

# Chapter 2

## Constitutional Democracy: Promoting Liberty and Self-Government

### Learning Objectives

Having read the chapter, the students should be able to do each of the following:

- Recall key events that led to the U.S. Constitution.
- Explain how the Constitution was negotiated and ratified.
- Identify the Constitution and its basic components.

### Chapter Outline

- I. Before the Constitution: The Colonial and Revolutionary Experiences
  - A. The Declaration of Independence
  - B. The Articles of Confederation
  - C. A Nation Dissolving
- II. Negotiating Toward a Constitution
  - A. The Great Compromise: A Two-Chamber Congress
  - B. The Three-Fifths Compromise: Issues of Slavery and Trade
  - C. A Strategy for Ratification
  - D. The Ratification Debate
  - E. The Framers' Goals
- III. Protecting Liberty: Limited Government
  - A. Grants and Denials of Power
  - B. Using Power to Offset Power
  - C. Separated Institutions Sharing Power: Checks and Balances
    1. Shared Legislative Powers
    2. Shared Executive Powers
    3. Shared Judicial Powers
  - D. The Bill of Rights
  - E. Judicial Review
- IV. Providing for Representative Government
  - A. Democracy versus Republic
  - B. Limited Popular Rule
  - C. Altering the Constitution: More Power to the People
    1. Jeffersonian Democracy: A Revolution of the Spirit
    2. Jacksonian Democracy: Linking the People and the Presidency
    3. The Progressives: Senate and Primary Elections
- V. Constitutional Democracy Today
- VI. Summary

## Focus and Main Points

This chapter describes how the principles of representative government and limited government are embodied in the Constitution and it explains the tension between them. It also indicates how these principles have been modified in practice in the course of American history. The main points presented in this chapter are:

- *America during the colonial period developed traditions of limited government and representative government.* These traditions were rooted in governing practices, political theory, and cultural values.
- *The Constitution provides for limited government mainly by defining lawful powers and by dividing those powers among competing institutions.* The Constitution, with its Bill of Rights, also prohibits government from infringing on individual rights. Judicial review is an additional safeguard.
- *The Constitution in its original form provided for representative government mainly through indirect methods of electing representatives.* The framers' theory of representative government was based on the notion that political power must be separated from immediate popular influences if sound policies are to result.
- *The idea of popular government—in which the majority's desires have a more direct and immediate impact on governing officials—has gained strength since the nation's beginning.* Originally, the House of Representatives was the only institution subject to direct vote of the people. This mechanism has been extended to other institutions and, through primary elections, even to the nomination of candidates for public office.

## Chapter Summary

The Constitution of the United States is a reflection of the colonial and revolutionary experiences of the early Americans. Freedom from abusive government was a reason for the colonies' revolt against British rule, but the English tradition also provided ideas about government, power, and freedom that were expressed in the Constitution and, earlier, in the Declaration of Independence.

The Constitution was designed in part to provide for a limited government in which political power would be confined to proper uses. The framers wanted to ensure that the government they were creating would not itself be a threat to freedom. To this end, they confined the national government to expressly granted powers and also denied it certain specific powers. Other prohibitions on government were later added to the Constitution in the form of stated guarantees of individual liberties in the Bill of Rights. The most significant constitutional provision for limited government, however, was a separation of powers among the three branches. The powers given to each branch enable it to act as a check on the exercise of power by the other two, an arrangement that during the nation's history has in fact served as a barrier to abuses of power.

The Constitution, however, made no mention of how the powers and limits of government were to be judged in practice. In its historic ruling in *Marbury v. Madison*, the Supreme Court assumed the authority to review the constitutionality of legislative and executive actions and to declare them unconstitutional and thus invalid.

The framers of the Constitution, respecting the idea of self-government but distrusting popular majorities, devised a system of government that they felt would temper popular opinion and slow its momentum so that the public's "true interest" (which includes a regard for the rights and interests of the minority) would guide public policy. Different methods were advanced for selecting the president, the members of the House and the Senate, and federal judges as a means of insulating political power against momentary majorities.

Since the adoption of the Constitution, the public gradually has assumed more direct control of its representatives, particularly through measures that affect the way officeholders are chosen. Presidential popular voting (linked to the Electoral College), direct election of senators, and primary elections are among the devices aimed at strengthening the majority's influence. These developments are rooted in the idea, deeply held by ordinary Americans, that the people must have substantial direct influence over their representatives if government is to serve their interests.

## **Major Concepts**

### **Anti-Federalists**

A term used to describe opponents of the Constitution during the debate over ratification.

### **Bill of Rights**

The first 10 amendments to the Constitution. They include rights such as freedom of speech and religion and due process protections (for example, the right to a jury trial) for persons accused of crimes.

### **checks and balances**

The elaborate system of divided spheres of authority provided by the U.S. Constitution as a means of controlling the power of government. The separation of powers among the branches of the national government, federalism, and the different methods of selecting national officers are all part of this system.

### **constitution**

The fundamental law that defines how a government will legitimately operate.

### **constitutional democratic republic**

A government that is constitutional in its provisions for minority rights and rule by law; democratic in its provisions for majority influence through elections; and a republic in its mix of deliberative institutions, which check and balance each other.

**democracy (according to the framers)**

A form of government in which the people govern, either directly or through elected representatives.

**denials of power**

A constitutional means of limiting governmental action by listing those powers that government is expressly prohibited from using.

**Electoral College**

An unofficial term that refers to the electors who cast the states' electoral votes.

**electoral votes**

The method of voting used to choose the U.S. president. Each state has the same number of electoral votes as it has members in Congress (House and Senate combined). By tradition, electoral voting is tied to a state's popular voting. The candidate with the most popular votes in a state (or, in a few states, the most votes in a congressional district) receives its electoral votes.

**Federalists**

A term used to describe supporters of the Constitution during the debate over ratification.

**grants of power**

The method of limiting the U.S. government by confining its scope of authority to those powers expressly granted in the Constitution.

**Great Compromise**

The agreement of the constitutional convention to create a two-chamber Congress with the House apportioned by population and the Senate apportioned equally by state.

**inalienable (natural) rights**

Those rights that persons theoretically possessed in the state of nature, prior to the formation of governments. These rights, including those of life, liberty, and property, are considered inherent and as such are inalienable. Since government is established by people, government has the responsibility to preserve these rights.

**judicial review**

The power of courts to decide whether a governmental institution has acted within its constitutional powers and, if not, to declare its action null and void.

**liberty**

The principle that individuals should be free to act and think as they choose, provided they do not infringe unreasonably on the rights and freedoms of others.

**limited government**

A government that is subject to strict limits on its lawful uses of power and, hence, on its ability to deprive people of their liberty.

**New Jersey (small-state) Plan**

A constitutional proposal for a strengthened Congress but one in which each state would have a single vote, thus granting a small state the same legislative power as a larger state.

**primary election (direct primary)**

A form of election in which voters choose a party's nominees for public office. In most states, eligibility to vote in a primary election is limited to voters who designated themselves as party members when they registered to vote.

**representative government**

A government in which the people govern through the selection of their representatives.

**republic**

A form of government in which the people's representatives decide policy through institutions structured in ways that foster deliberation, slow the progress of decision making, and operate within restraints that protect individual liberty. To the framers, the Constitution's separation of powers and other limits on power were defining features of a republican form of government, as opposed to a democratic form, which places no limits on the majority.

**separated institutions sharing power**

The principle that, as a way to limit government, its powers should be divided among separate branches, each of which also shares in the power of the others as a means of checking and balancing them. The result is that no one branch can exercise power decisively without the support or acquiescence of the others.

**separation of powers**

The division of the powers of government among separate institutions or branches.

**social contract**

A voluntary agreement by individuals to form a government that is then obligated to work within the confines of that agreement.

**Three-Fifths Compromise**

A compromise worked out at the 1787 convention between northern states and southern states. Each slave was to be counted as three-fifths of a person for purposes of federal taxation and congressional apportionment (number of seats in the House of Representative).

**tyranny of the majority**

The potential of a majority to monopolize power for its own gain and to the detriment of minority rights and interests.

## **Virginia (large-state) Plan**

A constitutional proposal for a strong Congress with two chambers, both of which would be based on numerical representation, thus granting more power to the larger states.

## **Lecture Outline**

This lecture outline closely follows the text in its organization. The instructor can use this outline as a lecture aid.

The author focuses on the foundations of limited government in the United States. In the beginning of the chapter, a review of the origins of the restriction of governmental authority is provided, followed by a discussion of constitutional restraints on power and the related issue of judicial review. The continuing debate over representation and degree of self-rule is also highlighted, tracing its development from the ratification of the Constitution in 1789 through the Progressive Era reforms in the modern era. The chapter concludes with an examination of contemporary American constitutional democracy.

### ***I. Before the Constitution: The Colonial and Revolutionary Experiences***

Early Americans' admiration for limited government was based on their British heritage and their colonial experience. This British heritage included the concept of a monarchy restricted by Parliament.

- Colonial charters had provisions for limited government, such as trial by jury, and for elected assemblies.
- The British failed to uphold the colonists' established traditions, and they imposed taxes, which led to the cry of "no taxation without representation."
- The First Continental Congress defined the colonists' demands, and violence ensued when the king refused their demands.

John Locke's writings introduced the concepts of the social contract and inalienable natural rights such as life, liberty, and property. Locke's ideas enjoyed great popularity in the colonies, where people enjoyed a degree of freedom unthinkable in Europe. Thomas Jefferson paraphrased Locke's ideas in the Declaration of Independence during the Revolutionary War.

- A constitution is the fundamental law that defines how government operates: how leaders are chosen; the institutions and procedures of government; and lawful power and limits on that power. It is the supreme law of the land.

- The first government of the United States was, instead, based on the Articles of Confederation, which subordinated national authority to that of the states, creating a weak and ineffectual national government.
- The national government lacked the power to tax and was dependent on voluntary contributions from the states. It was thus unable to finance an adequate army and navy.
- Congress could not shape a national economy, as it could not interfere with the commerce of the states.
- The Articles demonstrated the consequences of an overly weak national authority. This resulted in public disorder, economic chaos, and inadequate defense.
- Shays' Rebellion underscored these problems and provided the impetus for a constitutional convention.

## ***II. Negotiating Toward a Constitution***

Formulating and agreeing upon a stronger national government required a variety of compromises:

- An effective national government required a union of people, not just states.
- The Great Compromise was struck between the large-state and small-state factions, resulting in the creation of a bicameral Congress with a state-based Senate and a population-based House.
- The Three-Fifths Compromise between the commercial, non-slave North and the agricultural, slave South allowed slaves to count for part of the population in the South for congressional representation purposes. A separate compromise between the two regions prohibited a tax on exports (but not imports) and prohibited the end of the slave trade before 1808.
- The strategy for ratification of the Constitution was to have independently elected ratifying conventions in each state approve the document, with nine states required for approval.
- Madison, Hamilton, and Jay wrote *The Federalist Papers* in support of the new constitution. In 1788, ratification by the ninth state occurred.
- The framers' goals of creating a strong national government while preserving the states were attained by adopting a federal system, with sovereignty divided between the national and state governments.

### ***III. Protecting Liberty: Limited Government***

The Constitution seeks to establish a government strong enough to enforce collective interests without endangering personal liberty.

- By enumerating the powers possessed by the national government, the Constitution constrains it, implicitly denying it other, unmentioned powers.
- The Constitution also limits the government by explicitly prohibiting certain practices such as *ex post facto* laws.
- The framers' main instrument of limited government was a system of separated institutions sharing power, creating elaborate checks and balances among the three branches of government.
- The Bill of Rights restrains government by granting citizens a set of civil liberties that cannot lawfully be denied by government.
- Judicial review, established in the 1803 case of *Marbury v. Madison*, allowed the federal courts to restrain the actions of the other two branches.

### ***IV. Providing for Representative Government***

The framers made an important distinction between a democracy and republic.

- In a democratic government, the people decide issues directly.
- In a republican or representative government, elected officials make policy choices instead of the people.
- Fearing the chaos caused by the tyranny of the majority that had plagued previous democracies, the framers constructed a republican form of government characterized by limited popular rule.
- The Constitution contains a variety of mechanisms to institute representative, limited government by the people.

With the passage of time, an increasing amount of popular influence has been built into the U.S. political system. The first change can be found in the Jeffersonian conception of democracy.

- Jefferson believed that ordinary people were deserving of a larger governing voice than provided by the original Constitution.



- However, Jefferson had no clear idea of how popular government would work in practice.

The era of Jacksonian democracy witnessed a greater role for the public in government.

- Andrew Jackson argued that the presidency was the only office that represented the entire American nation.
- Jackson persuaded states to make popular voting the basis for selecting presidential electors.

Changes were implemented during the Progressive Era that were designed to weaken the power of big business and party bosses.

- Two important Progressive reforms at the local level were the initiative and referendum.
- Two of the most important Progressive changes for national politics were the direct election of U.S. senators and the introduction of primary elections.
- Charles Beard's argument that the framers were mainly concerned with protecting their property and wealth fit the Progressive Era's themes and assumptions.

## ***V. Constitutional Democracy Today***

The type of government created in 1787 could accurately be called a constitutional democratic republic.

- It is constitutional in its requirement that power be attained by electoral means with a respect for individual rights.
- It is democratic in its provisions for majority influence through elections.
- It is a republic in its multiple institutions.
- In some aspects, it is a model of representative government, with its extension of the principle of direct popular election to office, frequent elections, and reliance on primary elections rather than party organizations for the selection of nominees.
- The link between an electoral majority and a governing majority in the U.S. is, however, less direct than in many democratic systems.

## Complementary Lecture Topics

Below are suggestions for lectures or lecture topics that will complement the text. In general, these topics assume that students will have read the chapter beforehand.

- The Constitution is designed to preserve liberty. Americans have traditionally distrusted their perception of big government, and the American system puts a variety of limits on governmental authority, and safeguards personal rights. Given the present-day international and domestic environment, is this emphasis still practical and workable?
- The U.S. Constitution restricts political power in a number of ways—grants of power, denials of power, a separation and overlap of powers between institutions, and the Bill of Rights. Evaluate the effectiveness of these various mechanisms.
- The limited efficacy of constitutional constraints on political power is widely acknowledged. Some of the world's most repressive regimes are governed by constitutions that solemnly provide for individual rights and separation of powers. What are the social, economic, and cultural conditions that promote limited or repressive government?
- How would politics in America operate differently if the nation adopted a British-style parliamentary system? Do you believe such a change would be for the better or not, in terms of overall government performance and leadership effectiveness? Explain in intricate detail.

## Class Discussion Topics

1. Discuss with students their assessment of the fairness of the current Electoral College system. Suggest possible changes, such as proportional division of Electoral College votes based on the popular vote within the state (which two states currently use to varying degrees). Why has it been so difficult to reform the Electoral College? Are there any serious prospects for changes in the future, and why? Is there any variation today in how states allocate their electoral college votes?
2. Acquaint your class with more detailed objections of the Anti-Federalists to the adoption of the U. S. Constitution. Ask your class to respond to their concerns, addressing which ones seem to have been valid and which have not materialized as serious threats to liberty.
3. Discuss how the Progressive changes to the electoral process—including direct election of senators, referendums, initiatives, and other measures—have changed American politics over time. Suggest hypothetical changes to history in which these measures had not been adopted in the American political electoral system. What effect might this have

had on such diverse governmental aspects as the power of business interests, the party system, or the power of the House of Representatives versus the Senate?

4. Describe the workings of one of the European parliamentary democracies (or for greater contrast, use India) to illustrate the majoritarian aspects of popular rule. Use it to contrast with the American model of representation, including the role of the executive and judiciary. Address the issue of tyranny of the numerical majority, and protection of the numerical minority.