

# A.P. Govt Notes: Chapter 2

## “The Constitution”

### 1. *The Problem of Liberty*

1. In the decade that preceded the **Revolutionary War**, most American colonists believed that they could obtain certain liberties and still be a part of the British Empire, liberties such as:
  - i. The right to bring cases to truly independent judges that weren't subordinate to the king.
  - ii. The right to **NOT** have British troops quartered in private houses.
  - iii. The right to **NOT** have to pay taxes without direct Parliamentary representation.
2. However, by the time war broke out, many colonists had lost faith in the [unwritten] British constitution, one that allowed liberties to be violated and abuse of political power to flourish.
3. Colonists believed that English politicians tended to be corrupt, since they naturally desired power, and that was their explanation of why the British constitution was insufficient for their American liberties.
  - i. The colonists desired protected liberties based not on the king but on a “higher law” that embodied “**natural rights**,” such as those of life, liberty, and property, that were given by God.
  - ii. These rights could not be taken away from anyone by anyone, theoretically.
  - iii. By property, the revolutionaries did not be money, land, or economics; they meant the idea of being able to move up in life, of being capable of improving.
4. The **Declaration of Independence** listed man's “natural rights,” but it also displayed 27 complaints against the British king.
5. The “real revolution” was not just the fighting and combat that went on during the war, but the actual “radical change in the principles, opinions, and sentiments of the people.”

- i. Such revolutionary ideas included: (1) Human liberty exists before government organization, and is the number ONE priority; (2) The legislative branch of the government represents the people and should be more powerful than the executive branch; (3) Only a written constitution could allow political power to be recognized.*
- 6. In 1776, eight states adopted written constitutions, and within a few years, all states except Connecticut and Rhode Island (who relied on colonial charters) had constitutions of their own.*
- 7. The 11 years between the Declaration of Independence and the Constitution were tumultuous; George Washington had to run an army without a strong, supportive national government, many parts of the nation were in shambles, and even after their loss, the British continued to hold posts in Canada and the western territories of the U.S.; also, Spain held territory in Florida and the Mississippi River.*
- 8. In 1781, the **Articles of Confederation** went into effect, creating a confederation, NOT a country.*
  - i. Each state retained its sovereignty and independence and had one vote in Congress.*
  - ii. Nine votes out of thirteen were needed to pass ANY measure while amendments had to be unanimously approved, and the vote-casting delegates were chosen by state legislatures.*
  - iii. Congress could make piece, coin money, run the post office, and appoint the key army officers, but it could not settle states claims, call for taxes, or raise an effective military.*
- 9. Men like **George Washington** and **Alexander Hamilton** lament the weakness of the government under the Articles, so in May, 1787, a group of men met in Philadelphia to discuss ways of remedying the Articles.*
- II. The Constitutional Convention*
  - 1. The delegates who met in Philadelphia were authorized by Congress only to revise the Articles, but aside from agreeing that the protection of*

life, liberty, and property must be kept, they had little idea of how to fix the Articles of Confederation.

2. The delegates, such as **James Madison**, had spent a good deal studying ancient and modern political history, but had come to the conclusion that nothing in history had worked; there was no good model.
  - i. The problems of past governments had seemed to be that weak governments had collapsed from internal dissention while strong governments trampled their people's liberties.
3. Pennsylvania and Massachusetts provided two examples of this lack of a good model on which to create a government: Pennsylvania had the most radically democratic state constitution, in which all power was given to a unicameral legislature, where members served one-year terms and could not serve more than four years, and where there was no governor or president; Massachusetts had a clear separation of powers, and both voters and office holders had to be property holders.
  - i. **Thomas Paine** hailed the Pennsylvania constitution as the "best in America," and French philosophers loved it too, but to Madison and others, it could be tyrannical, since it concentrated all power into one set of hands.
4. In January 1787, a group of ex-Revolutionary War soldiers, plagued by debts and high taxes, decided to take matters in their own hands and rebel under the leadership of **Daniel Shays**.
  - i. **Shays Rebellion** showed the weakness of the federal government, since it could not stop it, and ultimately, private funds had to be used to hire a volunteer army, which marched into Springfield, Massachusetts, and dispersed the rebels with a few shots.
  - ii. This revolt made people afraid that state governments were about to collapse from internal dissention, and it helped persuade many that a strong central government was required.
5. The Philadelphia Convention attracted 55 mostly young but experienced delegates who met in blazing hot weather and swore to keep their proceedings a secret.

- i. *Thomas Jefferson, Samuel Adams, and Patrick Henry were among those NOT attending.*
  - ii. *What the convention came up with was NOT a revision of the Articles, but rather a whole new constitution, which is today's oldest written constitution in the world.*
  - iii. *The delegates didn't always agree on issues (such as powers given to the central government, state representation, the issue of slavery), but instead often compromised.*
  - iv. *All the delegates were heavily influenced by the writings of **John Locke**, who preached that in a "state of nature," all men were perfectly free, but that men gave up a bit of their "perfect freedom" to enter a society that could protect their property.*
  - v. *The delegates knew that a popular government could be too weak to prevent on faction from abusing another and that a popular majority could be tyrannical.*
6. *Thus, the problem laid in the fact that the delegates had to devise a government strong enough to preserve order but not so strong as to threaten liberty.*
- i. *The answer was not "democracy" as it was then thought of (back then, "democracy" meant rule by the mob), but rather, a republic, which was slightly limited.*

### III. *The Challenge*

1. *Almost immediately after the convention was established, the Virginia delegation, led by **Edmund Randolph** presented a plan to fix the Articles, and little else was discussed for the next two weeks.*
2. *The **Virginia Plan** called for a strong national union organized into three branches: the legislative, the executive, and the judicial.*
  - i. *There were to be two houses—the first chosen by the people and the second chosen by members of the first—and the executive was to be chosen by the national legislature.*
  - ii. *The executive and some members of the judiciary could veto acts of legislature, but such vetoes could be overruled by the legislature.*

- iii. *The national legislature would have supreme powers on all matters on which the separate states could not handle and could veto state law.*
  - 3. *However, as debate dragged on, delegates of small states started to worry that the small states would not be properly represented, so they, under **William Paterson**, submitted the **New Jersey Plan**.*
    - i. *It enhanced the power of the national government (though not as much as the Virginia Plan did) but restricted the votes of each state to one; state population would NOT determine the number of votes.*
    - ii. *Proposed after the Virginia Plan, it was not as favored as the first, and after much debating, the committee remained deadlocked.*
  - 4. *Then, on July 5, 1787, a compromise was submitted; the **Great Compromise** was adopted on July 16<sup>th</sup>.*
    - i. *The **House of Representatives** would consist of about 65 members, be elected by the people, and be apportioned according to state population.*
    - ii. *The **Senate** would consist of two senators from each state; each senator would be chosen by state legislatures.*
  - 5. *After this, there was a much larger spirit of accommodation, and after delegates could not agree on whether the president should be chosen by the people or by Congress, they came up with the idea of creating an **Electoral College** that would choose the president.*
    - i. *They also compromised and set the presidential term at four years, without restrictions on re-election and agreed to let **Supreme Court** justices be picked by the president and approved by the Senate.*
  - 6. *On September 17, all twelve states (but not all the delegates) approved this new constitution.*
- IV. *The Constitution and Democracy*
- 1. *The framers of the Constitution intended to create a **republic**, by which a government was operated by a system of representation; a pure*

democracy was NOT desired, as shown by the fact that state legislatures, not the people, elected senators

2. They wanted both the majority of voters AND the majority of states to make key decisions, not just one or the other.
3. The power of the Supreme Court to declare acts of Congress unconstitutional, or **judicial review**, was another way of limiting popular majorities.
4. An **amendment** to the Constitution can be proposed either by 2/3 vote of BOTH houses of Congress OR by a national convention called by Congress at the request of 2/3 of the states.
  - i. It must be passed by 3/4 of the states, either by legislatures or in special state conventions.
5. **Federalism** describes a political authority divided between a national and several state governments.
6. People naturally tended to be corrupt, but a good government could be created if good people were cultivated, and many Americans believed this.
  - i. However, Madison and his supporters believed that it would be hard and catastrophic to cultivate virtue; therefore, the best solution was to create a government that could function well even without virtuous people—one with **separation of powers**.
  - ii. Therefore, federalism was good because states and the central government checked each other, thus eliminating the strength that any **factions**, or political groups, might have.
  - iii. Power could be gained, but not FULL power.

#### V. The Constitution and Liberty

1. Supporters of the Constitution and its strong central government called themselves **Federalists**, while those more in favor of states' rights were called **Antifederalists**.
2. The framers of the Constitution devised it so that the Constitution could be passed by special state conventions (where the people had direct say), rather than in state legislatures (where it was more likely to be rejected by politicians fearing loss of power).

3. Antifederalists' main issue was liberty, not democracy, and they argued that a strong central government would be distant from the people and could take over powers belonging to states.
  - i. Congress could tax heavily, the Supreme Court could overrule state courts, and the President could head a large standing army, which was too tyrannical in their views.
  - ii. Antifederalists proposed limiting the national government by checking the president's power, leaving military affairs to state militias, increasing the size of the House of Representatives, and reducing or eliminating Congress's tax levying powers.
  - iii. James Madison's answer to them came in the form of *Federalist papers* 10 and 51, in which he argued that the checks and balances would help and that liberty was safest in large republics, in which anyone could have support, even rebels who went against the norm.
    - a. To rule, different interests must come together and form a **coalition**, or an alliance.
    - b. In large republics, coalitions would be more moderate because more interests would be represented by them, as opposed to the opposite in small republics.
4. Basically, Madison was arguing that if people could be corrupted by office, they could also be corrupted by factional self-interests, and that was a radical argument in 1787.
  - i. Yet, this argument won, mostly because most people believed that there would have to be a strong argument if the United States was to survive foreign attacks, facilitate trade among the states, and keep one faction from oppressing another.
5. Perhaps the framers of the Constitution didn't add a bill of rights because there were already numerous protections of liberty included in the Constitution:
  - i. **Writ of habeas corpus** (meaning you can't hold a person in jail without a reason) could not be suspended except in invasion or rebellion.

- ii. No **bill of attainder** (declaring a person guilty without trying him in a trial) could be passed by Congress or the states.
  - iii. No **ex post facto law** (arresting someone for breaking a new law a month that wasn't law a month ago) could be passed by Congress or the states.
  - iv. Right by trial by jury in criminal cases was guaranteed.
  - v. The citizens of each state were entitled to the privileges and immunities of the citizens of every other state.
  - vi. No religious test or qualification for holding federal office could be imposed.
  - vii. No law impairing the obligation of contracts could be passed by states.
6. Most states already had bills of rights anyway, and the framers thought that they were creating a government with specific, limited powers that could do **ONLY** what the Constitution said it could do and **NOTHING ELSE**.
7. In any case, it soon became clear that a bill of rights was needed; many states approved the Constitution only after a bill of rights was promised, and even then, they passed it after much debate.
8. On June 21, 1788, New Hampshire, the ninth state, approved the Constitution, and it was made legal.
9. James Madison finally introduced a set of proposals, mostly based on the Virginia bill of rights, to Congress, which passed twelve of them; ten of those twelve were passed by the states and went into effect as the first ten amendments, or the **Bill of Rights**, in 1791.
10. Interestingly, nowhere in the Constitution did the words "slave" or "slavery" appear, and Congress was even forbidden to ban slave importation until the year 1808.
- i. This hypocritically broke with the Declaration of Independence's "all men are created equal."
  - ii. Actually, there was some effort made into eliminating slavery in the Constitution, but the Framers decided that this would undoubtedly cause the southern states to reject the



Constitution, so they let the issue remain undecided until the nation could be strong enough to deal with slavery when the issue could no longer be postponed.

iii. Meanwhile, the northern states gradually passed state measures that banned slavery.

iv. Another compromise with slavery was the **3/5 Compromise**, which counted slaves as 3/5 of people when determining House representation.

#### VI. The Motives of the Framers

1. Astonishingly, personal economic factors barely played a role in the Framers' drafting of the Constitution; some framers were rich, others poor, some creditors, others debtors.

2. In 1913, in *An Economic Interpretation of the Constitution*, **Charles Beard** argued that the better-off urban and commercial classes favored the Constitution because they would have benefited from it.

3. In the 1950s, that view was opposed by some historians who claimed that this was not true: some of the richest delegates, like **Elbridge Gerry** and **George Mason**, refused to sign, while many of its backers, like **James Madison** and **James Wilson**, were from modest means or were in heavy debt.

4. In the 1980s, historians found that economic positions of delegates did play some role in their decisions, but the economic positions of delegates' states played a bigger role.

i. Basically, the delegates represented their states' interests—just like they were supposed to—and only let personal beliefs interfere on certain matters, like slavery.

5. In state conventions, economics played a larger role, with richer people more likely to vote for the Constitution, but still, the whole voting process was remarkably democratic—for the time period.

6. Back in the 1700s, the argument was that the government shouldn't fall into the hands of tyrants but it shouldn't be too distant from the people; today, people argue that the government should be strong enough to restrain natural economic frequencies that hurt the country

*and capable of producing a greater degree of equality than society could if it had been left alone.*

- i. Back then, people wanted to limit the government; today, some want to strengthen it.*

#### *VII. Constitutional Reform—Modern Views*

- 1. In general, today, just as in the 18<sup>th</sup> century, there are two types of critics to the Constitution: those who say that it's too weak and those who say it's too strong.*
- 2. Those who want to reduce separation of powers claim that such limitations strongly inhibit change, and since even a single bill must take a long, arduous process before it becomes law, changes—even those for the better—are very difficult to implement.*
  - i. These people want to strengthen the executive office so that the president and his party can be accountable for everything—gains and mistakes.*
  - ii. Critics of separation of powers complain that compromises must be taken between the president and Congress if a program is to be passed, and the resulting program is usually not much liked by either branch.*
  - iii. Government agencies are also exposed to undue interference from legislators and special interests, and thus can be corrupted.*
  - iv. Basically, all critics of separation of powers fear that the president is too weak and insufficiently accountable; thus they have proposed the following:*
    - a. Let the President appoint Congressmen to his cabinet.*
    - b. Let the President dissolve Congress and call special elections.*
    - c. Let Congress require a president who has lost its confidence to face the country before his term would normally end.*
    - d. Have the president serve a single six-year term, so that he doesn't have to worry about re-election and can go on with his programs uninhibited.*



simply writing that a bill could not be subject to the provisions of the *Line Item Veto Act*).

- iv. Still other critics want to limit the power of the judicial courts.
- v. *ARGUMENT FAULTS*: Congress can always borrow money and thus easily evade any budget limits; line-item vetoes can be used by the President to spend more, not less; curtailing judicial power would limit the way they protect essential citizen rights.

4. Actually, both sides may be right, but the Constitution has worked for over 200 years, so no change might even be necessary.

i. Critical questions in this debate are: How well has the Constitution worked over the long sweep of American history? *AND* How well has it worked compared to the constitutions of other democratic nations?

ii. The only way to answer those questions is the study American government closely, probing into how the government works and why it has produced the policies that it has.