

Debate and Compromise

The 18th-century statesmen who met in Philadelphia were adherents of Montesquieu's concept of the balance of power in politics. This principle was supported by colonial experience and strengthened by the writings of John Locke, with which most of the delegates were familiar. These influences led to the conviction that three equal and coordinate branches of government should be established. Legislative, executive, and judicial powers were to be so harmoniously balanced that no one could ever gain control. The delegates agreed that the legislative branch, like the colonial legislatures and the British Parliament, should consist of two houses.

On these points there was unanimity within the assembly. But sharp differences also arose. Representatives of the small states – New Jersey, for instance – objected to changes that would reduce their influence in the national government by basing representation upon population rather than upon statehood, as was the case under the Articles of Confederation.

On the other hand, representatives of large states, like Virginia, argued for proportionate representation. This debate threatened to go on endlessly until Roger Sherman came forward with arguments for representation in proportion to the population of the states in one house of Congress, the House of Representatives, and equal representation in the other, the Senate.

The alignment of large against small states then dissolved. But almost every

succeeding question raised new divisions, to be resolved only by new compromises. Northerners wanted slaves counted when determining each state's tax share, but not in determining the number of seats a state would have in the House of Representatives. According to a compromise reached with little dissent, tax levies and House membership would be apportioned according to the number of free inhabitants plus three-fifths of the slaves.

Certain members, such as Sherman and Elbridge Gerry, still smarting from Shays's Rebellion, feared that the mass of people lacked sufficient wisdom to govern themselves and thus wished no branch of the federal government to be elected directly by the people. Others thought the national government should be given as broad a popular base as possible. Some delegates wished to exclude the growing West from the opportunity of statehood; others championed the equality principle established in the Northwest Ordinance of 1787.

There was no serious difference on such national economic questions as paper money, laws concerning contract obligations, or the role of women, who were excluded from politics. But there was a need for balancing sectional economic interests; for settling arguments as to the powers, term, and selection of the chief executive; and for solving problems involving the tenure of judges and the kind of courts to be established.

Laboring through a hot Philadelphia summer, the convention finally achieved a

draft incorporating in a brief document the organization of the most complex government yet devised – one that would be supreme within a clearly defined and limited sphere. It would have full power to levy taxes, borrow money, establish uniform duties and excise taxes, coin money, regulate interstate commerce, fix weights and measures, grant patents and copyrights, set up post offices, and build post roads. It also was authorized to raise and maintain an army and navy, manage Native-American affairs, conduct foreign policy, and wage war. It could pass laws for naturalizing foreigners and controlling public lands; it could admit new states on a basis of absolute equality with the old. The power to pass all necessary and proper laws for executing these clearly defined powers rendered the federal government able to meet the needs of later generations and of a greatly expanded body politic.

The principle of separation of powers had already been given a fair trial in most state constitutions and had proved sound. Accordingly, the convention set up a governmental system with separate legislative, executive, and judiciary branches – each checked by the others. Thus congressional enactments were not to become law until approved by the president. And the president was to submit the most important of his appointments and all his treaties to the Senate for confirmation. The president, in turn, could be impeached and removed by Congress. The judiciary was to hear all cases arising under federal laws and the Constitution; in effect, the courts were empowered to interpret both the fundamental and the statute law. But members of the judiciary, appointed by the

president and confirmed by the Senate, could also be impeached by Congress.

To protect the Constitution from hasty alteration, Article V stipulated that amendments to the Constitution be proposed either by two-thirds of both houses of Congress or by two-thirds of the states, meeting in convention. The proposals were to be ratified by one of two methods: either by the legislatures of three-fourths of the states, or by convention in three-fourths of the states, with the Congress proposing the method to be used.

Finally, the convention faced the most important problem of all: How should the powers given to the new government be enforced? Under the Articles of Confederation, the national government had possessed – on paper – significant powers, which, in practice, had come to naught, for the states paid no attention to them. What was to save the new government from the same fate?

At the outset, most delegates furnished a single answer – the use of force. But it was quickly seen that the application of force upon the states would destroy the Union. The decision was that the government should not act upon the states but upon the people within the states, and should legislate for and upon all the individual residents of the country. As the keystone of the Constitution, the convention adopted two brief but highly significant statements:

Congress shall have power ... to make all Laws which shall be necessary and proper for carrying into Execution the ... Powers vested by this Constitution in the Government of the United States. ...

(Article I, Section 7)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

(Article VI)

Thus the laws of the United States became enforceable in its own national courts, through its own judges and marshals, as well as in the state courts through the state judges and state law officers.

Debate continues to this day about the motives of those who wrote the Constitution. In 1913 historian Charles Beard, in *An Economic Interpretation of the Constitution*, argued that the Founding Fathers represented emerging commercial-capitalist interests that needed a strong national government. He also believed many may have been motivated by personal holdings of large amounts of depreciated government securities. However, James Madison, principal drafter of the Constitution, held no bonds and was a Virginia planter. Conversely, some opponents of the Constitution owned large amounts of bonds and securities. Economic interests influenced the course of the debate, but so did state, sectional, and ideological interests. Equally important was the idealism of the framers. Products of the Enlightenment, the Founding Fathers designed a government that they believed would promote individual liberty and public virtue. The ideals embodied in the U.S. Constitution remain an essential element of the American national identity.

1. Whose concept of the balance of power in politics led to the conviction that three equal and coordinate branches of government should be established?
 - a. Adam Smith
 - b. John Locke
 - c. Montesquieu
 - d. Voltaire
2. Small states favored representation based on population.
 - a. True
 - b. False
3. Who came forward with arguments for representation in proportion to state populations in the House of Representatives, and equal state representation in the Senate (known as the Connecticut Compromise or Great Compromise)?
 - a. Benjamin Franklin
 - b. Elbridge Gerry
 - c. James Madison
 - d. Roger Sherman
4. According to what agreement would tax levies and House membership be apportioned according to the number of free inhabitants plus three-fifths of the slaves?
 - a. Missouri Compromise
 - b. New Jersey Plan
 - c. Three-Fifths Compromise
 - d. Virginia Plan
5. Delegates fiercely debated the issue of suffrage for women.
 - a. True
 - b. False

6. The principle of ____ led to a governmental system with three branches.
- checks and balances
 - natural law
 - necessary and proper laws
 - separation of powers
7. Which of the following is **not** one of the three branches of the federal government?
- diplomatic
 - executive
 - judicial
 - legislative
8. The principle of ____ is realized in the power that each of the three branches of the federal government has over the other two branches.
- checks and balances
 - natural law
 - separation of powers
 - supreme law
9. "Congress shall have power...to make all Laws which shall be ____ for carrying into Execution the...Powers vested by this Constitution in the Government of the United States." (Article I, Section 7, U.S. Constitution)
- adequate
 - necessary and proper
 - regulated
 - unnecessary and improper
10. "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges

in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding." (Article VI, U.S. Constitution)

Question: What does Article VI mean?

- Each state is free to create its own laws regardless of existing contradictory federal law.
 - Federal law in any and all cases takes precedence over state law.
 - It is up to individual states to negotiate treaties with foreign powers.
 - When federal and state laws contradict one another, the Supreme Court rules in favor of the law that is fairer.
11. What historian, in *An Economic Interpretation of the Constitution* (1913), argued that the Founding Fathers represented emerging commercial-capitalist interests that needed a strong national government?
- Charles Beard
 - Gwendolyn Midlo Hall
 - Oliver Wendell Holmes
 - Robin Lane Fox
12. The Founding Fathers were products of the ____, and designed a government that they believed would promote individual liberty and public virtue.
- Enlightenment
 - Post-modern movement
 - Renaissance
 - Scientific Revolution