

The American Founding (1776-1789)

1. Basic principle: No taxation without representation, namely, self-government.
2. The colonial system violated the principles of covenant, consent, and equality.
3. But revolution was big and difficult step:
 - A. Colonists did not develop even a weak sense of American nationhood until the 1760s and 1770s.
 - B. Colonists benefitted from many British policies, especially military protection; hence, colonies were a drain on the British treasury.
 - C. Most colonists in 1770s regarded themselves as loyal subjects of the Crown enjoying the rights of Englishmen and were reluctant to rebel against the Crown.
 - D. Some wanted a federal arrangement with Great Britain involving (1) strong self-rule at home and (2) representation in Parliament.
 - E. Stamp Act Congress (1765) was first official meeting of the colonies (9 of 13).
 - F. First Continental Congress did not meet until 1774.
4. Hence, need to justify the revolution and mobilize public opinion through the Declaration of Independence.

Declaration of Independence (1776)

1) Opening: “When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.”

2) “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.”

3) “That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,”

4) “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, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

Institution of New Government

1. Call for states to write constitutions in 1776; 18 state constitutions preceded the U.S. Constitution. Massachusetts Constitution of 1780 is world's oldest written constitution still operating.
2. Articles of Confederation were begun in 1776; passed Congress in 1779; and ratified by the states in 1781.
3. States ceded western land claims to the confederation; this was needed in order to obtain ratification.
4. Key provisions of **Articles of Confederation**
 - A. Established a one-branch government—Congress
 - B. Given power to make peace, coin money, appoint army officers, run post offices, and negotiate with Indian tribes
 - C. Each state had one vote in Congress
 - D. States appointed and paid delegates to Congress
 - E. Vote of 9 states needed to pass ordinary legislation.
 - F. Unanimous vote needed for major measures and amendments to Articles
5. **Characteristics of a Confederation**
 - A. Member states retain sovereignty and plenary power
 - B. States delegate specific, limited, express powers to confederal government
 - C. Each member state is equally represented in the legislative body
 - D. Super-majority and/or unanimous vote required for legislative action
 - E. Member states have right of secession, although the Articles of Confederation spoke of “perpetual union.”

F. Confederation gets its revenues from member-state contributions

G. Confederation has no power to legislate for individuals. This was key cause of weakness of the Articles

1) No power to tax

2) No power to regulate domestic or foreign commerce

3) No power to conscript persons into the military

4) No power to enforce treaties

6. After the war ended in 1782, the confederal government encountered more difficulties because the urgency of war-time cooperation was no longer present.

7. Weaknesses of the Articles drove effort to amend the Articles to strengthen the confederal government.

8. **Successes of the Articles of Confederation**

A. The Continental Army won the war (with some French help)

B. Confederal government concluded a peace treaty with Great Britain

C. Confederal government maintained a postal system and common currency

D. Confederal government maintained the idea of union

E. Confederal government passed Northwest Ordinance for the territories

Constitutional Convention—Philadelphia, May 25 – September 17, 1787

1. All states except Rhode Island sent delegates.
2. 55 of 74 delegates showed up for the convention.
3. Virginia Plan drafted by James Madison
 - A. Three-branch government: legislative, executive, judicial
 - B. National two-house legislature: one elected by the people; one chosen by state legislatures
 - C. National executive selected by the legislature for one term
 - D. Council of Revision (national executive and federal judges) to veto acts of the legislature
 - E. Federal court system headed by a supreme court
 - F. National legislature to have authority to veto state laws
4. Great Compromise or Connecticut Compromise
 - A. House representation based on each state's population
 - B. Each state legislature to select two senators for the Senate
5. Three-Fifths Compromise over Slaves
 - A. Southern states wanted states counted fully in order to increase their House representation. Northern states did not want to count slaves because South viewed them as property not people.
 - B. If slaves were to count fully for House representation, then North insisted they be counted fully for direct federal taxation. South did not want this.
 - C. Slaves were counted as three-fifths persons. (Note: Constitution does not use words "slave" or "slavery.")

6. Draft constitution approved September 17. 41 of 55 delegates remained; 39 delegates representing 12 states signed the draft constitution
7. Ratification was to be done by an elected convention in each state rather than by the state legislature
8. Ratification by 9 states would put the Constitution into operation

Ratification Campaign (September 28 – June 21, 1788)

1. Federalists versus Anti-Federalists
2. Hamilton, Madison, and Jay wrote *The Federalist* (The Federalist Papers) to promote ratification by New York (which ratified on July 26, 1788)
3. Major Anti-Federalist Concerns
 - A. Constitutional Convention violated its charge to amend the Articles of Confederation
 - B. A large republic cannot be democratic
 - C. Constitution contained no Bill of Rights
4. The vote in some key states was close—
 - A. New York: 30-27 = 52.6% for ratification
 - B. Massachusetts: 187-168 = 52.6% for ratification
 - C. Virginia: 89-79 = 52.9% for ratification
 - D. New Hampshire: 57-46 = 55.3% for ratification
 - E. Delaware, Georgia, and New Jersey were each unanimous for ratification
 - F. Rhode Island rejected ratification on March 24, 1788 by a popular vote of 237 for and 2, 708 against, but ratified on May 29, 1790, by 34-32 = 51.5% for ratification
5. George Washington was inaugurated as first president on April 30, 1789.

Four Basic Principles of the American Constitutional System

1. Dual Constitutionalism: federal and state
2. Federalism
 - A. States and federal government are each sovereign within their realms of constitutional authority
 - B. States delegate limited powers to the federal government, but with implied powers
 - C. Congressional representation is a mix of equal states and unequal population
 - D. Ordinary majority vote required for most legislative action; super-majority vote needed for some actions and for constitutional amendments
 - E. No right of secession
 - F. Revenues derived from federal taxes levied on persons and corporations
 - G. Federal government and state governments can act directly on individuals
3. Separation of Powers
 - A. Three distinct branches – legislative, executive, and judicial
 - 1) Each is independent and constitutionally equal
 - 2) Each is separately staffed—no dual office-holding (except vice president)
 - B. Credited to Baron de Montesquieu (1689-1755)
 - C. Roots lie in Aristotle's mixed regime
 - 1) Legislative – the many – democracy
 - 2) Executive – the one -- monarchy
 - 3) Judiciary – the few -- oligarchy

D. Checks and Balances (see chart on page 45 of O&S textbook)

- 1) Congress raises and appropriates money for executive and judiciary
- 2) Congress can impeach and remove presidents and federal judges
- 3) Congress can override a presidential veto
- 4) President can veto a bill passed by Congress
- 5) Vice President can break a tie vote in the Senate
- 6) Supreme Court can declare congressional and presidential acts unconstitutional
- 7) Supreme Court can interpret laws passed by Congress
- 8) Etc.

4. Protections of individual rights guaranteed in both state constitutions and the U.S. Constitution