

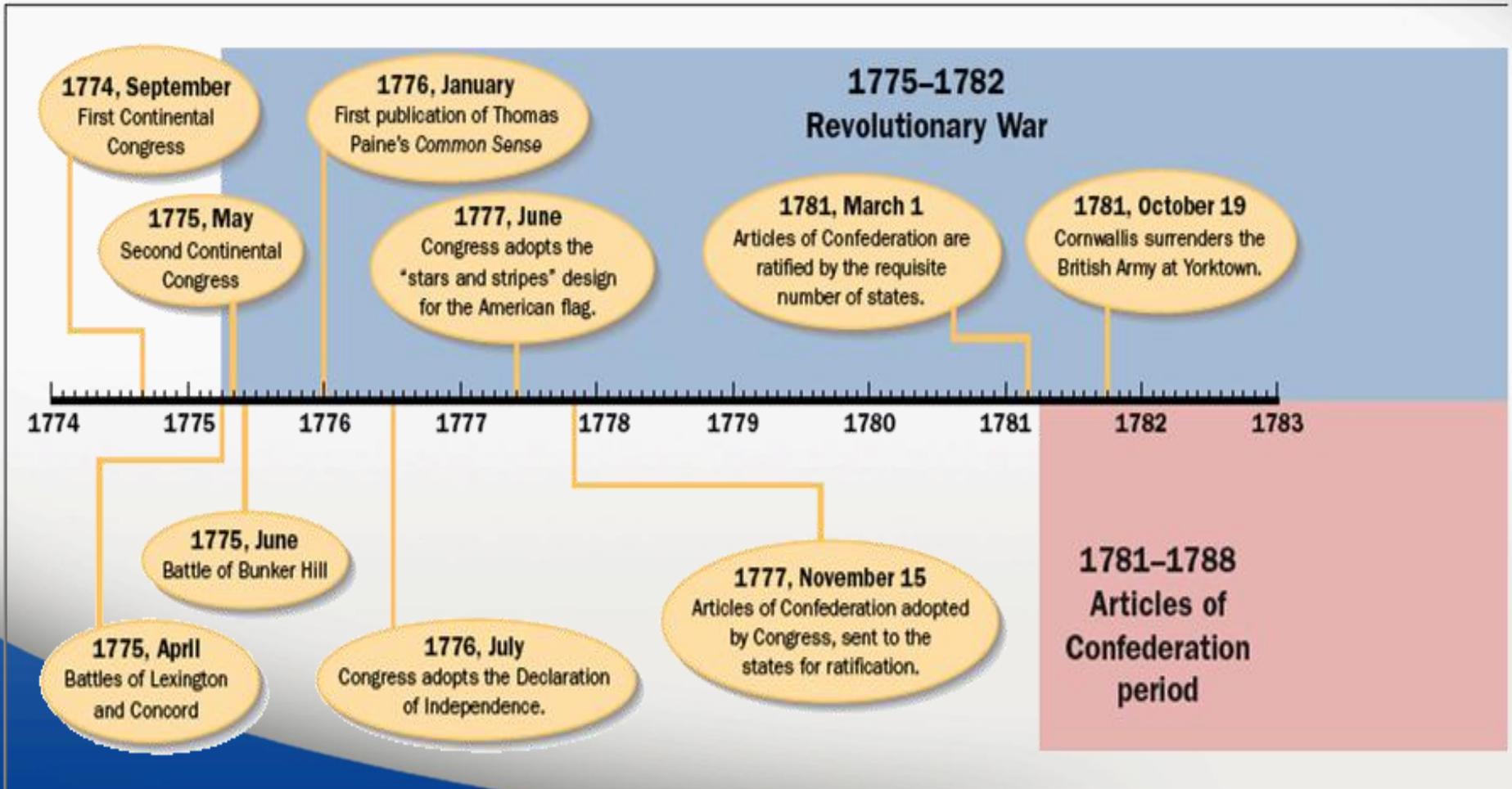


The US Constitution

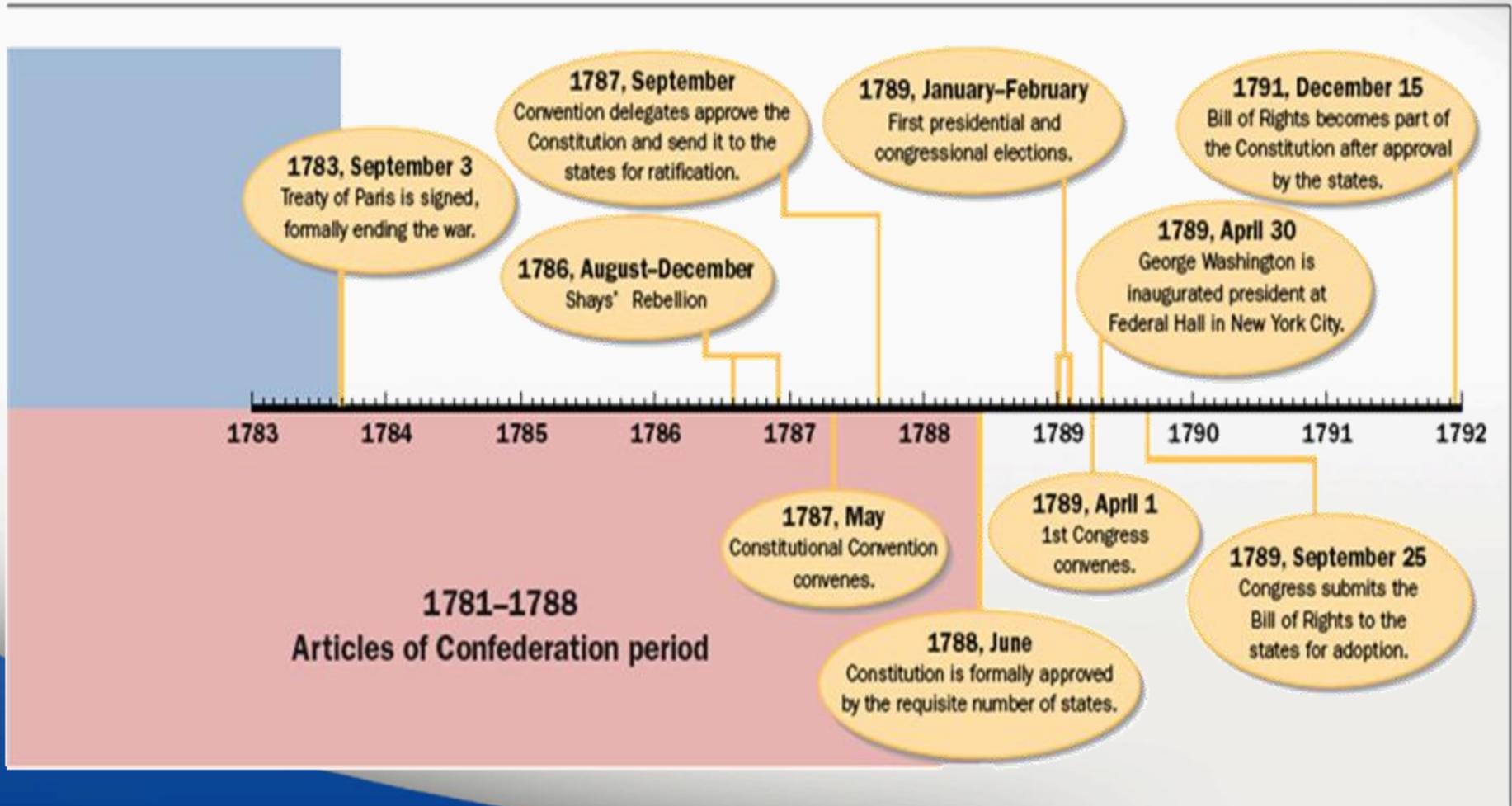
The strength of the Constitution lies entirely in the determination of each citizen to defend it. Only if every single citizen feels duty bound to do his share in this defense are the constitutional rights secure.

Albert Einstein

Timeline of the Founding of the US, 1774-1791



Timeline of the Founding of the US, 1774-1791



The Declaration of Independence

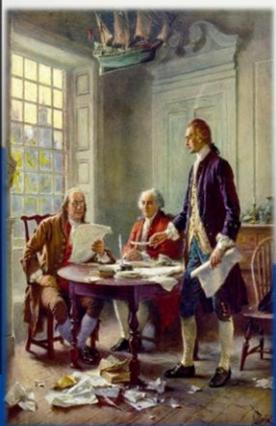


- In 1776, Thomas Jefferson wrote the *Declaration of Independence* to assert America's independence from Britain.
- Jefferson was influenced by European philosophers such as John Locke, Adam Smith, Jean-Jacques Rousseau, Thomas Hobbes, Francis Hutcheson and others.
- **Declaration's Key Ideas**
 - Human beings possess rights that cannot be legitimately given away or taken from them.
 - People create government to protect these rights.
 - If government fails to protect people's rights or itself becomes a threat to them, people can withdraw their consent from that government and create a new one.

The Declaration of Independence



- Omissions
 - Did not deal with the issue of what to do about slavery.
 - Did not say anything about the political status of women, Native Americans or African Americans who were not slaves.
- Argument of the Declaration
 - **Introduction:** When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another ... *a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.*



The Declaration of Independence

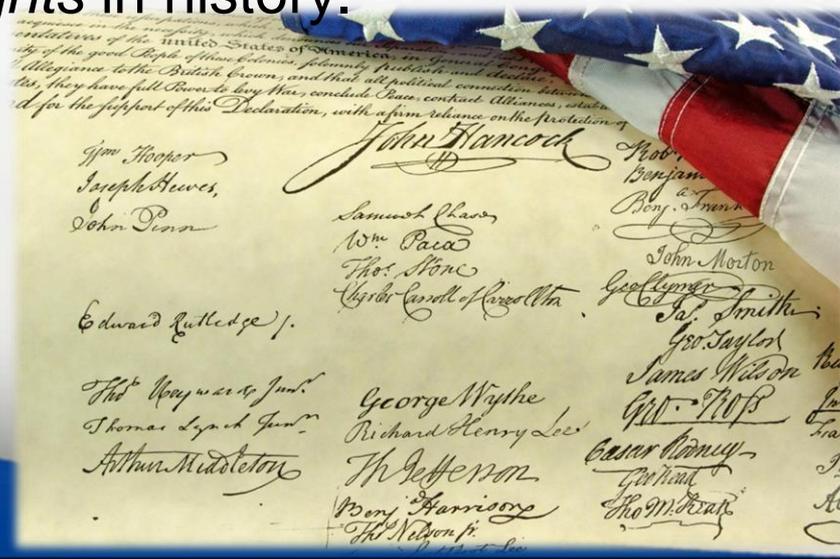


- Argument of the Declaration
 - **major premise**: people have the right to revolt when they determine their government is destructive of legitimate rights [We hold these truths to be self-evident, that all men are created equal ... as to them shall seem most likely to affect their Safety and Happiness.]
 - **minor premise**: list of deliberate acts committed by king offered as proof of destruction of government's legitimate ends [Prudence, indeed, will dictate that Governments long established ... is unfit to be the ruler of a free people.] and lack of help from British people [Nor have We been wanting in attention to our British brethren ... Enemies in War, in Peace Friends.]

The Declaration of Independence



- Argument of the Declaration
 - **conclusion**: therefore, the people have a right to revolt [We, therefore, the Representatives of the United States of America ... mutually pledge to each other our Lives, our Fortunes and our sacred Honor.]
- The document is regarded as the *best-written statement of individual rights* in history.



The Articles of Confederation: The First Constitution



- The Continental Congress adopted the **Articles of Confederation**, the first constitution of the US, in 1777. The Articles created a loose **confederation** of sovereign states and a weak central government, leaving most of the power with the state governments.
- Despite the weakness of the national government it would create, ratification of the Articles of Confederation by all thirteen states did not occur until 1781.
- Fighting as they were against a government of tyranny and repression, a **fear of central authority** inhibited the creation of a strong national government in the new nation.

The Articles of Confederation: The First Constitution

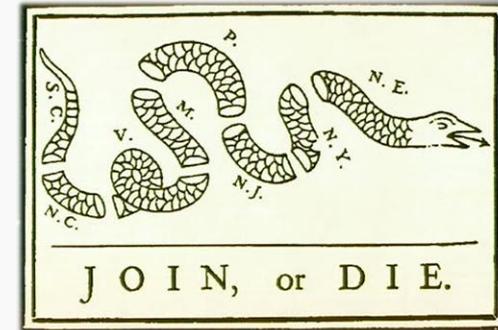


- **STRENGTHS**

- declare war and make peace.
- coin and borrow money
- detail with foreign countries and sign treaties
- operate post offices

- **WEAKNESSES**

- no power to tax: national government indebtedness and inability to finance its activities
- Each state could issue its own paper money.
- no power to enforce laws: The national government could not force the states to obey its laws.
- no system of national courts
- no national army or navy: inability to defend national interests in foreign affairs
- Congress lacked strong and steady leadership.
- commercial warfare among the states: Each state could (and did) put tariffs on trade between states.



Factors Leading to the Constitutional Convention



- There were three general problems that contributed to the post-revolution situation: problems within the states themselves, violations of the Articles of Confederation and of national treaties by the states and the lack of powers on the part of Congress to get states to comply with the Articles and with national legislation.
- Within the states, the governments often acted in ways **contrary to the ideal of good government** as held forth in the state declarations of rights.
- The state governments also seemed incapable of dealing with the problem of majority factions so that many were concerned about their **ability to maintain order**.

Factors Leading to the Constitutional Convention

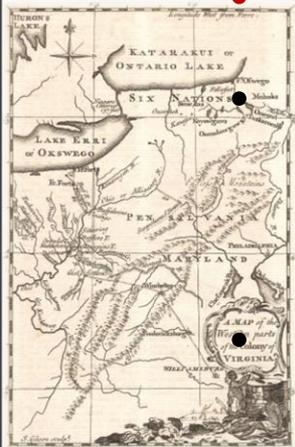


- **Boundary disputes** between states continued.

There was growing concern that the **passions for democracy and equality** among the common people were getting out of hand.

State governments flagrantly **violated national treaties** (leading to poor foreign relations), **ignored requisitions** for funds passed by Congress, and continued to **exercise powers prohibited** by the Articles of Confederation.

- But arguably the most pressing problem was that the states frequently disregarded Congressional requisitions for **funds to pay for national defense**. (The nation still had unpaid war debts.) Falling crop prices exacerbated the problem.



Factors Leading to the Constitutional Convention



- Consensus developed that a new Constitution was desperately needed.
- Even as the states began to commission delegates to the Philadelphia Convention, however, different opinions formed about what the delegates should try to accomplish there.
 - All of the delegates agreed that the Articles of Confederation should be **amended**, but many disagreed over how drastic the changes should be.
 - Some intended from the beginning to push for a **new Constitution** based on republicanism.
 - The differences between the two groups over the purpose of the Convention would eventually lead to deadlock during the first two months of the Convention.

Why the Founders Were Worried



- an **excess of democracy** in the states
 - In the mid-1780s, popular conventions were established to monitor and control the actions of state legislators.
 - The Pennsylvania state constitution replaced the property qualifications as a requirement to vote with a very small tax.
- the **threat to property rights** in the states
 - popular opinion
 - **Stay Acts**: state laws that prohibited farm foreclosures for nonpayment of debt
 - **Shays' Rebellion**



Shays' Rebellion, 1786



- Farmers experienced widespread economic problems at the end of the Revolutionary War.
- Nonpayment of taxes and debts led to foreclosure proceedings and imprisonment for debt.
- Farmers in western Massachusetts took up arms to prevent courts from meeting.
- Armed farmers led by a veteran of the Revolutionary War, Captain Daniel Shays, forced the ill-equipped state militia to withdraw.
- By the spring of 1787, special armed forces recruited from the Boston area defeated the rebels.





Aftermath of Shays' Rebellion

- Shays' Rebellion reinforced the fears of national leaders about the dangers of ineffective state governments and of popular democracy out of control.
- Wealthy conservatives, whose refusal to accept a strong national government had led to the Articles of Confederation, were afraid that anarchy and disorder were going to destroy America and were willing to consider setting up a stronger government.
- In this climate of crisis, a call was issued to meet in Philadelphia, to correct the flaws in our first constitution, simply to "revise" the Articles.



The Constitutional Convention

- The troubles with the Confederation of States finally convinced the Continental Congress, in February 1787, to call for a convention of delegates to meet in May "to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union."
- For four months, 55 delegates from the various states met in Philadelphia. Among the first orders of business was electing George Washington president of the Convention and establishing the rules that would guide the proceedings, including **complete secrecy** concerning its deliberations.



Who Were the Delegates?

- not common folk
- **wealthy** white men who were:
 - **well-educated**
 - relatively **young**, but with broad **experience** in American politics
 - immersed in the **great works** of Western philosophy and political science: Aristotle, Cicero, Locke, Montesquieu and others



Debate Over the Intentions of the Framers



- Historian Charles Beard: The framers were engaged in a conspiracy to protect their personal economic interests.
- Although the reality is surely more complex, broad economic and social-class motives were likely important.



Consensus at the Convention

- agreement that a new constitution must replace the Articles of Confederation
- support for a strengthened national government
- concern that a strong national government is potentially tyrannical
- belief in a republican form of government based on popular consent
- desire to insulate government from public opinion and popular democracy

The Republican Beliefs of the Delegates



- The delegates to the convention were believers in the theory of republicanism.
- **republicanism**: a political system must be founded upon limited government, the rule of law, the rights of individuals and the sovereignty of the people ... closely connected to the idea of **civic virtue**: the responsibility citizens owe to their republic and to opposition to corruption (the use of public power to benefit the politician)
- **18th-century republicanism**: people could not and should not rule directly, too much participation by the people could only have a bad outcome ... public affairs should be left to men from the better parts of society ... need protections against tyranny of the majority

Comparing 18th-Century Republicanism and the Democratic Ideal



18th-Century Republicanism

Government is based on popular consent.

Rule by the people is indirect, through multiple layers of representatives.

The term *people* is narrowly defined (by education, property holding, and social standing).

Office holding confined to a narrow and privileged stratum of the population.

Elected representatives act as “trustees” (act on their own to discover the public good).

Barriers to majority rule exist.

Government is strictly limited in what it can do.

Government safeguards rights and liberties, with a special emphasis on property rights.

The Democratic Ideal

Government is based on popular consent.

Rule by the people may be direct or indirect through representatives.

The term *people* is broadly defined.

Broad eligibility for office-holding.

Elected representatives act as “delegates” (act as instructed by the people; accurately reflect their wishes).

Majority rule prevails.

Government does what the people want it to do.

Government safeguards rights and liberties, with no special emphasis on property rights.



Federalists vs. Anti-Federalists

- Convention debate quickly separated into two camps, the Federalists and the Anti-Federalists.
- The differences between the Federalists and the Anti-Federalists are vast and at times complex.
- **Federalists' beliefs** could be better described as nationalist. They were instrumental in 1787 in shaping the new US Constitution, which strengthened the national government at the expense, according to the Anti-Federalists, of the states and the people.



Federalists vs. Anti-Federalists

	Federalists	Anti-Federalists
desired distribution of power	a strong central government and limited state governments	power in the states not the central government
key beliefs	<p>proponents of an orderly, efficient and strong central government that could protect their economic status</p> <p>individual and different fiscal and monetary policies lead to economic struggles and national weakness, favored central banking and central financial policies</p> <p>large republic was seen as the best protection for individual freedoms</p>	<p>individual liberties preeminent</p> <p>local control was key and states would lose influence with the growth of national power</p> <p>states were free agents that should manage their own revenue and spend their money as they saw fit</p> <p>only a small republic could protect rights</p>
characteristics	wealthy, well-educated, influential, unified by the desire for a powerful, centralized government	farmers, debtors, lower class, loyal to state governments, few wealthy men (Mason and Randolph of VA, Gerry of MA), not one group
key figures	<p>John Adams John Jay</p> <p>Benjamin Franklin James Madison</p> <p>Alexander Hamilton George Washington</p> <p>(leader)</p>	<p>Samuel Adams Thomas Jefferson</p> <p>John Hancock George Mason</p> <p>Patrick Henry James Monroe</p> <p>Richard Henry Lee</p>
favored document	Constitution	Articles of Confederation (amended not abandoned)
Bill of Rights	opposed: believed the Constitution was sufficient to protect individual rights	supported: believed the Constitution was not sufficient to protect individual rights
sources of support	mainly urban areas, large farmers, merchants, artisans	mainly rural areas, small farmers

Disagreement and Compromise at the Convention



- The Great Compromise (Connecticut Compromise)
 - **Virginia Plan** (large-state plan): proposal for a bicameral (two house) legislative branch with proportional representation based on population
 - **New Jersey Plan** (small-state plan): proposal for a unicameral (one house) legislative branch with equal representation for each state
 - **Connecticut Compromise**: called for proportional representation in the House, and one representative per state in the Senate (later changed to two) ... saved the Constitutional Convention, and, probably, the Union



Disagreement and Compromise at the Convention

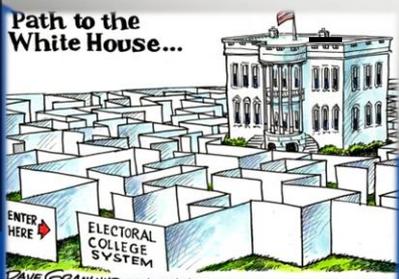


- Slavery
 - **Three-fifths Compromise**: north felt that slaves should be included in taxation (property), but not in determining representation (population), while slave states felt the opposite ... The final compromise established the policy of counting slaves as only three-fifths of their actual numbers for both.
 - **international slave trade**: Congress would have the power to ban the importation of slaves, but not until at least 20 years had passed, in 1808. In exchange, the national government's power to regulate foreign commerce would be strengthened by provisions that allowed for taxation of slave trades in the international market.
 - **runaway slaves**: required a runaway "person held to service or labor" to be returned to the owner upon demand by the owner.
- The word "slave" does not appear in the Constitution but overall, these provisions explicitly recognized the legal standing of slavery.

Disagreement and Compromise at the Convention



- The Presidency: biggest issue was how to elect the President
 - **single executive**: rather than, like England, dividing power between a head of state (monarch) and a head of government (prime minister), gave both functions to a President
 - **indirect election**: electors from each state would be chosen in such manner as its legislature might direct and collectively (Electoral College) would choose the president (In later years the Electoral College promised to vote based on what the majority of each state wanted. This became known as the *electoral college promise*.)

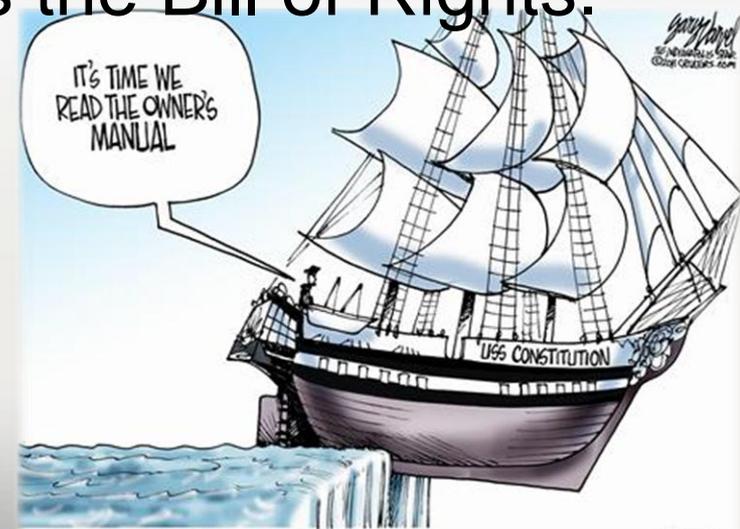


The House of Representatives chooses the president if no one receives a majority of electoral votes.



The Constitution

- The Constitution is one of the major structural factors that has influenced the evolution of American government.
- Despite often contentious disagreements, only **27 formal amendments** have been added in more than 200 years, 1-10 as the Bill of Rights.





What the Framers Created

- **republican form of government**
 - popular consent and some popular participation but barriers to majoritarian democracy
 - purposes and powers of government limited
- **election of government leaders**
 - representation of the people



What the Framers Created

- federalism
 - relatively strong central government.
 - Supremacy Clause (Article VI, Section 2): establishes that the Constitution, federal laws made pursuant to it and treaties made under its authority, constitute the supreme law of the land
 - important powers assigned to the national government
 - Elastic Clause (Article I, Section 8): grants Congress the power to pass all laws “necessary and proper” for carrying out its enumerated list of powers
 - states remain important





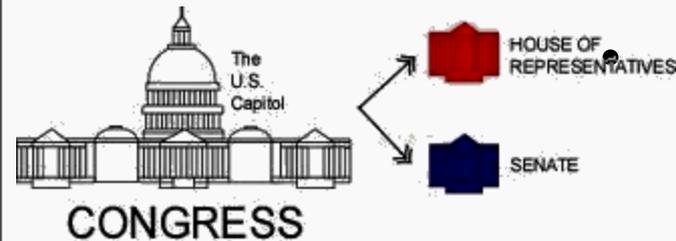
What the Framers Created

- **limited government**
 - The Constitution lists specific powers of the national government (Article I, Section 8) and specifically denies others (Article I, Section 9).
 - The Bill of Rights imposes restraints on the national government by protecting fundamental rights of citizens.



What the Framers Created

- checks on majority rule
 - The people rule only **indirectly**.

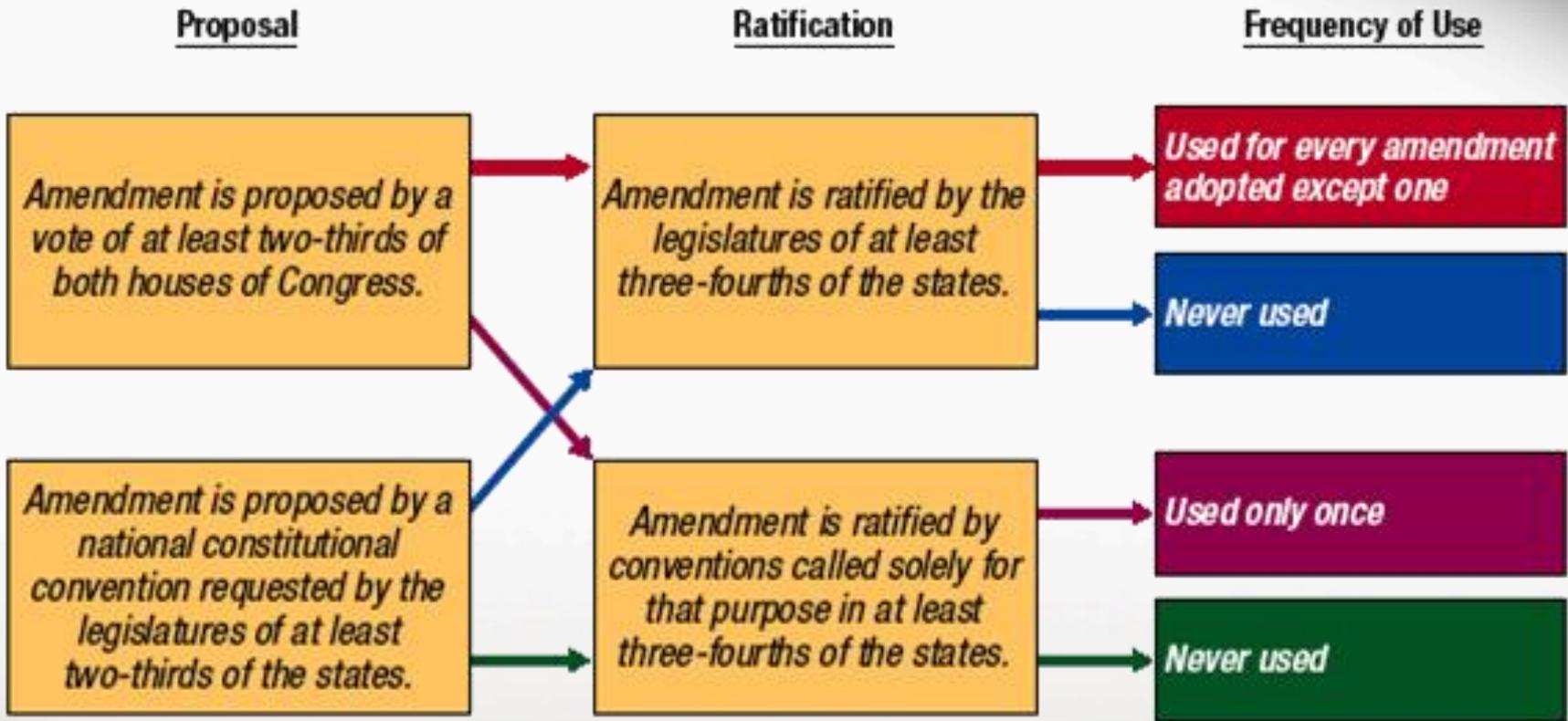


bicameral legislature, with varying terms of office and different constituencies

- indirect election of the President and Senate (changed by Amendment XVII)
- presidential appointment of judges and confirmation by Senate
- cumbersome and difficult **amendment** process



Amending the Constitution



With two ways of proposing an amendment and two ways of ratifying one, there are 4 ways to change the Constitution. In all but one case (the 21st amendment repealing Prohibition), amendments have been proposed by Congress and ratified by state legislatures.

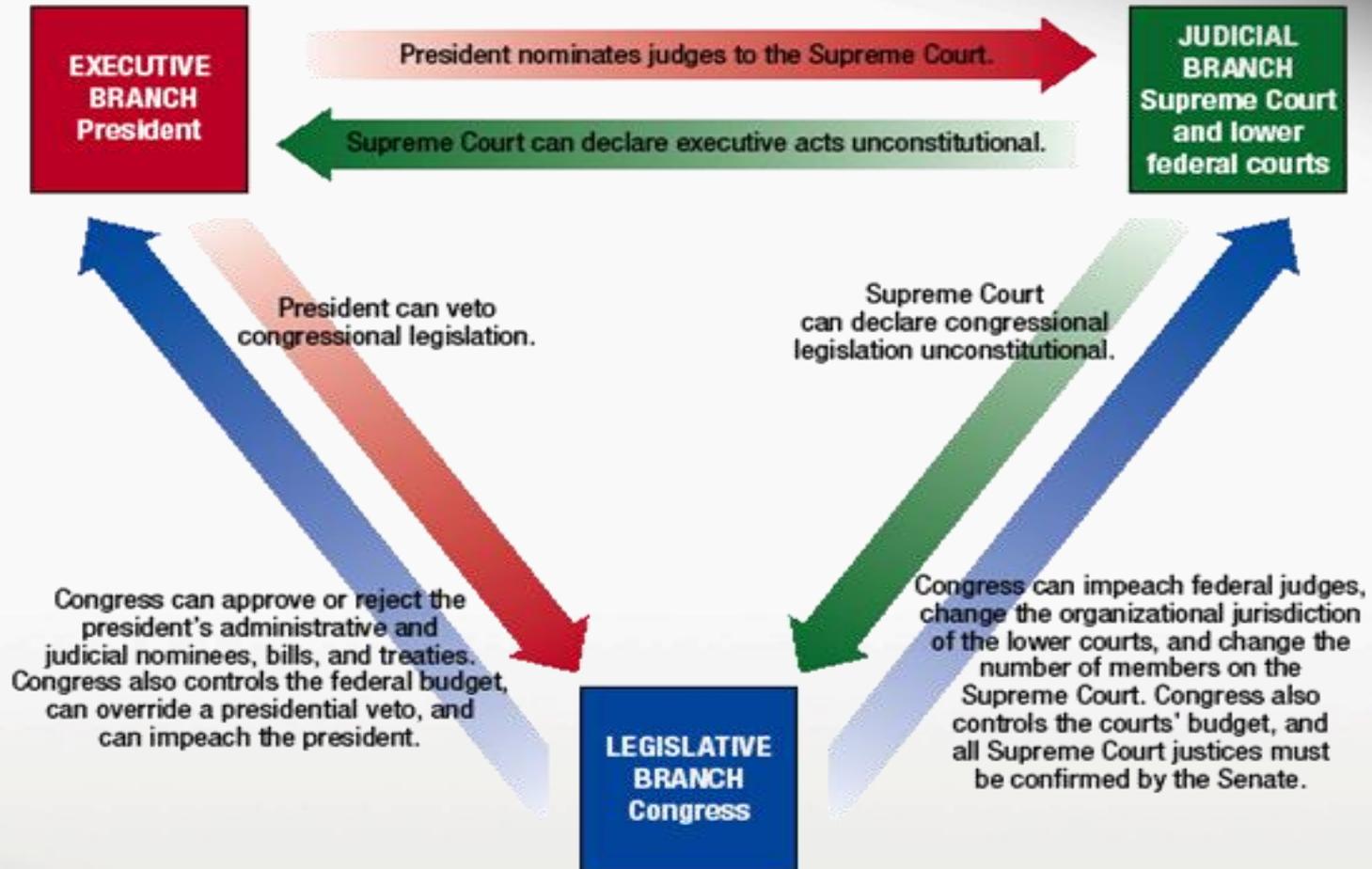


What the Framers Created

- separation of powers, checks and balances
 - Executive, legislative and judicial functions are separate branches with different powers (**separation of powers**).
 - No branch can control all powers or dominate the other branches.
 - Legislative, executive and judicial powers check one another and must share power (**checks and balances**).



Checks and Balances



The framers believed that tyranny might be avoided if the power of government was fragmented into its executive, legislative and judicial components and if each was made the responsibility of a separate branch of government. They also created mechanisms by which the actions of any single branch could be blocked by either or both of the others.

The Foundations for a National Free Enterprise Economy

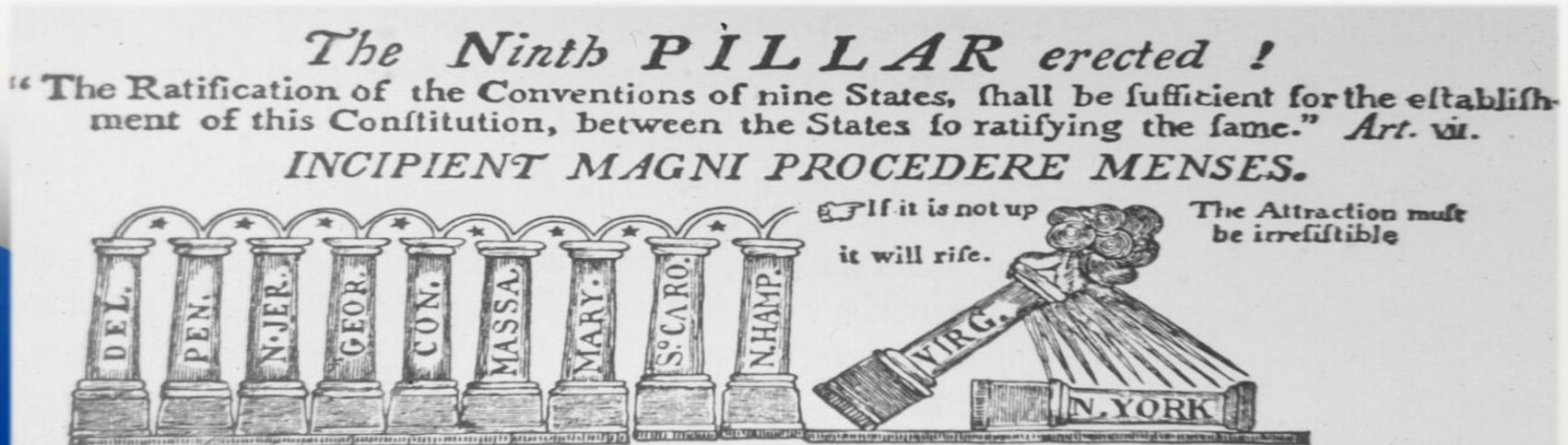


- belief that the right to accumulate, use and transfer property must be protected by government
- Constitutional protections for **property rights**
 - Article IV, Section 1
 - Article VI, Section 1
 - Article IV, Section 2
- Constitutional provisions aiding the emergence of a **national free enterprise economy**
 - Article 1, Sections 8-10



The Struggle to Ratify the Constitution

- Alteration of the Articles of Confederation required the unanimous consent of the thirteen states.
- The Framers asserted that ratification of the new Constitution required the consent of only nine states since the nation was no longer being governed by the Articles.





The Struggle to Ratify the Constitution

- **heated battle over ratification**: The drafters of the Constitution had no authority to impose their document on the American people.
- Intense debates and arguments over whether or not to ratify the constitution in each state eventually led to the final ratification.
 - **Federalists** favored ratification, of course.
 - **Anti-Federalists** opposed ratification of the new Constitution, but they never organized efficiently across all thirteen states, and so had to fight ratification at every state convention. Even so, many of the state convention votes were much closer than had been expected.
- The great success of the Anti-Federalists was forcing the first Congress under the new Constitution to establish a **Bill of Rights** ensuring the liberties that the Anti-Federalists felt the Constitution violated.

Ratification of the Constitution

#	Date	State	Votes	
			Y	N
1	Dec. 7, 1787	DE	30	0
2	Dec. 12, 1787	PA	46	23
3	Dec. 18, 1787	NJ	38	0
4	Jan. 2, 1788	GA	26	0
5	Jan. 9, 1788	CT	128	40
6	Feb. 6, 1788	MA	187	168
7	Apr. 26, 1788	MD	63	11
8	May 23, 1788	SC	149	73
9	Jun. 21, 1788	NH	57	47
10	Jun. 25, 1788	VA	89	79
11	Jul. 26, 1788	NY	30	27
12	Nov. 21, 1789	NC	194	77
13	May 29, 1790	RI	34	32

The Struggle to Ratify the Constitution



- In Rhode Island resistance against the Constitution was so strong that civil war almost broke out.
- Although not all of the states were as extreme as Rhode Island, many of them had difficulty deciding which side they were on. This uncertainty played a major role in the ratification convention in Massachusetts. After long debate, a compromise (the **Massachusetts Compromise**) was reached. Massachusetts would ratify the Constitution and in the ratifying document would strongly suggest that the Constitution be amended with a Bill of Rights.
- Four of the next five states to ratify included similar language in their ratification instruments.
- As a result, after the Constitution was enacted, Congress sent a set of twelve amendments to the states. Ten of these amendments were immediately ratified as the new Bill of Rights.
- Ratification led people to look at America as one united nation, rather than thinking of each state as a sovereign entity.



The Bill of Rights

Amendment I	Freedom of religion, speech, press, and assembly
Amendment II	The right to bear arms
Amendment III	Prohibition against quartering of troops in private homes
Amendment IV	Prohibition against unreasonable searches and seizures
Amendment V	Rights guaranteed to the accused: requirement for grand jury indictment; protections against double jeopardy and self-incrimination; guarantee of due process
Amendment VI	Right to a speedy and public trial before an impartial jury, to cross-examine witnesses, and to have counsel
Amendment VII	Right to a trial by jury in civil suits
Amendment VIII	Prohibition against excessive bail and fines and against cruel and unusual punishment
Amendment IX	Traditional rights not listed in the Constitution are retained by the people
Amendment X	Powers not denied to them by the Constitution or given solely to the national government are retained by the states

The Changing Constitution, Democracy and American Politics



- The Constitution is the basic rule book for the game of American politics.
- The amendment process is difficult so change by that route only occurs with big issues (if then).
- **judicial review**: the ability of a court to examine and decide if a statute, treaty or administrative regulation contradicts or violates the provisions of existing law, a state constitution or the US Constitution
- But changing political practices do occur.
 - existence of political parties
 - growing scope of presidential power

America's Constitution: How Exceptional?



- contrast with **parliamentary systems**: How different and similar are the presidential and parliamentary government systems, and what should they understand about each other?
- unusual degree of **governmental fragmentation**
 - separation of powers
 - checks and balances
 - federalism

America's Constitution: How Exceptional?



Thomas Jefferson characterized the 55 men who showed up in Philadelphia as *demi-gods*, who created a Constitution that would *last into remote futurity*.

Alexis de Tocqueville marveled at the work of the American founders: *Never before in the history of the world had the leaders of a country declared the existing government to be bankrupt, and the people, after debate, calmly elected delegates who proposed a solution, which, in turn, was debated up and down the country for nearly a year, and not a drop of blood was spilled.*

And Hamilton, in *Federalist 1*, suggested that this was a *unique event* in the history of the world; finally *government was going to be established by reflection and choice rather than force and fraud.*

