The United States Constitution

What Were Its Authors Thinking?
Preface: Is Our Government Broken?

1. What is a Constitution?
2. Who wrote the Constitution and why?
3. What did the Revolution teach Americans about government?
4. How did the framers solve the dilemma of making a government that
   (a) the people would control, but
   (b) that also would produce results that would help the nation and not harm it?
1. What is a Constitution?

It’s a set of rules about making rules – that is, laws

The U.S. Constitution is older than other constitutions

The U.S. Constitution is written
Key Choices —
What are the important decisions in making any Constitution?

Who makes the laws?  
(legislative power)

Who puts the laws into effect and enforces them?  
(executive power)

Who settles disputes about the laws?  
(judicial power)

What is government not permitted to do to its citizens?  
(civil liberties)
2. Who wrote the U.S. Constitution and why?

This is the popular image of the Constitution’s authors.
But politicians wrote the Constitution of 1787, not philosophers, political scientists, or plundering investors & they wrote it for politicians to use
Politicians set the agenda

& other politicians battled against parts of that agenda.

The Constitution resulted from unanticipated political compromises

& a set of ambiguous rules about politically charged issues

that the framers expected future politicians to work out.
Most of the 55 delegates who attended the Constitutional Convention from May 25 to September 17, 1787 were experienced politicians

- Nearly all had served in state legislatures
- 1 out of 4 had had some important statewide office, like governor, attorney general, or supreme court judge
- 41 out of 55 had served in the Confederation Congress
These experienced politicians

• Had helped build a dozen infant republics
• Had nurtured them through war and depression
• Had built enough government strength to successfully do unpopular things, like collect taxes
Most of the 39 signers went on to hold offices in the government they created

- Eleven were elected to the House of Representatives
- State governments sent fifteen to the U.S. Senate
- Four ran for president, and two were elected
- Five served on the Supreme Court
How does a political professional prepare for the chance of a lifetime?
James Madison prepared more thoroughly for the Constitutional Convention than any other delegate. This is how we remember James Madison today.

James Madison … in 1821
But in 1787, James Madison was only 36 years old.

Madison already was a shrewd, ambitious, & experienced young politician.
By 1787, Madison

- Had helped write Virginia’s Constitution
- Had been elected to the Virginia legislature
- Had been a leader in the Confederation Congress
- Had been a key leader in organizing the Convention
After 1787, Madison

- Fought for ratification in New York and Virginia
- Became the leader of the new U.S. House of Representatives
- Served as Secretary of State
- Became the fourth president of the United States
- Co-founded the Democratic Party in the 1790s
What did Madison want?

A strong national government that could pursue America’s national interests in a world of opportunities and threats

…the way other national governments pursued their national interests

• Note: *in his mind, the nation’s interests were remarkably similar to Virginia’s interests*
Madison’s political tactics

a. Know the facts
b. Show up before anyone else
c. Make a lot of friends

Madison tried to build support among large states and southern states.
5. Have a plan: 
The *Virginia Plan*

A strong, sovereign national government with
- full taxing power
- all commercial powers
- most military powers
- A national veto over all state laws

Representation in both houses of Congress based on size of population
(the more people, the more representation for your state in the House and the Senate)
2. What had the Revolution taught the framers about government?
The Nation’s Governments had managed to win the war, but they seemed to be losing the peace.
The delegates represented 12 independent polities, that is, self-described “States”
1787: States Managed their Own Economies

The states interfered with each other’s commerce.
They quarreled about land.
They refused to pay their share of national expenses.
Southern and northern states quarreled about issues like trade on the Mississippi.
States tried to benefit their residents with currency and credit policies at the expense of those in other states.
C. Problems within some States

- Rhode Island’s farmers and the state’s currency
- Shay’s Rebellion in Massachusetts
AND The United States was surrounded by potentially hostile powers

- Britain
- France
- Spain
- The Barbary Pirates
A Weak National Government: The Articles of Confederation

- Dominated by a Congress of 13 equal states
- to accomplish anything, almost all states have to agree
- No President
- No National Courts
- No Steady Source of Revenues

What compares with the Confederation Government?

Today’s United Nations
Leaders saw a crisis of American government in 1786-1787

- “… our prospects appear to become more gloomy. I look with much anxiety. I fear confusion, if nothing worse. Our federal government seems to be expiring.”

Constitutional Convention delegate Jared Ingersoll, May 18, 1787
“the primary cause of all our disorders lies in the different State Governments, and in the tenacity of that power which pervades the whole of their systems.

“Whilst independent sovereignty is so ardently contended for, whilst the local views of each State and separate interests by which they are too much governed will not yield to a more enlarged scale of politics; incompatibility in the laws of different States, and disrespect to those of the general government must render the situation of this great Country weak, inefficient and disgraceful.

“It has already done so, -- almost to the final dissolution of it -- weak at home and disregarded abroad is our present condition, and contemptible enough it is”

George Washington, letter to David Stuart, July 1, 1787
But there was a major dilemma in building a new government.
Madison’s Dilemma

How do you give citizens control of the government & make sure that the government makes good laws and protects basic rights?

How do you let the people govern without letting them mess things up -- or turning to a king?
• “what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary.

• If angels were to govern men, neither external nor internal controls on government would be necessary.

• In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

Federalist 51
What did the Constitution’s authors want to avoid?

Government that’s too strong
What did the Constitution’s authors want to avoid?

Government that’s not strong enough

Independent.co.uk

Leading Article: A departing president and an unstable nation

The challenges facing post-Musharraf Pakistan are formidable
4. How did the framers solve this dilemma of making a government that
(1) the people would control, but
(2) also would produce results that would help the nation and not harm it?
They tried to make a government difficult for their opponents to use –
And wound up making a government that’s difficult for anyone to use.
Roger Sherman of Connecticut - a different vision for national government

- Represented one of the most self-satisfied states
- Became Madison’s main Convention adversary
- Wanted a national government that would leave lots of power to the states
- And a U.S. Senate that would protect them
Sherman was well known among American politicians

The best known picture of the signing of the Declaration of Independence, 1776

Here’s Roger Sherman, with John Adams, Thomas Jefferson, and Benjamin Franklin
Sherman was as shrewd and experienced a politician as Madison

In the 1780s, he had served as:

- mayor of New Haven,
- a member of the Connecticut Council (senate),
- the Connecticut Supreme Court, and
- a member of the Confederation Congress

_all at the same time_

Typical Sherman advice:
“Minorities talk; Majorities vote”
Much of the Constitutional Convention was shaped by the battle between

Madison’s vision for the nation’s future & Sherman’s defense of the nation’s present
Sherman’s tactics

How does a political professional defend against someone like Madison?
1. Nurture your allies

- On June 11, after the Convention accepted proportional representation in the House of Representatives, Sherman proposed a Senate with equal state representation.
- On this vote, Madison’s coalition turned back his opponents, 6 votes to 5 – thus unifying Madison’s opponents.
2. Propose an alternative agenda

Sherman helped write
New Jersey’s Plan,
which kept the
Confederation government
(one vote per state in Congress)
but added a few national powers
3. Change the Decision Venue

After bitter debates and a deadlocked 5-5 vote on July 2, Sherman declared an impasse, and he called for a committee to work out the differences on representation.

4. Shape the outcome in the new venue

Sherman served on the committee
– Madison did not
It recommended the “Connecticut Compromise”
5. The Convention then played out as an unexpected series of compromises that no one anticipated.
Unexpected Compromise #1: Congress

- Mid-July – the Convention accepted the Connecticut compromise

A Congress with two houses –
- A House of Representatives in which larger states had more representatives than small ones,
- A Senate in which the state governments had equal representation
As soon as the delegates approved the Connecticut compromise in mid-July:

- Madison began to fight for a strong presidency because the president could be a champion of national interests against a Congress that would be too responsive to the states.
- Madison also fought for as much national authority as possible.
- Sherman, who wanted to protect state powers, insisted on a Senate with as much power as possible.
- Slave states fought to protect slavery.
The Battle over National Authority versus State Authority

- In early August, a Committee of Detail reported a draft Constitution in which national powers are specified and much more limited than the powers Madison sought.

- The committee placed the “burden of proof” on those who wanted more expansive national power.

- Most of these basic enumerated powers persisted in the final Constitution.
Unexpected Compromise #2: Slavery
Slavery sparked strong disagreement

- Gouverneur Morris: Slavery is a “nefarious institution ... the curse of heaven on the States where it prevailed.”

- George Mason: slaves “bring the judgment of heaven on a Country ... By an inevitable chain of causes & effects providence punishes national sins, by national calamities.”
The South bitterly disagreed

• Pierce Butler: “The security the South[ern] States want is that their negroes may not be taken from them,”

• John Rutledge: The people of the Carolinas and Georgia, according to “will never be such fools as to give up so important an interest.”

“Religion & humanity had nothing to do with this question -- Interest alone is the governing principle with Nations … If the Northern States consult their interest, they will not oppose the increase of Slaves which will increase the commodities of which they will become the carriers.”
Connecticut supported the slave states

- **Roger Sherman**: “[A]s the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, & as it was expedient to have as few objections as possible to the proposed scheme of Government”

- Sherman “thought it best to leave the matter as we find it.”

- **Oliver Ellsworth**: “The morality or wisdom of slavery are considerations belonging to the States themselves -- What enriches a part enriches the whole, and the States are the best judges of their particular interest.”
The delegates bitterly contested the authority to make commercial treaties and to govern slavery

• to pressure the northerners to protect slavery, the southerners moved to require a 2/3 majority for commercial treaties
The southern delegates backed off their demand for a 2/3 majority for commercial treaties, and in return get specific protections for slavery

- A slave would be counted as 3/5 of a person for the purpose of allocating Representatives in the House
- The slave trade can’t be ended until 1808
- Fugitive slaves will be returned to their owners
Unexpected Compromise #3: The Presidency

The President is elected by an “electoral college”
States have the same number of electoral votes as they have votes in Congress
(2 Senators + some number of Representatives, based on population)
Presidential Powers

Madison fought for a large presidential role -
Sherman fought for Senate power over the president -
The compromises created a president with large powers and frustrating constraints
• The president can make treaties  
  – but the Senate must approve them
• The president can appoint top administrators and judges  
  -- if the Senate consents
• The president can veto laws  
  – but Congress can override him
• The House can impeach the president  
  but the Senate holds the trial
The Consequences:

What did the framers leave us?

- A government much more complicated and harder to use than any delegate expected or wanted
- As the delegates grew less certain about the consequences of their choices,
- they armed their favored institutions with the will and ability to stop policies threatening to their vital interests.
- They could not agree on the exact boundaries of national authority,
- but they could agree that by building separate defenses for their favored institutions, they could reduce the danger that the national government would use its authority to take advantage of their constituents.
The Consequences:
What did the framers leave us?

With pragmatic imprecision, the delegates constructed an unfinished national policy workplace and stocked it with a limited range of policy tools, expecting future politicians to use and add to these tools in pursuit of their own political agendas.
• The Constitution’s preeminence, combined with its ambiguity, has made it an irresistible weapon in political conflict

• Sometimes it is used as a sword for change

• Sometimes it is used as a shield to defend against change
Some think the government is broken
But maybe our government works exactly the way the framers intended it to work