

# Chapter 1

## THE CONSTITUTION OF THE UNITED STATES

### CHAPTER REVIEW

#### Learning Objectives

After studying Chapter 1, you should be able to do the following:

1. Explain the nature and functions of a constitution.
2. Understand the theoretical underpinnings of the Declaration of Independence.
3. Evaluate the strengths and weaknesses of the Articles of Confederation.
4. Summarize the history of the constitutional convention, including backgrounds of the framers, procedures, and compromises reached.
5. Describe the struggle for ratification and how the Bill of Rights fits into this struggle.
6. Understand and define the major features of the Constitution, including secularism, republicanism, checks and balances, federalism, the electoral college, and adaptability.
7. Explain how the Constitution can be changed both formally by amendment and informally.
8. Discuss the importance of judicial review as originating in *Marbury v. Madison*.

#### Chapter Outline and Summary

##### I. Introduction

##### II. What Is a Constitution?

###### A. Constitutionalism

1. Constitutionalism is the belief of limiting power by written charter **that is followed**.
2. Constitutions take different forms in different lands.
3. Constitutions embody intangibles that enable them to work and survive.

## B. Constitutional Functions

1. A constitution outlines the organization of government.
2. A constitution grants power and authority to government.
3. A constitution can be a mainstay of rights.
4. A constitution may serve as a symbol of the nation.

## III. The Road to Nationhood

### A. The Declaration of Independence: The Idea of Consent

1. Between 1763 and 1776 British attempts at direct control clashed with colonial self-interest and identity.
2. The Declaration of Independence stated colonists' grievances against British rule.
3. The Declaration also expressed the political ideas and values of the day including the following themes:
  - a. Humankind shares an equality.
  - b. Government is the creation and servant of the people.
  - c. The rights that all people intrinsically possess constitute a higher law binding government.
  - d. Governments are bound by their own laws.

### B. The Articles of Confederation: The Idea of Compact

1. State autonomy was preserved.
2. Equal representation for the states was preserved.
3. The central government was granted only a few important powers.
4. There were no separate executive or national courts.
5. Amendments were almost impossible.

## IV. The Making of the Constitution

### A. Prelude to Philadelphia

1. The major deficiencies of the Articles were a weak central government and state governments having too much power.
2. Shays' Rebellion illustrates the economic problems and weaknesses of the central government.
3. The Annapolis Convention led to a call for a constitutional convention.
4. One notable success of the Articles was the Northwest Ordinance, laying the basis for government in the West.

## B. The Philadelphia Convention

1. America of 1787 was sparsely populated, weakly defended, and internationally isolated.
2. The convention delegates were among the most notable and talented of their day.
3. Procedures and compromises at the convention:
  - a. Deliberations were held in secret.
  - b. The Great Compromise incorporated the Virginia Plan for a strong national government and the New Jersey Plan for strong state governments and created numerical representation in the lower house and equal state representation in the upper house.
  - c. The three-fifths compromise allowed slaves to be counted as a fraction for representation purposes.
  - d. Ironically, a majority of Americans (slaves and women) were denied representation and participation.

## C. Ratification

1. Article 7 required the approval of nine state conventions.
2. Supporters of the Constitution called themselves Federalists and the other side Antifederalists.
3. *The Federalist*, a collection of essays supporting the Constitution, is a major source of American political theory.
4. The Antifederalists believed the Constitution was conceived illegally, weakened state governments, threatened individual liberty, and promoted a commercial empire. (See “Politics and Economics: The Constitution as an Economic Document.”)

## V. Features of the Constitution

### A. Republicanism and Divided Powers

1. Republican government is one of divided powers.
2. A mixture of democratic/nondemocratic elements includes popular elections, indirect popular elections, and appointment.
3. The Constitution limited government and diffused and dispersed power in order to prevent Madison’s fear of tyranny.
4. Power was divided horizontally in a system of checks and balances where the legislative, executive, and judicial branches share power.
5. Federalism divided power vertically between national and state governments.
6. Divisions of power were designed in part to limit the influence of factions and to cope with human ambition.

7. Side effects of these attempts to check tyranny:
  - a. It was sometimes more difficult to deal with threats to individual liberty in the states.
  - b. Fragmented powers have sometimes made it hard to govern.

#### B. Single and Independent Executive

1. Executive authority was suspect at the time of the Convention.
2. The electoral college was a compromise between electing the president by the people, Congress, or state legislatures.

#### C. Adaptability

1. Although a product of the eighteenth century, the Constitution has adapted over time.
2. The Constitution's brevity necessitates interpretation.
3. There is elasticity in the language of the Constitution.
  - a. Some words and phrases have no precise meaning.
  - b. The elastic clause gives Congress implied powers that have been used to meet new challenges and needs.
4. The Constitution exalts procedure over substance, thus avoiding time-related policy choices.

### VI. Changing the Constitution

#### A. Amendment by the Rules

1. The Constitution has been amended relatively few times.
2. Congress or state legislatures may initiate amendments.
  - a. Only Congressional initiation has been employed successfully.
  - b. State legislatures must convene a national convention.

#### B. Change by Custom and Evolution

1. Changing values, expectations, and conditions have influenced constitutional attitudes and practices.
2. Examples include requirements for representatives to live in their districts, political parties, and presidential electors' pledge to support their party's ticket.

## VII. Judicial Review Comes to the Supreme Court

### A. *Marbury v. Madison*: The Case of the Undelivered Commissions

1. After the 1800 election, the Federalist Congress authorized 42 new justices of the peace, but some of these appointments were not delivered before the new president (Jefferson) took office.
2. William Marbury asked the Supreme Court to force delivery through a writ of mandamus.
3. Chief Justice Marshall decided that Marbury should have his job, that the Supreme Court can rule on the legality of actions of the executive, and that the Court could not issue a writ of mandamus because it was not in their original jurisdiction.

### B. The Significance of *Marbury*

1. Officers of the government were bound by law.
2. Laws contrary to the Constitution were not valid.
3. The Court claimed authority to decide what the Constitution means (judicial review). See “Contemporary Controversies: Is Judicial Review Democratic?—A Comparative Perspective.”
4. The Court rejected the states’ desire to interpret the Constitution as argued in the Kentucky and Virginia Resolutions.

### C. Judicial Review and the Framers

1. Some framers expected the Court to exercise judicial review.
2. Much controversy stems from the fact that the Constitution says nothing about how its words are to be interpreted. (See “Politics and Ideas: Whose Constitution Is It?”)
3. Marshall saw judicial review as only a modest power.

## Key Terms, Concepts, and Personalities

After studying Chapter 1, you should be able to identify and describe the significance of the following:

constitutionalism

Declaration of Independence

Articles of Confederation

confederation

Shays’ Rebellion

Annapolis Convention  
Northwest Ordinance  
Virginia Plan  
New Jersey Plan  
Great Compromise  
Three-fifths compromise  
Federalists  
Antifederalists  
*The Federalist*  
Bill of Rights  
republican government  
checks and balances  
federalism  
electoral college  
adaptability  
brevity  
elastic clause  
John Marshall  
William Marbury  
writ of mandamus  
*Marbury v. Madison*  
original jurisdiction  
appellate jurisdiction  
judicial review  
Kentucky and Virginia Resolutions

## TESTING YOUR UNDERSTANDING

### Completion

1. The belief in limiting governmental power by a written charter is called \_\_\_\_\_.
2. The Declaration of Independence contains a strong belief that government is the creation and servant of the \_\_\_\_\_.
3. Under the Articles of Confederation the \_\_\_\_\_ retained most political power.
4. The \_\_\_\_\_ solved the problem of how to count slaves for purposes of congressional representation.

5. Supporters of the proposed Constitution called themselves \_\_\_\_\_.
6. Direct election of the president by the people, Congress, or state legislatures was avoided by creation of the \_\_\_\_\_.
7. The \_\_\_\_\_ authorizes Congress to pass laws allowing it to carry into execution its expressed powers.
8. John Marshall could not help William Marbury get his judicial appointment because the writ of mandamus he requested was not part of the Court's \_\_\_\_\_ jurisdiction.

## **Compare and Contrast**

1. Shays' Rebellion and Annapolis Convention
2. Virginia Plan, New Jersey Plan, and Great Compromise
3. Federalists and Anti federalists
4. ratification and the Bill of Rights
5. checks and balances and federalism
6. *Marbury v. Madison* and judicial review
7. original jurisdiction and appellate jurisdiction

## **True/False**

1. The British Constitution can be changed by an act of Parliament. T F
2. Virtual unanimity existed in the colonies in favor of declaring independence in 1776. T F
3. The Articles of Confederation provided for no separate executive and no national courts. T F
4. One of the few successes of Congress under the Articles of Confederation was the Northwest Ordinance. T F

5. Under the original Constitution, a majority of Americans were denied representation and participation. T F
6. As written, the Constitution facilitates the creation of political parties and interest groups, called factions by Madison. T F
7. The Constitution of the United States is longer than most state constitutions. T F

## Multiple-Choice

1. All of the following are constitutional functions *except* \_\_\_\_\_.
  - a. providing an outline for the organization of government
  - b. establishing a formal economic system for the nation
  - c. granting power to governmental institutions
  - d. serving as a symbol of the nation
2. Prior to the American Revolution, British leaders in London \_\_\_\_\_.
  - a. attempted to force the colonies to raise armies for self defense
  - b. repealed the Townsend Acts, allowing the colonies to tax
  - c. gave the colonies power to appoint their own governors
  - d. attempted to bring the colonies under more direct control
3. Which of the following is not a major theme of the Declaration of Independence?
  - a. Humankind shares an equality.
  - b. Government is a divinely ordained compact between people and God.
  - c. The rights that all people intrinsically possess constitute a higher law binding government.
  - d. Governments are bound by their own laws.
4. Which of the following was one of the main provisions of the Articles of Confederation?
  - a. It guaranteed equal representation for the states.
  - b. It established a weak separate executive department.
  - c. The national courts were given only limited appellate jurisdiction.
  - d. Amendments could only be made with the approval of Congress and a majority of state legislatures.
5. One of the major deficiencies of the Articles of Confederation was \_\_\_\_\_.
  - a. too great a policymaking role for the national courts
  - b. the ability of the states to declare war separately
  - c. the ease by which the Articles could be amended by the states
  - d. the absence of sufficient power in the central government



6. The 1786 Annapolis Convention was originally promoted as a means of \_\_\_\_\_.
  - a. consolidating the American military forces
  - b. creating a uniform tariff policy toward Britain
  - c. improving commercial relations among the states
  - d. writing a new national constitution
7. One of the few successes of the Articles of Confederation was the \_\_\_\_\_.
  - a. Annapolis Convention
  - b. Northwest Ordinance
  - c. Townsend Acts
  - d. three-fifths compromise
8. The framers of the Constitution \_\_\_\_\_.
  - a. were among the most talented and intellectual people of the day
  - b. were mostly farmers
  - c. represented a reassembling of the generation that had set the Revolution in motion
  - d. were all committed to writing a completely new Constitution
9. In order for the new Constitution to go into effect it had to be approved by \_\_\_\_\_.
  - a. all of the state legislatures
  - b. seven of the thirteen state legislatures
  - c. popularly elected conventions in nine states
  - d. popularly elected conventions in all of the states
10. Why did Antifederalists oppose the Constitution?
  - a. It was conceived, in an illegal manner
  - b. It seemed designed to promote a commercial empire
  - c. It failed to include a bill of rights
  - d. All of the above
11. The constitutional arrangement where power is divided and shared horizontally is called \_\_\_\_\_.
  - a. Republicanism
  - b. Popularism
  - c. Checks and balances
  - d. Federalism
12. The Constitution requires amendments to be \_\_\_\_\_.
  - a. initiated by Congress
  - b. initiated by the President
  - c. approved by two-thirds of the state legislatures
  - d. approved by three-fourths of the states

13. In *Marbury v. Madison*, Chief Justice John Marshall ruled which of the following?
  - a. A writ of mandamus was an improper constitutional remedy.
  - b. The Supreme Court did not possess original jurisdiction.
  - c. The Court could not rule on the legality of presidential action.
  - d. Marbury would receive his judicial appointment.
14. What was the significance of *Marbury v. Madison*?
  - a. Officers of the government could be called to account in court.
  - b. Statutes contrary to the Constitution were not valid.
  - c. The Court claimed authority to decide what the Constitution means.
  - d. All of the above.
15. The Kentucky and Virginia Resolutions of 1798 \_\_\_\_\_.
  - a. called for the Supreme Court to have the power of judicial review
  - b. favored decentralized over centralized judicial review
  - c. claimed for the states the final authority to interpret the Constitution
  - d. called for Congress to have the power of judicial review
16. Judicial review \_\_\_\_\_.
  - a. was favored by a majority of the founding fathers
  - b. was favorably argued in *The Federalist* papers
  - c. can be found in Article III of the Constitution
  - d. was not mentioned in the state ratifying conventions

## Essay

1. Explain what is meant by the term “constitutionalism” and delineate the major functions of a constitution.
2. What happened at the Philadelphia Convention? How would you characterize the delegates to the convention? Describe the compromises reached at the convention.
3. Explain how the Constitution diffuses and disperses power. What unpleasant side effects might occur as a result of this arrangement?
4. Explain how the Constitution is changed, both formally (by amendments) and informally (by custom and evolution). Give examples of each. How does the process of amending the U.S. Constitution differ from amending the state constitutions?

5. What was the significance of *Marbury v. Madison*? Evaluate judicial review in terms of democracy.

## Research Topics and Practical Applications

1. Find a copy of the constitution of a country other than the United States. Answer the questions below regarding the constitution you chose, comparing your answer with characteristics of the American Constitution.
  - a. How is the government organized and what are the major branches of government?
  - b. How is power horizontally divided between the branches of government?
  - c. Is there a vertical division of government (federal or confederal)? How is power divided vertically?
  - d. Does the constitution provide for elections of government officials? If so, what is the nature of these elections and are political parties mentioned?
  - e. Is there a bill of rights in the constitution? What is the extent of these rights and what limitations are placed on them?
  - f. Is judicial review mentioned? If so, what is the procedure for judicial review?
  - g. What is the procedure for amending the constitution? Does it appear to be easy or hard to amend the constitution?
2. Examine how the Constitution has withstood the test of time. Is it truly an adaptable document? What aspects of the Constitution might you consider outdated? Give examples and reasons why. Examine a contemporary issue, such as abortion, the environment, nuclear power, or high-tech communications. How might these become constitutional issues? Can the Constitution fairly deal with issues such as these that the founding fathers could never have foreseen?