

1 Patterson suggests limited
2 and representative
3 [S1]government operates as one
4 of the key components of the
5 Constitutional framework of the
6 American political system: Our
7 limited and representative
8 government originates from the
9 Constitution and limits on
10 government's authority and
11 power, to ensure the preservation
12 of individual liberty, are set forth
13 in the Constitution. The U. S.
14 Constitution was an attempt to
15 strike a balance between
16 representative government and
17 limited government.

18 So, how did this essential
19 document come to be written?
20 What forces and conditions
21 helped bring about its writing?
22 What was the historical context
23 in which it came into being?

24

25 **I. Before the Constitution: The** 26 **Colonial and Revolutionary** 27 **Experiences**

28 Early Americans admired
29 **limited government** (a
30 government that is subject to
31 strict limits on its lawful uses of
32 powers and hence on its ability to
33 deprive people of their liberty)
34 and **self-government**

35 (government in which the people
36 are the ultimate source and
37 proper beneficiary of government
38 authority; a government based on
39 majority rule). The admiration
40 was based on their British
41 heritage and their colonial
42 experience.

43 Britain had developed a
44 system of precedent known as
45 "**common law**," which
46 guaranteed **trial by jury and**
47 **due process of law** as safeguards
48 of life, liberty, and property. As
49 British subjects, colonists
50 enjoyed a right to a jury trial.
51 Although religious freedom was
52 not granted by all colonies,
53 religious oppression of the kind
54 commonplace in Europe was
55 rare.

56 Colonists also enjoyed a
57 degree of self-government. Each
58 colony had an elected assembly.
59 And although wealthier interests
60 usually controlled these
61 assemblies, they acted as
62 representative bodies that grew
63 increasingly powerful during the
64 colonial period.

65 In the years after 1763, the
66 British Crown increasingly
67 ignored the colonists' "rights as
68 Englishmen" by implementing

1 punitive taxes and other
2 burdensome laws.
3 The Seven Years' War
4 between Britain and France in
5 Europe and North America
6 (1756-1763), known as the
7 French and Indian War in the
8 American colonies, was a turning
9 point in the relationship between
10 the American colonists and
11 Britain. Under Prime Minister
12 William Pitt, the British
13 supported by American colonists
14 defeated the French, and under
15 the Treaty of Paris of 1763
16 Britain gained all of Canada and
17 all of what is now the United
18 States east of the Mississippi
19 River. France lost all of its North
20 American holdings. Colonists
21 had fought alongside British
22 soldiers to drive the French out
23 of Canada and the Western
24 territories. Americans at the end
25 of the French and Indian War
26 were proud to be part of the
27 victorious British Empire and
28 proud of the important role they
29 had played in making it so. They
30 felt affection for Great Britain,
31 and thoughts of independence
32 would not have crossed their
33 minds. So what happened? Why,
34 only twelve years later (1775),

35 did American colonists and
36 British troops battle at Lexington
37 and Concord?

38 While Americans' feeling
39 toward Great Britain were pride
40 an affection, British officials felt
41 contemptuous of Americans and
42 were eager to increase imperial
43 control over them beyond
44 anything that had previously
45 been attempted. Many British
46 officials felt the American
47 colonists had not adequately
48 supported the British war effort
49 against the French and Indians.
50 This drive to gain new authority
51 over the colonies, beginning in
52 1763, led directly to American
53 independence.

54 Britain needed money to
55 pay for the French and Indian
56 War and the European
57 counterpart of that war. In 1763
58 the strongly anti-American
59 George Crenville became prime
60 minister and set out to solve
61 some of the Empire's more
62 pressing economic problems.
63 Chief among these was the large
64 national debt incurred in the
65 Seven Years' War and the related
66 concern of defending the
67 American frontier. About half of
68 Britain's debt of 140 million

1 pounds had been incurred in
2 defending the American colonies.
3 British officials felt that
4 Americans should be asked to
5 defray one-third the cost of
6 maintaining a garrison of some
7 ten thousand troops in America.
8 Grenville created a
9 comprehensive program to deal
10 with these problems and moved
11 to put it into effect. He sent the
12 Royal Navy to suppress
13 American smuggling and
14 vigorously enforce the
15 Navigation Acts that previously
16 imposed no intolerable burden,
17 mainly because they were laxly
18 enforced through a policy of
19 “salutary neglect.” Colonial
20 merchants knew how to disregard
21 or evade restrictions. In fact,
22 some of the early American
23 fortunes were amassed by
24 wholesale smuggling. John
25 Hancock of Massachusetts came
26 to be known as the “King of
27 Smugglers.” He issued the
28 Proclamation of 1763, forbidding
29 white settlement west of the crest
30 of the Appalachians, in hopes of
31 keeping the Indians happy and
32 the settlers close to the coast and
33 thus easier to control.

34 In 1764, Grenville pushed
35 through Parliament the Sugar Act
36 (also known as the Revenue Act)
37 aimed at raising revenue by taxes
38 on goods imported by the
39 Americans. This was the first
40 law passed by Parliament for
41 raising tax revenue in the
42 colonies for the crown. It was
43 aimed at raising revenue rather
44 than control trade. It was
45 stringently enforced, with
46 accused violators facing trial in
47 admiralty courts without benefit
48 of jury or the normal protections
49 of due process. For example, the
50 burden of proof was on the
51 defendants, who were assumed to
52 be guilty unless they could prove
53 themselves innocent. Trial by
54 jury and the precept of “innocent
55 until proven guilty” were long-
56 standing privileges that the
57 English people and the American
58 colonials held most dear. After
59 bitter protests by the colonials,
60 the duties were lowered
61 substantially, and the agitation
62 died down.

63 But resentment was kept
64 burning by the Quartering Act of
65 1765. This measure required
66 colonies in which British troops
67 were stationed to provide food

1 and quarters for British troops.
2 Americans had never before been
3 required to support a standing
4 army in their midst.

5 Most important, Grenville
6 got Parliament to pass the Stamp
7 Act (1765), imposing a direct tax
8 on Americans for the first time.
9 This tax was intended to raise
10 revenues to support the British
11 force stationed in the colonies. It
12 mandated the use of stamped
13 paper or the affixing of stamps,
14 certifying payment of tax.
15 Stamps were required on bills of
16 sale for about fifty trade items as
17 well as on certain types of
18 commercial and legal documents,
19 including playing cards,
20 pamphlets, newspapers,
21 diplomas, bills of lading, and
22 marriage licenses.

23 Grenville and Parliament
24 regarded these measures as
25 reasonable and just. They
26 believed they were asking
27 Americans to pay a fair share of
28 the costs for their own defense,
29 through taxes that were already
30 familiar and accepted in England.

31 The Stamp Act disrupted
32 commerce and public
33 communication. The colonies
34 were not used to direct taxes.

35 Rather, the previous practice was
36 to raise money by taxing colonial
37 imports and exports. A tax on an
38 import or an export is called a
39 tariff.

40 What was the reaction of
41 many colonists? Americans
42 reacted at first with restrained
43 and respectful petitions and
44 pamphlets, in which they pointed
45 out that “taxation without
46 representation is tyranny.”
47 Grenville dismissed these
48 American protests by asserting
49 that the power of Parliament was
50 supreme, and further asserting
51 that Americans were “virtually
52 represented” in Parliament. He
53 claimed that every Member of
54 Parliament represented all British
55 subjects, even those Americans
56 who had never voted for a
57 Member of Parliament.
58 Americans rejected Grenville’s
59 notion of virtual representation.
60 And truthfully, they did not
61 really want direct representation
62 in Parliament. Even if they had
63 obtained it, American
64 representatives, few in numbers,
65 would have been without a
66 principle with which to resist the
67 actions of Parliament. Resistance
68 progressed to stronger protests

1 that eventually became violent
2 and involved intimidation of
3 those Americans who had
4 contracted to be the agents for
5 distributing the stamps.

6 In October 1765, twenty-
7 seven delegates from nine
8 colonies met in New York City
9 as the Stamp Act Congress.

10 Called by the Massachusetts
11 legislature at the instigation of
12 James Otis, the Stamp Act
13 Congress passed moderate
14 resolutions against the act,
15 asserting that Americans could
16 not be taxed without their
17 consent, given by their
18 representatives. They pointed
19 out that Americans were not, and
20 because of their location could
21 not practically be, represented in
22 Parliament and concluded by
23 beseeching King George III and
24 Parliament to repeal both the
25 Stamp and Sugar Acts.

26 The Stamp Act Congress,
27 which was largely ignored in
28 England, made little splash at the
29 time in America. However, it
30 began to erode sectional
31 suspicions, for it brought
32 together around the same table
33 leaders from the different and
34 rival colonies. It showed that

35 representatives of the colonies
36 could work together and gave
37 political leaders in the various
38 colonies a chance to become
39 acquainted with each other.

40 Most effective in achieving
41 repeal of the Stamp Act was
42 colonial merchants' non-
43 importation (boycott) of British
44 goods. Begun as an agreement
45 among New York merchants, the
46 boycott spread throughout the
47 colonies and had a powerful
48 effect on British merchants and
49 manufacturers, who began
50 clamoring for the act's repeal.

51 In March 1766, under the
52 leadership of a new prime
53 minister, Parliament repealed the
54 Stamp Act, but passed the
55 Declaratory Act, claiming power
56 to tax or make laws for the
57 Americans "in all cases
58 whatsoever."

59 Americans generally
60 ignored the Declaratory Act in
61 their exuberant celebration of the
62 repeal of the Stamp Act. In fact,
63 most Americans continued to
64 eagerly proclaim their loyalty to
65 Great Britain.

66 In 1766 a new prime
67 minister, Charles Townshend,
68 convinced Parliament to pass his

1 program of taxes on items
2 imported into the colonies. He
3 believed colonials would accept
4 this method while rejecting the
5 use of direct internal taxes.
6 These Townshend Acts, or
7 Townshend Duties as they are
8 sometimes called, included the
9 use of admiralty courts to try
10 those accused of violations, the
11 use of writs of assistance
12 (general search warrants, that
13 some colonials believed violated
14 natural law, issued to help royal
15 officials stop evasion of the acts),
16 and the paying of customs
17 officials out of the fines they
18 levied. Townshend also had the
19 New York legislature suspended
20 for noncompliance with the
21 Quartering Act.

22 American reaction was at
23 first slow. Philadelphia lawyer
24 John Dickinson wrote an
25 anonymous pamphlet entitled
26 “Letters from a Farmer in
27 Pennsylvania,” in which he
28 pointed out in moderate terms
29 that the Townshend acts violated
30 the principle of no taxation
31 without representation and that if
32 Parliament could suspend the
33 New York legislature it could do
34 the same to others. He urged a

35 restrained response on the part of
36 his fellow Americans.

37 In February 1768 the
38 Massachusetts legislature, at the
39 urging of Samuel Adams, passed
40 the Massachusetts Circular
41 Letter, reiterating Dickinson’s
42 mild arguments and urging other
43 colonial legislature to pass
44 petitions calling on Parliament to
45 repeal the acts. Had the British
46 government done nothing the
47 matter might have passed
48 quietly?

49 Instead, British authorities
50 acted. They ordered that if the
51 letter was not withdrawn, the
52 Massachusetts legislature should
53 be dissolved and new elections
54 held. They forbade the other
55 colonial legislatures to take up
56 the matter, and at the request of
57 repeated pleas of the Boston
58 customs agents they also sent
59 four regiments of troops to
60 Boston to prevent intimidation of
61 royal officials and to intimidate
62 the populace instead. Corrupt
63 customs agents had used
64 technicalities of the confusing
65 and poorly written Sugar and
66 Townshend Acts to entrap
67 innocent merchants and line their
68 own pockets. Mob violence had

1 threatened when agents had
2 seized the ship *Liberty*,
3 belonging to Boston merchant
4 John Hancock. Such incidents
5 prompted the call for troops.
6 The sending of troops,
7 along with the British authority's
8 repressive response to the
9 Massachusetts Circular Letter,
10 aroused the Americans to
11 resistance. Non-importation was
12 again instituted, and soon British
13 merchants were calling on
14 Parliament to repeal the acts. In
15 March 1770, Parliament, under
16 the new prime minister,
17 Frederick Lord North, repealed
18 all of the taxes except that on tea,
19 which was retained to prove
20 Parliament had the right to tax
21 the colonies if it so desired.

22 By the time of the repeal,
23 however, friction between British
24 soldiers and Boston citizens had
25 led to a violent clash between
26 colonials and British soldiers.
27 On the evening of March 5,
28 1770, a crowd of some sixty
29 townspeople set upon a squad of
30 about ten Redcoats (British
31 soldiers) one of whom was hit by
32 a club and another of whom was
33 knocked down. Acting
34 apparently without orders but

35 under extreme provocation, the
36 troops opened fire and killed or
37 wounded eleven citizens. One of
38 the first to die was Crispus
39 Attucks, described by
40 contemporaries as a powerfully
41 built runaway "mulatto" and as a
42 leader of the mob. Samuel
43 Adams labeled the incident the
44 "Boston Massacre" and
45 publicized it widely. Both sides
46 were in some degree to blame,
47 and in the subsequent trial (in
48 which prominent Massachusetts
49 lawyer and future president John
50 Adams served as defense
51 attorney for the soldiers) the
52 soldiers were acquitted of
53 murder; however, two of the
54 redcoats were found guilty of
55 manslaughter and were released
56 after being branded on the hand.

57 Following the repeal of the
58 Townshend duties a period of
59 relative peace set in. The tax on
60 tea remained as a reminder of
61 Parliament's claims, but it was
62 easily avoided by smuggling.

63 Significantly, much good
64 will had been lost and colonists
65 remained suspicious of the
66 British government. An
67 increasing number of Americans
68 believed the events of the

1 previous decade to have been the
2 work of a deliberate conspiracy
3 by British officials to take their
4 liberty.

5 The Tea Act of 1773
6 brought an end to the relative
7 period of peace. In desperate
8 financial condition – partially
9 because the Americans were
10 buying smuggled Dutch tea
11 rather than the taxed British
12 product – the British East India
13 Company sought and obtained
14 from Parliament concessions
15 allowing it to ship tea directly to
16 the colonies rather than only by
17 way of Britain. The result would
18 be that East India Company tea,
19 even with the tax, would be
20 cheaper than smuggled Dutch
21 tea. The colonists would thus, it
22 was hoped, buy the tea, tax and
23 all. The East India Company
24 would be saved and the
25 Americans would be tacitly
26 accepting Parliament's right to
27 tax them.

28 Americans resisted this
29 approach; they vigorously
30 resisted the cheaper tea. Various
31 methods, including tar and
32 feathering customs agents, were
33 used to prevent the collection of
34 the tax on tea. In most ports

35 Americans did not allow the tea
36 to be landed.

37 In Boston, pro-British
38 Governor Thomas Hutchinson
39 forced a confrontation by
40 ordering Royal Navy vessels to
41 prevent the tea ships from
42 leaving the harbor. After twenty
43 days this would, by law, result in
44 the cargoes being sold at auction
45 and the tax paid. The night
46 before the time was to expire,
47 December 16, 1773, Bostonians
48 thinly disguised as Indians
49 boarded the ships and threw the
50 tea into the harbor.

51 Many Americans felt this –
52 the destruction of private
53 property – was going too far, but
54 the reaction of Lord North and
55 Parliament quickly united
56 Americans in support of Boston
57 and opposition to Britain.

58 The British responded with
59 four acts collectively title the
60 Coercive Acts. First, the Boston
61 Port Act closed the port of
62 Boston to all trade until local
63 citizens would agree to pay for
64 the lost tea (they would not).
65 Secondly, the Massachusetts
66 Government Act greatly
67 increased the power of
68 Massachusetts' royal governor at

1 the expense of the legislature.
2 Thirdly, the Administration of
3 Justice Act provided that royal
4 officials accused of crimes in
5 Massachusetts could be tried
6 elsewhere, where changes of
7 acquittal might be greater.
8 Finally, a strengthened
9 Quartering Act allowed the new
10 governor, General Thomas Gage,
11 to quarter his troops anywhere.

12 A further act of Parliament
13 also angered and alarmed
14 Americans. This was the Quebec
15 Act, which extended the province
16 of Quebec to the Ohio River,
17 established Roman Catholicism
18 as Quebec's official religion, and
19 set up for Quebec a government
20 without a representative
21 assembly.

22 For Americans this was a
23 denial of the hopes and
24 expectations of westward
25 expansion for which they had
26 fought the French and Indian
27 War. Also, New Englanders
28 especially saw it as a threat that
29 in their colonies too, Parliament
30 could establish autocratic
31 government and the hated
32 Church of England.

33 What was the colonial
34 reaction? In response to the

35 Coercive Acts, the First
36 Continental Congress was called
37 and met in Philadelphia in
38 September 1774. It once again
39 petitioned Parliament for relief
40 calling for the following: free
41 assembly, an end to British
42 military occupation, their own
43 councils for the imposition of
44 taxes, and trial by local juries. In
45 addition, it also passed the
46 Suffolk Resolves denouncing the
47 Intolerable Acts and calling for
48 strict non-importation and
49 rigorous preparation of local
50 militia companies in case the
51 British should resort to military
52 force. Finally, it was agreed that
53 there should be a Second
54 Continental Congress to meet in
55 May of 1775 if the colonies'
56 grievances had not been righted
57 by then.

58 The British government
59 paid little attention to the First
60 Continental Congress, having
61 decided to teach the Americans a
62 military lesson. More troops
63 were sent to Massachusetts,
64 which was officially declared to
65 be a state of rebellion. Orders
66 were sent to General Gage to
67 arrest the leaders of the
68 resistance or, failing that, to

1 provoke any sort of confrontation
2 that would allow him to turn
3 British military might loose on
4 the Americans.

5 On the night of April 18,
6 1775 General Gage ordered
7 seven hundred British troops to
8 set out on a mission to find and
9 destroy a reported stockpile of
10 colonial arms and ammunition at
11 Concord. Their movement was
12 detected by American
13 surveillance and news was spread
14 throughout the countryside by
15 dispatch riders Paul Revere and
16 William Dawes.

17 At the little village of
18 Lexington, Captain John Parker
19 and some seventy Minutemen
20 (militiamen trained to respond at
21 a moment's notice) awaited the
22 British on the village green. As
23 the British approached, a British
24 officer shouted at the Minutemen
25 to lay down their arms and
26 disperse. The Minutemen did not
27 lay down their arms but did turn
28 to file off the green. A shot was
29 fired, and then the British opened
30 fire and charged. Eight
31 Americans were killed and
32 several others wounded, most
33 shot in the back.

34 The British continued to
35 Concord only to find that nearly
36 all of the military supplies they
37 had expected to find had already
38 been moved. Attacked by
39 growing numbers of Minutemen,
40 they began to retreat toward
41 Boston. At the British retreated,
42 Minutemen, swarming from
43 every village for miles around,
44 fired on the column from behind
45 rocks, trees, and stoned fences.
46 Only a relief force of additional
47 British troops saved the first
48 column from destruction.

49 Open warfare had begun,
50 and the myth of British
51 invincibility was destroyed.
52 Militia came in large numbers
53 from all the New England
54 colonies to join the force
55 besieging Gage and his army in
56 Boston.

57 In addition to the demands
58 made by the First Continental
59 Congress upon the British
60 Crown, ideas about the proper
61 form of government also played
62 a role in bringing about the
63 colonial break with Britain.
64 Colonial leaders were influenced
65 by the writings of the English
66 Enlightenment thinker and
67 philosopher John Locke. In his

1 Two Treatises of Government
2 (1690), Locke advanced the
3 liberal principle that people have
4 inalienable rights (or natural
5 rights), including those of life,
6 liberty and property. In Locke’s
7 view these natural rights existed
8 apart from the existence of
9 government. Natural rights were
10 neither taken from people by
11 government nor surrendered by
12 people to government. Locke
13 argued that if government
14 protected peoples’ natural rights,
15 they were obliged to obey it, but
16 if government failed to protect
17 peoples’ rights, they could
18 **rightfully rebel** against it. This
19 concept of a rightful rebellion
20 against existing government was
21 a radical concept for its time.

22 Locke’s ideas inspired
23 many leaders of the American
24 Revolution, and in particular
25 Thomas Jefferson. It was
26 Jefferson who paraphrased
27 Locke’s ideas in key passages of
28 the Declaration of Independence:
29 “We hold these truths to be self-
30 evident, that all men are created
31 equal, that they are endowed by
32 their Creator with certain
33 unalienable rights, that among
34 these are life, liberty and the

35 pursuit of happiness. That to
36 secure these rights, governments
37 are instituted among men,
38 deriving their just powers from
39 the consent of the governed. That
40 whenever any form of
41 government becomes destructive
42 of these ends; it is the right of the
43 people to alter or to abolish it,
44 and to institute a new
45 government.”

46 The Declaration of
47 Independence was a call to a
48 revolution rather than a
49 framework for a new form of
50 government. But, the ideas it
51 contained—liberty, individual
52 rights, self-government, lawful
53 powers—were to become the
54 basis, eleven years later (1787),
55 for the U.S. Constitution.

56 The first government of the
57 United States was based on the
58 Articles of Confederation.
59 Adopted by the Continental
60 Congress in 1777 but not ratified
61 by all 13 states until March 1781,
62 the Articles of Confederation
63 subordinated national authority
64 to that of the states, creating a
65 weak and ineffectual national
66 government. Each state retained
67 its “sovereignty, freedom and
68 independence.” Members of the

1 national Congress were
2 appointed and paid by their
3 representative state governments.
4 Each state had one vote in
5 Congress. The agreement of nine
6 states was required to pass
7 legislation. The agreement of all
8 states was required to amend the
9 Articles of Confederation. The
10 national government lacked the
11 power to tax and had to rely on
12 voluntary contributions from the
13 states. The states did not
14 contribute enough money to
15 pay the national government's
16 debts, resulting in the inability to
17 support an adequate army and
18 navy. Congress could not
19 develop a national economy
20 because the Articles forbade
21 Congress from interfering in the
22 states' commerce policies. Weak
23 national governmental
24 authority under the Articles
25 resulted in public disorder,
26 economic chaos, and inadequate
27 defense. Once the Revolutionary
28 War ended the states went their
29 separate ways. Several states
30 negotiated their own foreign
31 trade agreements. New
32 Hampshire with eighteen miles
33 of coastline established its own
34 navy.

35 In 1786 a revolt, Shay's
36 Rebellion, in western
37 Massachusetts brought these
38 issues to a head. The revolt was
39 about unpaid debts and taxes of
40 Revolutionary army veterans.
41 New taxes were levied on the
42 farms of veterans threatening
43 them with loss of property and
44 even incarceration for non-
45 payment of debt. Congress had
46 no army to send to put down the
47 rebellion. The state militia
48 finally suppressed the rebellion,
49 but the rebellion made it clear,
50 especially to the propertied
51 interests, that the system of
52 national government needed to
53 be changed. The rebellion
54 clarified the need for a stronger
55 national government, providing
56 the impetus for a constitutional
57 convention to revise the Articles.
58 Congress authorized a
59 constitutional convention to meet
60 in Philadelphia in 1787 with the
61 following restriction on it: the
62 delegates were to meet for “the
63 sole and express purpose of
64 revising the Articles of
65 Confederation.”

66

1 **II. The Second American**
2 **Revolution - Negotiating**
3 **Toward a Constitution**
4 Formulating and agreeing
5 upon a stronger national
6 government required a variety of
7 compromises at the Philadelphia
8 constitutional convention. An
9 effective government required a
10 union of people, not states.

11 The Virginia delegation,
12 dominated by strong nationalists
13 (those favoring a strong national
14 government), introduced the
15 Virginia Plan (or large state
16 plan). It called for a two-
17 chamber Congress that would
18 have supreme authority in
19 defense and interstate trade and
20 all areas “in which the separate
21 states are incompetent.” This
22 plan called for states to have
23 numerical representation in
24 Congress in proportion to their
25 populations or tax contributions.
26 Representatives of small states
27 would be outnumbered.

28 In contrast, **William**
29 **Paterson of New Jersey put**
30 **forth the New Jersey Plan (or**
31 **small-state plan) that called for**
32 **a strong national government**
33 **with the power to tax and to**
34 **regulate interstate commerce,**

35 **but in** most other respects it
36 called for retaining the Articles
37 of Confederation. Congress
38 would have a single chamber in
39 which each state, large or small,
40 would have a single vote.

41 After many weeks of
42 debate, delegates agreed on the
43 **Great Compromise between**
44 **the New Jersey and Virginia**
45 **plans. The Great Compromise**
46 **provided for a bicameral (two-**
47 **chamber) Congress:** the House
48 of Representatives would be
49 apportioned among the states on
50 the basis of population and the
51 Senate on the basis of an equal
52 number of votes (two for each
53 state.)

54 The next major issue for the
55 convention involved the
56 economic consequences of
57 slavery and the differences
58 between the South’s slave-based
59 agricultural economy and the
60 North’s more manufacturing
61 oriented economy. Southern
62 representatives feared the North
63 would gain a majority in
64 Congress and proceed to enact
65 unfair tax policies—high import
66 tariffs on finished goods in order
67 to protect manufacturers and
68 place high export tariffs on

1 agricultural goods—that would
2 place an unfair burden of
3 financing the new government on
4 the South. Southern
5 representatives also feared the
6 North would place a tax on
7 imported slaves or even bar the
8 importation of slaves.

9 A compromise was
10 reached. **The North-South**
11 **Compromise** between the
12 commercial, non-slave Northern
13 states and the agricultural, slave
14 Southern states prohibited a tax
15 on exports (but not imports). In
16 addition, Congress was
17 prohibited from passing laws to
18 end the slave trade until 1808.

19 A final compromise, was
20 the "**Three-Fifths**
21 **Compromise**:" for purposes of
22 both taxation and representation
23 in Congress, five slaves were to
24 be considered the equivalent of
25 three white people; in effect, five
26 enslaved individuals would be
27 counted as the equivalent of three
28 non-enslaved individuals.
29 Although Southern delegates
30 wanted enslaved persons to count
31 the same as free persons for
32 purposes of calculating a state's
33 population thus increasing the
34 number of House members in

35 Congress for a state, the 3/5ths
36 compromise did not give them
37 everything they wanted and it
38 effectively reduced the total
39 number of Southern
40 representatives in Congress. It
41 did, however, serve as a **quid**
42 **pro quo** for allowing the
43 continuation of the slave trade
44 until at least 1808.

45 The southern states'
46 dependence on slavery was a
47 formidable obstacle to union.
48 Southern states had based their
49 economies on large slave
50 populations and southern
51 delegates were ready to leave the
52 convention and form their own
53 union rather than join one that
54 prohibited slavery.

55 The delegates realized that
56 if they followed the ratification
57 process outlined by Congress the
58 Constitution had little chance of
59 being ratified because all thirteen
60 states would have had to ratify it
61 under the procedures outlined by
62 Congress. So, the convention
63 established its own ratifying
64 process. The convention
65 instructed Congress to submit the
66 Constitution directly to the states,
67 where it would become law after
68 being approved by at least nine

1 states in special ratifying
2 conventions of popularly elected
3 delegates. North Carolina and
4 Rhode Island opposed the new
5 Constitution and did not ratify it
6 until eleven other states had
7 ratified it and begun the process
8 of establishing the new
9 government.

10 The ratification debate
11 revolved around the issue of
12 national versus state sovereignty.
13 The Anti-Federalists (opponents
14 of the Constitution) favored a
15 state-centered government. The
16 Federalists (supporters of the
17 Constitution) favored changing
18 from a confederacy to a federal
19 form of government, which
20 would give the national
21 government greater authority for
22 defense and commerce. Although
23 federalists asserted that a federal
24 government should have
25 expanded powers and even some
26 greater powers than state
27 governments compared to that
28 which existed under the Articles
29 of Confederation, James Madison
30 and other federalists argued the
31 states needed to retain important
32 governing ability. For example,
33 writing in *Federalist No. 39* in
34 support of adoption of the

35 Constitution, staunch federalist
36 James Madison wrote, “The
37 proposed government cannot be
38 deemed a National one, since its
39 jurisdiction extends to certain
40 enumerated objects only, and
41 leaves to the several states a
42 residuary and inviolable
43 sovereignty over all objects.”
44 Thus, in *Federalist No. 39*
45 Madison reached the conclusion
46 that a government should be
47 developed where states retain
48 important governing abilities but
49 are subordinate to the federal
50 government in other areas. The
51 absence of a bill of rights and the
52 role of the presidency were
53 concerns for many people during
54 the ratification process.
55

56 **III. Providing for a Limited** 57 **Government - Limits on** 58 **Government in the** 59 **Constitution**

60 **Grants of power:** Powers
61 granted to the national
62 government by the Constitution.
63 Powers not granted to it are
64 denied to it unless they are
65 necessary and proper to the
66 carrying out of granted powers.
67

1 **Denials of power:** Powers
2 expressly denied to the national
3 and state governments by the
4 Constitution.

5
6 **Separated institutions**
7 **sharing power:** The division of
8 the national government's power
9 among three branches, each of
10 which is to act as a check on the
11 powers of the other two.

12
13 **Bill of Rights:** The first ten
14 amendments to the Constitution,
15 which specify rights of citizens
16 that the national government
17 must respect.

18
19 **Federalism:** The division of
20 political authority between the
21 national government and the
22 states, enabling the people to
23 appeal to one authority if their
24 rights and interests are not
25 respected by the other authority.

26
27 **Judicial review:** The power
28 of the courts to declare
29 governmental action null and
30 void when it is found to violate
31 the Constitution.

32

33 **Elections:** The power of the
34 voters to remove officials from
35 office.

36

37 **Grants and Denials of Power**

38 The Framers other goals
39 were to establish a national
40 government that was restricted in
41 its lawful uses of power (limited
42 government) and that gave the
43 people a voice in their
44 governance (self-government).
45 The Constitution seeks to
46 establish a government strong
47 enough to enforce
48 national interests, including
49 defense and commerce among
50 the states, but not so strong as to
51 destroy liberty.

52 Limited government was
53 built into the Constitution
54 through both grants and
55 restrictions of political power.
56 For example, Congress's
57 lawmaking authority is
58 constitutionally confined to
59 seventeen specified powers
60 specifically listed in Article I,
61 section 8. Among these powers
62 are the following: tax, establish
63 an army and navy, declare war,
64 regulate commerce among the
65 states (interstate commerce),
66 create a national currency, and

1 borrow money. Authority not
2 granted to the government by the
3 Constitution is **in theory** denied
4 to it. Patterson notes that this was
5 a remarkable limitation at the
6 time.

7 Denials of power were
8 used as means to limit
9 government. Examples include:
10 the protection of a **writ of**
11 **habeas corpus**—(“show me the
12 body”) which means a person has
13 the right to be brought before a
14 court for a judgment as to the
15 legality of their confinement—
16 and the protection from
17 prosecution under *ex post facto*
18 laws for acts that were legal at
19 the time they were committed.

20 The difficulty of amending
21 the Constitution is another
22 example of a denial of power.
23 An amendment could be
24 proposed only by a two-thirds
25 majority in both chambers of
26 Congress or in a national
27 constitutional convention called
28 by the legislatures of two-thirds
29 of the states. A proposed
30 amendment becomes part of the
31 Constitution only if ratified by
32 three-fourths of the state
33 legislatures or by three-fourths of
34 the states in a special national

35 convention. The Constitution has
36 been amended only twenty-seven
37 times; in each instance, the
38 amendment was proposed by
39 Congress and ratified by the state
40 legislatures.

41 **Using Power to Offset Power**

42 The Framers sought to
43 check power with power by
44 dividing the authority of the
45 government so that no single
46 institution could exercise great
47 power without the agreement of
48 other institutions. This idea is
49 known as **separation of powers**.
50 This concept is associated with
51 the earlier writings of the French
52 theorist Montesquieu. The
53 wisdom of separating powers is
54 seen in the case of
55 Pennsylvania's state government
56 during the Revolutionary War.
57 Unrestrained by an independent
58 judiciary or executive,
59 Pennsylvania's all-powerful
60 legislature systematically
61 deprived minority groups of their
62 basic rights: Quakers were
63 disenfranchised for their
64 religious beliefs, conscientious
65 objectors to the Revolutionary
66 War were prosecuted, and the
67 right of trial by jury was
68

1 eliminated. The effectiveness of
2 separation of powers in
3 American government is further
4 illustrated by the Watergate affair
5 during the Nixon administration.
6 The resolution of this incident
7 demonstrates that the Executive
8 branch of government is not
9 above the law and is not superior
10 to Congress or the Supreme
11 Court.

12 James Madison writing in
13 *Federalist No. 10* argued that
14 people are divided into opposing
15 religious, geographical, ethnic,
16 economic and other **factions**. He
17 believed these divisions are
18 natural and desirable—free
19 people have a right to their
20 personal opinions and interests.
21 But, he argued that factions could
22 be a source of oppressive
23 government. If a faction gains
24 full power, it will use
25 government to advance itself at
26 the expense of all others.

27 The Framers believed that
28 total separation of power would
29 make it too easy for a single
30 faction to exploit a particular
31 kind of political power. A better
32 system of divided government
33 would be one in which political
34 power could be applied forcibly

35 only when institutions agreed on
36 its use. This would require a
37 system of separated but
38 **overlapping** powers. Since no
39 faction could easily gain control
40 over all institutions, factions
41 would have to work together, a
42 process that would require each
43 to moderate its demands and thus
44 serve many interests rather than
45 one or a few.

46 **Separated Institutions Sharing** 47 **Power: Checks and Balances**

48 The Framers' concept of
49 divided powers has been
50 described by political scientist
51 Richard Neustadt as the principle
52 of separated institutions sharing
53 power, creating elaborate checks
54 and balances between the three
55 branches of national government.
56 See Figure 2-2 below.

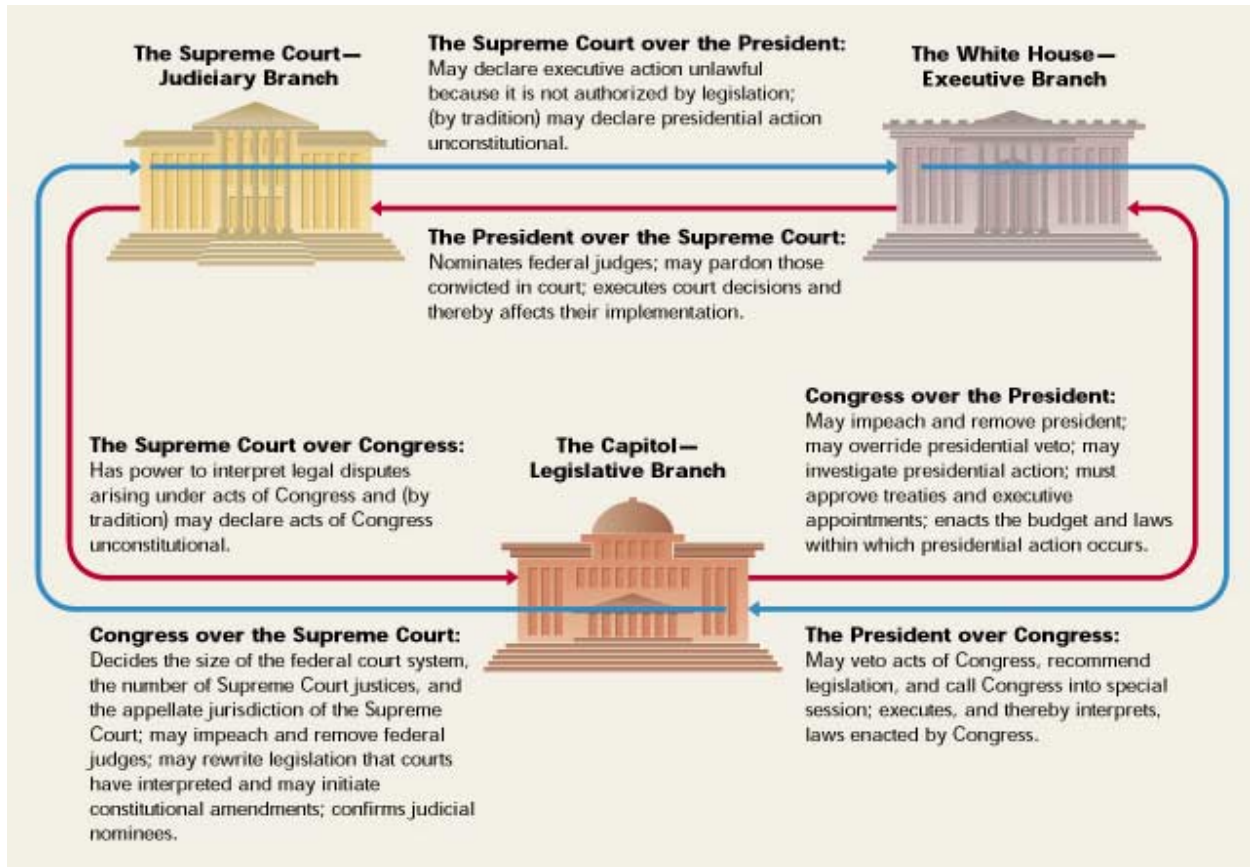
57 Legislative, executive, and
58 judicial powers are divided in
59 such a way that they overlap;
60 each of the three branches of
61 government checks the others'
62 powers and balances those
63 powers with powers of its own.
64

65
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71

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1
2
3

4
5



1 **Shared Legislative Powers**

2 Within Congress, there is a
3 further check on legislative
4 power: for legislation to be
5 passed, a majority in each house
6 of Congress is required. The
7 Senate or the House can block
8 the other from acting.

9
10 **Bill of Rights**

11 James Madison introduced
12 a series of amendments during
13 the First Congress in 1789.
14 Ten were ratified by the

15 States and became the Bill of
16 Rights. The Bill of Rights was
17 added to the Constitution to
18 protect individuals' civil
19 liberties from being taken away
20 by the national government.

21
22 **Judicial Review**

23 The Framers did grant the
24 Supreme Court the authority to
25 decide on “all cases arising under
26 this Constitution.” But, because
27 the Constitution did not explicitly
28 provide for judicial review or

1 judicial power it was a principle
2 that had to be established in
3 practice. The judiciary
4 determines whether the
5 government is operating within
6 its constitutional framework of
7 powers. Supreme Court Chief
8 Justice John Marshall in the
9 landmark case *Marbury v.*
10 *Madison* (1803) defined the
11 powers of the Supreme Court and
12 asserted its power of judicial
13 review. Outgoing President John
14 Adams appointed a loyal
15 Federalist William Marbury to
16 one of fifty-nine newly created
17 lower-court judgeships. Adam's
18 term expired before the secretary
19 of state could deliver the judicial
20 commission to Marbury.
21 Without the formal authorization,
22 Marbury could not take office.
23 In coming President Thomas
24 Jefferson told his secretary of
25 state James Madison not to
26 deliver the commission to
27 Marbury. Marbury asked the
28 Supreme Court to issue a writ of
29 *mandamus* (a written court order
30 that directs an official to take a
31 specific action) requiring
32 Madison deliver the commission.
33 Chief Justice John Marshall
34 wrote the Court's opinion, which

35 declared that Marbury had a legal
36 right to his commission. The
37 opinion also said, however, that
38 the Supreme Court could not
39 issue him a **writ of mandamus**
40 because it lacked the
41 constitutional authority to do so.
42 Why? Because Congress had
43 granted the Court the power to
44 issue such writs in an ordinary
45 act of legislation—the **Judiciary**
46 **Act of 1789**. Marshall pointed
47 out that the Constitution prohibits
48 any extension of the Supreme
49 Court's authority except through
50 an amendment to the
51 Constitution. Therefore,
52 Marshall stated, the portion of
53 the Judiciary Act that provided
54 the authorization was
55 constitutionally invalid.

56 In declaring that Marbury
57 had a right to his commission,
58 the Court in effect said that
59 President Jefferson had failed in
60 his constitutional duty to execute
61 the laws faithfully. But since the
62 Court did not order Jefferson to
63 deliver the commission, he had
64 no opportunity to refuse to
65 comply with the Court's
66 judgment. At the same time, the
67 Court admonished Congress for
68 passing legislation that exceeded

1 its constitutional authority. And
2 in the process of invalidating an
3 act of Congress on constitutional
4 grounds, the Court asserted its
5 power of judicial review.

6 7 **IV. Providing for Self-** 8 **Government**

9 The Framers feared the
10 tyranny of the majority (the
11 people acting as an irrational
12 mob that tramples on the rights
13 of others) and proposed to
14 control the power of the majority.
15 They distinguished between a
16 democracy and a republic.

17 In a direct democracy, the
18 public decides issues directly. In
19 a parliamentary or representative
20 democracy, officials elected by
21 the public meet in representative
22 institutions to decide policy for
23 the public. The Framers' concept
24 of a proper system of
25 representation was similar to an
26 idea put forth by the English
27 theorist Edmund Burk (1729-
28 1797). In his *Letter to the*
29 *Sheriffs of Bristol*, Burke argued
30 that representatives or delegates
31 should act as public trustees: they
32 are obliged to promote the
33 interest of those who elected
34 them, but the nature of this

35 interest is for the representatives,
36 not the voters, to decide. Burke
37 thought it imperative for
38 representatives not to surrender
39 their judgment to popular whim.

40 Further, many restrictions
41 were placed on direct popular
42 participation at the national level
43 of government. For example,
44 there is no provision in the
45 Constitution for any form of
46 direct popular participation in
47 public policymaking, such as a
48 national referendum. Although
49 members of the House of
50 Representatives would be
51 selected by direct popular
52 election, senators would be
53 appointed by their state
54 legislatures. The Framers
55 intended the House of
56 Representatives to be more
57 responsive to popular opinion
58 while the Senate was envisioned
59 to check and balance the House.
60 The President would be chosen
61 by electors from each state rather
62 than by direct national popular
63 election. The "Electoral
64 College" (a term not appearing in
65 the Constitution) is an unofficial
66 term that refers to the electors
67 who cast their states' electoral
68 votes. Each state has electoral

1 votes equal to its number of
2 members in Congress (House
3 members + two senators). In
4 addition, under the 23rd
5 Amendment the District of
6 Columbia currently has three
7 electors. Federal judges would be
8 appointed rather than elected and
9 serve for terms of good behavior.
10 Different terms and selecting
11 processes for public officials
12 make it more difficult for a
13 numerical majority to dominate
14 decision-making.

15 Soon after ratification of
16 the Constitution, Americans
17 sought a stronger voice in their
18 own governing. Jefferson
19 championed the common people
20 and urged Americans to look
21 upon the national government as
22 belonging to all, not just to a
23 privileged few. The era of
24 Jacksonian Democracy increased
25 the role of the public in
26 government. Jackson persuaded
27 states to make the popular vote
28 the basis for selecting
29 presidential electors, although
30 this has not prevented
31 presidential elections being won
32 by a candidate receiving fewer
33 popular votes than a competitor.
34 The presidential election of 2000

35 is the most recent example of
36 this. Jackson encouraged more
37 rotation of office holders by
38 abolishing property ownership as
39 a requirement for voting. He also
40 promoted formation of grass-
41 roots political parties and the
42 party nominating convention.

43 **The Progressive era**
44 brought forth reforms designed to
45 weaken the power of business
46 trusts and political party bosses.
47 They proposed that elected
48 representatives act more like
49 instructed delegates of the
50 people, rejecting the trusteeship
51 model. They introduced the
52 **initiative and the referendum**
53 mechanisms for direct popular
54 control over legislation at the
55 state and local level. Recall
56 elections provided a way for
57 citizens to remove an existing
58 official from office. Other
59 reforms proposed direct popular
60 election of U.S. senators and the
61 direct primary nominating
62 system.

63 Progressive reform efforts
64 encouraged historian **Charles**
65 **Beard** to argue that the Framers
66 devised an elaborate system of
67 power and representation in order
68 to keep power in the hands

1 of the rich. 35 in the American system than in
2 American government 36 European democratic systems.
3 evolved into a constitutional 37
4 democracy, which is democratic
5 in its provisions for majority 38
6 influence through popular
7 elections, and constitutional in its 39
8 requirement that this power be
9 exercised in accordance with law 40
10 and with due respect for 41
11 individual rights. 42

13 **V. Constitutional Democracy** 14 **Today**

15 The United States today has
16 a hybrid system of constitutional
17 democracy that combines
18 original counter-majoritarian
19 elements with newer majoritarian
20 aspects. The U.S. conducts
21 elections for the House of
22 Representatives and for the chief
23 executive more frequently than
24 any other democracy. Self-
25 government in the U.S. is
26 illustrated by primary and
27 general elections. Less
28 majoritarian elements of the U.S.
29 system are the separation of
30 powers and staggered terms of
31 office, which encourage separate
32 constituencies. The link between
33 an electoral majority and a
34 governing majority is less direct

39 **Major Concepts**

40 **Anti-Federalists** - A term used
41 to describe opponents of the
42 Constitution during the debate
43 over ratification.

44
45 **Bill of Rights** - The first ten
46 amendments to the Constitution.
47 They include such rights as
48 freedom of speech and trial by
49 jury.

50
51 **Checks and balances** - The
52 elaborate system of divided
53 spheres of authority provided by
54 the U.S. Constitution as a means
55 of controlling the power of
56 government.

57
58 **Constitution** - The fundamental
59 law that defines how a
60 government will legitimately
61 operate.

62
63 **Constitutional democracy** - A
64 government that is democratic in
65 its provisions for majority

1 influence through elections and
2 constitutional in its provisions for
3 minority rights and rule by law.

4
5 **Delegates** - Elected
6 representatives whose obligation
7 is to act in accordance with the
8 expressed wishes of the people
9 they represent.

10
11 **Democracy** - A form of
12 government in which the people
13 govern, either directly or through
14 elected representatives.

15
16 **Denials of power** - A
17 constitutional means of limiting
18 governmental action by listing
19 those powers that government is
20 expressly prohibited from using.

21
22 **Electoral College** - An unofficial
23 term that refers to the electors
24 who cast the states' electoral
25 votes.

26
27 **Electoral votes** - The method of
28 voting that is used to choose the
29 U.S. president. Each state has
30 the same number of electoral
31 votes as it has members in
32 Congress. By tradition, electoral
33 voting is tied to a state's popular
34 voting; thus, the presidential

35 candidate with the most popular
36 votes overall has usually also had
37 the most electoral votes.

38
39 **Federalists** - A term used to
40 describe supporters of the
41 Constitution during the debate
42 over ratification.

43
44 **Grants of power** - The method
45 of limiting the U.S. government
46 by confining its scope of
47 authority to those powers
48 expressly granted in the
49 Constitution.

50
51 **Great Compromise** – This was
52 the agreement of the
53 constitutional convention to
54 create a two-chamber Congress
55 with the House apportioned by
56 population and the Senate
57 apportioned equally by state.

58
59 **Unalienable (inalienable) rights**
60 – These are rights that persons
61 theoretically possessed in the
62 state of nature, prior to the
63 formation of governments.

64
65 **Judicial power** - The power of
66 courts to decide whether a
67 governmental institution has
68 acted within its constitutional

1 powers and, if not, to declare its
2 action null and void.

3

4 **Limited government** - A
5 government that is subject to
6 strict limits on its lawful uses of
7 powers and hence on its ability to
8 deprive people of their liberty.

9

10 **New Jersey (small state) plan** -
11 A constitutional proposal for a
12 strengthened Congress, but one
13 in which each state would have
14 single vote, thus granting a small
15 state the same legislative power
16 as a larger state.

17

18 **Primary elections** - A form of
19 election in which voters choose a
20 party's nominees for public
21 office.

22

23 **Representative democracy** - A
24 system in which the people
25 participate in the decision-
26 making process of government
27 not directly but indirectly,
28 through the election of officials
29 to represent their interests.

30

31 **Self-government** - The principle
32 that the people are the ultimate
33 source and proper beneficiary of
34 governing authority; in practice,

35 a government based on majority
36 rule.

37

38 **Separated institutions sharing
39 power** – This is the principle
40 that, as a way to limit
41 government, its powers should be
42 divided among separate
43 branches, each of which also
44 shares in the power of the others
45 as a means of checking and
46 balancing them. The result is
47 that no one branch can exercise
48 power decisively without the
49 support or acquiescence of the
50 others.

51

52 **Separation of powers** - The
53 division of the powers of
54 government among separate
55 institutions or branches.

56

57 **Trustees** - Elected representative
58 whose obligation is to act in
59 accordance with their own
60 consciences as to what policies
61 are in the best interest of the
62 public.

63

64 **Tyranny of the majority** - The
65 potential of a majority to
66 monopolize power for its own
67 gain and to the detriment of
68 minority rights and interests.

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1

2 **Virginia (large state) plan** - A
3 constitutional proposal for a
4 strong Congress with two
5 chambers, both of which would
6 be based on numerical
7 representation, thus granting
8 more power to the larger states.

[S1]FEQ's: 8, 12, 30, 31, 43