

AMERICAN GOVERNMENT

Institutions and Policies

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Thirteenth Edition

Chapter 2 The Constitution

■ WHO GOVERNS?

1. What is the difference between a democracy and a republic?
2. What branch of government has the greatest power?

■ TO WHAT ENDS?

1. Does the Constitution tell us what goals the government should serve?
2. Whose freedom does the Constitution protect?

Qualifications requisite for Electors of
be a Representative who shall not have
elected, be an Inhabitant of that State in which
es and direct Taxes shall be apportioned among the several
all be determined by adding to the whole Number of free Persons,

WE THE PEOPLE

insure domestic Tranquillity, provide for the common
and our Posterity, do ordain and establish this Const

Section. 1. All legislative Powers herein gran
of Representatives.
Section. 2. The House of Representatives
in each State shall have the Qualifications requisite
and who shall not, when elected, be an Inhabitant
Representative shall be a Representative in
Members, which shall be determined by add
ed, three fifths of all other Persons sha
very subsequent Term of
each State shall
Massachusetts

The Problem of Liberty

- The Colonial Mind
 - Men will seek power because they are ambitious, greedy and easily corrupted
- The Real Revolution
 - (Drafting and Ratification)
- Weaknesses of the Confederation
 - Articles of Confederation 1781

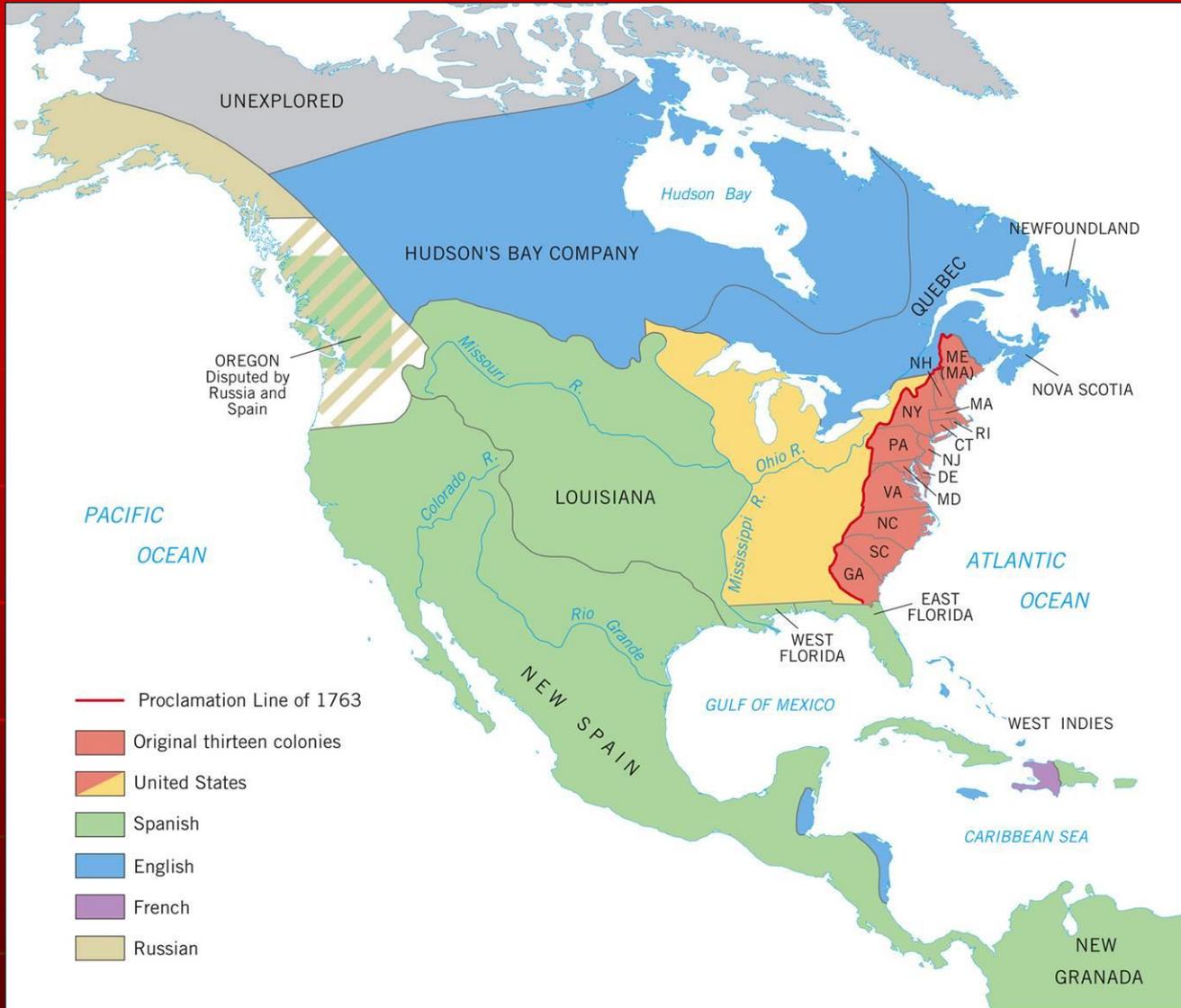


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Signing the Declaration of Independence, painted by John Trumbull.

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North America in 1787

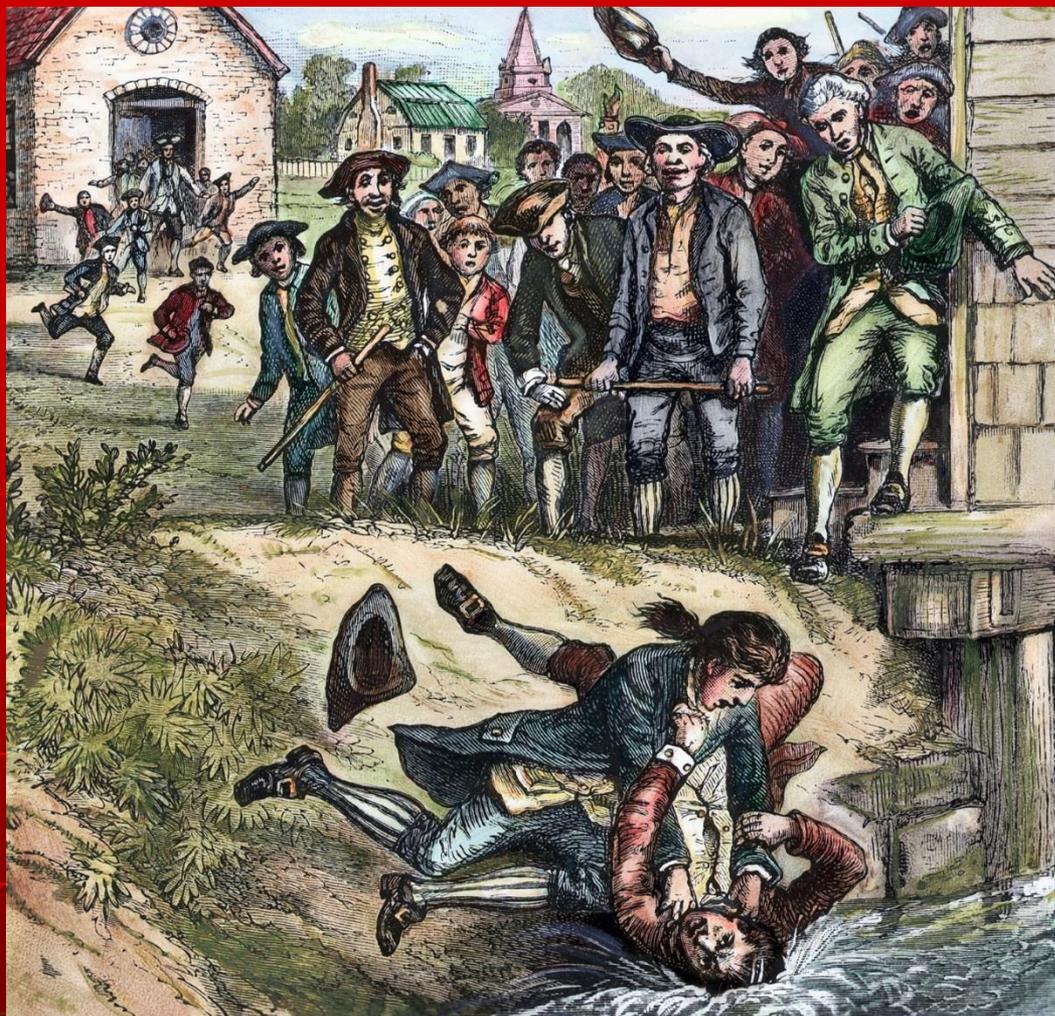




Bettmann/CORBIS

In 1775, British and American troops exchange fire in Lexington, Massachusetts, the first battle of the War of Independence.

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Shays' s Rebellion in western Massachusetts in 1786–1787 stirred deep fears of anarchy in America. The ruckus was put down by a hastily assembled militia, and the rebels were eventually pardoned.

The Constitutional Convention

- The Lessons of Experience
 - State Constitutions
 - Shays' s Rebellion
- The Framers
 - 55 delegates, RI did not send a single delegate because they couldn't get along with anyone else. What a bunch of Jerks.

The Challenge

- *The Virginia Plan*—proposal to create a strong national government
- *The New Jersey Plan*—proposal to create a weak national government
- *The "Great" Compromise*
 - popularly elected house based on state population
 - state elected Senate, with two members for each state



Andre Jenny/Alamy

Independence Hall in Philadelphia.

The Constitution and Democracy

- Republican Form of Government
 - Key Principles
 - Federalism
 - Enumerated powers
 - Reserved powers
 - Concurrent powers
- Government And Human Nature
 - Separation of powers
 - Checks and balances

How Things Work

Checks and Balances

The Constitution creates a system of *separate* institutions that *share* powers. Because the three branches of government share powers, each can (partially) check the powers of the others. This is the system of **checks and balances**. The major checks possessed by each branch are listed below.

Congress

1. Can check the president in these ways:
 - a. By refusing to pass a bill the president wants
 - b. By passing a law over the president's veto
 - c. By using the impeachment powers to remove the president from office
 - d. By refusing to approve a presidential appointment (Senate only)
 - e. By refusing to ratify a treaty the president has signed (Senate only)
2. Can check the federal courts in these ways:
 - a. By changing the number and jurisdiction of the lower courts
 - b. By using the impeachment powers to remove a judge from office
 - c. By refusing to approve a person nominated to be a judge (Senate only)

The President

1. Can check Congress by vetoing a bill it has passed
2. Can check the federal courts by nominating judges

The Courts

1. Can check Congress by declaring a law unconstitutional
2. Can check the president by declaring actions by him or his subordinates unconstitutional or not authorized by law

In addition to these checks specifically provided for in the Constitution, each branch has informal ways of checking the others. For example, the president can try to withhold information from Congress (on the grounds of "executive privilege"), and Congress can try to get information by mounting an investigation.

The exact meaning of the various checks is explained in Chapter 13 on Congress, Chapter 14 on the presidency, and Chapter 16 on the courts.

The Constitution and Liberty

- The Antifederalist View
- Need for a Bill of Rights
- The Constitution and Slavery



Ratification of the Federal Constitution by State Conventions, 1787-1790

Liberties Guaranteed in the Original Constitution

- Writ of *habeas corpus* protected
- No *bills of attainder*
- No *ex post facto* laws
- Right of trial by jury

Liberties Guaranteed in the Original Constitution (cont' d)

- Citizens of each state entitled to the privileges and immunities of the citizens of every other state
- No religious test or qualification for holding federal office
- States cannot pass laws impairing the obligation of contracts.



How Things Work

The Bill of Rights

The First Ten Amendments to the Constitution Grouped by Topic and Purpose

Protections Afforded Citizens to Participate in the Political Process

Amendment 1: Freedom of religion, speech, press, and assembly; the right to petition the government.

Protections Against Arbitrary Police and Court Action

Amendment 4: No unreasonable searches or seizures.

Amendment 5: Grand jury indictment required to prosecute a person for a serious crime.

No “double jeopardy” (being tried twice for the same offense).

Forcing a person to testify against himself or herself prohibited.

No loss of life, liberty, or property without due process.

Amendment 6: Right to speedy, public, impartial trial with defense counsel and right to cross-examine witnesses.

Amendment 7: Jury trials in civil suits where value exceeds \$20.

Amendment 8: No excessive bail or fines, no cruel and unusual punishments.

Protections of States’ Rights and Unnamed Rights of People

Amendment 9: Unlisted rights are not necessarily denied.

Amendment 10: Powers not delegated to the United States or denied to states are reserved to the states.

Other Amendments

Amendment 2: Right to bear arms.

Amendment 3: Troops may not be quartered in homes in peacetime.

How We Compare

Does a Constitution Guarantee Freedom?

You may think that the best protection for individual freedom is for a nation to have a written constitution. After all, a constitution is supposed to limit governmental action. But if you look around the world you will see that a constitution is not enough.

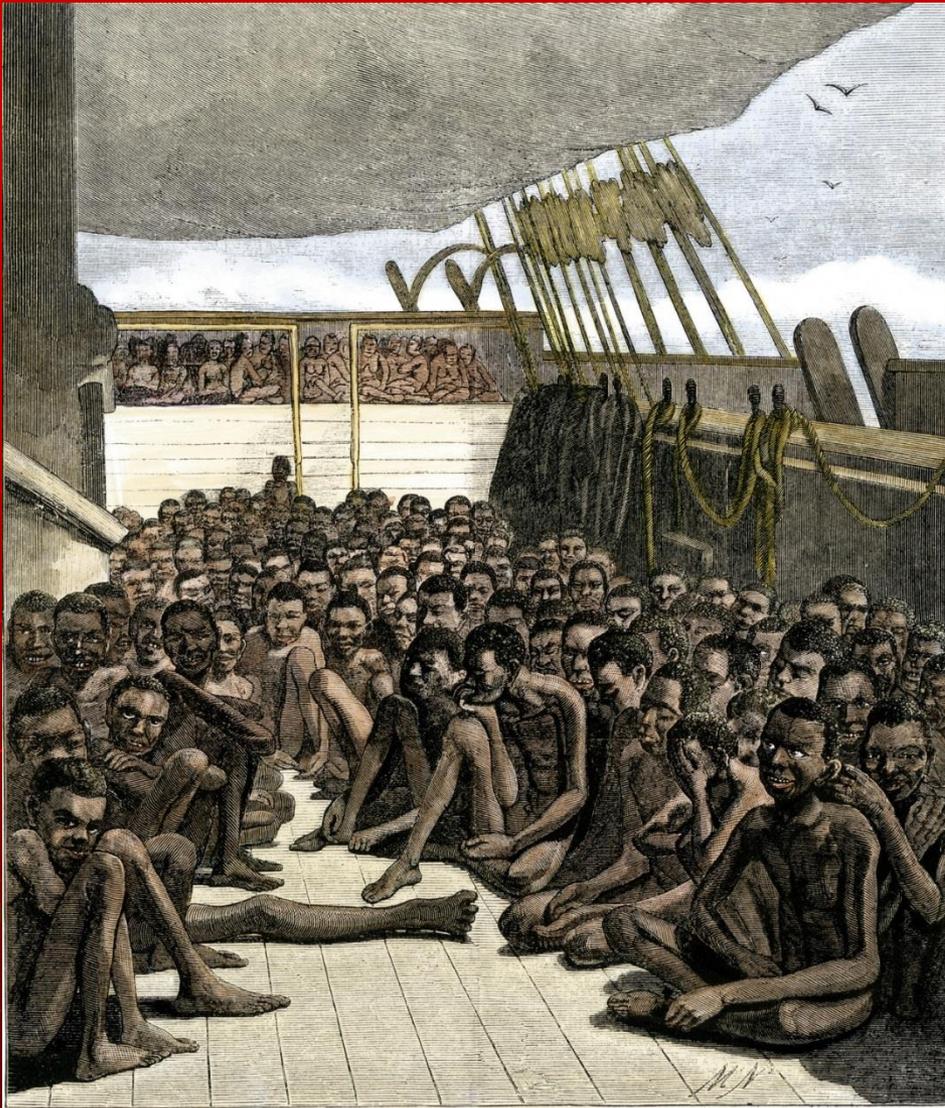
Here are three nations that do not have a written constitution and yet personal freedom is well established:

Israel New Zealand United Kingdom

And here are three nations with a written constitution where personal freedom is rare:

Iran North Korea Russia

What else must nations have in order to ensure personal freedom?



The Motives of the Framers

- Economic Interests
- The Constitution and Equality

Constitutional Reform: Modern Views

- Reducing the Separation of Powers
 - *Increase presidential authority*
 - *Lengthen terms for members of the U.S. House of Representatives*
- Making the System Less Democratic
 - *Balanced Budget Amendment*
 - *Line-item veto*



How Things Work

Ways of Amending the Constitution

Under Article V, there are two ways to *propose amendments* to the Constitution and two ways to *ratify* them.

To Propose an Amendment

1. Two-thirds of both houses of Congress vote to propose an amendment, *or*
2. Two-thirds of the state legislatures ask Congress to call a national convention to propose amendments.

To Ratify an Amendment

1. Three-fourths of the state legislatures approve it, *or*
2. Ratifying conventions in three-fourths of the states approve it.

Some Key Facts

- Only the first method of proposing an amendment has been used.
- The second method of ratification has been used only once, to ratify the Twenty-first Amendment (repealing Prohibition).
- Congress may limit the time within which a proposed amendment must be ratified. The usual limitation has been seven years.
- Thousands of proposals have been made, but only 33 have obtained the necessary two-thirds vote in Congress.
- Twenty-seven amendments have been ratified.
- The first 10 amendments, ratified on December 15, 1791, are known as the Bill of Rights.

Who Is Right?

- Study the government's historical evolution
- Study how the government works and why it has produced the policies you see
- Study the practices of other nations



Kent Eanes/HBO/Everett Collection

In an excellent TV series, John Adams and George Washington discuss politics in the 18th century.

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WHAT WOULD YOU DO?

Arguments for:

1. Since the Twenty-second Amendment restricts presidents to two terms, members of Congress should face similar limits.
2. Term limits will ensure that national leaders do not become career politicians.
3. The public favors the direct popular election of the president; this constitutional convention would make possible abolishing the Electoral College.

WHAT WOULD YOU DO?

Arguments against:

1. Limiting members of Congress to two terms would increase the power of lobbyists, congressional staffers, and administrative officials.
2. The Electoral College encourages a two-party system; a direct popular vote for the president would require runoff elections if no candidate won a majority.
3. The Constitutional Convention of 1787 was held in secret and involved only a few dozen people; today it would be heavily covered by the press and involve hundreds, perhaps thousands of people. No one knows what changes it might make.

WHAT WOULD YOU DO?

Your decision:

Favor legislation?

Oppose legislation?