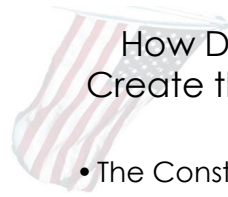




Joseph Stewart, Jr.
 Department of Political Science
 Clemson University
 jstewa4@clemson.edu



How Did the Framers Create the Constitution?

- The Constitution & Plumbing
 - “Who Done It (& Why)?”
- Compromises by Commission & Omission
 - The Politics of Ratification



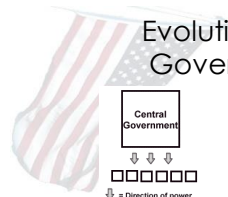
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A National Government Not A New Concept

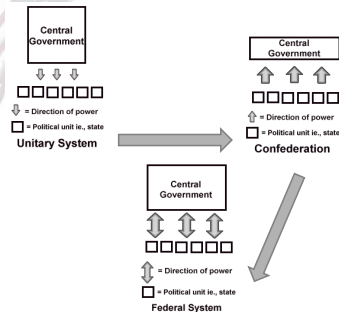
- Benjamin Franklin had proposed a colonial government as early as 1754 & in July, 1775 submitted a draft for articles of confederation to the 2ND Continental Congress
- In June 1776, Richard Henry Lee (VA) introduced resolutions to the 2ND Continental Congress that led to the
 - Declaration of Independence
 - Articles of Confederation



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Evolution of American Governmental Forms



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Major Economic Problems

- A war-torn economy (debt national; purse strings with the states; unwilling to share import duties)
- Trade barriers at home & abroad (all matters of commerce reserved to the states; cannot negotiate trade agreements)
- Mounting debt (currency 1/10 of prewar value; states have their own currencies leading to widely fluctuating exchange rates)
- Popular discontent (Shays's Rebellion) demonstrates that confederation cannot even perform the most basic function of government—keeping the peace



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Shays' Rebellion

Daniel Shays and his Regulators

- Being farmers &, in many instances, former soldiers whose economic difficulties were created by the failure of Congress to pay them their wages, suffered losses of home & farms
- Organized to prevent courts from selling the property of those who could not pay their debts
- Sought to obtain weapons by attempting to capture the arsenal at Springfield, MA



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The Framers: Why?

- Convened "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the states, render the federal Constitution adequate to the exigencies of government and the preservation of the union."
- States Were Free Riding

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The Framers: Who?



- 55 White Males (of 70 Appointed)
 - George Washington
 - Experienced (42 MCs; 3 sitting Governors; Revolutionary Army Vets)
- Well Educated (Harvard; W&M; Yale; Penn; Columbia; Princeton; or England)
 - Wealthy
- 11 Days after Scheduled Start a Majority of States Represented (All Except RI)

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Well Known Attendees

Benjamin Franklin (PA)	George Mason (VA)
Elbridge Gerry (MA)	Gouverneur Morris (PA)
Alexander Hamilton (NY)	Edmund Randolph (VA)
Rufus King (MA)	Roger Sherman (CT)
James Madison (VA)	George Washington (VA)
	James Wilson (PA)

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Well Known Absentees

- Thomas Jefferson, U.S. minister to France
- John Adams, U.S. ambassador to Great Britain
- Patrick Henry, "I smell a rat"

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The Framers: How? Consensus?

- Immediately Discarding Their Mandate
- George Washington, Presiding
 - Republic

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Committee Appointed to Draw Up Rules

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Rules Adopted To Govern Debate, I

- At least 7 states had to be represented for the convention to do business
- A delegate had to get permission to be absent if his absence would leave a state without representation
- A delegate had to address the president when rising to speak &, while he was speaking, other members could not
 - pass notes
 - hold conversation with one another
 - read a book, pamphlet or paper

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Rules Adopted To Govern Debate, II

- A delegate could not speak more than twice on the same subject & could not speak a 2nd time until every other member had the opportunity to be heard on the subject
- Committees could be appointed as necessary
- Any decision made by the convention was subject to reconsideration & change & no decision was final until the entire plan was completed

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"Civil Discourse"

- "Reasoned discussion in which"
- Every member has the opportunity to speak on any question
 - No individual's voice can drown out the ideas of others
 - Listening matters as much as speaking"

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Committees

- Representation
- Detail
- Assumption of State Debts
- Slave Trade
- Trade
- State Commitments
- Leftovers
- Style
- Economy, Frugality and Manufactures

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THE CONSTITUTION AS "FIXIN' WHAT WAS BROKE" WITH THE ARTICLES OF CONFEDERATION

WHAT WAS BROKEN	THE "FIX"
Power of the National Government	The Supremacy Clause (Art. 6) A Stronger Congress (Art. 1)
No Power to Collect Taxes	An Expressed Power (Art. 1, § 8)
No Power Over Interstate & Foreign Commerce	An Expressed Power + the Power to Regulate Instruments of Commerce [Bankruptcy; Coining Money; Enforcing Patents & Copyrights, etc.] (Art. 1, § 8)
No Mandatory Power to Raise an Army	An Expressed Power (Art. 1, § 8)
National Government Had Only Specific, Limited Powers	Congress Given Implied Powers [Art. 1, § 8, Cl. 18] "the Necessary & Proper Clause"
No Independent Executive	A President (Not "His Excellency" nor "His Highness") Chosen Indirectly by the Voters (Art. 2)

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THE CONSTITUTION AS "FIXIN' WHAT WAS BROKE" WITH THE ARTICLES OF CONFEDERATION, CONT.

WHAT WAS BROKEN

Enforcement of National Laws Dependent on States' Courts

The Amendment Process

WHAT MIGHT BREAK

Too Much Power

THE "FIX"

Establishment of a Supreme Court & Grant of Power to Establish Lower National Courts (Art. 3)

Liberalized Amendment Rules

THE "FIX"

Federalism

Separation of Powers ("Separate Institutions Sharing Power")

Bicameralism

Differing Terms

Differing Means of Selection, ergo Differing Constituencies

Differing Formal Qualifications

Checks & Balances

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Separation of Powers

Branch:	Legislative Congress		Executive Presidency	Judicial Federal Courts
	House	Senate	President	Judges
Officials chosen by:	People	People (originally, state legislatures)	Electoral College, whose members are chosen by the people (originally, by state legislatures)	President, with advice and consent of Senate
For term of:	2 years	6 years	4 years	Life
To represent primarily:	Common people Large states	Wealthy people Small states	All people	Constitution

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James Madison: "Experience in all the States had evinced a powerful tendency in the Legislature to absorb all power into its vortex."

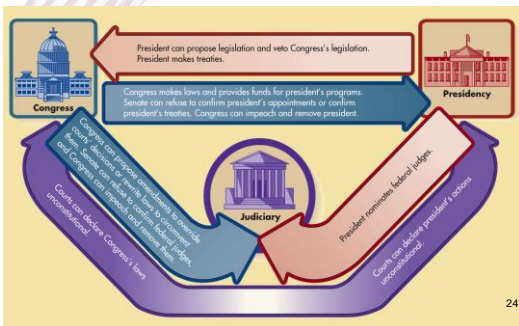
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Virginia Plan

- Empowered Congress with the ability to strike down state laws it considered to be in violation of the national constitution or national interest

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Checks and Balances



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Compromises

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Population Alignment

Divisions

More Populous

Maryland
Massachusetts
New York
North Carolina
Pennsylvania
Virginia

Less Populous

Connecticut
Delaware
Georgia
New Hampshire
New Jersey
Rhode Island
South Carolina

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Slavery Alignment

Divisions

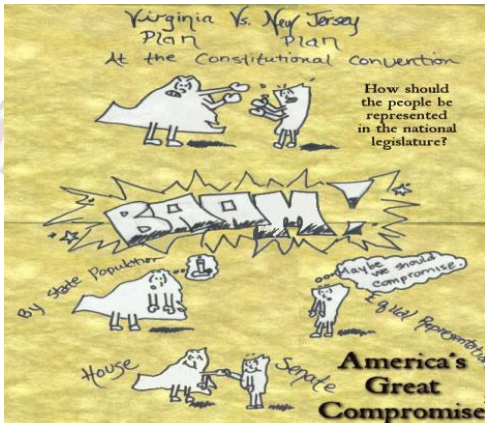
More Slave

Delaware
Georgia
Maryland
North Carolina
South Carolina
Virginia

Less Slave

Connecticut
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island

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"Representation" At The Philadelphia Convention, I

There was little disagreement on the notion of a 2-house Congress

- Only PA & GA had unicameral legislatures
- A widespread belief that, with each house as a check on the other, a bicameral legislature was less likely to violate rights than a unicameral one
- Accepted the notion that the House of Representatives should be that legislative body whose proportional representation should connect the people to the national government

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"Representation" At The Philadelphia Convention, II

- Those seeking = representation of the states (as under the Articles of Confederation) believed the United States represented the states, not the people
- Smaller states feared domination by the larger states

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The Issue Of Slavery, I

- The words **slave & slavery** do not appear in the Constitution.
- James Madison "*thought it wrong to admit in the Constitution that there could be property in men*"
- The states of NC, SC, & GA indicated they would not join the nation if the Constitution interfered with slavery
- Northerners such as Oliver Ellsworth (CT) deferred, stating: "*The morality or wisdom of slavery are considerations belonging to the states themselves.*"

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The Issue Of Slavery, II

Why did the northern delegates give in to the southern ones, who were fewer in number?

- the need to get the Constitution passed
- fear of defection
- logrolling – a standard bargaining strategy in which 2 sides swap support for dissimilar policies:
 - New England accommodated the South, & in return, the South dropped their opposition to commercial issues important to New England
- Two guarantees for the South:
 - unrestricted right to continue importing slaves (In the end they managed to negotiate a ban on regulation of the slave trade until 1808)
 - the return of runaway slaves residing in northern states

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The 3/5 Compromise

How enslaved persons should be counted when apportioning representations to the states

- Delegates from southern states (which had the most slaves) argued that they should be counted as full persons for representation
- Pierce Butler (SC) argued that slaves were the southern equivalent of northern free farmers & laborers

"an equal representation ought to be allowed for them in a government which was instituted principally for the protection of property and was itself to be supported by property."

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The View From The North

- Why slaves should be counted at all, given that the interests of the elected representatives would be those of the slave-owners, not of the slaves?
- *"Why should the blacks, who were property in the South, be in the role of representation more than the cattle and horses of the North?"*

Elbridge Gerry (MA)

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The Fugitive Slave Clause

Slavery—though not called such in the Constitution—was made a state issue in Article IV, §2, when, in calling for a person "held to service or labor" in one state who escaped to another, to be returned to the claiming jurisdiction, described the subject as **"under the Laws thereof"**

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Northwest Ordinance

The Northwest Ordinance

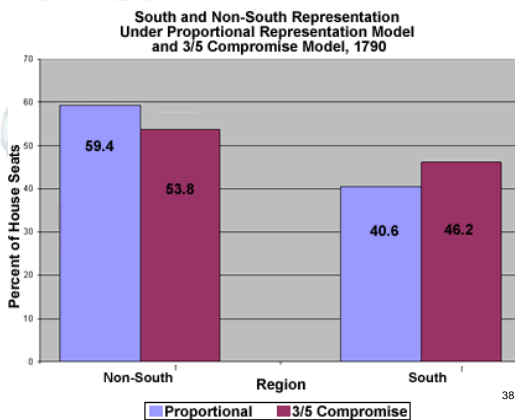
- Defined the Northwest Territory & created a plan for its government
- Laid out the process by which a territory could move to statehood
- Guaranteed that new states would be on = footing with existing ones
- Required new states to provide for education, setting aside land that could be sold to fund schools
- Prohibited slavery in the lands of the Northwest Territory

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What Lands Constituted The Northwest Territory?



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Population in 1790

		% Enslaved
Connecticut	237,635	1.1
Delaware	59,096	15.0
Georgia	82,548	34.5
Maryland	319,728	32.2
Massachusetts	378,556	0.0
New Hampshire	141,899	0.1
New Jersey	184,139	6.2
New York	340,241	6.2
North Carolina	395,005	25.5
Pennsylvania	433,611	0.9
Rhode Island	69,112	1.4
South Carolina	249,073	43.0
Virginia	747,550	39.1

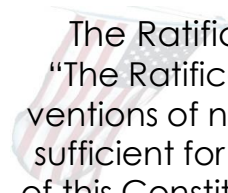
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Other Compromises

- Congressional Regulation of Commerce by Simple Majority
- No Export Tax (only Imports)
 - Voting Qualifications?
 - No National Citizenship
- Whether States Could Secede

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The Ratification Exercise:
 “The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.”

- Extraordinary Procedure
 - Limited Participation
 - On-going Debate
- Bill of Rights—An Afterthought?

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Social Contract Theory

The call for the state ratifying conventions consistent with

- John Locke’s natural rights philosophy
- The Declaration of Independence’s statement regarding “just Powers from the Consent of the Governed”
- The submission by individual states of their respective constitutions to the people for ratification, rather than to existing legislatures

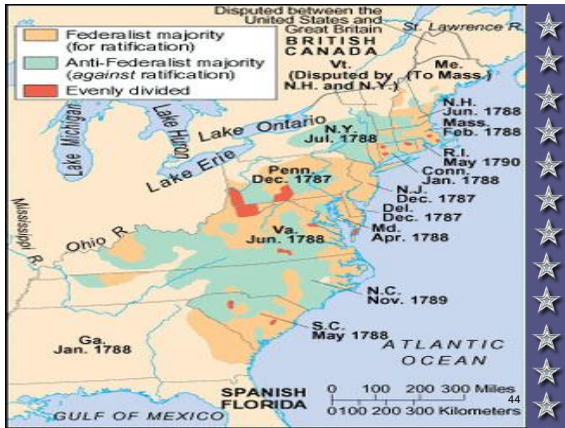
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The Debate Begins

- Included opposition from delegates at the Convention itself
- George Mason (VA) who wrote a list of objections on a draft of the Constitution & left the Convention without signing the document
- Robert Yates (NY), using the pseudonym *Brutus*, wrote 16 Anti-Federalist essays
- Melancton Smith (NY) was likely the author of the writings attributed to the Federal Farmer
- Elbridge Gerry (MA) & Richard Henry Lee (VA)

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Final Ratification

Although 9 states had ratified the Constitution by June, 1788, success of the nation was still in doubt as neither NY nor VA had done so

- An agreement was reached that, when the 1st Congress was held, a bill of rights would be added
- After NY & VA ratified the Constitution, only RI & NC were left. NC voted to ratify once Congress proposed the Bill of Rights
- When Providence threatened to leave the state to join the union, RI voted to ratify

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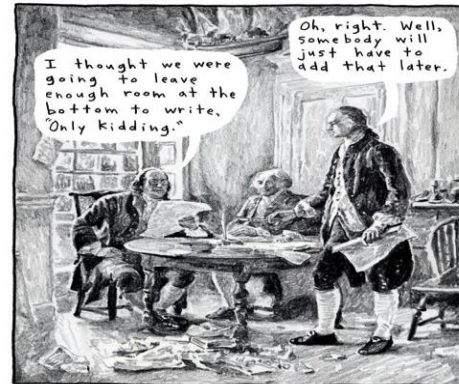
Ratification of the Constitution

Votes of State Ratifying Conventions

State	Date	For	Against
Delaware	December 1787	30	0
Pennsylvania	December 1787	46	23
New Jersey	December 1787	38	0
Georgia	January 1788	26	0
Connecticut	January 1788	128	40
Massachusetts	February 1788	187	168
Maryland	April 1788	63	11
South Carolina	May 1788	149	73
New Hampshire	June 1788	57	47
Virginia	June 1788	89	79
New York	July 1788	30	27
North Carolina	November 1789	194	77
Rhode Island	May 1790	34	32

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THE FOREFATHERS DECIDING ON A FINAL DRAFT OF THE U.S. CONSTITUTION.



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