

## THE ROAD TO THE CONVENTION

How did the post-independence experience of governing—of actually being in charge—influence the Founding generation and shape the U.S. Constitution? One way of framing this question is as follows: *How did we get from the Declaration of Independence (and the American Revolution) to the U.S. Constitution?*

- What changed?
- What remained the same?
- And how did this experience—and the debates of the period—shape the push to create a new national government in just a little over a decade?

Let's begin by reviewing some of the key events (and factors) leading to the push for a new constitution.

### THE ARTICLES OF CONFEDERATION

When the Constitutional Convention met in Philadelphia in 1787, our nation already had a framework of government—the [Articles of Confederation](#). And the Constitutional Convention itself was, in many ways, a response to the weaknesses of this form of government.

- The one thing to remember about the Articles of Confederation: The Articles created a weak central government—a “league of friendship”—one that largely preserved state power (and independence).

The Articles created a national government centered on the legislative branch, which consisted of a single house. There was no separate executive branch or judicial branch. There was no separate House and Senate. The delegates in the legislative branch voted by state—with each state receiving one vote, regardless of its population.

The powers of the national government were limited. The national government didn't have the power to tax or to regulate commerce between the states. It couldn't force states to provide troops or send the government money.

Any proposed amendment to the Articles required *unanimous* approval from all 13 states. As a result, no amendment was ever ratified. Congress couldn't exercise the powers that it *did* have without support from *nine* of the 13 states.

## CONSTITUTION 101

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### Module 3: Road to the Convention

#### 3.2 Info Brief

In other words, it couldn't declare war, enter into treaties with other nations, spend money, or appoint a commander in chief of the military with the support of *nine* states. This supermajority requirement made it difficult for the national government to govern.

These limits created several problems for the young nation. Without the power to tax, Congress struggled to fund that national government and to pay its soldiers. It depended on *voluntary* contributions from state governments. And many states simply refused to pay their fair share. The national government struggled to defend the frontier. And many states raised trade barriers against one another—imposing taxes on one another's goods, spurring unhealthy competition between the states, and harming the new nation's economy.

Congress was powerless to stop this.

### STATE CONSTITUTIONS

The Constitutional Convention was also a response to the nation's experience with revolutionary-era state governments. Prior to the American Revolution, the American colonies were ruled by royal governments linked to the British Empire. With the outbreak of the American Revolution, these royal governments fell.

Informal patriot assemblies assumed the duties of governance throughout America. In May 1776, Congress agreed to a resolution, proposed by John Adams, calling for the colonies to set up new state governments. The American colonies responded with new charters of government: state constitutions. This was a constitutional revolution in itself—a decisive turn toward written constitutions.

In the years between the Declaration of Independence in 1776 and the new Constitution in 1789, the United States was governed primarily by 13 separate governments. During this period, the state constitution makers looked to translate their vision of an ideal American republic into concrete written constitutions.

Most states built their constitutions within the confines of the theory of mixed government.

This is the traditional idea that constitutions should model themselves after the British Constitution and include traces of three key sources of political power: the one (monarchy), the few (aristocracy), and the many (democracy). The one was traditionally embodied by an executive. Within the states, this was usually called a “governor.” The few and the many were usually represented in the two houses of the state legislature: the few in the upper house—often called a senate—and the many in a lower house—often called an assembly.

Interestingly, Pennsylvania's state constitution—the most radical and democratic at the time—included a state legislature with only one house (rather than two).

In 1776, John Adams wrote his [\*Thoughts on Government\*](#)—which offered his own guide for state constitution makers. The pamphlet circulated widely in the states and it was one of the most

## CONSTITUTION 101

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### Module 3: Road to the Convention

#### 3.2 Info Brief

influential pamphlets of the period. In it, Adams tried to outline the proper mode of constitution writing for states. He framed the question as follows: *How might constitution makers write a constitution that strikes the right balance between the one, the few, and the many?*

Americans were divided over how best to strike this balance.

Conservatives were accused of giving too much power to the monarchical (the one) and aristocratic (the few) elements—in other words, the governor and the upper house of the legislature. At the same time, radicals were thought by their critics to give too much power to the democratic branch (the many)—the lower house of the legislature.

Generally speaking, America's early state constitutions created governments led by a strong legislature—responsive to each state's voters—and a weak executive branch and judiciary.

These state governments pushed laws to relieve debtors (those who owed money). They set up trade barriers to protect their own businesses from competing with businesses from other states.

During this period, the American economy cratered—with many leaders blaming the downturn on the economic policies advanced by the states' democratically elected legislatures. With the new Constitution, the framers were looking, in part, to respond to—what they perceived to be—the weaknesses of the powerful, democratic state legislatures.

Many took the Massachusetts Constitution—written in response to some of the perceived flaws of the other state constitutions—as a model. The Massachusetts Constitution looked to check the powers of the lower house of the state legislature. It created a powerful and independent governor—elected directly by the people and equipped with a veto that could check unwise legislation. It created a powerful and independent judiciary and tried to create an upper house with a property qualification designed to represent the wealthy and elite in Massachusetts. In the Massachusetts Constitution, we see important constitutional principles like separation of powers (dividing the powers of government between three co-equal branches of government) and checks and balances (providing each branch of government with the powers to check the other branches).