RECENTLY, THE CONSTITUTION ITSELF HAS BECOME THE focus of political debate and conflict. Starting in the 2010 midterm elections and continuing through the 2012 presidential election, a popular movement known as the Tea Party has supported candidates who endorse a return to the Constitution’s founding principles. While the range of views within the Tea Party movement is vast, its supporters generally see the expansion of federal power—which began with Theodore Roosevelt, exploded during the New Deal of the 1930s and Great Society of the 1960s, and continues today with President Obama’s health care reform—as constitutional overreach. Many Tea Partiers see Social Security, Medicare, and the Federal Reserve as unconstitutional because they are not expressly permitted by the Constitution. Jim DeMint, a Republican senator from South Carolina and a leading Tea Partier, recently wrote, “If President Obama’s motto is ‘Yes, we can,’ the Constitution’s is ‘No, you can’t.’ . . . Although the Constitution does give some defined powers to the federal government, it is overwhelmingly a document of limits, and those limits must be respected.”

The Tea Party’s efforts to establish constitutional limits on government activity have met resistance from those who challenge the Tea Party’s take on the Constitution and the Founding. These critics argue that rather than serving as a document that created a limited national government and protected state power, the Constitution was intended to create a strong national government while limiting state power. Differences of opinion about the Constitution have been part of American politics since the debates between Federalists and
Antifederalists over the document's ratification. Unfortunately, the Constitution itself provides few definitive answers because its language was intentionally general so that it would stand the test of time. Consequently, in every major political debate in our nation's history, both sides have claimed to ground their views in the Constitution. Abolitionists and secessionists during the pre–Civil War period, New Deal supporters and opponents, and civil rights activists and segregationists all claimed to have the Constitution on their side. Today's vigorous debate about the proper scope of the national government's powers is only the most recent chapter in this perpetual conflict.

Our Constitution has survived so long because rather than taking up arms, since the earliest years of our republic Americans have relied on elections and representative government to settle disputes. Losers of one round of elections know that they have an opportunity to compete in the next election and that their voices can be heard in another part of the government. The peaceful transitions of power and stability in our political system may be attributed to the hallmark characteristics of U.S. constitutional government: the separation of power across the levels of government (national, state, and local) and within government (legislative, executive, and judicial), as well as the checks and balances of power across the institutions of government.

The separation of powers in government does not mean that the Constitution resolves our political conflicts. The Founders recognized that self-interest and conflict are inherent parts of human nature and cannot be eliminated, so they attempted to control conflict by dispersing power across different parts of government. Thus parts of the political system are always competing with one another in pursuit of various interests: for example, Republicans in Congress may want to cut spending to balance the budget, while a Democratic president may want a mix of spending cuts and tax increases. This conflictual process is often criticized as "gridlock" and "partisan bickering." But that is the system our Founders created. Think about it this way: dictatorships do not have political conflict because dissenters are imprisoned or murdered; in contrast, we do have political conflict because under our constitutional government there is free and open competition among different interests and ideas.

In addition to guaranteeing that politics is conflictual, the Constitution clearly exemplifies the other two themes of this textbook. The sweeping influence of the Constitution also shows that politics is everywhere. The document shapes every aspect of national politics, which in turn influences many parts of your life. The Constitution establishes the basic rules for our nation's institutions of government, prevents the government from doing certain things to citizens (such as denying them freedom of speech), and guarantees specific individual rights. In other words, the Constitution determines the ground rules for the process that guides politics. We will return to these themes throughout this chapter.

Finally, the Constitution is highly readable. You do not have to be a lawyer or a political philosopher to understand it. It contains only 4,543 words (about the length of a 15-page term paper), and although the writing is somewhat old-fashioned in places, it uses everyday language rather than the legalese that one would confront in a modern document of this type. If you haven't read it recently (or at all), turn to the Appendix and read it now.
THE HISTORICAL CONTEXT OF THE CONSTITUTION

The Constitution was created through conflict and compromise, and it is important to understand the historical context within which that process occurred. Key events shaped the Constitutional Convention, including the period of British rule over the American colonies, the Revolutionary War, and problems with the first form of government in the United States—the Articles of Confederation.

The first event that led many American colonists to question the fairness of British rule and shaped their ideas about self-governance was the Stamp Act of 1765, which imposed a tax on many publications and legal documents in the colonies. The British Parliament enacted the tax to help pay for the French and Indian War (1754–1763), claiming the tax was fair because the American colonists were benefiting from the protection of British troops. Many colonists saw this as unfair “taxation without representation” because they had no say in the legislation’s passage (because they had no representation in the British Parliament). A series of escalating events, including the Tea Act (1773) and the Boston Tea Party later that year, in which colonists dumped tea from the British Indian Tea Company into the harbor rather than pay new tax, moved the colonies closer to the inevitable break with Great Britain. Attempts at a political solution failed, so the Continental Congress declared independence from Britain on July 4, 1776.

ARTICLES OF CONFEDERATION: THE FIRST ATTEMPT AT GOVERNMENT

Throughout the Revolutionary and early post-Revolutionary era, the future of the American colonies was very much in doubt. While many Americans were eager to sever ties with the oppressive British government and establish a new nation
that rejected the trappings of royalty, there was still a large contingent of Tories (supporters of the British monarchy) and probably an even larger group of Americans who wished the conflict would just go away. This context of uncertainty and conflict made the Founders’ task of creating a lasting republic extremely difficult.

The first attempt to structure an American government, the Articles of Confederation, swung too far in the direction of limited government. The Articles were written in the summer of 1776 during the Second Continental Congress, which also authorized and approved the Declaration of Independence. The Articles were submitted to all 13 states in 1777 for approval, but they did not take effect until the last state ratified them in 1781. However, in the absence of any alternative, the Articles of Confederation served as the basis for organizing the government during the Revolutionary War. (See Figure 2.1, “Constitutional Timeline.”)

In their zeal to reject monarchy, the authors of the Articles did not even include a president or any other executive leader. Instead, they assigned all national power to a Congress in which each state had a single vote. Members of Congress were elected by state legislatures rather than directly by the people. There was no judicial branch; all legal matters were left to the states, with the exception of disputes among the states, which would be resolved by special panels of judges appointed on an as-needed basis by Congress. In their eagerness to limit the power of government, the authors of the Articles gave each state veto power over any changes to the Articles and required approval from 9 of the 13 states on any legislation.

More important, the states maintained autonomy and did not sacrifice any significant power to the national government. Powers granted to the national government, such as making treaties and coining money, were not exclusive powers; that is, they were not denied to the states. Congress also lacked any real authority over
the states. For example, Congress could suggest the amount of money each state owed to support the Revolutionary army but could not enforce payment. After the Revolutionary War ended with the British surrender in 1781, the same weaknesses continued to plague Congress. For example, even though the new government owed millions of dollars to foreign governments and domestic creditors, it had no way to make the states pay their share. And if a foreign government negotiated a trade agreement with Congress, any state government could veto or amend the agreement, which meant that the foreign government might have to negotiate separate agreements with Congress and each state legislature. Even trade among states was complicated and inefficient.

In the face of such issues, a small group of leaders decided that something had to be done. A group from Virginia urged state legislatures to send delegates to a convention on interstate commerce in Annapolis, Maryland, in September 1786. Only five sent delegates. However, Alexander Hamilton and James Madison salvaged the effort by getting those delegates to agree to convene again in Philadelphia the following May. They also proposed that the next convention examine the defects of the current government and "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."

The issues that motivated the Annapolis Convention gained new urgency as subsequent events unfolded. In the years after the war, economic chaos led to a depression, and many farmers lost their land because they could not pay their debts or state taxes. Frustration mounted, and early in 1787 a former captain in the Revolutionary army, Daniel Shays, led a force of 1,000 farmers in an attempt to take over the Massachusetts state government arsenal in Springfield. Their goal was to force the state
### COMPARING THE ARTICLES OF CONFEDERATION AND THE CONSTITUTION

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<td>Unanimous consent required</td>
<td>Consent of nine states required</td>
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Monarchy A form of government in which power is held by a single person, or monarch, who comes to power through inheritance rather than election.

Republicanism A form of government in which the interests of the people are represented through elected leaders.

Although the leaders who gathered in Philadelphia in the summer of 1787 to write the Constitution were chastened by the failure of the Articles of Confederation, they still supported many of the principles that motivated the Revolution. There was broad consensus on: (1) rejection of monarchy, (2) popular control of government through a republican democracy, and (3) limitations on government power that would protect individual rights and personal property (that is, protect against tyranny).
First among these principles was rejection of monarchy in favor of a form of government based on self-rule. In its broadest sense, republicanism is the ideology of any state that is not a monarchy. As understood by the framers, it is a government in which elected leaders represent the views of the people. Thomas Paine, an influential political writer of the Revolutionary era, wrote a pamphlet entitled Common Sense in 1776 that was a widely read indictment of monarchy and an endorsement of the principles that fueled the Revolution and underpinned the framers’ thinking. Paine wrote that a monarchy was the “most bare-faced falsity ever imposed on mankind” and that the common interests of the community should be served by elected representatives.

The Founders’ views of republicanism were combined with liberal principles of liberty and individual rights to create their views of the proper form of government. The Declaration of Independence expresses these core principles:

*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government.*

Three crucial ideas are packed into this passage: equality, self-rule, and natural rights. Equality was not given much attention in the Constitution (in later chapters we discuss how the problem of slavery was handled), but the notion that a government gains its legitimacy from the “consent of the governed” and that its central purpose is to uphold the “unalienable” or natural rights of the people were central to the framers. The “right of the people to alter or abolish” a government that did not protect these rights served both to justify the revolt against the British and to remind the framers of their continuing obligation to ensure that those needs were met. The leaders who met in Philadelphia thought the Articles of Confederation had become “destructive to those ends” and therefore needed to be altered.

The most comprehensive statement of the framers’ political philosophy and democratic theory was a series of essays written by James Madison, Alexander Hamilton, and John Jay entitled the *Federalist Papers*. These essays explained and justified the framework of government created by the Constitution. They also revealed the framers’ view of human nature and its implications for democracy. The framers’ view of human nature as basically self-interested led to Madison’s assessment that “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” This analysis (from *Federalist 51*) is often considered the clearest articulation of the need for republican government and a system of separated powers.

In *Federalist 10* Madison described the central problem for government as the need to control factions. He argued that governments cannot control the causes of factions, because differences of opinion—based on the fallibility of reason; differences in wealth, property, and native abilities; and attachments to different leaders—are part of human nature. The only way to eliminate factions would be to either remove liberty or try to make everyone the same. The first remedy Madison called “worse
than the disease,” and the second he found “as impracticable as the first would be unwise.” Because people are driven by self-interest, which sometimes conflicts with the common good, government must, however, try to control the effects of factions. This was the task facing the framers at the Constitutional Convention.

ECONOMIC INTERESTS

Political ideas were central to the framers’ thinking at the Constitutional Convention, but economic interests were equally important. Both the economic status of the framers themselves and the broader economic context of the time played a role. The historian Charles Beard famously argued that the framers wanted to revise the Articles of Confederation and strengthen the national government largely to protect their own property holdings and investments. In fact, some undemocratic features of the Constitution probably do reflect the framers’ privileged position; however, Beard’s argument has been countered by research showing, among other things, that opponents of the Constitution also came from the upper class. Most constitutional scholars now view the Constitution as the product of both ideas and interests.

The broader economic context of the American Founding was more important than the delegates’ individual interests. First, while there were certainly class differences among Americans in the late eighteenth century, they were insignificant compared to those in Europe. America did not have the history of feudalism that had created tremendous inequality in Europe between landowners and propertyless serfs who worked the land. In contrast, most Americans owned small farms or worked as middle-class artisans and craftsmen. Thus, while political equality did not figure prominently in the Constitution, citizens’ relative economic equality did indeed influence the context of debates at the Constitutional Convention.

Second, despite Americans’ general economic equality, there were significant regional differences. The South was largely agricultural with cotton and tobacco plantations that depended on slave labor. The South favored free trade because of its export-based economy (bolstered by westward expansion) and the slave trade. The middle Atlantic and northern states, however, had smaller farms and a broad economic base of manufacturing, fishing, and trade. These states favored government-managed trade and commercial development.

Despite these differences the diverse population favored a stronger national government and reform of the Articles of Confederation. Creditors wanted a government that could pay off its debts to them, southern farmers wanted free trade that could only be efficiently promoted by a central government, and manufacturers and traders wanted a single national currency and uniform interstate commerce regulations. However, there was a deep division between the supporters of empowering the national government and those who still favored strong state governments. These two groups became known as the Federalists and the Antifederalists. The stage was set for a productive but contentious convention.
THE POLITICS OF COMPROMISE AT THE CONSTITUTIONAL CONVENTION

Although the delegates to the Constitutional Convention generally agreed that the Articles of Confederation needed to be changed, there were many tensions over the changes that required political compromise. Among them were the following:

- majority rule versus minority rights,
- small states versus large states,
- legislative power versus executive power (and how to elect the executive),
- national power versus state and local power, and
- slave states versus nonslave states.

These complex and competing interests meant that the delegates had to focus on pragmatic, achievable solutions rather than on proposals that represented particular groups' ideals but could not gain majority support.

MAJORITY RULE VERSUS MINORITY RIGHTS

A central problem for any representative democracy is protecting minority rights within a system ruled by the majority. The framers did not think of this issue in terms of racial and ethnic minorities (as we might today), but in terms of regional and economic minorities. How could the framers be sure that small landowners and poorer people would not impose onerous taxes on the wealthier minority? How could they guarantee that dominant agricultural interests would not impose punitive tariffs on manufacturing while allowing the free export of farmed commodities? The answers to these questions can be found in Madison's writings on the problem of factions.

Madison defined a faction as a group motivated by selfish interests against the common good. If these interests prevailed, he felt, it could produce the very kind of tyranny that the Americans had fought to escape during the Revolutionary War. Madison's solution to this problem provided justification for the American form of government. To control majority tyranny, he argued, factions must be set against one another to counter one another's ambitions and prevent the tyranny of any single majority faction. This would be accomplished through the "double protection" of the separation of powers within the national government in the form of checks and balances, and also through the further division of power across the levels of state and local governments.

Madison also argued that additional protection against majority tyranny would come from the "size principle." That is, the new nation would be a large and diverse republic in which majority interests would be less likely to organize,
pluralism The idea that having a variety of parties and interests within a government will strengthen the system, ensuring that no group possesses total control.

Virginia Plan A plan proposed by the larger states during the Constitutional Convention that based representation in the national legislature on population. The plan also included a variety of other proposals to strengthen the national government.

New Jersey Plan In response to the Virginia Plan, smaller states at the Constitutional Convention proposed that each state should receive equal representation in the national legislature, regardless of size.

Great Compromise A compromise between the large and small states, proposed by Connecticut, in which Congress would have two houses: a Senate with two legislators per state and a House of Representatives in which each state’s representation would be based on population (also known as the Connecticut Compromise).

and therefore less able to dominate. This insight provides the basis for modern pluralism, a political theory that makes the same argument about the crosscutting interests of groups today.

The precise contours of Madison’s solution still had to be hammered out at the Constitutional Convention, but the general principle pleased both the Antifederalists and the Federalists. State governments would maintain some autonomy, but the national government would become stronger than it had been under the Articles. The issue was how to strike an appropriate balance: none of the framers favored a pure populist majoritarian democracy, and few wanted to protect minority rights to the extent that the Articles had.

SMALL STATES VERSUS LARGE STATES

The question of the appropriate balance came to a head in a debate between small states and large states over representation in the national legislature. Under the Articles every state had a single vote, but this did not seem fair to large states. They were pushing for representation based on population. This proposal, along with other proposals to strengthen the national government, constituted the Virginia Plan. The small states countered with the New Jersey Plan, which proposed maintaining equal representation for every state. Rhode Island, the smallest state, was so concerned about small-state power that it boycotted the convention. Tensions were running high; this issue appeared to have all the elements of a deal breaker, and there seemed to be no way to break the impasse.

Just as it appeared that the convention might grind to a halt, Connecticut proposed what became known as the Great Compromise, or the Connecticut Compromise. The plan suggested establishing a Congress with two houses: a Senate with two senators from each state, and a House of Representatives with each state’s number of representatives being based on its population. That system is still in place today.

LEGISLATIVE POWER VERSUS EXECUTIVE POWER

An equally difficult challenge was how to divide power at the national level. Here the central issues revolved around the executive—the president. How much power should the president have relative to the legislative branch? (The courts also figured into the discussions, but they were less central.) And how would the president be elected? One of the main problems was that the convention delegates did not have any positive role models for the executive.

LIMITING PRESIDENTIAL POWER

The delegates knew what they did not want: the king of England and his colonial governors were viewed as trampers of liberty. Many delegates rejected outright the idea of a single executive because they believed it was impossible to have an executive who would not be oppressive. For this reason Edmund Randolph proposed a three-person executive. In contrast, the Virginia Plan envisioned a single executive who would share some legislative power with federal judges in a Council of Revision with the power to veto legislation passed by Congress (however,
the veto could be overridden by a simple majority vote in Congress). The delegates finally agreed on the single executive because the president would have the most "energy, dispatch, and responsibility for the office," but they constrained the president’s power through the system of checks and balances. One significant power they granted to the executive was the veto. It could be overridden by Congress, but only with the support of two-thirds of both chambers. This requirement gave the president a significant role in the legislative process.

The arguments for a strong executive relied heavily on the work of the English philosopher John Locke. Locke recognized the general superiority of a government of laws created by legislatures, but he also saw the need for an executive with more flexible leadership powers, or what he called "prerogative powers." Legislatures are unable, Locke wrote, "to foresee, and so by laws to provide for all accidents and necessities." They also are, by virtue of their size and unwieldiness, too slow to alter and adapt the law in times of crisis, when the executive could step in to pursue policies in the public's interest.

Although there was support for this view, the Antifederalists were concerned that if such powers were viewed as open-ended, they could give rise to the type of oppressive leader the framers were trying to avoid. Madison attempted to reassure the opponents of executive power, arguing that any prerogative powers would have to be clearly enumerated in the Constitution. In fact, the Constitution explicitly provides only one extraordinary executive power: the right to grant reprieves and pardons, which means that the president can forgive any crimes against the federal government.

**SELECTING THE PRESIDENT**

The second contentious issue concerning the executive was the method of selecting a president. The way the president was to be elected incorporated the issues of majority rule and minority rights, state versus national power, and the nature of executive power itself. Would the president be elected by the nation as a whole, by the states, or by coalitions within Congress? If the state-level governments played a central role, would this mean that the president could not speak for national interests? If Congress elected the president, could the executive still provide a check on the legislative branch?

Most Americans do not realize how unique our presidential system is and how close we came to having a parliamentary system, which is the form of government that exists in most other established democracies. In a parliamentary system, the executive branch depends on the support of the legislative branch. The Virginia Plan proposed that Congress elect the president, just as Parliament elects the British prime minister. However, facing lingering concerns that the president would be too beholden to Congress, a committee of framers subsequently made the following recommendations: (1) that the president would be selected by an electoral college, representation in which would be based on the number of representatives and senators each state has in Congress, and (2) that members of each state legislature would determine the method for choosing their state's electors. The delegates ultimately approved this recommendation.

However, the solution did not work out the way the framers intended. First, if the electoral college was supposed to provide an independent check on the voters, it never played this role because the framers did not anticipate the quick emergence of political parties. Electors soon became agents of the parties (as they remain today) rather than independent actors who would use their own judgment to pick the most qualified candidate for president. Second, the emergence of parties...
created a serious technical error in the Constitution: the provision that gave each
elector two votes and elected the candidate with the most votes as president and
the second-place finisher as vice president. With electors acting as agents of the
parties, they ended up casting one vote each for the presidential and vice presiden-
tial candidate of their own party. This created a tie in the 1800 presidential elec-
tion when Thomas Jefferson and Aaron Burr each received 73 electoral votes. The
problem was easily fixed by the Twelfth Amendment, which required that electors
cast separate votes for president and vice president.

reserved powers As defined in
the Tenth Amendment, powers that
are not given to the national govern-
ment by the Constitution, or not pro-
hibited to the states, are reserved by
the states or the people.

national supremacy clause
Part of Article VI, Section 2, of the
Constitution stating that the Constitu-
tion and the laws and treaties of
the United States are the “Supreme
Law of the Land,” meaning national
laws take precedence over state laws
if the two conflict.

A SLAVE AUCTION IN VIRGINIA. SLAVERY
created several problems at the
Constitutional Convention: Would
there be limits on the importation
of slaves? How would runaway
slaves be dealt with by nonslave
states? And how would slaves be counted for the purposes of
congressional representation?

NATIONAL POWER VERSUS STATE AND LOCAL POWER

Tensions over the balance of power cut across virtually every debate at the con-
vention: presidential versus legislative power; whether the national government
could supersede state laws, apportionment in the legislature, slavery, regulation
of commerce and taxation, and the amending process. The overall compromise
that addressed these tensions was the system of federalism, which divided power
among autonomous levels of government that controlled different areas of policy.

Federalism is such an important topic that we devote the entire next chapter to
it, but two brief points about it are important here. First, federalism is an example
of how careful compromises can alter the Constitution’s meaning by changing a
single word. The Tenth Amendment, which was added as part of the Bill of Rights
shortly after ratification, was a concession to the Antifederalists who were con-
cerned about the national government gaining too much power in the new politi-
cal system. The Tenth Amendment says, “The powers not delegated to the United
States by the Constitution, nor prohibited by it to the States, are reserved to the
States respectively, or to the people.” This definition of reserved powers was
viewed as setting outer limits on the reach of national power.

However, the Antifederalists were not happy with this wording because of the
removal of a single word; they wanted the Tenth Amendment to read, “The pow-
ers not expressly delegated to the United States . . . .” The new wording would have
more explicitly restricted national power. With the word expressly removed, the
amendment became much more ambiguous and less restrictive of national power.

Second, the national supremacy clause of the
Constitution (Article VI) says that any national law is
the supreme law of the land and takes precedence over
any state law that conflicts with it. This is especially
important in areas where the national and state govern-
ments have overlapping responsibilities for policy. (The
relationship between the national government and the
states is discussed in Chapter 3, Federalism.)

SLAVE STATES VERSUS NONSLAVE
STATES

Slavery was another nearly insurmountable issue for
the delegates. Southern states would not agree to any
provisions limiting slavery. Although the nonslave
## Major Compromises at the Constitutional Convention

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<td>National Bill of Rights needed</td>
<td>Bill of Rights passed by the 1st Congress; ratified by all states as of December 1791.</td>
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* This was changed by the Judiciary Act of 1789, which provided for appeals from state to federal courts.

States opposed the practice, they were not willing to scuttle the entire Constitution by taking a principled stand. Even after these basic divisions had been recognized, many unresolved issues remained. Could the importation of slaves be restricted in the future? How would northern states deal with runaway slaves? Most important, how would the slave population be counted for the purpose of slave states' representation in Congress?

In reaching compromises on these questions, the delegates went through similar negotiations over how slaves would be counted for purposes of states' congressional representation. The states had been through this debate once before, when they addressed the issue of taxation under the Articles of Confederation. At that point slave states had argued that slaves should not be counted because they did not receive the same benefits as citizens and were not the same burden to the government. Nonslave states had countered that slaves should be counted in the same way as citizens when determining a state's fair share of the tax burden. They had reached a compromise by agreeing that slaves would count as three-fifths of a person for...
Three-Fifths Compromise

The states’ decision during the Constitutional Convention to count each slave as three-fifths of a person in a state’s population for the purposes of determining the number of House members and the distribution of taxes.

purposes of taxation. Now the arguments over the issue of representation were even more contentious at the Constitutional Convention. Here the positions were reversed, with slave states arguing that slaves should be counted like everyone else for the purposes of determining the number of House representatives for each state. Ultimately, both sides managed to agree on the Three-Fifths Compromise.

The other two issues involved the importation of slaves and how to deal with runaway slaves. In terms of the latter issue, northern states either would be obligated to return runaway slaves to their southern owners or they would not. Because there was no middle ground, the opposing sides looked for other issues on which to trade votes. The nonslave states wanted more national government control over commerce and trade than under the Articles, a change that the slave states opposed. So a vote trade developed as a way to compromise the competing regional interests of slavery and regulation of commerce. Northern states agreed to return runaway slaves, and southern states agreed to allow Congress to regulate commerce and tax imports with a simple majority vote (rather than the super-majority required under the Articles).

The importation of slaves was included as part of this solution. Northern states wanted to allow future Congresses to ban the importation of slaves; southern states wanted to allow the importation of slaves to continue indefinitely, arguing that slavery was essential to produce their labor-intensive crops. After much negotiation the final language of the Article prevented a constitutional amendment from banning the slave trade until 1808.19

From a modern perspective it is difficult to understand how the framers could have taken such a purely political approach to the moral issue of slavery. Many of the delegates believed slavery was immoral, yet they were willing to negotiate in order to gain the southern states’ support of the Constitution. Some southern delegates were apologetic about slavery, even as they argued for protecting their own interests. Numerous constitutional scholars view the convention’s treatment of slavery
as its central failure. In fairness to the delegates, it is not clear that they could have done much better if the goal was to create a document that all states would support. However, the delegates’ inability to resolve this issue meant that it would simmer below the surface for the next 70 years, finally boiling over into the bloodiest of all American wars, the Civil War.

The convention ended on a relatively harmonious note with Benjamin Franklin moving for adoption. His motion was worded ambiguously to allow those who still had reservations to sign the Constitution anyway: “Done in Convention by the unanimous consent of the States present the 17th of September . . . In Witness whereof we have hereunto subscribed our names.” His clever wording meant that the signers were only bearing witness to the approval by the states and therefore could still, in good faith, oppose substantial parts of the document. Franklin’s motion passed with ten ayes, no nays, and one delegation divided. All but three of the remaining delegates signed.

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RATIFICATION

Article VII of the Constitution, which described the process for ratifying the document, was also designed to maximize its chance of success. Only nine states were needed to ratify, rather than the unanimity rule that had applied to changing the Articles of Confederation. Equally important, ratification votes would be taken in state conventions set up specifically for that purpose, bypassing the state legislatures, which would be more likely to resist some of the Constitution’s state—federal power-sharing arrangements.

The near-unanimous approval at the Constitutional Convention’s end masked the very strong opposition that remained. Subsequently, the ratifying conventions in each state subjected the Constitution to intense scrutiny, as attendees examined every sentence for possible objections. A national debate raged over the next nine months.

THE ANTIFEDERALISTS’ CONCERNS

The Antifederalists were most worried about the role of the president, the transfer of power from the states to the national government, and the lack of specific guarantees of civil liberties. In short, they feared that the national government would become tyrannical. State power and the ability to regulate commerce were also central concerns. States such as New York would lose substantial revenue if they could no longer charge tariffs on goods that came into their ports. Other states were concerned that they would pay a disproportionate share of national taxes.

The Antifederalists’ most important objection was the lack of protections for civil liberties in the new political system. During the last week of the convention, Elbridge Gerry and George Mason offered a resolution “to prepare a Bill of Rights.” However, the resolution was unanimously defeated by the state delegations. Some believed that the national government posed no threat to liberties such as freedom of the press because it did not have the power to restrict them in the first place. Others thought that because it would be impossible to enumerate all rights, it was