

The Politics of Constitution Building: An Overview of the American Political System

1. THE ARTICLES OF CONFEDERATION: “NEITHER FIT FOR WAR, NOR PEACE”

When the representatives of the colonies meeting in a Continental Congress voted in favor of independence they created not just one, but thirteen new countries. Far past Jefferson’s eloquent introductory claims about inalienable rights and all men being created equal, past the laundry list of complaints that make up the bulk of the Declaration of Independence, it concludes by stating that “these united Colonies are, and of Right ought to be Free and Independent States.” States, plural, in the Weberian sense, not “a state.” As they fought the war to make their claim to independence real, they drafted a document for a political union of these states, the Articles of Confederation and Perpetual Union. The Articles emphasized that this was indeed a confederation of independent states, not a single country, in Article II, which said that “Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.” This Congress was the Continental Congress now transformed into a Confederation Congress, but very little power was delegated to it beyond the power to negotiate treaties with other countries. Specifically, it did not have the power to make laws or to raise taxes, and it had no executive power – no force – to enforce any law or collect revenues. Following Weber’s definition of a state, the Confederation Congress was not a real state at all.

Although the Articles of Confederation named the union The United States of America, because each colony-become-state was independent, the unity was more of an aspiration than a reality, both during the Revolutionary War and after. During the war, Alexander Hamilton, serving as a high-level staffer to George Washington, was to write to a friend that “the confederation itself is defective and requires to be altered; it is neither fit for war, nor peace.”¹ It was certainly unfit for war. Not having the power to tax, it could not raise enough money to support the armies led by Washington, but could only ask states to supply enough men and money. This was a perfect collective action problem: each state wanted

independence, but preferred that other states paid the cost. Although Hamilton had never heard of a collective action problem, he identified it clearly in his letter.

The present mode of supplying the army – by state purchases . . . is too precarious a dependence, because the states will never be sufficiently impressed with our necessities. Each will make its own ease a primary object, the supply of the army a secondary one.²

If something didn't change soon, Hamilton suggested, the war for independence would be lost.

the army must dissolve; it is now a mob, rather than an army, without cloathing, without pay, without provision, without morals, without discipline.³

The intervention of the French with financial and material support tipped the balance and won the war, but as Hamilton had predicted, the Articles were unfit for maintaining the union in peacetime as well as war. The Confederation Congress had, despite its lack of authority to do so, borrowed money, particular from the French, to fight the way, but without the power to tax they could only beg the states to contribute to paying off the war debt, a burden the states preferred to shirk. Hamilton was again in the midst of the problem, having been appointed Receiver of Continental Taxes for the State of New York, and being able to do little more than publish pleas in local newspapers.

THE SUBSCRIBER has received nothing on account of the quota of this State for the present year.⁴

Economic conflicts abounded. Each state coined its own money, hindering the efficiency of trade between them. States put tariffs on each other's goods, further dampening the economic growth many looked for at war's end. Virginia and Maryland were in conflict over shipping on the Potomac River, which Virginia's original royal charter designated as belonging wholly to them, allowing them to charge high fees to Marylanders trying to bring goods inland via the river. Further north, New York charged such high fees to use New York harbor that Connecticut and New Jersey were considering a joint military attack on the state to capture the harbor for their own use. In addition, there were conflicts over territory, because the original grants of land from the King and Parliament to the colonies were often

vague and conflicting, having been written at a time when the territory was unknown. As Hamilton later pointed out, "Territorial disputes have at all times been found one of the most fertile sources of hostility among nations.⁵" James Madison also critiqued the inability of the Articles of Confederation to hold the union together, using language strikingly similar to the definition of the state Max Weber would use more than a century later.

A sanction is essential to the idea of law, as coercion is to that of Government. The [Articles of Confederation] being destitute of both, wants the great vital principles of a Political Constitution.⁶

The states needed a change in constitution if they were to remain united, instead of being, as George Washington said, "Thirteen Sovereignities pulling against each other"⁷ but getting to agreement on that point took time. Future Supreme Court Chief Justice John Jay wrote to George Washington in 1786 that "An opinion begins to prevail that a general convention for revising the articles of Confederation would be expedient."⁸ But that same year "A Meeting of Commissioners to Remedy Defects of the Federal Government," promoted by Madison and Hamilton (who had met by chance at Washington's home) drew representatives from only five of the thirteen states. The only accomplishment of that meeting was to write a recommendation to the Confederation Congress to officially authorize a meeting for the following year, to try again. The Congress did, and later that year a galvanizing event occurred in Massachusetts. Shay's Rebellion, a local rebellion against the state courts, was unsuccessful, but created fear that rebellions would spread among the states. In this context, twelve of the thirteen states met in Philadelphia, authorized to propose revisions to the Articles of Confederation. Rhode Island, jealous of its independence, smelt a rat and refused to participate. They were right. While others came prepared to discuss revisions, Madison came to the convention with a plan to throw away the Articles and start over with an entirely new plan of union with a strong central government.

2. CONFLICT AND SELF-INTEREST AT THE CONSTITUTIONAL CONVENTION

The men at the Constitutional Convention did not calmly and philosophically come to considered agreement on a theoretically ideal

government. They were pragmatic men trying to resolve conflicting interests in a way that might not be totally satisfactory to anyone, but could, they hoped, solve their problems and get enough agreement to be put into effect. Although everyone at the Convention was aware of Shay's Rebellion and of conflicts between various states, they were also there representing their own states' interests, and it being less than a decade since they had won their independence from a government they believed had treated them tyrannically, they were all aware of the dangers of a powerful government, particularly one located far from their own state. They did not come to the Convention unanimously agreed that the Articles were unsalvageable, and some were to leave before the Convention had concluded, objecting to the direction it was taking.

But one of the most important political skills is agenda-setting, and Madison did so brilliantly. He came prepared with a proposal for an entirely new governing document, now called the Virginia Plan. He asked Edmund Randolph, a fellow member of the Virginia delegation who was a much better public speaker to present it. And George Washington, a fellow Virginian who shared Madison's views, and had of course been elected as the presiding officer of the Convention, recognized Randolph as the first speaker on the day they began dealing with substantive business. This was no coincidence. By calling for a real central government with actual legislative and enforcement power the Virginians were challenging the Convention to go far beyond its mandate, but through Randolph's speech explaining why the Articles could not be fixed, the other delegates were brought around to focusing on Madison's plan. Although changed substantially, it was the basis of the Convention's work, and the initial blueprint for the U.S. Constitution.

Federalism

The most foundational question for the convention was how to distribute political authority. Under the Articles, political authority was almost wholly vested in the individual states, with were guaranteed their sovereignty and independence. The Virginia Plan proposed to reduce, if not eliminate, their independence, and dramatically limit their sovereignty by shifting political authority to a "National Legislature." The word "national" spooked the delegates, and asked if Virginia "intended to annihilate State governments"⁹ altogether. The plan did not actually go that far, but it did propose to give

the new Congress power to veto any state law that it thought conflicted with the new Constitution. Contemporary political scientists would define

Comparison of the Articles of Confederation, James Madison's Virginia Plan, and the U.S. Constitution		
Articles of Confederation	Virginia Plan	Constitution
Confederal government	National government	Federal Government
Unicameral Congress (1 house)	Bicameral Congress (2 houses)	Bicameral Congress (House and Senate)
Each state represented equally	States represented proportionally to their population or based on their financial contributions to the government.	House: States represented proportional to population Senate: States represented equally
Representatives chosen by state legislatures	Representatives of the first house chosen by the people of their respective states; representatives of the second house to be chosen by the first house from people nominated by the state legislatures.	House: Representatives chosen by the people of their state Senate: Senators chosen by their state legislature (changed to election by the people of their state with 17 th Amendment)
No power to intervene in state's internal affairs	Right to veto state laws.	No power to directly intervene in state's internal affairs
No executive power	A chief executive	A chief Executive (the President)
Congress acted as a supreme court in extraordinary cases	A national judiciary	A national judiciary (the Supreme Court and other national courts as created by Congress)

Table 1

this as a unitary government (see figure 1), in which political power is predominantly vested in a central government, with lower-level governments having little independent authority.

This was too much for the delegates to accept. As representatives of their states they were being asked to give up their own state's sovereignty and the independence for which they had so recently fought a war. At each point of decision the Convention faced, we have to remember that these were individuals who had been chosen to represent their states because there were high status individuals, trusted and respected in their states. Each care deeply about their own state's interests, as well as being concerned about their own status, and each had to consider how they would be greeted if they went back home having surrendered their state's independence.

The issue was resolved through compromise, the first of many at the Convention. To keep the Virginia Plan a live proposal, Madison withdrew the proposal for a national veto over state laws, and the Convention agreed in principle to redistribute some of their state's powers to a government of the United States. This form of government we now call federal (see figure 1), a system in which sovereign political authority is shared between the central government and regional (state or provincial) governments. This is in in

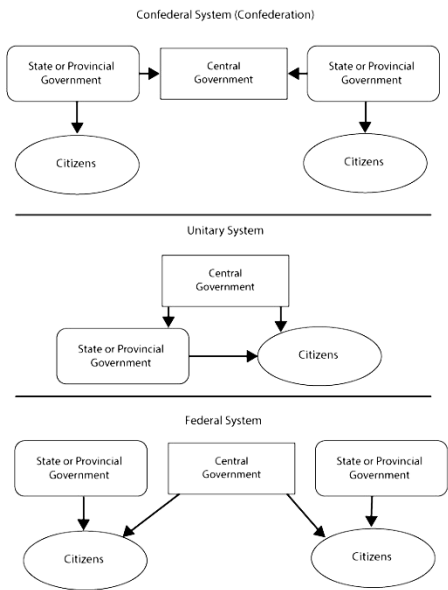


Figure 1

contrast to a confederal system, as the states had under the Articles, where the regional governments are sovereign, and the central government has only as much authority as the regional governments allow it, and a unitary system where the central government is sovereign, and the state or provincial governments have only as much power as the central government allows them. Neither of those systems was acceptable to the

Convention, the confederal because it was not keeping the union together, the unitary because the states were unwilling to give up that much power. The delegates to the Convention could walk away at any time. Some did, and if too many did the Convention would fail. And even if the Convention completed a proposed new constitution the states could reject it. Compromising to keep everyone participating was the only way to success (a validation of the old saying that politics is the art of compromise).

The federal government created by this compromise is variously called a government of delegated powers and a government of enumerated powers. It's called a government of delegated powers because all the sovereign political authority it has was given to it by the states, whose power it was originally. This understanding was clearly expressed by the Supreme Court in a 1947 ruling, where it noted

The powers granted by the Constitution to the Federal Government are subtracted from the totality of sovereignty originally in the states and the people.¹⁰

It's called a government of enumerated powers because the powers surrendered by the states were not a general undefined political authority, but a specific and exclusive list of powers enumerated in Article 1, section 8 of the Constitution. All sovereign powers not delegated were kept by the states, or as we say, reserved to them. This created a system of "dual sovereignty," where the federal government was sovereign within its area of political authority and the states were sovereign within their areas of political authority.

In general these areas were very separate. With control of the military, the power to regulate trade with other countries, and the President and Senate's shared treaty-making power the federal government was given authority for all dealings with other countries, as though it conceptually wrapped around and enclosed the states, forming a layer of political authority between them and other countries. And with the power to regulate commerce among the states – where the states gave up their power to make their own money and charge tariffs on imports from other states – the federal government conceptually fits between the states, acting as a layer of political authority that buffers the states from bumping up against each other. Within that buffer, inside each state itself, each state's government remained sovereign and supreme – the power given to the federal government did not include a power to regulate state affairs. A

handful of powers were given to the federal government, but with the states reserving their authority to use them as well, such as the power to raise money through taxes and borrowing and the power to define crimes. But the federal government's use of those powers was limited to its areas of control, and the states' use limited to their areas of control (see figure 2). As we shall see in a later chapter, American federalism has evolved dramatically since the Constitution was adopted, giving the federal government the kind of authority over the states that many of the Convention delegates feared.

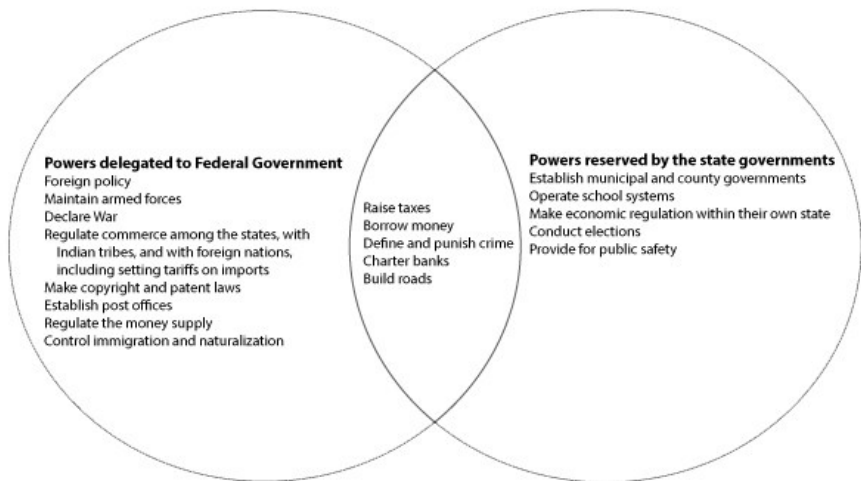


Figure 2

Separation of Powers with Checks and Balances

While the delegates to the Convention agreed on the need to create a central government with real power, they were persistently concerned about the risk of giving it too much power, about creating the kind of tyrannical government they had just escaped from. Federalism alleviated their concern in part by limiting how much authority the new government would have, but that still wasn't enough for them. They were concerned about the control over that power, particularly the legislative and the executive powers.

Their intellectual guide here was the French political theorist Baron de Montesquieu (1689-1755), who warned against letting anyone control both those powers.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehension may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the executive, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.¹¹

Montesquieu's example of a system with a good separation of powers was the British system, with the King as the executive power and the parliament as the legislative power. The delegates to the convention also thought the British system was the best government in the world. They had not fought against it because they thought it was bad, but because they were prohibited from participating in it and getting the benefit of its democratic representation. But they did not want a king – with the likely exception of Alexander Hamilton – so Madison proposed a president instead.

They avoided uniting powers in the same body of men by creating three distinct branches of government. The judiciary power was made independent of the others by giving federal judges a lifetime appointment and by prohibiting Congress from reducing their pay. Although they are nominated by the President, and have to be approved by the Senate, as soon as a person enters the federal judiciary, they are free from direct political influence (but they can be impeached and removed from office for misbehavior).

Separating the presidency from the legislature was a little more complicated. The Virginia Plan proposed that the president be chosen by the legislature, but nothing more than that. It was not clear the executive would be separate from the legislature. Pennsylvania delegates James Wilson and Gouverneur Morris objected that legislative selection of the president would make them subject to the control of Congress, which would lead to legislative tyranny. The debate over presidential selection began on June 1st, and reappeared occasionally, not being finally settled until September 7. Delegates determined to keep the legislature from selecting the President suggested election by the public, public election of electors who would

choose the President, election by state governors, and then finally won approval for election by electors to be chosen in each state in whatever way was determined by that state's legislators. Only in the closing weeks of the Convention, then, was separation of powers finally created.

There are two important points to consider here. First, in response to the threat of tyranny, some of the delegates were determined to fragment political authority as much as possible, and they did so first by limiting how much authority was shifted from the states to the federal government and then by insisting on dividing control of those powers the federal government was given. Second, this double division of political authority, federalism and separation of powers, was not part of Madison's Virginia Plan. Although federalism and separation of powers are the most foundational characteristics of the American political system, they were not part of anyone's comprehensive grand vision for an ideal political system but were proposed, argued for, and agreed upon through extensive and vigorous debate.

Checks and Balances

The powers of the three branches are not, however, entirely separate. The President plays a role in the legislative process, authorized to propose legislation, and given the veto. The President appoints ambassadors, judges, and executive branch officials, and negotiates treaties with other countries, but the Senate has the final say on all that. The great presidential scholar Richard Neustadt went so far as to say that the Constitution didn't really have separation of powers at all, but "separated institutions sharing powers."¹²

The purpose of these shared powers, however, was still to act as a constraint on tyranny. They didn't want anyone to have too much power, but they also didn't want anyone to have too much control over their own power. Madison argued that

the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachment by others.¹³

The constitutional means were these checks and balances of shared powers, while the personal motive was simply jealousy of power. "Ambition must be made to counteract ambition," Madison argued.

It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. ¹⁴

Their concern was not just theoretical. They were thinking about the power struggles within their own states. And American history is filled with examples of presidents and Congress fighting against each other for power, sometimes with the outcome decided politically, sometimes by the judiciary, and on one case by the threat of impeachment. Few things are as certain as the human drive for power, and the Framers of the Constitution counted on those drives to create conflict that would keep each branch under control.

Separation of Powers in International Context

Is separation of powers really necessary though? Were Montesquieu and the Framers of the Constitution right? As far as separating the judiciary and keeping it independent from political control, yes. Although the judiciary, being composed of humans, does an imperfect job of protecting the citizens' rights, countries with independent judiciaries have much more civil and political liberties than countries without. Authoritarian governments in particular do not like independent judiciaries, and have been known to destroy them in order to gain more power over the political system.

Separation of legislative and executive powers, however, does not seem to be necessary to prevent tyranny. Most countries, even democratic ones, do not separate the executive and legislative powers, or only partially separate them. Of twenty-three countries that have been independent and continuously democratic since 1950, the only three that have had full separation of power between the executive and legislative branch during that time are the U.S., Switzerland, and Costa Rica. Fifteen of them have "fused" legislative and executive powers, where the prime minister of Parliament, a legislator, is the chief executive of the country. Comparisons

of the civil and political rights of the citizens in these countries show that most have as much freedom as, and sometimes more than, Americans.

This is not to criticize the delegates to the Convention. They had few models to follow, and to a large degree they followed the model of what was then the most free country on earth, England, and the arguments of one of the most influential political theorists of their time, Montesquieu. They did not get it “wrong,” when they separated powers. They just overestimated the danger of not separating the executive from the legislative power.

Representation in a Bicameral Congress

After fragmenting political authority by delegating an enumerated set of powers to the federal government, then dividing the federal government into separated branches sharing just enough powers to provide checks and balances on each other, the Convention fragmented power one more time, dividing the legislative power between two chambers of the new Congress. By requiring agreement between the two chambers to pass legislation, they created an internal check on the legislative power. The gridlock Americans often complain about today is not an indication that our system is failing; it is the natural outcome of the Framers’ intentional fragmentation of political authority, both the internal legislative check of needing bicameral agreement and the check imposed by the presidential veto.

But defining the structure of Congress was by far the bitterest fight in the Convention, pitting the large states against the small, and bringing them almost to the point of breaking up. The Confederation Congress was unicameral (one chamber, or house) and each state had an equal vote. The Virginia Plan proposed to create a bicameral legislature (two chambers), and to eliminate equal representation of states by giving each a number of representatives proportional to their population. Madison believed that the states’ obsession with their own local interests were the cause of the union’s problems, and believed that the new government had to represent the people of the United States to limit the bad influence of the states. But it did not escape the notice of the small states that the proposal came from the largest state, Virginia, which had ten times as many people – not even counting their slaves – as the smallest. Maryland’s Luther Martin and Connecticut’s Roger Sherman both pointed out that the four largest states had a majority of the population, so with proportional representation they could dominate the other nine.¹⁵ In response a large state delegate noted that

there were more small than large states, so if they stuck with equal representation the small ones could oppress the larger. Gunning Bedford, from Delaware, the smallest state, made the most intemperate speech of the Convention, bluntly telling the large state delegations “I do not, gentlemen, trust you. If you possess the power . . . what then would prevent you from exercising it to our destruction?” and suggesting that the small states might be driven to leave the union and seek support from foreign powers.¹⁶ Virginia’s Gouverneur Morris argued almost as intemperately that the small states were at risk of wrecking the union, and war might be necessary to preserve it: “This Country must be united. If persuasion does not unite it, the sword will,”¹⁷ Delegates begged Bedford to explain that he wasn’t really suggesting dividing the union with help from foreign powers, and Morris to clarify that he wasn’t really advocating union at the point of the sword. The convention was on the point of breaking up. Rufus King, from the second-largest state, Massachusetts, said if the proposal for equal representation passed, “our business here is at an end.”¹⁸ On next day, Luther Martin, from mid-sized Maryland, threw King’s words back at him, insisting on equal representation “or our business is at an end.”¹⁹

The conflict was primarily about how much voice each state would have in the proposed new government, but there was an important theoretical question underlying it: Should the new government be national in the sense of representing the people of the United States, or should it be federal in the sense of representing the states as distinct political units? In support of Madison’s desire to reduce the influence of states as self-interested political bodies, Pennsylvania’s James Wilson asked, “For whom do we form a constitution, for men, or for imaginary beings called States?”²⁰ But he was from Pennsylvania, the third largest state. For the small states, New Jersey’s Jonathan Dayton responded that “We, as distinct societies, entered into the compact,” and asked “Will you now undermine the thirteen pillars that support it?”²¹

The conflict was fought intermittently over most of the month of June and into July. On June 11 Connecticut proposed a compromise: as the Convention was considering a bicameral legislature, let the states be represented proportionally in one chamber and equally in the other. The proposal was defeated. A few days later New Jersey attempted to stop the Virginia Plan by proposing its own plan, which would have kept the Confederation Congress, one chamber with equal representation, although with more power, and adding an executive and judiciary. This proposal was

also defeated. On June 28 the small state representatives tried and lost again. Connecticut then again proposed its compromise position accepting the proportional representation for the first chamber of the legislature as satisfying large state's interests and arguing that the second chamber should therefore protect the small state's interests by having equal representation. The heated debate continued for several days, then the proposal was defeated again, but this time by a tied vote. Encouraged, the small states kept up the fight, and fearing that deadlock would destroy the progress they'd made, the Convention voted to create a committee with one member from each state to examine the issue, and pointedly excluded the most adamant large-state opponents of equality, such as Madison and Hamilton. The committee met for two days, then returned with Connecticut's compromise again. Finally, on June 7, the third time it was voted, the Connecticut proposal won, 6-3, with two votes divided. The Great Compromise had finally been achieved.

The 3/5 Compromise

Although the Convention was agreed upon proportional representation in the House of Representatives, the question remained about how to count a state's population for purposes of determining how many representatives it would have. The southern states wanted their slaves to be counted. Their purpose was simply to maximize their influence in the new government. Virginia had 500,000²² free people and 300,000 slaves. South Carolina had 140,000 free people and just over 100,000 slaves. The other southern states had 1/3 or more of their total population as slaves. The northern states, by contrast, were critical of slavery and had fewer slaves in their population. Pennsylvania had 430,000 free people, but less than 4,000 slaves. Massachusetts was the second largest state with 475,000 people, but had no slaves. These northern states objected that the southern states treated slaves as property, to citizens, so it was inappropriate to count them at all for purposes of representation. In the end they compromised on including 3/5 of a state's slaves in determining their population for determining how many Representatives they would get in the House.

The 3/5 compromise and the other clauses protecting slavery are the ugliest parts of the Constitution that was crafted at the Convention. But just as the large states could not persuade the small states to give up equal representation in at least one chamber of the legislature, the northern states could not persuade the southern states to give up counting slaves. Had the

northern states insisted, this might also have been a cause that broke up the Convention and led to a dissolution of the union. That also would have done nothing to end or limit slavery. Sometimes the best strategy is to take what you can get, however imperfect, and look for future opportunities to make improvements. Seven decades later, after the Civil War, the 13th Amendment changed prohibited slavery and specified that all people of the state would be counted for purposes of determining how many representatives a state would have.

Selection of Senators

The selection of members of the second house of the legislature, the Senate, was also the subject of controversy. Madison's Virginia Plan proposed that they would be chosen by the first legislative house (the House of Representatives) from people chosen by the state legislatures. This would mean not every state would necessarily be represented, if their nominees weren't chosen. The Convention soon moved toward appointment by state legislatures, a move opposed by Madison and Hamilton, who wanted to weaken the state legislatures. But to their dismay, in the end the Convention settled on equal representation of each state in the Senate with each state's legislators choosing its Senators. This meant that the Senate didn't just represent the states as political bodies, but that it literally represented the state legislatures. The House belonged to the people; the Senate belonged to their state governments.

As the country developed a stronger sense of national identity after the Civil War, and as claims of corruption in the selection of Senators grew, the demand for direct election of Senators grew. This was finally achieved with the 17th amendment in 1913. A minority of people still argue that this amendment was a mistake, and that an important check on the federal government was lost when the state legislatures' representation in Congress was eliminated. Madison and Hamilton, however, would surely be pleased. But even though the state legislatures are no longer directly represented in the Senate, each state still has equal representation, and are so are still represented as distinct political bodies: Wyoming's less than 600,000 people and California's 40 million people have the same voice. Some people argue that this is undemocratic, and see the Senate as illegitimate, while others see it as important to ensure the small states are not dominated by a handful of big states. Without taking sides on that issue, we can see that the debate

about whether Congress should represent “the people” or “ echoes down to the present day.

Factual Questions

1. Did the 13 original states all devote their greatest efforts to winning the Revolutionary war?
2. What kind of internal problems did the United States face after the war?
3. Did the Constitution create 1 country or 13 countries?
4. Define federalism
5. What is a unitary system? A confederal one?
6. Where did the federal government’s powers come from?
7. Where are the federal government’s powers enumerated in the Constitution?
8. Did James Madison propose separation between Congress and President?
9. To prevent anyone from getting too much control over any part of the federal government’s power, each branch was given some share in the other branches’ powers. This is called what?
10. Has history shown that separation of powers is necessary to protect liberty?
11. When designing Congress, what kind of representation did the small states want? What kind did the big states want?
12. What was the 3/5 compromise?
13. How did the Convention agree to have Senators selected?
14. What amendment changed the selection of Senators, when did that happen, and how are Senators now selected?

Conceptual Questions

- A. What was the collective action problem the states faced during the Revolutionary War?
- B. What is the value of agenda-setting?
- C. Why did the Constitutional Convention choose federalism over a confederation or a unitary state?
- D. What does it mean to say that a federal government is one of enumerated powers?
- E. What is the purpose of dividing up, or fragmenting, political authority the way the delegates to the Convention did?
- F. What does it mean to say the U.S. doesn’t have separation of powers, but separated institutions sharing powers?
- G. Should we be represented in Congress as people or as states?

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- ²² Population numbers are based on the 1790 census, conducted three years after the Convention. Kentucky's and Maine's populations are included in Virginia's and Massachusetts's respectively, as they had not become separate states by 1787.