipped, and it showed. The Continental Army came close to defeat. The war did not end until 1781 when General Washington was able to defeat the British General Cornwallis at Yorktown in Virginia. The British then decided to ask for peace and the Revolutionary War ended after six bitter years.

Battling the British

George Washington was named commander in chief of the Continental forces in July of 1775. He took his troops to Massachusetts, and subsequently liberated Boston in the spring of 1776. In the summer of 1776, British General Howe landed with 30,000 troops on Long Island, New York, to put the rebellion down. They took New York City, and Washington had to retreat. By the winter of 1776, it looked like the war was over. There was no financial support from the Continental Congress, mass desertions happened, and George Washington rejected his salary and pledged to use his own money to pay his troops. It was his victory at Trenton, New Jersey, where he crossed the Delaware River at night, seen in Figure 1-3, and surprised the British Army, mostly consisting of German mercenaries, who did not want to be fighting in the U.S. anyway, that changed the war.



FIGURE 1-3:
George Washington crossing the Delaware.

Leutze, Emanuel/Library of Congress/Public domain

By summer of 1777, Washington won battles at Germantown and Brandywine. It was the battle of Saratoga that saved the day. After his victory there, the French government decided to join in the war and help the U.S. forces. However, before the French could arrive, Washington had to spend a miserable winter at Valley Forge in Pennsylvania. While he was waiting for the French, the British moved south and conquered parts of Georgia and South Carolina.

When the French finally arrived, Washington was able to move. In the summer of 1781, he launched a massive attack on British forces at Yorktown, Virginia. On October 19, 1781, the British surrendered to Washington, and the Revolutionary War was over. The British Parliament, over the objections of King George III, decided it was time to end the war and let the colonies go free. Finalizing the peace took two more years, and in September 1783, a peace treaty was finally signed.

Creating a new government

After declaring independence, a new government for the colonies had to be created. So, the Second Continental Congress drew up a written statement and principles to guide the new government in 1777. This statement was called the Articles of Confederation. It took until 1781 for all 13 colonies to ratify the Articles of Confederation, so a new government was not put in place until 1781. The Articles of Confederation created a league of friendship between the colonies where power was retained at the state level.



REMEMBER

A *confederation* is a form of government where power rests at the state level, not the national level.

The Continental Congress renamed itself the Congress of the Confederation. It was a unicameral legislature, with one house and each one of the 13 states had one vote in it. This of course gave smaller states, such as Rhode Island, more power than larger states such as Virginia. To pass legislation, 9 out of 13 states had to approve, and there was no federal executive or judiciary around. The Congress lacked some basic powers, such as regulating foreign trade or levying and collecting taxes. So, it did not have the money or power to create an army. To change the Articles of Confederation, a unanimous vote in the Congress was necessary.



TECHNICAL
STUFF

The most significant policy successes the Congress of the Confederation could brag about were regulating westward expansion, including the selling of farmlands to settlers and the admission of new states. The Land Ordinances of 1785 and 1787 (referred to as the Northwest Ordinance) established guidelines on how to acquire property in the West and allowed areas with a set number of settlers to apply to become a new state.

Having problems

Without the power to tax, the national government was not able to raise an army to protect the country against foreign powers. At this time, the British Empire was not the only danger. The Russian and Spanish Empires were also present on the North American continent, presenting a constant threat. For example, the Spanish Empire closed the Mississippi to American ships, and pirates seized U.S. ships in Africa. The national government could not do anything about it.

Without tax monies, the new confederate government could not redeem war bonds, referred to as *continental loan certificates* at the time, which were used to finance the war against Great Britain. Many patriotic Americans had bought war bonds, expecting them to be redeemed. However, the new government had no money to redeem the war bonds, and many Americans lost their life savings. Obviously, they were not pleased.

To make matters worse, states negotiated with themselves and with foreign powers without informing or taking the new national government into account. How can you create a new country if its members impose trade restrictions against each other? The United States of America looked more like the Disunited States of America back in the 1780s.

The final straw was Shays's rebellion. Captain Daniel Shays led a rebellion consisting of thousands of farmers protesting high taxes and interest rates in Massachusetts in August 1786. Local state militia either deserted or refused to fight, and the national government could not step in. It had no army. Finally, the governor of Massachusetts had to hire mercenaries to put down the rebellion. It was time to act.

By the mid-1780s, the situation got so dire that many prominent Americans and the Congress itself became worried and wanted changes. They recognized the new government created by the Articles of Confederation was not working, so a national Congress was needed to change the Articles of Confederation. In February 1787, Congress called for a convention to amend the Articles of Confederation. This meeting, also referred to as the Constitutional Convention, convened in May of 1787 in Philadelphia. It lasted until September of 1787, and instead of revising the Articles of Confederation, it created a new constitution for the United States.



REMEMBER

The Constitutional Convention called for in Philadelphia in 1787 was only supposed to revise the Articles of Confederation, not to write a brand-new constitution.

Writing a Constitution

The Constitutional Convention, depicted in Figure 1-4, began on May 25, 1787. Fifty-five delegates from 12 states participated. Rhode Island was the only state that did not send any delegates. It continued to believe in a confederation. The delegates in attendance selected George Washington to preside over the convention. Although there was agreement over the issues of foreign threat and economic problems, there was wide disagreement over what type of government to create. The larger states wanted a legislature based on population whereas the smaller states preferred a government based on the concept of one vote per state.



FIGURE 1-4:
The
Constitutional
Convention in
Philadelphia.

The Indian Reporter/Wikimedia Common/Public Domain

Soon, two plans emerged for the new government. The first one was the Virginia Plan. Devised by James Madison, it would have created a bicameral legislature with both houses seeing representation based on population. This would have given the larger states control over the new government. The legislatures would have further chosen the executive and members of the judiciary.

To counter this plan, the smaller states came up with the New Jersey Plan. It advised for the creation of a unicameral legislature with only one house, and representation would be based on equality. Each state, regardless of population, would have the same number of votes. This one house would have the power to select the executive and the judiciary.

By July 1787, the debate over the type of legislatures nearly ended the convention. It is at this time Roger Sherman, a delegate for Connecticut, came up with the Great Compromise, also called the Connecticut Plan. Under it, a bicameral legislature would be created with two houses; one, the House of Representatives, would be based on population, and the second, the Senate, where representation would be based on equality with each state sending two senators. Also, all revenue bills had to originate in the House of Representatives.

One of the hottest topics under discussion in Philadelphia was what type of executive the country should have. Some delegates wanted a strong executive; some wanted a weak executive at the mercy of Congress. Some wanted a president elected by the people, some wanted one appointed by Congress. Under the New Jersey Plan, there were even two executives proposed.

Finally, the convention agreed to have the executive elected by an Electoral College. Instead of having the people directly elect the executive, an Electoral College, where each state chose how to select electors, picked the president (for a discussion of the Electoral College, see Chapter 4). This allowed the states, which picked the actual electors, to change the public's selection if necessary. Keep in mind that most of the delegates attending the Constitutional Convention looked down on the average person, believing that they could not make an informed choice for president.



REMEMBER

The current presidency is based on a proposal by James Wilson, a delegate at the convention from Pennsylvania. He based his proposal on how the New York and Massachusetts state constitutions structured the executive.

Discussing slavery

The issue of slavery proved to be a controversial one at the convention. Forty-five percent of the delegates owned slaves themselves. The four largest slave states, with a population of more than 100,000 slaves, were Virginia, North and South Carolina, and Maryland. Maine and Massachusetts, on the hand, had already banned slavery. So, what to do about the slave population? Should they be included for representation when the total U.S. population was counted for representation in the House of Representatives? If they were fully counted, slave states would be overrepresented in the new House of Representatives. If they were excluded, the slaveholding states would not approve the new constitution.



REMEMBER

Both Georgia and South Carolina threatened to walk out of the Constitutional Convention if the institution of slavery was threatened.

A compromise was found. It was referred to as the Three-Fifths Compromise.

Delegates from Southern states wanted enslaved people to be fully counted to increase their representation in the House of Representatives. Northern delegates, many from states where slavery was limited or abolished, opposed this, because it would give disproportionate power to slaveholding states. The Three-Fifths Compromise stipulated that for every five enslaved individuals, three would be counted toward a state's population. If a state had 100,000 slaves, for example, 60,000 were counted for purposes of representation in the House of Representatives. This allowed slaveholding states to wield greater influence in Congress and the Electoral College.



TECHNICAL
STUFF

In 1790, 43 percent of the population in South Carolina were slaves; in Virginia, the number was 39.1 percent, whereas in New Hampshire it was 0.1 percent.

The Convention further agreed not to ban the import of more slaves for the next twenty years and stipulated that escaped slaves had to be returned to their owners. It was not until 1808 that importing slaves became illegal in the U.S. The reason then was not pressure from Northern states but the fact that the slave population in the Southern states was growing fast enough that no new slaves were needed to be imported.

To avoid offending the slaveholding states and to assure ratification of the Constitution, the document itself did not address the issue of slavery.

Ratifying a new constitution

Finally, on September 17, 1787, after four months of negotiations and bargaining, all twelve state delegations in attendance approved the Constitution. Now it had to be ratified by 9 out of the 13 states to go into effect.



TECHNICAL
STUFF

The Constitution of the United States is the oldest written constitution in the world today. It is also one of the shortest constitutions, with only 7,500 words, which includes the 27 amendments which have been added. India has the longest constitution in the world with 146,385 words, and the Kingdom of Monaco has the shortest with 4,543 words.

Ratification was not assured. There were many in the U.S. who opposed the document, preferring a weaker national government with more power at the state level. To make it easier to ratify the Constitution, the Framers had decided that only nine out of the 13 states had to approve the Constitution for it to go into effect, which proved to be a wise choice.

In addition, the Constitution called for special sessions in each state to vote on the Constitution and not for the state legislatures to be able to ratify the document. The Framers were afraid that the state legislatures would vote the document

down, because they had the most to lose. In the 1780s, the U.S. was run by state legislatures, and they would lose many of their powers with the new Constitution.

In addition, the Constitutional Convention agreed on the rule of secrecy. Meetings on ratification were not open to the public but were held behind closed doors. The rule of secrecy also forbade the participants to discuss what had been said in the secret meetings. The hope was that secrecy allowed all participants of the conventions to debate and discuss their points freely.

The Framers further pushed for quick conventions in all states to ratify the new Constitution and made sure they were held in winter. Four states ratified the Constitution before the opposition, the Anti-Federalists, had even organized.

It was tough to travel back then, especially during wintertime, and the hope was that city dwellers could easily attend conventions whereas people living in rural areas would have a tough time to make it to the ratification conventions. People living in cities were more likely to support the Constitution whereas people living in rural areas were more opposed to it.

Favoring or opposing the ratification

Soon two camps developed. The people favoring the Constitution were called the Federalists, and the ones opposing it, the Anti-Federalists. Both sides began to publish essays and gave speeches in support of or against the Constitution. Today, the papers supporting ratification of the Constitution, known as the Federalist Papers, represent some of the most important and discussed writings in U.S. history. They were written by James Madison, Alexander Hamilton, and John Jay. The two essays that stand out are Federalist Papers 10 and 51, both written by James Madison.



REMEMBER

The Federalist Papers consisted of 77 essays in support of the Constitution. The essays were written under the pseudonym Publius and were published in major newspapers and magazines. They discussed the benefits of the new Constitution and tried to alleviate the fear people had of it. In Federalist Paper No. 10, James Madison created the theory of pluralism (see Chapter 15) and in Federalist Paper No. 51, Madison showed how the new Constitution prevented a government from abusing its citizens. His arguments were that the many parts of government would constantly check on each other, preventing one part becoming dominant and that people would organize and bargain and compromise.

The Anti-Federalists were led by Patrick Henry, John Hancock, future president James Monroe, and George Mason. They also published a set of essays. The major concern of theirs, shared by Thomas Jefferson, was that the Constitution did not contain a Bill of Rights and that U.S. citizens therefore were not protected from a

new and stronger government. This was a concern that was later remedied by a Bill of Rights being added to the Constitution.

The Anti-Federalists published their views under the pseudonym Brutus. They argued that the government created by the Constitution was too powerful and could limit freedom in the U.S. They were especially afraid of the new government's power to tax and the fact that the Constitution lacked a Bill of Rights to guarantee individual liberties in the U.S.

They also did not like the position of president. They believed that the executive resembled a king. They further rejected the idea of a national army, believing in state militias instead.

The one thing they got out of the debate was a Bill of Rights and that is exactly what they had wanted the most.

Ratifying the Constitution

The first state to ratify the Constitution was Delaware on December 7, 1787. Soon afterwards, New Jersey, Georgia, and Connecticut followed. A battle broke out in Pennsylvania over the lack of a Bill of Rights in the Constitution, and only the promise of adding one got the Constitution ratified. The same happened in Massachusetts. After Maryland, South Carolina, and New Hampshire ratified the Constitution, it had met the nine states threshold, but the Framers knew that the two most powerful states, Virginia and New York, were needed for the new Constitution to succeed. In Virginia, it took a personal appeal from George Washington and a promise of a Bill of Rights from James Madison to get the Constitution approved. With Virginia's approval, New York fell in line and the Framers decided to implement the new Constitution with 11 out of 13 states having ratified it.

On September 9, 1789, the House of Representatives voted to submit a Bill of Rights to the states to amend the Constitution. Ten were ratified by the required nine states by December 15, 1791, and the Constitution now had a Bill of Rights. North Carolina did not ratify the Constitution until a draft for a Bill of Rights was introduced in the newly assembled Congress. The last state to ratify the Constitution was Rhode Island. It ratified the Constitution on May 29, 1790, after George Washington had already been elected president.

Adding a Bill of Rights

During the ratification debate, the issue of whether a Bill of Rights was needed came to the forefront. Even Federalist supporters of the Constitution had acknowledged that a Bill of Rights needed to be added. So, one of the first acts of Congress and the new President George Washington was to add a Bill of Rights in 1789. All

ten amendments to the Constitution were fully ratified by 1791. The first ten amendments to the Constitution are referred to as the Bill of Rights. They contain the most important civil liberties granted to U.S. citizens (for a detailed discussion of the Bill of Rights and civil liberties, see Chapter 7). They are listed below.

The Bill of Rights

Amendment 1: Freedom of Religion, Speech, Assembly, and the Press

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment 2: The Right to Bear Arms

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.

Amendment 3: The Housing of Soldiers

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment 4: Protection from Unreasonable Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5: Protection of Rights to Life, Liberty, and Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6: Rights of the Accused in Criminal Cases

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defense.

Amendment 7: Right of Trial by Jury

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States than according to the rules of the common law.

Amendment 8: No Excessive Bail, Excessive Fines, and Cruel and Unusual Punishment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 9: Other Rights Kept by the People

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment 10: Powers Kept by the States

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amending the Constitution



REMEMBER

It is important to point out that many constitutional amendments have made our political process more democratic. The 13th Amendment prohibited slavery, the 15th Amendment gave former slaves the right to vote, the 17th Amendment allowed for the popular election of U.S. senators, the 19th Amendment gave women the right to vote, the 24th Amendment barred poll taxes, and the 26th Amendment lowered the voting age to 18.

How are amendments passed? There are two ways to propose amendments to the Constitution:

- » **An amendment can be formally proposed by the U.S. Congress.** This requires a two-thirds vote in both houses, the House of Representatives, and the Senate.
- » **An amendment can be proposed by two-thirds of the state legislatures.** This method has never been used.

Next, the amendment proposed by Congress goes to the states. There it has to be ratified by seventy-five percent of the states. Today, this equals 38 states approving. A second way to approve an amendment is to have it approved in special conventions in three-quarters of the states. This method has only been used once, in 1933, to repeal prohibition.



TIP

Two amendments cancel each other out. The 18th Amendment implemented prohibition in 1919, making it illegal to sell and consume alcohol, whereas the 21st Amendment repealed the 18th Amendment in 1933.



TECHNICAL
STUFF

It is difficult to change the U.S. Constitution. Since ratification by the states, close to 11,000 amendments have been proposed. Only 27 have passed. Of the 27 amendments that were added, 10, known as the Bill of Rights, were added in 1791.

Having a New Constitution



REMEMBER

A *constitution* is defined as the basic principles and laws according to which a country, state, or organization is organized.

Constitutions are written documents that outline the structure of a political system. They determine what type of legislature, executive, and judiciary a country has and what form of government a country possesses. This could be a democracy, monarchy, and so on. Constitutions set rules for governments. Besides setting the structure of government, constitutions also provide for rights and obligations of citizens.

A constitution does not only set up the structures for a government but also outlines the vision for society. It places limits on the power a government has over its citizens and establishes rights for these citizens. Constitutions both empower and limit governments. Constitutions are the highest law of the land, and leaders must follow and abide by the rules constitutions set.

Most constitutions consist of several parts. First, many contain preambles. These are symbolic statements indicating the values of a nation. They are not required and have no legal meaning but express the writers' intention and motives. They further preview the basic principles of a constitution. The U.S. Constitution contains the following preamble:

“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 blessing of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.”

Next come articles and clauses. They contain the actual meat in a constitution. They contain the foundation of the political structures as well as specific rights and obligations citizens possess. The U.S. Constitution contains seven articles that outline the new form of government, its relations with the states, and the process by which the Constitution can be changed.

Structuring the Constitution

Article I is the longest in the Constitution. It consists of ten sections. It establishes Congress, lays out qualifications for serving in the House of Representatives and the Senate, discusses elections for both bodies, discusses procedures for operating both houses of Congress, and, most important, discusses congressional powers (see Chapter 3).

Article II discusses the presidency (see Chapter 4). It only consists of four sections. Section 1 mentions presidential elections and the Electoral College whereas section 2 talks about the powers of the presidency (see Chapter 4). The last two sections discuss the State of the Union address and impeachment procedures.

Article III establishes the judicial system (see Chapter 5). It allows for a Supreme Court and lower federal courts as established by Congress. It further mentions lifelong terms for judges and discusses the impeachment process for the federal judiciary. Finally, it elaborates on the crime of treason and possible punishment, which includes death.

Article IV describes the relationship between the national government and the states (see Chapter 2), and Article V authorizes amendments to the Constitution and discusses in detail how the amendment process works. Article VI makes the Constitution the supreme law of the land, and Article VII outlines the ratification process for the Constitution.



TIP

Every constitution contains an amendment process, telling the reader how to change or alter a constitution. In the U.S. Constitution, Article V outlines the amendment process.

Analyzing the Constitution

The new Constitution introduced the concept of separation of powers to the U.S. The concept was based on the works of the French political philosopher Baron de Montesquieu, who argued that if the executive, legislative, and judiciary are separate, powers cannot be easily abused. By being independent of each other, the three branches could not be controlled by another branch and in addition could check on each other.



REMEMBER

Charles-Louis de Secondat, Baron de La Brede et de Montesquieu, just known as Montesquieu, was a major political theorist impacting the structure of the U.S. government. He came up with the concept of separation of powers by which government is divided into various branches that constantly check on each

other. He advocated for three branches of government, a legislative, an executive and a judiciary, which are independent of each other and check each other.

The new Constitution set up a system of checks and balances where the three branches must work together to make policy while at the same time, they can also check on each other to make sure no abuse occurs. For example, the president nominates Supreme Court judges, but they must be ratified by the Senate. The Supreme Court in turn can declare acts of Congress and the executive unconstitutional.

In addition, the Constitution develops a federal system in which both the new national government and the states share power (for a full discussion of federalism, see Chapter 2). The Constitution further lists the powers the federal government should have. These are called enumerated powers and are discussed in Chapter 2. All powers not mentioned in the Constitution were supposed to be left to the states.

The U.S. Constitution is a brief constitution. It provides for a structure of government but does not go into much detail when it comes to societal matters. It is vague and open for interpretation, which has led the U.S. Supreme Court to come in to interpret it many times.

For this reason, the U.S. Constitution is called a living constitution, meaning it is short, vague, and easily adaptable to changing times.

