

CHAPTER 02

The Founding and the Constitution

Chapter Goals

- Explain the conflicts and coalitions that led to the Declaration of Independence and the Articles of Confederation.
- Describe the political context of the constitutional convention and the compromises achieved there.
- Describe the principles of governance and the power of the national government defined by the Constitution.
- Differentiate between the Federalist and Antifederalist stance on the ratification of the Constitution.
- Explain how, and how often, the Constitution has been changed.

The Colonial Background

- Religious Separatists seeking religious liberty.
- The Mayflower, and the Compact.
 - Establish the concept of Representative assembly.
 - Consent of the affected individuals.
- More Colonies and More Government.
- 13 colonies of North America established between 1607-1732
- British Restrictions and Colonial Grievances



The Founding and the Constitution

When the framers of the Constitution met in 1787, they set out to establish a political system that would protect liberty and place limits on government.

They also believed a powerful government required a broad popular base. However, they debated how best to protect liberty and how to balance democracy with other concerns.



The First Founding: Interests and Conflicts

Americans had different financial interests prior to the Revolution.

- New England merchants
 - Southern planters
 - Royalists
 - Shopkeepers, artisans, and laborers
 - Small farmers
- Conflicting economic interests are long-standing elements in American politics.
 - This list eventually narrows into two camps (Federalists and Antifederalists) demonstrating the role and importance of coalition politics that remains a central feature in American government and politics.

The First Founding: British Taxes and Colonial Interests

- During the first half of the 1700s, Britain ruled its American colonies with a light hand.
- This relationship changed when:
 - The British government accumulated debt from waging the French and Indian War.
 - Britain had to continue to spend money to protect the colonies.
 - Great Britain sought to extract revenue from the colonists by placing taxes on commerce.

The First Founding: British Taxes and Colonial Interests

Early Tax Revolts

- Sugar Act 1764
 - Enforced a previous tax on molasses
- The Stamp Act 1765
 - Required printed materials to have a stamp on them
- The most powerful economic segments at that time were new England merchants and wealthy southern planters. Prior to these taxes, they were content with British colonial rule.

The First Founding: British Taxes Hurt Colonial Interests

- These two new taxes were enacted during an economic depression, at a high cost to their business and personal wealth.
- As a result, the new taxes pushed merchants and planters into a coalition with the lower classes in a rebellion against the colonial government.
- The rebellion was an agreement not to purchase the stamps and a boycott of purchasing taxed molasses.

Many colonists saw these moves as detrimental to their livelihoods and a challenge to the colonies' autonomy.

- Under the slogan “No taxation without representation,” they organized demonstrations and a boycott of British goods.

The Boston Tea Party

Disagreements between the British and the colonists over taxation continued.

In 1773, the British government again took action with the Tea Act.

- East India Trade Company had monopoly on importing tea and sought to bypass the merchants by selling it directly to the colonists
- Goal was to provoke a government clampdown
 - Closed the Port of Boston and shut down the Massachusetts government

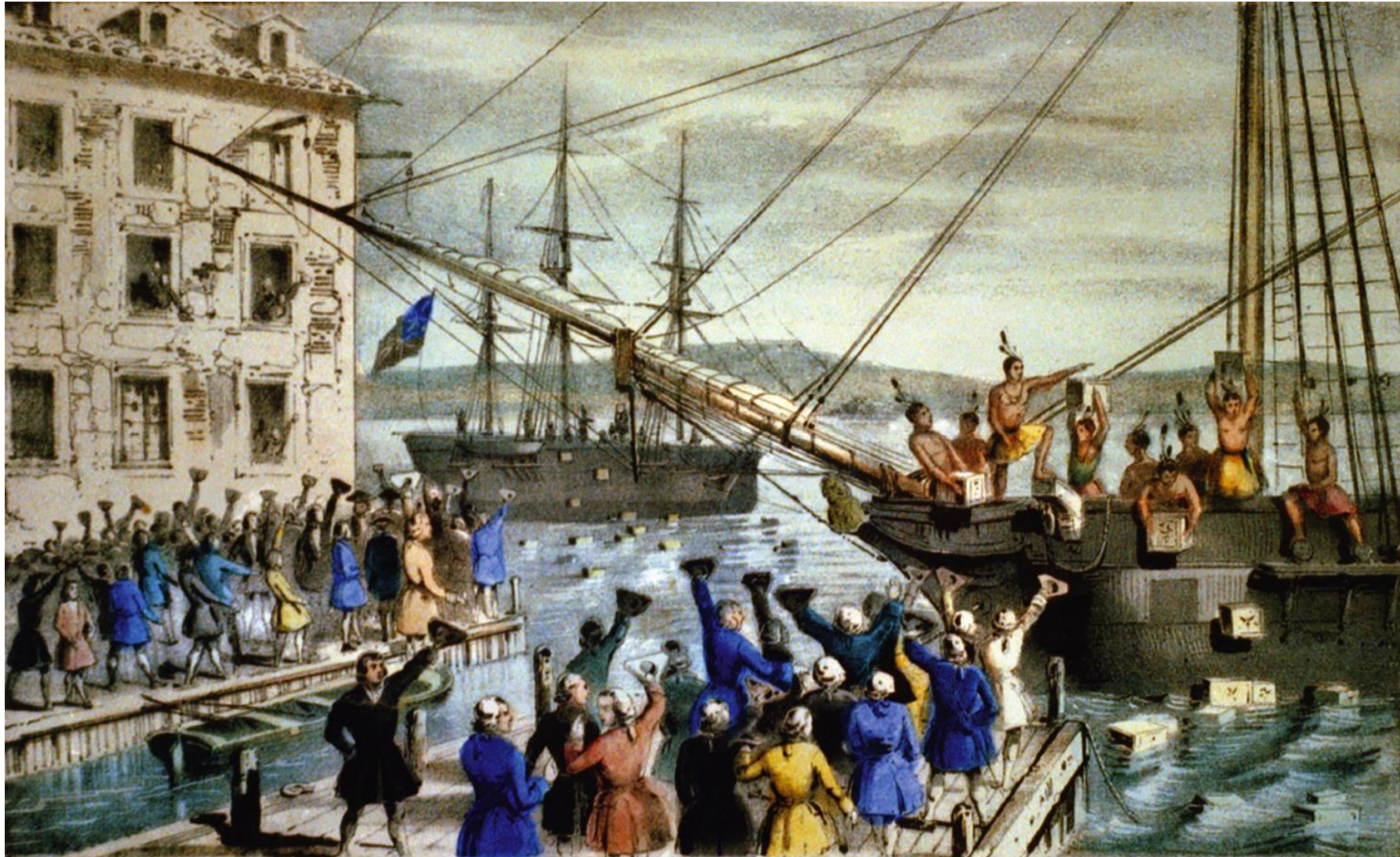
The colonists, led by Samuel Adams, responded in protest.

- “Disguised” as Mohawk Indians, they boarded three British ships.
- They threw an entire cargo of tea into Boston Harbor.

The Boston Tea Party

- During the blockade of Boston, cities and communities along the Atlantic seaboard provided essential support to the city of Boston by sending food and other supplies to sustain Bostonians.
- This collective colonial effort pulled the disparate colonists together.
- The vast connections made in the effort to support Boston showed the colonists the deep and widespread support for Revolutionary activities.
- Leaders in the different colonies now believed they could coordinate a revolution across the colonies and the mass citizenry would support them.

The Boston Tea Party



The Declaration of Independence

- Resentment mounted against British rule during the 1770s and the colonists became determined to fight the British in order to win their rights and liberties.
- They signed the Declaration of Independence in 1776 proclaiming they were done with British rule.

How the colonists get to the point of DOI?

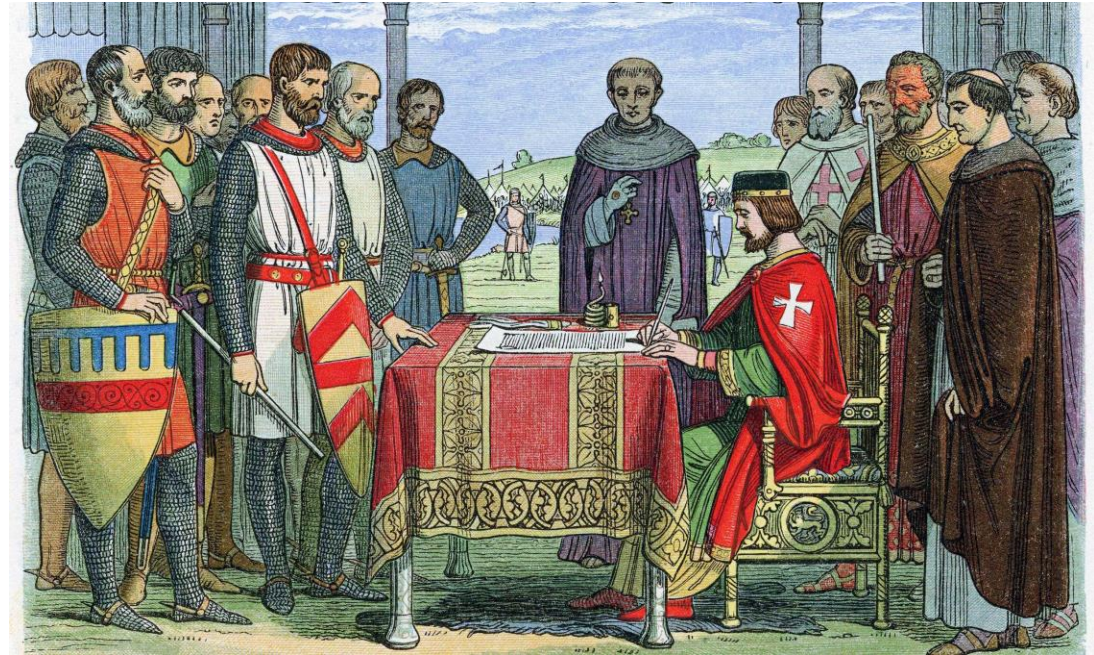
- **Magna Carta 1215** -Clause 29 The origins of trial by jury.
- **English Bill of Rights 1689**-Declaration of rights and liberties of Englishmen-freedom of speech, excessive bail, free election, taxes without Parliament's consent.

The Declaration of Independence

The Magna Carta is a charter of liberty and political rights obtained from King John of England by his rebellious barons at Runnymede in 1215, which came to be seen as the seminal document of English constitutional practice.

The Magna Carta gives us the concepts of trial by jury, due process of law, no taking of property without payment and a system of weights and measures.

Read The Magna Carta.



The Declaration of Independence

Virginia Declaration of Rights- was drawn upon by Thomas Jefferson for the opening paragraphs of the Declaration of Independence. It was widely copied by the other colonies and became the basis of the Bill of Rights. Written by George Mason, it was adopted by the Virginia Constitutional Convention on June 12, 1776.

- That all men are by nature equally free and independent and have certain inherent rights.
- That all power of execution of laws, by the consent of the people via their representatives.

The Influence of the European Enlightenment

The Founders were also influenced by the Enlightenment where society is to be reformed using reason, and knowledge, it challenged traditional ideas and customs' and opposed all forms of superstition.

John Locke- Established the notion of the social contract and his belief that mankind is endowed with certain inalienable rights, including life, liberty, and property. Social contract is to uphold the inherent rights of the individual.

Thomas Hobbs- Social contract exists between ruler and the masses in an effort to keep civilization from reverting back to its natural state- savage anarchy.

The Influence of the European Enlightenment

Baron Charles de Montesquieu- Believed in a political system that separate that power of the government and provides a series of checks and balance so that one branch could not gain too much power and become a tyranny.

Jean Jacques Rousseau- In his book the Social Contract he proposes that all men are created equal and endowed with certain inalienable rights. Sees freedom and liberty not as license to do whatever you want, but rather, the opportunity to do the right thing.

The Declaration of Independence

In July 1775, The Second Continental Congress Sent the Olive Branch Petition to King George III.

Attempted to bring to attention of the king the situation that the colonies are experiencing.

- Parliament imposed new laws and regulations on the colonies without their knowledge or approval.
- The aggressive behavior of the king's ministers toward the colonies.
- The colonist have been compelled to arm them selves for their own defense.
- Implore the king to intervene with parliament and to address the situation that the colonist are suffering in America.
- Remind the king that they are still loyal subjects of the crown.

The Declaration of Independence

Olive Branch Petition was rejected in August 1775, the King believed that:

- The British army could control the situation and quell any rebellion.
- Most colonist were still loyal to the British Crown, and it was the traitorous views of their leaders that were causing all the trouble.
- Believed that if one colony was emancipated, it would lead to other colonies to want their independence.

Domino Theory.

The Declaration of Independence

King George III (1738-1820) was king of Great Britain and Ireland from 1760 until his death on January 29, 1820. Under George III, the British Parliament attempted to tax the American colonies. Ultimately, exasperated at repeated attempts at taxation, the colonies proclaimed their independence on July 4, 1776.



The Declaration of Independence

In 1776, the Second Continental Congress appointed a group to draft a statement of independence.

The draft committee included:

Thomas Jefferson of Virginia

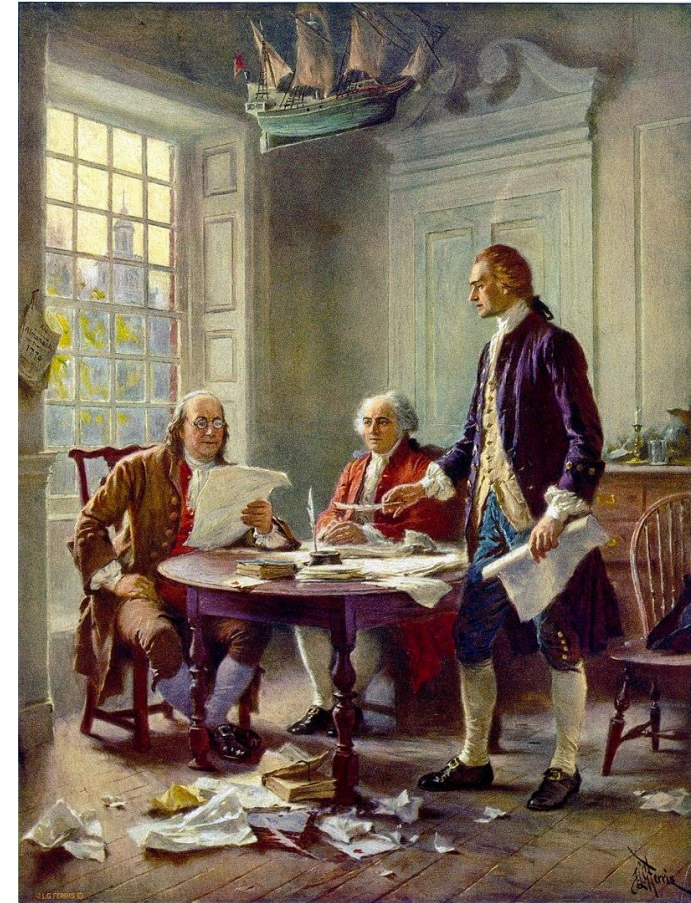
Benjamin Franklin of

Pennsylvania

Roger Sherman of Connecticut

John Adams of Massachusetts

Robert Livingston of New York



The Declaration of Independence

- July 4, 1776 – The Declaration of Independence
 - Natural Rights and a Social Contract.
 - Philosophical document stating that certain rights were inalienable.
 - Political document explaining that since the king has violated those rights, the colonists had the right to separate.
 - Addressed multiple audiences.
 - Tells the world that since they cannot get the king to address their issues, he has forfeited their allegiance and as such have proclaimed to the world that they are a free and independent people.

The Declaration of Independence

The Declaration of Independence (1776) is: A grievance Document

- He has refused his Assent to Laws, the most wholesome and necessary for the public good.
- For imposing Taxes on us without our Consent.
- For depriving us in many cases, of the benefit of Trial by Jury.
- He has made Judges dependent on his Will alone for the tenure of their offices, and the amount and payment of their salaries.
- For cutting off our Trade with all parts of the world.
- For quartering large bodies of armed troops among us.
- He has endeavored to prevent the population of these States; for that purpose, obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither and raising the conditions of new Appropriations of Lands.

The Declaration of Independence

What was the main purpose of the Declaration of Independence:

- Getting reluctant colonists to realize that loyalty to Britain was a lost cause.
- Explaining the colonists' position on the purpose of human government.
- Listing the colonists' grievances against King George III to show the legitimacy of their actions to others.
- To encourage foreign nations to help them.
- Read the D.O.I- Located in my Faculty Website / Textbook Appendix A1

The Declaration of Independence

The year after fighting began between American colonists and the British army, the Continental Congress voted for independence on July 2, 1776, and approved the Declaration of Independence two days later, on July 4.



The Articles of Confederation: America's First Government

After declaring independence, the Continental Congress adopted the Articles of Confederation.

The Articles of Confederation, 1777–1789

In 1777, the colonies established a centralized government to run the war against Britain. These articles were not ratified by the states until 1781 after the war had been going on for six years. It was a fragile league of friendship more than a national government. When the war ended in 1783, the need for the government began to fade and conflicts between the states grew intense.

The Articles of Confederation: America's First Government

- **The Articles of Confederation (1777–1789)**

Established The United States of America as a confederacy of independent states where the states retained all sovereignty, freedom, and independence, and every Power, Jurisdiction and right, which is not by the confederation expressly delegated to Congress remains with the states.

Review the Articles of Confederation located in my faculty website.

The Failure of the Articles of Confederation

Weaknesses of the Articles

- First American government weak and ineffective.
- Created a confederation of 13 states.
- There was no president, only a legislature.
- Members of Congress were chosen and paid by the states.
- Weak central government with limited powers.
- Impractical government requiring 9 of 13 votes to pass any laws, and all 13 to make amendments.
- Each state had one vote regardless of population size.
- There was no national army or navy to protect the citizens—only state militias.
- The national government had no taxing authority.
- The national government could not stop a state from competing with other states for foreign commerce.

The Failure of the Articles of Confederation

A series of developments highlighted the shortcomings of the Articles of Confederation.

- Foreign affairs: Under the Articles, they were unable to enforce treaties. A new treaty was needed with the British to cover the disputes left over from the war. The British government stated it would negotiate with all 13 states separately.
- Economic and political turmoil: The end of the war for independence brought new political leadership in many states causing the merchant class to worry that the central government lack the authority to establish and enforce a unified economic and trade policy for the entire nation.
- Weakness domestically and internationally: The lack of a strong central government lead to domestic instability and weakness on the world stage causing many to believe that if the country descended into anarchy, the British would once again try to reconquer the colonies.

The Articles of Confederation

The Federal Government Structure under the Articles of Confederation



Shays' Rebellion

Shays' Rebellion in 1787 magnified concerns about the Articles of Confederation.

Daniel Shays, a former army captain, led a mob of farmers in a rebellion against the Massachusetts government.

- The goal of the rebellion was to prevent the court from repossessing debt-ridden lands held by poor farmers in western Massachusetts by keeping county courts from sitting until after the next election.
- Shays and his followers attempted to capture the federal arsenal in Springfield to protest heavy taxes levied by the Massachusetts legislature.
- In the end, Shays' Rebellion failed as the state government ultimately regained control.
- The rebellion proved the Articles of Confederation too weak to protect the fledgling nation.

Shays's Rebellion



Annapolis Convention Led to a New National Convention

Shays' Rebellion and the Need for Revision of the Articles

- Economic depression / lack of unified currency.
- The rebellion revealed the weaknesses of the new central government, which lacked both the power to tax and a national army.
- Served as a focal point for those who would draft the new constitution.

Drafting the Constitution

- Problems to be solved
 - Relationship between states and central government
 - Powers of the national legislature
 - Need for executive leadership
 - Establishment of policies for economic stability

Annapolis Convention Led to a New National Convention

Annapolis Convention

- In 1786, under the leadership of Alexander Hamilton, a meeting took place in Annapolis, Maryland to discuss trade and navigation and was attended by five states. They issued a call for all states to send delegates to Philadelphia in May 1787. This meeting became known as the Constitutional Convention.
- In the meantime, farmers in western Massachusetts rebelled under the leadership of Daniel Shays. This led to a reinforcement of the view that a stronger national government was necessary.

The Constitutional Convention

Constitutional Convention, 1787

- ***Interests***: the financial interests of the nation was in question. In order to make America into a great commercial nation and foster nation and international trade the nation needed uniform laws, stable money, sound credit, enforcement of contracts and debt collection, and protection of private property rights.
- ***Principles***: the new Constitution embodied leading political theories of the time regarding liberty, equality, and democracy.
- ***Factions***: There are many factions among the delegates where a majority were strong nationalists, and a small group was totally against national authority.

The Constitutional Convention

- Convened in Philadelphia from May to September 1787
 - State legislatures sent fifty-five delegates who were the leading citizens of their respective colonies.
 - Washington
 - Franklin
 - Hamilton
 - Determined the Articles were beyond repair
 - Predicament: government was too weak, but fearful of a government too strong
 - Anarchy or tyranny?

The Constitutional Convention

- James Madison, Virginia
 - Father of the Constitution.
- Consensus
 - Agreement that the government should be a **Republic**
 - Power derived from the people and whose officials were accountable to the people.
 - An indirect democracy in which the people vote for at least some of the officials who represent them.

The Constitutional Convention

Consensus

- Republican form of government.
- Balanced government with strong national component.
- Change from the *Articles* was necessary.

Ref: Federalist No. 39 Republican Principles

Read The Formation of the Constitution located in my faculty website

The Constitutional Convention and the Great Compromise

Delegates offered different visions of representation in the national legislature.

- Edmund Randolph proposed what became known as the **Virginia Plan**:
 - Representation would be based on state population, the proportion of each state's revenue contribution to national government, or both.
 - Bicameral legislature:
 - Lower chamber chosen by the people.
 - Smaller upper chamber chosen by the lower chamber.
 - Creation of unspecified national executive elected by the legislature.
 - Creation of national judiciary appointed by the legislature,
 - Opponents claimed the plan was biased in favor of the large states.

The Constitutional Convention and the Great Compromise

Delegates offered different visions of representation in the national legislature.

- William Paterson proposed the **New Jersey Plan**:
 - Each state would have equal representation.
 - Unicameral legislature
 - One state, one vote would be maintained.
 - Congress would regulate trade and impose taxes.
 - All acts of Congress would be supreme law of the land.
 - People elected to Congress to form executive office.
 - The executive office would appoint a Supreme Court.

The Constitutional Convention and the Great Compromise

The Connecticut (or Great) Compromise bridged the Virginia Plan and the New Jersey Plan.

The Great Compromise created a bicameral legislature:

- A Bicameral legislature with an upper and lower chamber:
 - House of Representatives: representation based on population; members elected by voters.
 - Senate: equal representation for all states, regardless of population, representation would be by states; members would be selected by state legislatures.

The Constitutional Convention and the Great Compromise

The Connecticut (or Great) Compromise bridged the Virginia Plan and the New Jersey Plan.

The Great Compromise created a bicameral legislature:

- The House: representatives apportioned by the population in the state.
- The Senate: equal representation for all states, regardless of population.

The Constitution and Slavery

To agree on the new Constitution, the northern and southern states needed to reach a compromise on the issue of how *non-free persons* would, or would not, be counted for the purposes of determining representation in the House. **Article 1, Section 2**

The Three-Fifths Compromise: Seats in the House were apportioned by “population,” according to which five *non-free persons* would count as three free persons.

Ref: Federalist No.54 The Apportionment of Members Among the States.

Read The Three Fifth Compromise located in my faculty website.

The Constitution and Slavery

- The Three-Fifths Compromise:
 - Conflict between northern and southern states;
 - Argued that slaves were not considered persons when it came to rights.
 - Slaves made up one third of the southern states' population; southern states wanted them to count fully in the calculus of representation. (*1790 pop 3.9 mil – Slave pop 697k*)
 - Northern states did not want slaves to count because they wanted to weaken the slaveholding power in congress.
 - In 1790 it require 30,000 people to equal 1 representative in congress. With the 3/5 clause it required 50,000 people to equal 1 representative.
 - Slaveholding states ended with a minority of voting power.

The Three-Fifths Compromise

The Three-Fifths Compromise

- After much debate, the Convention decided $\frac{3}{5}$ of the slave population would count for taxation and representation.
- 5 ENSLAVED PEOPLE=3 FREE PEOPLE
- This became known as the $\frac{3}{5}$'s Compromise.



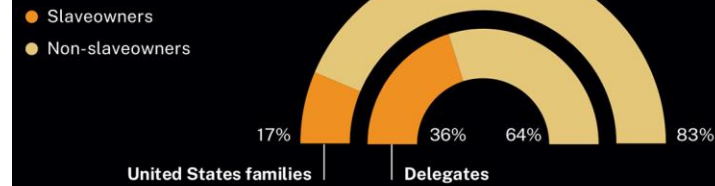
Who Were the Framers of the Constitution?

The Delegates to the Constitutional Convention (1787) and the U.S. Population (1790)

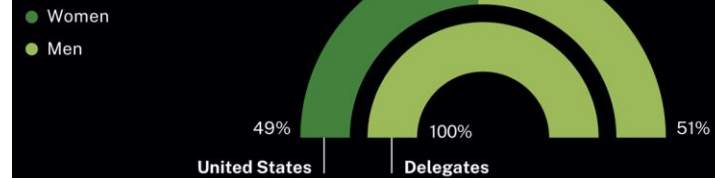
Race*



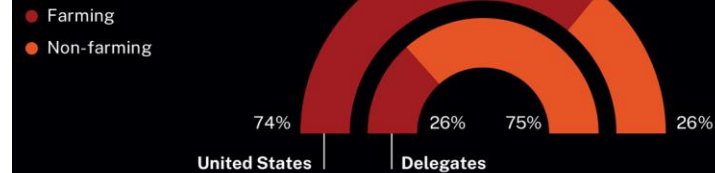
Slaveowners†



Gender††



Occupation



* The 1790 census had no category to count Native peoples living in the general population, even though an estimated 600,000 Native peoples lived in the United States.

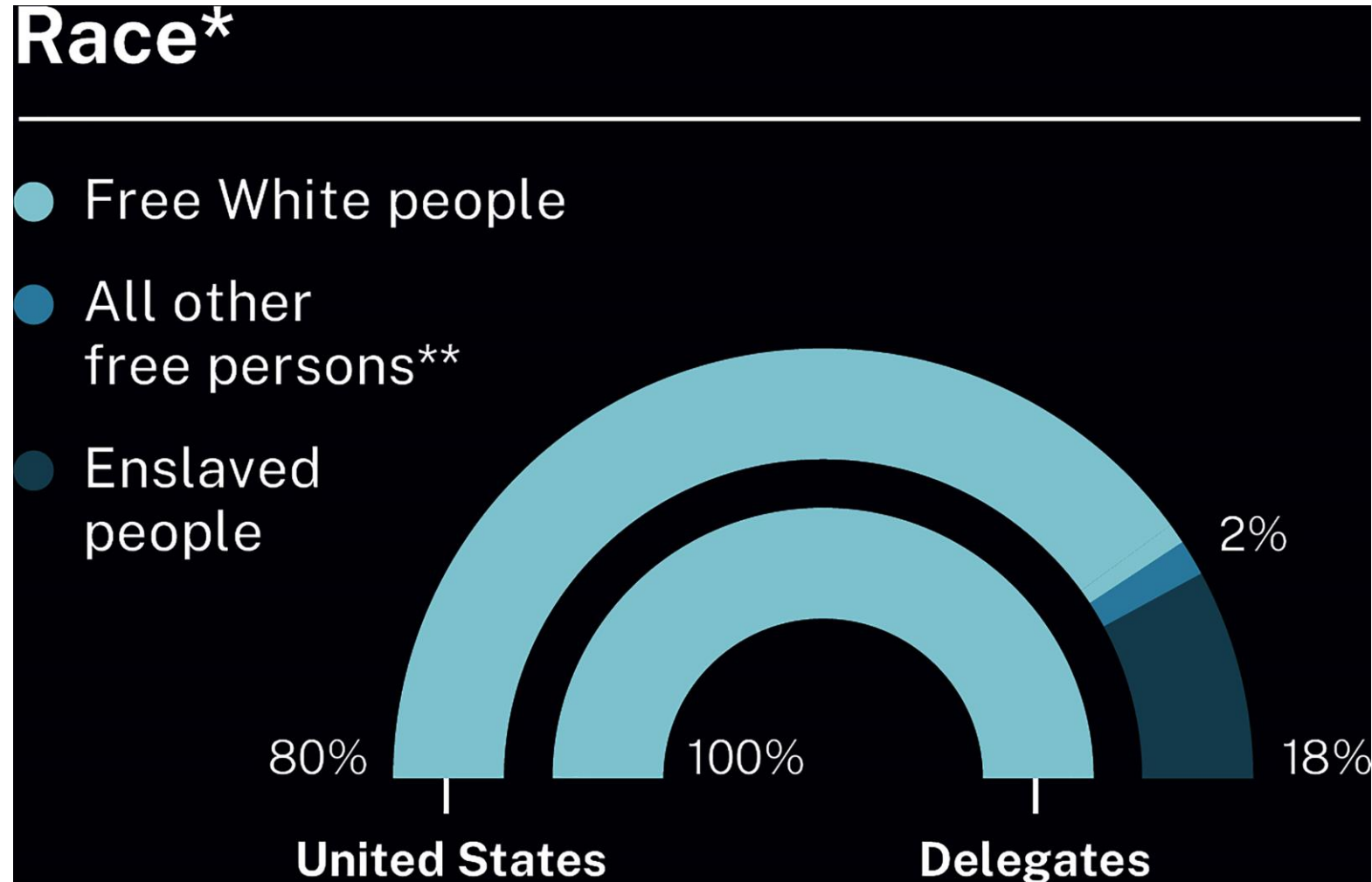
** The 1790 census defined "all other free persons" as free Black people, people of mixed race, and a small number of Native peoples who lived among White people.

† For this graphic, slaveowning delegates are delegates who owned slaves at the time of the 1787 Constitutional Convention.

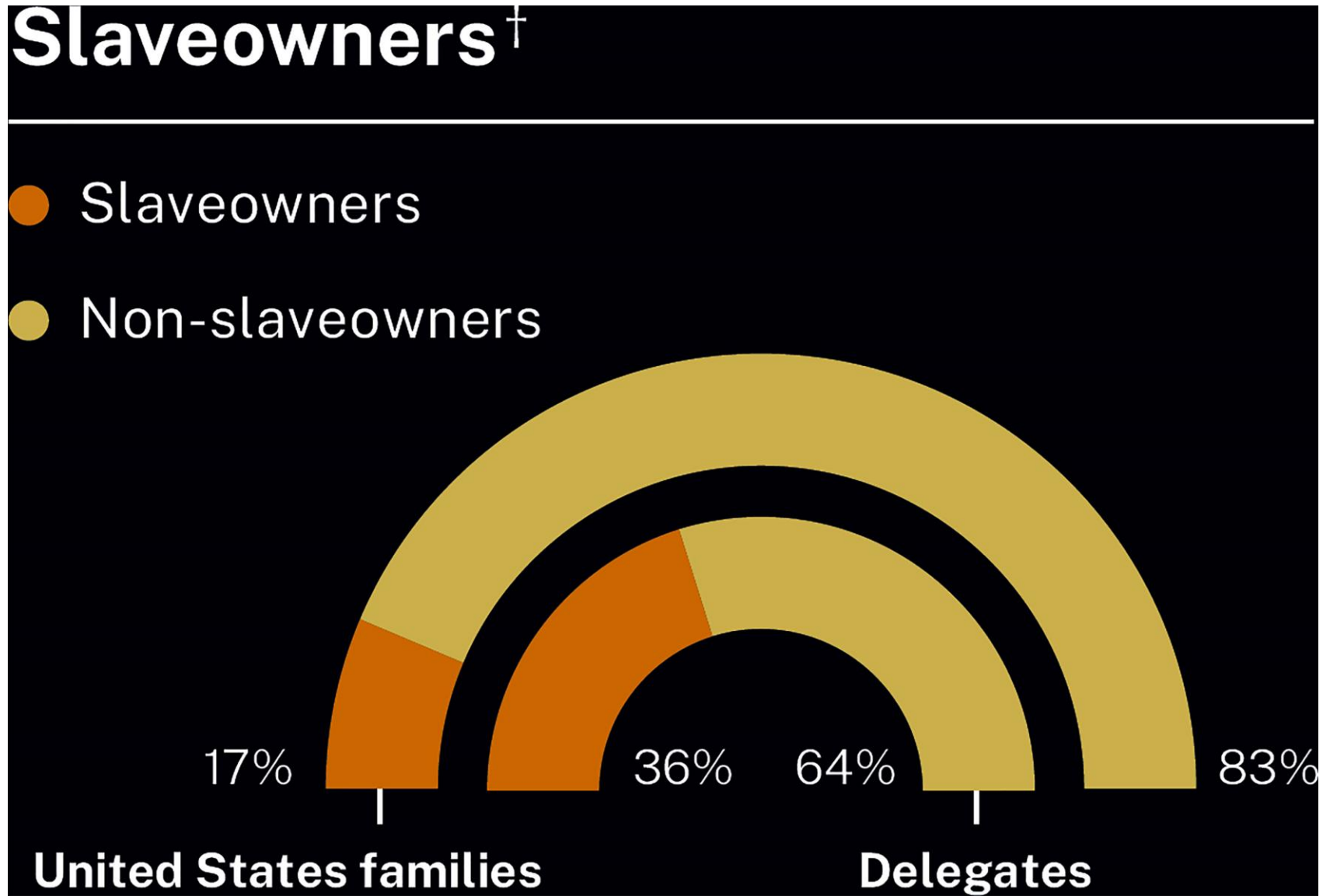
†† The 1790 census only recorded gender data for the White population.

NOTE: Numbers may not add up to 100 percent due to rounding.

The Delegates to the Constitutional Convention (1787) and the U.S. Population (1790): Race



The Delegates to the Constitutional Convention (1787) and the U.S. Population (1790): Slaveowners



The Delegates to the Constitutional Convention (1787) and the U.S. Population (1790): Gender

Gender^{††}

● Women

● Men

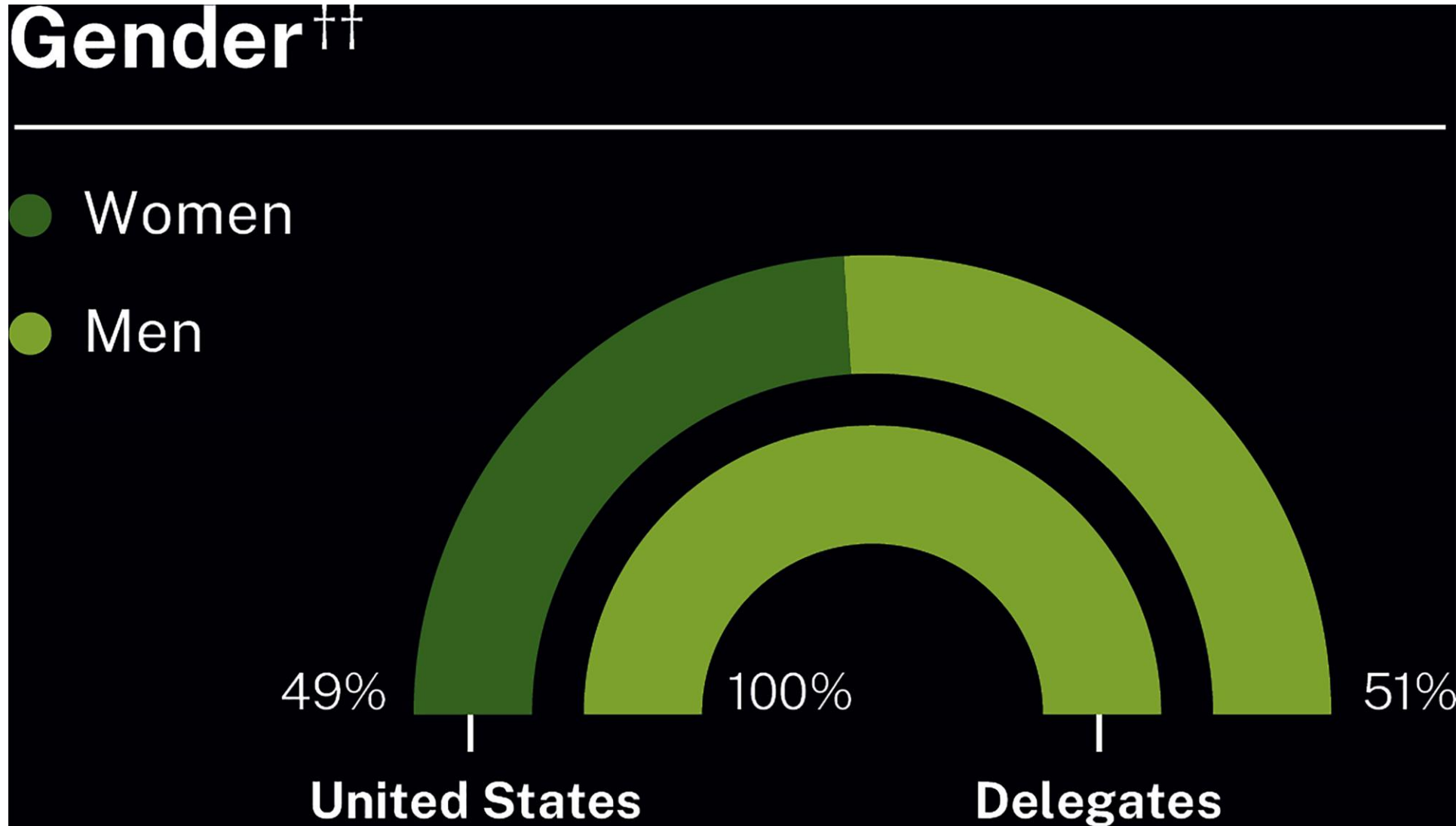
49%

100%

51%

United States

Delegates



The Delegates to the Constitutional Convention (1787) and the U.S. Population (1790): Occupation

Occupation

● Farming

● Non-farming

74%

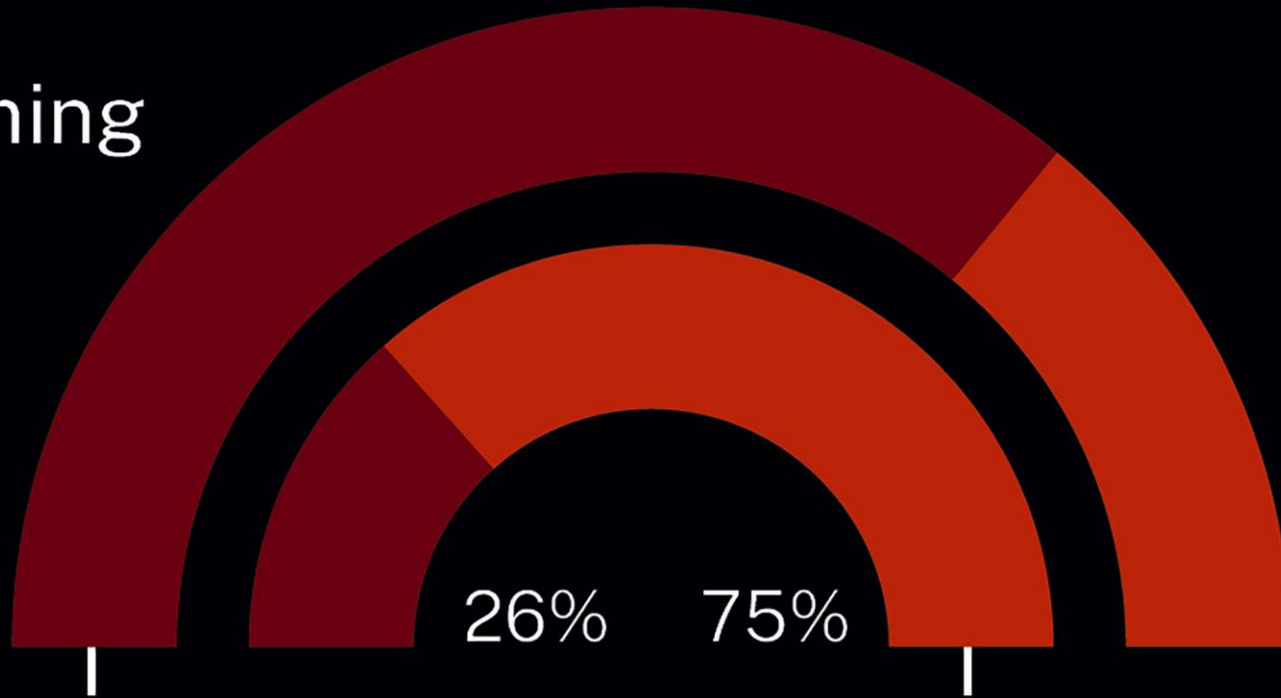
26%

75%

26%

United States

Delegates



Who Were the Framers of the Constitution?

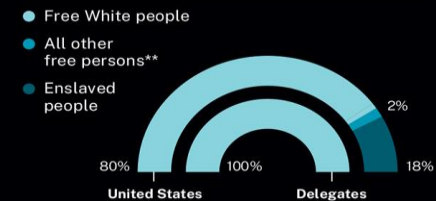
WHO ARE AMERICANS?

Who Were the Framers of the Constitution?

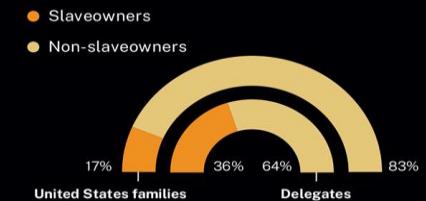
During the drafting and ratification of the Constitution, the demographics of the framers were quite different in comparison to the overall population of the United States. The 55 delegates to the 1787 Constitutional Convention were all White and male, whereas the American people were more diverse. The contrast between who was writing and designing the Constitution (a document that emphasized freedom, equality, and justice) and the composition of the U.S. population overall illustrates the contradictions in American political life and provides the foundation for conflicts and debates we have seen throughout American history.

The Delegates to the Constitutional Convention (1787) and the U.S. Population (1790)

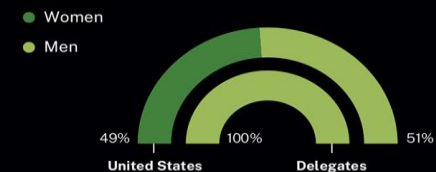
Race*



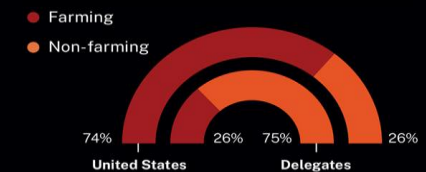
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SOURCES: 1790 census, full data tables, p. 4: www.census.gov/library/publications/1793/dec/number-of-persons.html; Russell Thornton, *American Indian Holocaust and Survival: A Population History Since 1492* (University of Oklahoma Press, 1990); Dorothy S. Brady, ed., "Output, Employment, and Productivity in the United States after 1800," NBER, 1966.

The Constitution: Bold Powers and Sharp Limits

The Framers sought several goals in the new government:

- A central government strong enough to promote commerce and protect property
- Prevention of “excessive democracy”
- Emphasis on ideas that would generate public support
- Restraint of federal government from threatening citizens’ liberties and property rights

The Constitution: Bold Powers and Sharp Limits



George Washington presided over the Constitutional convention of 1787. Although the convention was supposed to start on May 14, 1787, few of the delegates had actually arrived in Philadelphia by that date.

The convention formally opened in the East Room of the Pennsylvania State House (later named Independence Hall) on May 25. Only Rhode Island did not send any delegates.

Articles of Confederation versus the Constitution

TABLE 2.1 Comparing the Articles of Confederation and the Constitution		
MAJOR PROVISIONS	ARTICLES OF CONFEDERATION	CONSTITUTION
Executive branch	None	President of the United States
Judiciary	No federal court system. Judiciary exists only at state level.	Supreme Court
Legislature	Unicameral legislature with equal representation for each state. Delegates to the Congress of the Confederation were appointed by the states.	Bicameral legislature consisting of Senate and House of Representatives. Each state is represented by two senators, while apportionment in the House is based on each state's population. Senators are chosen by the state legislatures (changed to direct popular election in 1913) for six-year terms and members of the House by popular election for two-year terms.
Fiscal and economic powers	The national government is dependent upon the states to collect taxes. The states are free to coin their own money and print paper money. The states are free to sign commercial treaties with foreign governments.	Congress is given the power to levy taxes, coin money, and regulate international and interstate commerce. States are prohibited from coining money or entering into treaties with other nations.
Military	The national government is dependent upon state militias and cannot form an army during peacetime.	The national government is authorized to maintain an army and a navy.
Legal supremacy	State constitutions and state law are supreme.	National Constitution and national law are supreme.
Constitutional amendment	Must be agreed upon by all states	Must be agreed upon by three-fourths of the states
Slavery	No mention	Enslaved people count as 3/5 of a state's total enslaved population, and trade of enslaved people is allowed for 20 years.

The Constitution: Bold Powers and Sharp Limits

To protect against “excessive democracy,” the Constitution provides for:

- A **bicameral** legislature: assembly composed of two chambers
- **Checks and balances**: mechanisms through which each branch of government can participate in and influence activities of the other branches
- Selection of the president through an electoral college

The Constitution: Bold Powers and Sharp Limits

To make sure that the government does not infringe on citizens' rights, the Constitution incorporates:

- **Separation of powers:** division of governmental power among several institutions.
- **Federalism:** system of government in which power is divided between central and regional governments.

To create broad support for the Constitution, the framers promised to add:

- A **Bill of Rights** to ensure citizen liberty

The Constitution: The Legislative Branch

In **Article 1, Section 1**, the Constitution provided for a Congress consisting of two chambers: the House of Representatives and the Senate.

- Most powerful branch of new government-with power being shared with the other branches.
- Different term lengths (2 years in the House, 6 years in the Senate)
- Each is accountable to a different constituency.
- A Senate designed to guard against “excessive democracy”
- Each has different powers:
 - Senate alone given power to ratify treaties and approve presidential appointments.
 - House given sole power to originate revenue bills.

The Constitution: The Legislative Branch

Article 1, Section 8 of the Constitution lists the powers of Congress.

Congress has the authority to:

- Collect taxes
- Borrow money
- Coin money
- Regulate commerce
- Establish post office
- Declare war
- Provide and maintain an Army and Navy

The Constitution: The Legislative Branch

- **Expressed powers**
 - Specific powers granted by the Constitution to Congress and the president.
- **Implied powers**
 - Stem from the necessary and proper clause or the **elastic clause** of the Constitution.
 - This clause gives Congress the power to make all laws “necessary and proper” to carry out the expressed powers.

The Constitution: The Legislative Branch

- New federal government far more powerful than the old.
- New powers specifically given mostly to Congress
 - Congress directly accountable to the people in the House.
 - Congress directly accountable to the states in the Senate.
- New powers were expressly written but flexible enough to adapt and respond to public will

The Constitution: The Executive Branch

Article 2, Section 1 of the Constitution provided for the establishment of the Presidency.

- The Framers envisioned the need for an executive both to offset the potential power of the new Congress and to act with speed during times of crisis.
- They also needed a unifying figure who would serve as the Head of State.

The Constitution: The Executive Branch

Article 2, Section 2 states that the President can:

- Commander and chief of the military
- Negotiate treaties (with approval of the Senate)
- Receive ambassadors from other countries
- Grant reprieves and pardons
- Appoint major departmental personnel
- Veto congressional enactments

The Constitution: The Judicial Branch

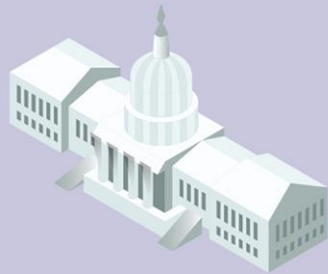
Article 3, Section 1 provided for establishment of the judicial branch

The judicial branch:

- Includes the Supreme Court of the United States.
- The Supreme Court is the final interpreter of the Constitution, but this is not a power granted by the Constitution.
- The Constitution only mentions the Supreme Court; all lower courts are creatures of Congress.
- The courts has the power to resolve conflicts between federal and state laws
- Federal Courts are protected against Congress through life terms, and their salaries cannot be touched.
- Supreme Court assumed the power of **judicial review** (the power to declare laws unconstitutional).

The Separation of Powers

FIGURE 2.2 | The Separation of Powers



Legislative

- Passes federal laws
- Controls federal appropriations
- Approves treaties and presidential appointments
- Regulates interstate commerce
- Establishes lower court system



Executive

- Enforces laws
- Commander in chief of armed forces
- Makes foreign treaties
- Proposes laws
- Appoints Supreme Court justices and federal court judges
- Pardons those convicted in federal court



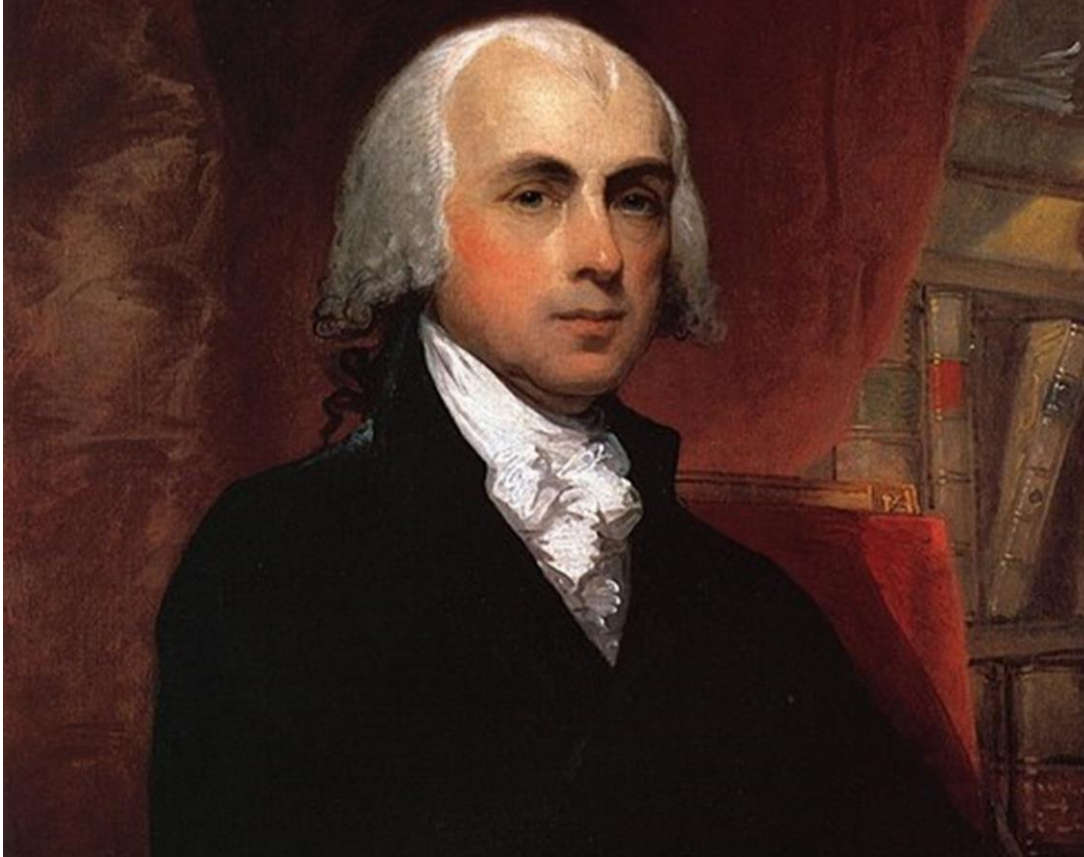
Judicial

- Decides constitutionality of laws
- Decides cases involving disputes between states

The Constitution: National Unity and Power

- The States wrote the Constitution and created the Federal government to address concerns about national unity and power.
- The Constitution had to allow states enough freedom to pursue their own policies and unify the nation enough to have a common economy.
- States were given tremendous leeway but were asked to respect contracts made in other states.
- The U.S. Constitution stands supreme over state laws (the supremacy clause).

The Father of the Constitution



James Madison earned the title “master builder of the Constitution” because of his persuasive logic during the Constitutional Convention.

His contributions to the Federalist Papers showed him to be a brilliant political thinker and writer.

Read James Madison and the role of the architect located in my faculty website.

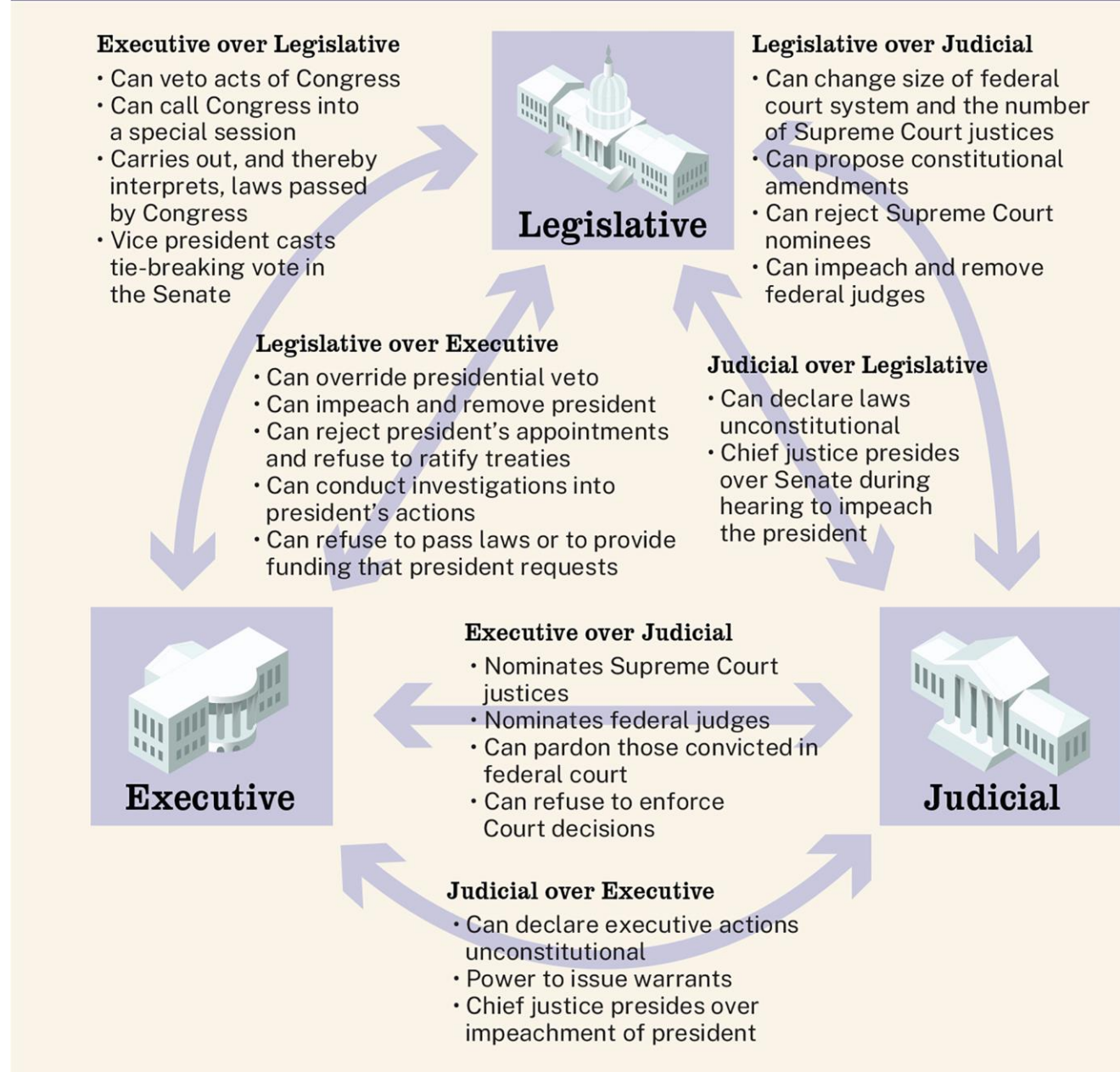
The Constitution: Limits on the National Government's Powers

The Framers wanted to guard against the misuse of power by the national government. The Constitution therefore includes several checks on the government:

- **Separation of powers** – each branch had checks on the others and had different constituencies to whom they were responsible.
- **Federalism** – power was further divided between the national and state governments.
- **The Bill of Rights** – this subsequent addition to the Constitution further placed limits on what the government could do.

The Constitution: Checks and Balances

FIGURE 2.3 | Checks and Balances



The Fight for Ratification

Ratification required 9 of 13 states to approve. The struggle for ratification was carried out in 13 separate state campaigns.

The **Federalists**:

- Favored a stronger national government
- Were united in their support for the Constitution

The **Antifederalists**:

- Favored strong state government and a weak, more decentralized national government
- constitution did not guarantee that the lives, liberties and property of the common citizen will not be usurped by the central government.

The Fight for Ratification

Ratification required 9 of 13 states to approve. The struggle for ratification was carried out in 13 separate state campaigns.

Ratification was uncertain in New York and Virginia.

- New Hampshire ninth state to ratify and put Constitution formally into effect
- Constitution in effect meant little without Virginia and New York's ratification

The Federalists argued for their cause through the publication of the *Federalist Papers*, which were a series of essays written by Alexander Hamilton, James Madison, and John Jay.

The Fight for Ratification: Federalists versus Antifederalists

The Federalists and Antifederalists disagreed over three fundamental issues.

- **Representation:** Did representatives need to be precisely like those they represented?
- **Tyranny:** Was tyranny more likely to stem from a gradual shift to aristocracy or from the majority?
- **Government power:** Should the national government have strict limits or broad powers?

The Fight for Ratification: Representation

Federalists versus Antifederalists

The Antifederalists wanted representatives who had a “true picture of the people....[possessing] the knowledge of their circumstances and wants”.

The Federalists thought that those elected need not reflect their constituents, but that voters might choose those who had wisdom and experience to represent them.

Federalists versus Antifederalists

TABLE 2.3 | **Federalists versus Antifederalists**

	FEDERALISTS	ANTIFEDERALISTS
Who were they?	Property owners, creditors, merchants	Small farmers, frontiersmen, debtors, shopkeepers, some state government officials
What did they believe?	Believed that elites were most fit to govern; feared “excessive democracy”	Believed that government should be closer to the people; feared concentration of power in hands of the elites
What system of government did they favor?	Favored strong national government; believed in “filtration” so that only elites would obtain governmental power	Favored retention of power by state governments and protection of individual rights
Who were their leaders?	Alexander Hamilton, James Madison, George Washington	Patrick Henry, George Mason, Elbridge Gerry, George Clinton

The Fight for Ratification: Tyranny

The Antifederalists were concerned government would be controlled by an aristocratic elite.

- They feared the **tyranny** of an aristocratic minority.
- Feared that the central government would get too powerful and would trample on the rights of the states and the people.

The Federalists feared a mass electorate would align against the rights of other citizens.

- They feared the tyranny of an unsophisticated majority.

The Fight for Ratification: Limiting Government Power

Limited government: a government whose powers are defined and limited by a constitution.

- The Antifederalists wanted a weak central government with limited, enumerated powers and a bill of rights.
- The Federalists favored a strong central government, with divided powers to prevent tyranny of the majority.

The Fight for Ratification: Limiting Government Power

The Bill of Rights

- Constitution would not have been ratified in some important states without assurance of amendments.
- First 10 amendments to the constitution.
- 17 amendments proposed with 12 sent to the states for ratification, of which 10 were adopted in 1791

A “Bill of Limits”

- Limited powers of national government over individuals.

No Explicit Limits on State Government Powers

Contributions of the Federalists and Antifederalists

While the Federalists ultimately prevailed, the Antifederalists did have a lasting impact on the Constitution.

- The Federalist help to create a constitution with a strong central government.
- Antifederalists helped bring about the inclusion of a Bill of Rights to the Constitution.
 - The Bill of Rights are the first ten amendments to the Constitution.
 - They are intended to protect individual rights and liberties from government overreach.
 - Including the freedom of speech, the right to bear arms, protection from unreasonable searches, and the right to trial by jury.
- Yet the Antifederalists' skepticism of a strong national government remains popular with people today.

The Constitution: Amending and Ratifying

The Constitution established procedures for its own revision in Article V. Requirements to add amendments are very difficult and happen only rarely (just 17 times since 1791).

- **Amendment:** a change added to a bill, law, or constitution

The Constitution also lays out the rules for its ratification or adoption in Article VII.

- The Constitution required 9 of 13 states to ratify for it to go into effect.
- Even if all thirteen states did not ratify, it would take effect for all thirteen once the threshold of nine states had been crossed.

The Constitution: The Amending and Ratifying

Since 1789, more than 11,000 amendments have been introduced in Congress.

- Of these, Congress officially proposed only 29, and 27 were eventually ratified by the states.
 - Two of these—Prohibition and its repeal—cancel each other out, leaving 25 amendments that have been added to the Constitution.

The 25 successful amendments are concerned with the broader structure or composition of government—not with specific policies.

- This pattern is consistent with the concept of a constitution as “higher law” or framework for the processes of governing and making law.

The Constitution: Formal Amendment Process

Article 5 Formal Amendment Process

- Congress can propose amendments with the approval of two-thirds of both houses (287/66).

Limits on Ratification

Ratification by three-fourth (38) of state legislature.

The National Convention Provision

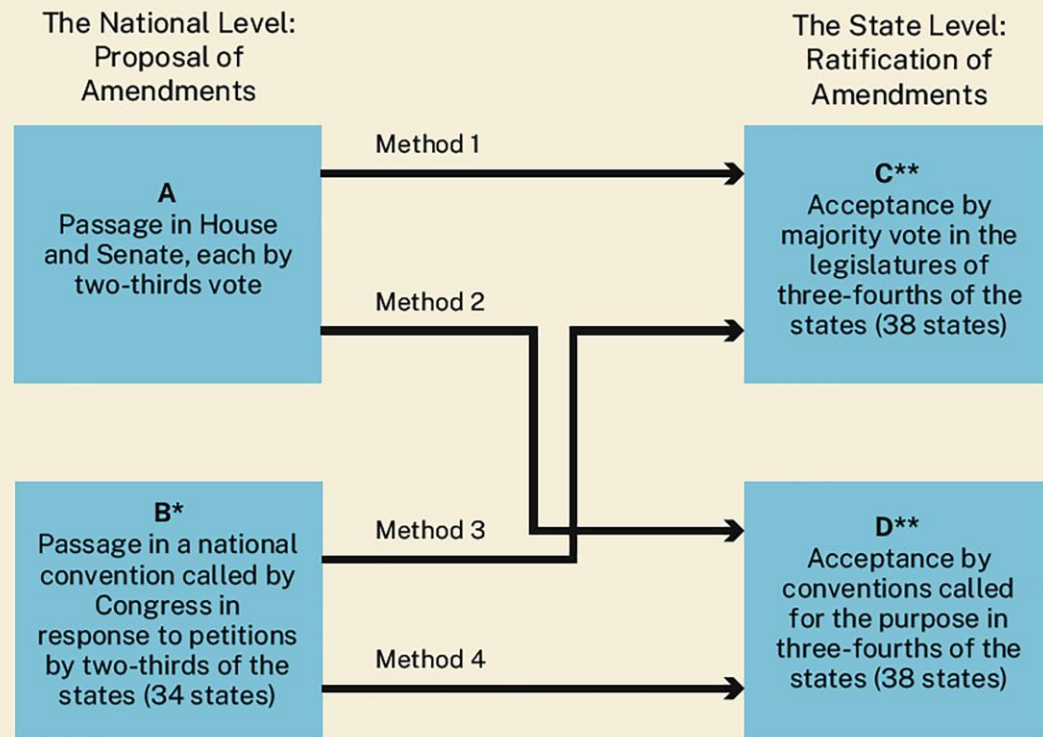
- National convention of states requested by the legislatures of two-thirds of states (33) can propose amendment.

The Constitution: Informal Amendment Process

- Congressional Legislation- Pursuant to **Article 1, Section 8** powers.
- Presidential actions / activities.
- Executive actions / agreements / whatever congress will allow i.e., proposing budget.
- Judicial Review
 - Myth of Living Constitution
 - Allows the Court to Adapt the Constitution
- Interpretation, Custom, and Usage

The Constitution: Amending and Ratifying, 2 of 3

FIGURE 2.1 | Four Ways the Constitution Can Be Amended



*This method of proposal has never been employed. Thus, amendment methods 3 and 4 have never been attempted.

**For each amendment proposal, Congress has the power to choose the method of ratification, the time limit for consideration by the states, and other conditions of ratification. The movement to repeal Prohibition in the Twenty-First Amendment was the only occasion in which method 2 was used successfully.

Amendments to the Constitution

TABLE 2.2 | Amendments to the Constitution

AMENDMENT	PURPOSE
I	Congress is not to make any law establishing a religion or abridging free exercise of religion, speech, press, assembly, or petitioning the government for redress of grievances.
II, III, IV	No branch of government may infringe on the right of people to keep arms (II), arbitrarily occupy homes for a militia (III), or engage in the search or seizure of evidence without a court warrant swearing to belief in the probable existence of a crime (IV).
V, VI, VII, VIII	The courts* are not to hold trials for serious offenses without provision for a grand jury (V), a petit (trial) jury (VII), a speedy trial (VI), presentation of charges (VI), confrontation of hostile witnesses (VI), immunity from testimony against oneself (V), and immunity from more than one trial for the same offense (V). Neither bail nor punishment can be excessive (VIII), and no property can be taken without just compensation (V).

Amendments to the Constitution, continued

TABLE 2.2 | Amendments to the Constitution—cont'd

AMENDMENT	PURPOSE
IX, X	All rights and powers not enumerated are reserved to the states or the people.
XI	Federal courts have limited jurisdiction over suits involving the states.
XII	A separate ballot must be provided for the vice president in the electoral college.
XIII	Slavery and the right of states to treat persons as property are eliminated.
XIV	The principle of national citizenship is asserted and the states are prohibited from infringing upon the rights of citizens of the nation, no matter that they happen to live in that state. States are prohibited from denying voting rights to male citizens over the age of 21.”
XV	Voting rights are extended to all races.
XVI	National power to tax incomes is established.
XVII	Provision for direct election of senators.
XVIII	The manufacture, sale, transportation, or export of alcohol is prohibited.
XIX	Voting rights are extended to women.
XX	“Lame-duck” session of Congress is eliminated.
XXI	The Eighteenth Amendment is repealed.
XXII	Presidential term is limited.
XXIII	Voting rights are extended to residents of the District of Columbia.
XXIV	Voting rights are extended to all classes by abolition of poll taxes.
XXV	Presidential succession is provided in case of disability.
XXVI	Voting rights are extended to citizens age 18 and over.
XXVII	Congress’s power to raise its own salary is limited.

*These amendments also impose limits on the law-enforcement powers of federal and (especially) state and local executive branches.

**In defining *citizenship*, the Fourteenth Amendment actually provided the constitutional basis for expanding the electorate to include all races, women, and residents of the District of Columbia. Only the “18-year-olds’ amendment” should have been necessary, since it changed the definition of citizenship. The fact that additional amendments were required following the Fourteenth suggests that voting is not considered an inherent right of U.S. citizenship. Instead, it is viewed as a privilege.

Supreme Law of the Land

Article 6 - The U.S. Constitution is “*The supreme law of the land.*”

- Establishes a framework within which ordinary laws are made

Many politicians, lawyers, judges and commentators believe that the U.S. Constitution is a living document, and hence our understanding of it changes over time, even without amendments.

It cannot be Living, because by living it is meant that the rules are changed depending on the fashionable ideas of the day, and as such cannot be considered to be law. Law must be a constant designed to protect the life, liberty and property of the people . It should only be changed after careful deliberation and only by the people through their elected representatives and not from an unaccountable bureaucrat ,or Judge

Readings From Faculty Website

- *The Magna Carta*
- *The English Bill of Rights*
- *The Virginia Declaration of Rights*
- *The Olive Branch Petition*
- *The Declaration of Independence*
- *The Articles of Confederation*
- *Federalist No. 39 Republican Principles*
- *The Formation of the Constitution*
- *Federalist No.54 The Apportionment of Members Among the States.*
- *The Three Fifth Compromise*
- *The Founding Fathers*

The Founding and the Constitution

