

Lesson 2

Creating Our Constitution



Key Terms

delegates	legislative
equal representation	Philadelphia Convention
executive	proportional representation
federal system	ratification
framers	senate
House of Representatives	Virginia Plan
judicial	

What You Will Learn to Do

- Explain how the Philadelphia Convention and the Virginia Plan helped create the Constitution

Linked Core Objectives

- Communicate using verbal, non-verbal, visual, and written techniques
- Apply critical thinking techniques

Skills and Knowledge You Will Gain Along the Way

- Describe the steps leading to the calling of the Philadelphia Convention and the initial purpose of the Convention
- Describe the characteristics of the Framers who attended the Convention
- Describe the Framers' agreement on how to conduct the business of the Convention
- Defend positions on how the constitution should be developed—by Congress or by a special national convention
- Describe the basic elements of the Virginia Plan and the New Jersey Plan and the differences between them
- Relate the elements of the Virginia and New Jersey Plans to the basic ideas of government such as natural rights, republican government, and constitutional government
- Explain the reasons for the disagreements among the delegates regarding representation

- Evaluate the advantages and disadvantages of the Virginia and New Jersey Plans for a national government
- Explain why the Virginia Plan was used as the basis for the new Constitution rather than the New Jersey Plan
- Define key words contained in this lesson

Introduction

The second U.S. Constitution was written at a convention held in Philadelphia in 1787. Both the New Jersey and the Virginia delegates to the convention submitted plans to organize the new national government. In this lesson you learn how the Philadelphia Convention came to be, the major issues that were discussed and debated, and the role that the New Jersey and Virginia plans played in creating the Constitution.

Solving the Problems of the Articles of Confederation

Many political leaders, including Alexander Hamilton and James Madison, were dissatisfied with the government under the Articles of Confederation. They claimed the government was inadequate for meeting the problems of the United States.

A number of prominent leaders suggested holding a meeting of representatives of all the states. This idea of holding a special meeting or convention to discuss constitutional changes, instead of using the legislature, was an American invention. Most of the early state constitutions had been written by state legislatures. In 1780, Massachusetts became the first state to hold a constitutional convention. By 1786, Madison



Figure 3.2.1: Alexander Hamilton—1757–1804.

Courtesy of Archivo Iconografico, S.A./ Corbis Images.

Key Note Term

Philadelphia Convention—the meeting held in Philadelphia from May 25 through September 18, 1787, at which the Constitution of the United States was drafted

and other leaders decided that if a convention could be used successfully in a state, it was worth trying at the national level.

In 1786, a meeting to discuss commercial problems was held in Annapolis, Maryland. Only five states sent representatives. Disappointed at the low turnout, Hamilton, Madison, and others wrote a report asking Congress to call a meeting in Philadelphia to suggest ways to change the Articles of Confederation to strengthen the national government. Congress did so after a delay of several months. Delegates to the **Philadelphia Convention** were authorized only to propose amendments to the Articles, not to develop an entirely new constitution which is exactly what they did.

Evaluating Alternative Political Strategies

Suppose you wanted to develop a plan to change the Constitution of the United States. Your class should be divided into two groups. Each group should adopt one of the positions. Be prepared to present and defend your assigned position.

Group 1. Position: The plan to change the Constitution should be developed by Congress and then submitted to state governments for approval.

Group 2. Position: The plan to change the Constitution should be developed at a special national convention of delegates from the states selected by their legislatures and then submitted to the people of their state for approval.

The Philadelphia Convention

Fifty-five delegates attended the meeting at Independence Hall (see Figure 3.2.2) that later became known as the Philadelphia or Constitutional Convention. This group of men is now often called the **Framers** of the Constitution. Most of the delegates were fairly young; the average age was 42. About three-fourths of them had served in Congress. Most were prominent in their states, and some had played important parts in the Revolution. Some were wealthy, but most were not. A French diplomat in America at the time said that the Framers “*without being rich are all in easy circumstances.*”

Contemporary observers were impressed by the quality of the delegates to the Philadelphia Convention. Another French diplomat stationed in America observed that never before, “*even in Europe,*” had there been “*an assembly more respectable for talents, knowledge, disinterestedness, and patriotism.*” From Paris, Thomas Jefferson wrote to John Adams in London that the convention “*is an assembly of demigods.*”

We should remember, however, that some of the Framers were men of modest abilities or questionable motives. Probably the most balanced view of the men at Philadelphia has been given by Max Farrand, a historian, who wrote: “*Great men there were, it is true, but the convention as a whole was composed of men such as would be appointed to a similar gathering at the present time: professional men, business men, and gentlemen of leisure; patriotic statesmen and clever, scheming politicians; some trained by experience and study for the task before them; and others utterly unfit. It was essentially a representative body.*”

Key Note Term

Framers—the 55 delegates who attended the Philadelphia Convention



Figure 3.2.2: Independence Hall where both the Declaration of Independence and the Constitution were signed.

Courtesy of Dennis Degnan/Corbis Images.

Most of the Framers' stories are worth telling in detail, but here we are limited to introducing you to those who were the most important. We also will mention some leaders who did not attend the convention but who played a part in the establishment of our constitutional government.

George Washington

George Washington was probably the most respected and honored man in the country. During the Revolutionary War, he had left Mount Vernon, his Virginia plantation, to lead the American army to victory over the British. When the war was over, Washington returned to private life. Although convinced of the necessity for a strong national government, he was not interested in holding public office.

At first Washington refused the invitation to attend the convention. He later agreed to be a **delegate** from Virginia, fearing that if he did not attend, people might think he had lost his faith in republican government. Washington was unanimously elected president of the convention, though he was not active in the debates. His presence and support of the Constitution, together with the widespread assumption that he would be the nation's first president, were essential to the Constitution's **ratification** by the states.

Key Note Term

delegate—a person chosen to act for or represent others, as at a convention

ratification—formal approval of the U.S. Constitution by the states

James Madison

Of all the Framers, James Madison probably had the greatest influence on the organization of the national government. Born in 1751, Madison was one of the youngest of the revolutionary leaders, but by 1787, his talents had long been recognized and admired. In 1776, at the age of 25, Madison had been elected to the Virginia convention, where he was named to a committee to frame the state constitution. There, he first displayed his lifelong commitment to freedom of religion. Madison was instrumental in persuading George Mason, author of the Virginia Bill of Rights, to change the clause that guaranteed “toleration” of religion to one that secured its “free exercise.”

As a leader in Virginia politics and a member of the Confederation Congress, Madison was active in the 1780s, in support of a stronger national government. His influence at the convention was great, in part because he brought with him a plan he had already developed for creating a new national government—the **Virginia Plan**. After much debate over alternatives, this plan was used as the basis for discussion on improving the government. Had it not been for Madison, we probably would not know much about what happened during the convention. The Framers had decided to keep the discussions a secret, although delegates were free to take notes. Madison attended nearly every session and kept careful notes. Much of what we know today about what happened in the convention is based on his records.

Key Note Term

Virginia Plan—the plan traced the broad outlines of what would become the U.S. Constitution: a national government consisting of three branches with checks and balances to prevent the abuse of power

Figure 3.2.3: Benjamin Franklin.

Courtesy of Bettmann/Corbis Images.



After the convention, Madison collaborated with Alexander Hamilton and John Jay to write a defense of the new Constitution. This defense was a series of 85 articles written for newspapers in New York. In 1788, the articles were collected in a book called *The Federalist*. The articles urged citizens of New York to vote for delegates to the state ratifying convention who were favorable to the Constitution. *The Federalist* is probably the most important work written on the basic principles and ideas underlying our constitutional government.

Other Delegates

In addition to Washington and Madison, the delegates included many other prominent men. Benjamin Franklin (see Figure 3.2.3) was 81 and in poor health, but because he

was internationally respected, his mere presence lent an aura of wisdom to the convention. Alexander Hamilton, although one of the strongest supporters of a strong national government, was outvoted within his own state delegation and left in frustration before the convention was half over. He returned for a few days and he signed the completed document in September. Hamilton played a major role in the struggle over ratification, as a principal author of *The Federalist* and as the leader of pro-Constitution forces in New York. James Wilson, although not as well known as Madison or Hamilton, was also a major influence in shaping the theory of the Constitution. Later, Wilson would lead the Federalist forces in Pennsylvania, and in 1789, President Washington appointed him a justice of the Supreme Court.



George Washington
(1732–1799)



James Madison
(1751–1836)



James Wilson
(1742–1798)

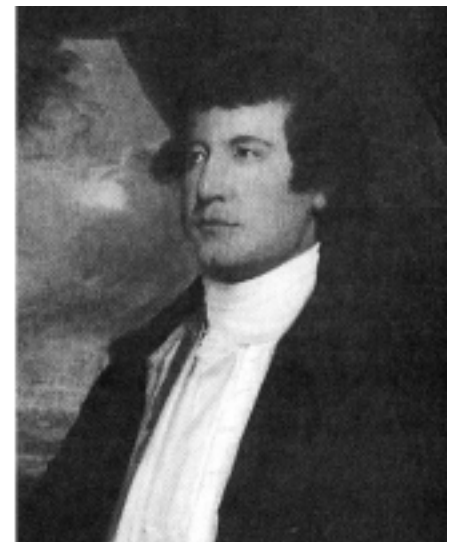
Courtesy of the National Portrait Gallery.



Elbridge Gerry
(1744–1814)



Roger Sherman
(1721–1793)



Edmund Randolph
(1753–1813)

Courtesy of the Center for Civic Education.

Besides Madison and Wilson, the delegate who spoke most frequently at the convention was Gouverneur Morris of Pennsylvania. Edmund Randolph, who as Governor of Virginia was officially the head of the Virginia delegation, introduced the Virginia Plan into the convention.

Randolph, however, refused to sign the completed document. Roger Sherman of Connecticut was instrumental in forging the “Connecticut Compromise” on representation in Congress. George Mason, author of the Virginia Bill of Rights, believed that the national constitution also should contain explicit guarantees of fundamental rights. Like Randolph, he did not sign the Constitution. Elbridge Gerry, who also refused to sign the Constitution, later led the forces against ratification in Massachusetts. Later still, he served as vice president under President James Madison.

Founders Who Did Not Attend the Convention

There also were some important political leaders who did not attend the Constitutional Convention. Thomas Jefferson was in Paris as U.S. ambassador to France. John Adams, who was serving as U.S. ambassador to Great Britain, was recognized as a leading American political thinker. Adams had been a principal architect of the Massachusetts constitution of 1780. The first volume of his *Defense of the Constitutions of Government of the United States of America* had also appeared in early 1787.

Patrick Henry, the revolutionary leader, refused to attend the convention. He was against the development of a strong national government and was suspicious of what might happen at the convention. He supposedly said later that he had “smelt a rat.”

Other leaders not present at Philadelphia included John Hancock, Samuel Adams, and Richard Henry Lee. Besides these prominent individuals, one state, Rhode Island, refused to be represented at the convention.

Points to Ponder

1. In what ways were the Framers representative of the American people in 1787? In what ways were they not?
 - a. What criteria would you use to select a group of people to draft a constitution today?
 - b. Explain any advantages and disadvantages that might result from using your criteria to select people to write a constitution compared with the group of Framers who actually wrote our Constitution.
 - c. Are there any groups whose interests you feel do not need to be represented? Why or why not?
2. Would you agree with Thomas Jefferson's characterization of the Philadelphia Convention as an “assembly of demigods”? Explain your answer.

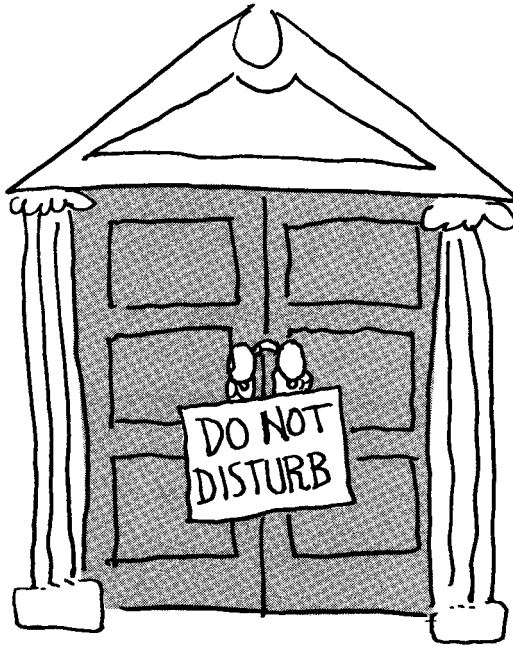
The Convention Began

By Friday, May 25, 1787, eleven days after the convention was scheduled to begin, delegations from a majority of the states were present in Philadelphia. George Washington was unanimously elected president of the convention, and a committee was appointed to draw up the rules for the meeting.

After the rules were agreed on, the convention got to work. Almost immediately, the Framers decided to ignore their instructions from Congress to limit their work to amending the Articles of Confederation. Instead, they voted to work on the development of an entirely new constitution.

The Framers decided that what was said in the convention should be kept secret. There were two reasons for this.

- **The Framers wanted to develop the best constitution they could. This required a free exchange of ideas. They were afraid that if their debates were made public, many of the delegates would not feel free to express their real opinions.**
- **The Framers thought the new constitution would have a greater chance of being accepted if people did not know about the arguments that went on while it was being created.**



Why did the delegates to the Constitutional Convention decide to keep their deliberations secret?

The Framers agreed that each state would have one vote at the convention, even though their delegations varied in size. They also agreed that a member could not be absent from the convention without permission if it would deprive a state of its vote. In addition, they adopted a rule making it possible to reconsider issues freely. This way no decision had to be made permanent until the entire plan was completed.

More Points to Ponder

1. Were the members of the convention right to ignore their original instructions? Why?
2. Should the debates at the Constitutional Convention have been open to the public? Why?

The Virginia Plan

Many delegates came to Philadelphia convinced that the defects of the Articles were so serious it would be better not to use them as a starting point. One of these was James Madison. Before the convention, he already had drafted a plan for a new national government, which came to be called the Virginia Plan. While they waited for the other state delegations to arrive, the Virginia delegates had agreed to put Madison's plan forward as a basis for the convention's discussions.

The most important thing to know about the Virginia Plan is that it proposed a strong national government. Under the Articles of Confederation, the national

Key Note Term

federal system—a form of political organization in which governmental power is divided between a central government and territorial subdivisions

legislative—branch given the powers of taxes, trade, and control over the states

executive—composed of several persons appointed by Congress; this branch has the power to administer national laws, appoint other executive officials, and direct all military operations.

judicial—branch with the power to decide over cases involving treaties, trade among the states or with other nations, and the collection of taxes

House of Representatives—elected directly by the people of each state

Senate—the upper house of the U.S. Congress, to which two members are elected from each state by popular vote for a six-year term

proportional representation—the electoral system in which the number of representatives of a state in the House of Representatives is based on the number of people who live in that state

government could act only on the states, not on the people directly. For example, the national government could request money, but only the states had the authority to raise that money through taxes.

Under the Virginia Plan, the national government would have the power to make and enforce its own laws, and to collect its own taxes. Each citizen would be governed under the authority of two governments, the national government and a state government. Both governments would get their authority from the people. The existence of two governments, national and state, each given a certain amount of authority, is what we now call a **federal system**. In addition, the Virginia Plan recommended the following:

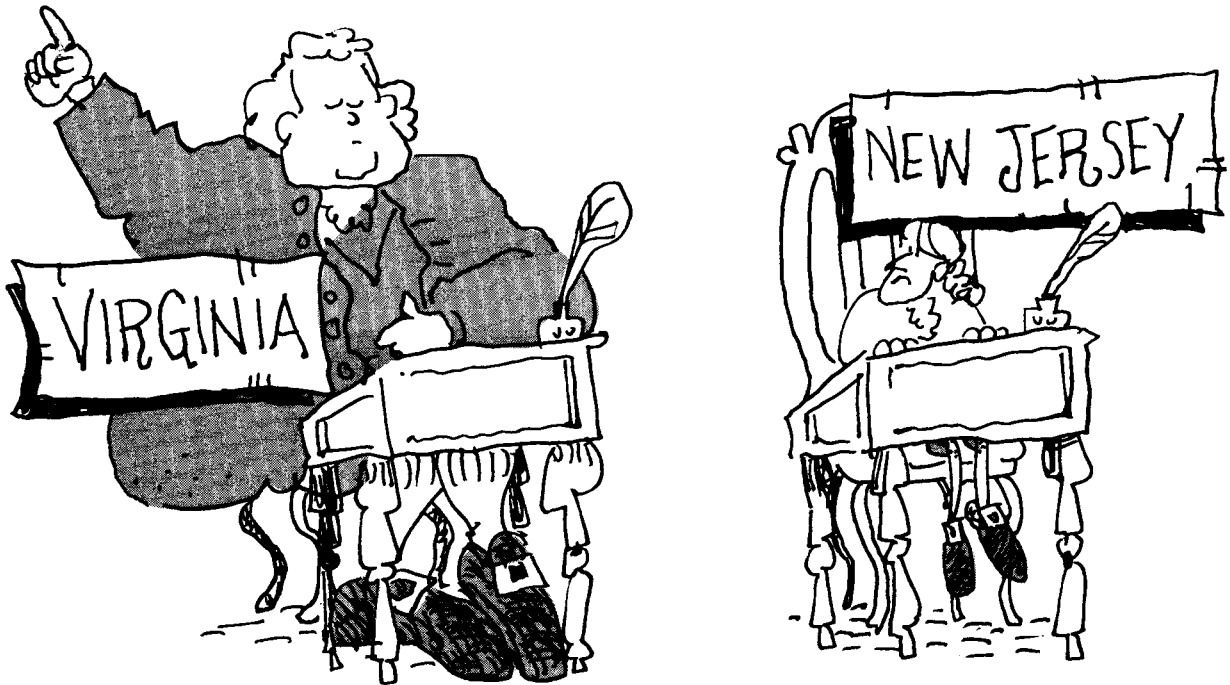
- **Three branches—legislative, executive, and judicial—would compose the national government. The legislative branch would be more powerful than the other branches because, among other things, it would have the power to select people to serve in the executive and judicial branches.**
- **The national legislature, Congress, was to have two houses. A *House of Representatives* would be elected directly by the people of each state. A *Senate* would be elected by the members of the House of Representatives from lists of persons nominated by the legislature of each state.**
- **The number of representatives from each state in both the House and the Senate would be based on the size of its population or the amount of its contribution to the federal treasury. This system of *proportional representation* meant that states with larger populations would have more representatives in the legislature than states with smaller populations.**

The Virginia Plan gave the legislative branch of the national government the following powers:

- **Make all laws that individual states were not able to make, such as laws regulating trade between two or more states**
- **Strike down state laws that it considered to be in violation of the national constitution or the national interest**
- **Call forth the armed forces of the nation against a state, if necessary, to enforce the laws passed by Congress**
- **Elect people to serve in the executive and judicial branches of government**

What Do You Think?

1. What are the advantages and disadvantages of having two houses of Congress? Explain what position you would take on this question.
2. Why do you suppose the Virginia Plan gave Congress the power to strike down laws made by state legislatures? What arguments could you make for or against giving Congress this power?
3. In what ways does the Virginia Plan correct what the Framers perceived to be weaknesses in the Articles of Confederation?



Why were delegates from small states suspicious of the Virginia Plan?

The Framers' Reaction to the Virginia Plan

There was considerable debate among the Framers over the Virginia Plan. In the early weeks of the convention, as specific features of the plan were discussed, a major disagreement over representation became apparent.

- **The larger states wanted both houses of the national legislature to be based on proportional representation.** They argued that a government that both acted on and represented the people should give equal voting power to equal numbers of people.
- **The smaller states wanted *equal representation***—equal voting power for each state. Their position was based on their fear that unless they had an equal voice, as they did under the Articles of Confederation, the larger states would dominate them.

By mid-June this disagreement had created a crisis for the convention. The delegates from the small states, led by William Paterson of New Jersey, asked for time to come up with an alternative to the Virginia Plan.

The New Jersey Plan

On June 15, Paterson presented the small states' plan, which has become known as the New Jersey Plan. The small states did not wish to create a national government in which they had little power. They argued that the best and safest thing to do would be to keep the framework of the Articles of Confederation, as they had been asked to do. The following are some of the main parts of the plan.

Key Note Term

equal representation—equal voting power for each state

Legislative Branch

Congress would have only one house, as in the Confederation, and it would be given the following increased powers:

- **Taxes.** The national government would be given the power to levy import duties and a stamp tax to raise money for its operations, together with the power to collect money from the states if they refused to pay.
- **Trade.** Congress would be given the power to regulate trade among the states and with other nations.
- **Control over the states.** The laws and treaties made by Congress would be considered the supreme law of the land. No state could make laws that were contrary to them.

Executive Branch

This branch would be made up of several persons appointed by Congress. They would have the power to administer national laws, appoint other executive officials, and direct all military operations.

Judicial Branch

A supreme court would be appointed by the officials of the executive branch. It would have the power to decide cases involving treaties, trade among the states or with other nations, and the collection of taxes.

Developing and Defending Positions

The Virginia and New Jersey Plans each had certain benefits and costs. Understanding these is helpful in making an intelligent decision about which was the better plan. Work in small groups to identify and describe the benefits and costs of each plan and list them on a chart similar to the following one. Select the plan that your group thinks would make a better government. Be prepared to explain and defend the reasons for your decision.

Table 3.1.1: Components of the Preamble

<i>Virginia Plan</i>		<i>New Jersey Plan</i>	
Benefits	Costs	Benefits	Costs

Why the Virginia Plan Was Used

The New Jersey Plan continued the system of government existing under the Articles of Confederation. In this system, the national government represented and acted upon the states rather than directly representing and acting upon the people. The New Jersey Plan did contain useful suggestions to solve some weaknesses of the Articles of Confederation. By the time the New Jersey Plan was presented, after two weeks of debate on the Virginia Plan, many delegates had become convinced that the national government needed new powers and a new organization for exercising those powers.

When the vote was taken on June 19, the New Jersey Plan was supported by the delegations from New Jersey and Delaware, by a majority of the New York delegation since Hamilton was always outvoted by his two colleagues, and by half the Maryland delegation. So, the Virginia Plan continued to be the basis for the convention's discussion.

A number of major issues had not been resolved, however. Among them were two potentially explosive ones.

- **How should the number of representatives from each state be determined? According to population? Many delegates still argued that each state should have an equal vote, no matter how large or small its population.**
- **What powers should the national government have?**

There were serious disagreements among the delegates. These disagreements were so intense that the convention nearly failed.

Conclusion

The second U.S. Constitution was written at a convention held in Philadelphia in 1787. This lesson described the idea of a constitutional convention, how the Philadelphia Convention came to be, some of the most important people who attended it, and some of the first steps they took to create our present Constitution.

You should be able to describe the steps leading to the calling of the Philadelphia Convention and some of the leading Framers who attended it.

Both the Virginia and the New Jersey delegates to the Philadelphia Convention submitted plans to organize the new national government for the Framers' consideration. After considerable debate, the Virginia Plan was used as the basis for the new Constitution. Not all the recommendations in the plan were accepted. An understanding of both plans and the debates over them should increase your understanding of the Constitution and the continuing debates over how our government is organized.

You should be able to explain the differences between the Virginia and the New Jersey Plans. You also should be able to explain why the Virginia Plan was used as the basis of our Constitution.

The balance of power is covered in the following lesson.

Lesson Review

1. Why did Congress call for a constitutional convention? What did Congress authorize the delegates to the Philadelphia Convention to do?
2. How would you describe the delegates to the Philadelphia Convention? What prominent political leaders attended?
3. Why did the delegates to the Philadelphia Convention decide to conduct their deliberations in secret?
4. Why is it said the delegates to the Philadelphia Convention ignored their instructions?
5. What was the conflict between larger and smaller states over representation in Congress? Which states favored equal representation, and which favored proportional representation? What is the difference between equal and proportional representation?