Creating the Constitution

Objectives
You may wish to call students’ attention to the objectives in the Section Preview. The objectives are reflected in the main headings of the section.

Bellringer
Ask students to think of a conflict that they have read about recently involving local or National Government. Have them brainstorm possible compromise solutions to the conflict. Explain that in this section, they will learn how compromises saved the Constitution.

Vocabulary Builder
Have students read the terms in the Political Dictionary. Tell them that in 1787 the Constitution was like a house under construction. Ask students to describe the roles that a Framer, a Plan, and a Compromise might have today in the building of a house. Encourage them to recall those images as they read the text.

Lesson Plan

Teaching the Main Ideas

1. Focus
Tell students that the remarkable character of the delegates had much to do with their success in framing a Constitution. Ask them to discuss what they know about the Framers and their accomplishments at the Constitutional Convention.

2. Instruct
Ask students why the Connecticut Compromise is often called the Great Compromise. Lead a discussion of the two competing plans and how the Framers combined their basic features.

3. Close/Reteach
Remind students of the hard work that went into framing the Constitution. Have them create a flowchart of the process, beginning with the Framers’ sources and ending with the completed Constitution.

Section Preview

Objectives

1. Identify
the Framers of the Constitution and discuss how the delegates organized the proceedings at the Philadelphia Convention.

2. Compare
and contrast the Virginia Plan and the New Jersey Plan for a new constitution.

3. Summarize
the major compromises that the delegates agreed to make and the effects of those compromises.

4. Identify
some of the sources from which the Framers of the Constitution drew inspiration.

5. Describe
the delegates’ reactions to the Constitution as they completed their work.

Why It Matters

The Framers

The Framers of the Constitution created a document that addressed the major concerns of the States attending the Philadelphia Convention. By reaching compromise on items about which they disagreed, the Framers created a new National Government capable of handling the nation’s problems.

Political Dictionary

★ Framers
★ Virginia Plan
★ New Jersey Plan
★ Connecticut Compromise
★ Three-Fifths Compromise
★ Commerce and Slave Trade Compromise

Picture this scene. It’s hot—sweltering, in fact. Yet the windows are all closed to discourage eavesdroppers. Outside, soldiers keep interested onlookers at a distance. Inside, the atmosphere is tense as men exchange their views. Indeed, some become so angry that they threaten to leave the hall. A few carry out their threats.

This was the scene throughout much of the Philadelphia meeting that began on Friday, May 25, 1787. Over the long summer months, the participants labored to build a new government that would best meet the needs of the nation. In this section, you will consider that meeting and its work.

The Framers

Twelve of the 13 States, all but Rhode Island, sent delegates to Philadelphia. In total, 74 delegates were chosen by the legislatures in those 12 states. For a number of reasons, however, only 55 of them actually attended the convention.

Of that 55, this much can be said: Never, before or since, has so remarkable a group been brought together in this country. Thomas Jefferson, who was not among them, later called the delegates “an assembly of demi-gods.”

The group of delegates who attended the Philadelphia Convention, known as the Framers of the Constitution, included many outstanding individuals. These were men of wide knowledge and public experience, of wealth and prestige. Their collective record of public service was truly impressive. Many of them had fought in the Revolution; 39 had been members of the Continental Congress or the Congress of the

Block Scheduling Strategies

Consider these suggestions to manage extended class time:

- Ask students to compare the chart of the Framers on p. 49 with the charts of the members of Congress in Chapter 10 (p. 280). Ask students to identify similarities as well as differences between the two groups. Have students explain how congressional leadership has changed, and whether they feel these changes have been beneficial or detrimental to the United States.
Most had legal or political experience. Some students might see such a similar background as helpful in creating an authoritative document; others might suggest that it could promote self-interest.
Chapter 2  •  Section 4

Background Note

Common Misconceptions
The delegates to the Constitutional Convention weren’t “delegates” at all—at least, that’s not what they called themselves. At the convention, they used the term *deputies* instead. (In fact, George Washington wrote the phrase “deputy from Virginia” after his signature on the Constitution.) Moreover, the states gave the men they sent to the convention different titles, including “representatives” and “commissioners.” It was historians who first applied the term *delegates*, and the name stuck.

**Differentiated Instruction**
1. Have students write each of the following on one side of an index card: Magna Carta, Petition of Right, Bill of Rights, Albany Plan of Union, Stamp Act Congress, First Continental Congress, Second Continental Congress, Declaration of Independence, Articles of Confederation, the Virginia Plan, and the New Jersey Plan.
2. Then have students write dates and important facts about each item on the reverse side of each card. Encourage students to organize the cards chronologically, thus creating a timeline of key events in the creation of American government. Suggest that students use the cards to review the key points of the chapter.

Point-of-Use Resources

- The Enduring Constitution
  Separation of Powers, p. 5
- Basic Principles of the Constitution
  Transparencies Transparencies 23-29, Separation of Powers

**Critical Thinking** Possible answer: that it was an orderly, solemn occasion.

**Critical Thinking** What impressions did the artist try to convey about this historic gathering?

- This nineteenth-century engraving shows George Washington presiding over the Constitutional Convention in 1787. The delegates to the Constitutional Convention weren’t “delegates” at all—at least, that’s not what they called themselves. At the convention, they used the term *deputies* instead. (In fact, George Washington wrote the phrase “deputy from Virginia” after his signature on the Constitution.) Moreover, the states gave the men they sent to the convention different titles, including “representatives” and “commissioners.” It was historians who first applied the term *delegates*, and the name stuck.

They organized immediately on May 25, unanimously electing George Washington president of the convention. Then, and at the second session on Monday, May 28, they adopted several rules of procedure. A majority of the States would be needed to conduct business. Each State delegation was to have one vote on all matters, and a majority of the votes cast would carry any proposal.

**Working in Secrecy**
The delegates also decided to keep their deliberations secret. The convention had drawn much public attention and speculation. So, to protect themselves from outside pressures, the delegates adopted a rule of secrecy. On the whole, the rule was well kept.

A secretary, William Jackson, and other minor, nonmember officials were appointed. Jackson kept the convention’s *Journal*. That official record, however, was quite sketchy. It was mostly a listing of members present, motions put forth, and votes taken; and it was not always accurate at that.

Fortunately, several delegates kept their own accounts of the proceedings. Most of what is known of the work of the convention comes from James Madison’s voluminous *Notes*. His brilliance and depth of knowledge led his colleagues to hold him in great respect. Quickly, he became the convention’s floor leader. Madison contributed more to the Constitution than did any of the others, and still he was able to keep a close record of its work. Certainly, he deserves the title “Father of the Constitution.”

The Framers met on 89 of the 116 days from May 25 through their final meeting on September 17. They did most of their work on the floor of the convention. They handled some matters in committees, but the full body ultimately settled all questions.

**A Momentous Decision**
The Philadelphia Convention was called to recommend revisions in the Articles of Confederation. However, almost at once the delegates agreed that they were in fact, meeting to create a *new* government for the United States. On May 30 they adopted this proposal:

> *Resolved, . . . that a national Government ought to be established consisting of a supreme Legislative, Executive and Judiciary.*

–Edmund Randolph, Delegate from Virginia

With this momentous decision, the Framers redefined the purpose of the convention. From that point on, they set about the writing of a new constitution. This new constitution was intended to replace the Articles of Confederation. Their debates were spirited, even bitter. At times the convention seemed near collapse. Once they had passed Randolph’s resolution, however, the goal of a majority of the convention never changed.

**Constitutional Principles**

**Separation of Powers**
Although the Virginia and New Jersey Plans were very different from each other, both plans proposed a government that separated powers among various government branches. Each plan included legislative, judicial, and executive elements for the National Government, yet had different ideas about how each of these elements would function.

**Activity**
Have students review material about the Virginia and New Jersey Plans found in this section. Then ask each student to create a Venn diagram highlighting similarities of and differences between each plan’s proposed role for its legislative, judicial, and executive elements. Have students include differences in the outer circles and similarities in the overlapping circle.
The Virginia Plan

No State had more to do with the calling of the convention than Virginia did. It was not surprising, then, that its delegates should offer the first plan for a new constitution. On May 29 the Virginia Plan, largely the work of Madison, was presented by Randolph.

The Virginia Plan called for a new government with three separate branches: legislative, executive, and judicial. The legislature—Congress—would be bicameral. Representation in each house was to be based either on each State’s population or on the amount of money it gave for the support of the central government. The members of the lower house, the House of Representatives, were to be popularly elected in each State. Those of the upper house, the Senate, were to be chosen by the House from lists of persons nominated by the State legislatures.

Congress was to be given all of the powers it held under the Articles. In addition, it was to have the power “to legislate in all cases to which the separate States are incompetent” to act, to veto any State law in conflict with national law, and to use force if necessary to make a State obey national law.

Under the proposed Virginia Plan, Congress would choose a “National Executive” and a “National Judiciary.” Together, these two branches would form a “Council of revision.” They could veto acts passed by Congress, but a veto could be overridden by the two houses. The executive would have “a general authority to execute the National laws.” The judiciary would “consist of one or more supreme tribunals [courts], and of inferior tribunals.”

The Virginia Plan also provided that all State officers should take an oath to support the Union, and that each State be guaranteed a republican form of government. Under the plan, Congress would have the exclusive power to admit new States to the Union.

The Virginia Plan, then, would create a new constitution by thoroughly revising the Articles. Its goal was the creation of a truly national government with greatly expanded powers and, importantly, the power to enforce its decisions.

The Virginia Plan set the agenda for much of the convention’s work. But some delegates—especially those from the smaller States of Delaware, Maryland, and New Jersey, and from New York—found it too radical. Soon they developed their counterproposals. On June 15 William Paterson of New Jersey presented the position of the small States.

The New Jersey Plan

Paterson and his colleagues offered several amendments to the Articles, but not nearly so thorough a revision as that proposed by the Virginia Plan. The New Jersey Plan retained the unicameral Congress of the Confederation, with each of the States equally represented. To those powers Congress already had, would be added closely limited powers to tax and to regulate trade between the States.

The New Jersey Plan also called for a “federal executive” of more than one person. This plural executive would be chosen by Congress and could be removed by it at the request of a majority of the States’ governors. The “federal judiciary” would be composed of a single “supreme Tribunal,” appointed by the executive.

Among their several differences, the major point of disagreement between the two plans centered on this question: How should the States be represented in Congress? Would it be on the basis of their populations or financial contributions, as in the Virginia Plan? Or would it be on the basis of State equality, as in the Articles and the New Jersey Plan?

For weeks the delegates returned to this conflict, debating the matter again and again. The lines were sharply drawn. Several delegates, on both sides of the issue, threatened to withdraw. Finally, the dispute was settled by one of the key compromises the Framers were to make as they built the Constitution.

Compromises

The disagreement over representation in Congress was critical. The large States expected to dominate the new government. The small

Preparing for Standardized Tests

Have students read the passages under The Virginia Plan and then answer the question below.
From the passages, you can infer that smaller States might have found the Virginia Plan too radical because
A it thoroughly rejected the Articles.
B by basing representation in the houses on population or monetary support, it favored the larger States.
C it did not call for an executive branch.
D it did not provide for a national judiciary.

Enrichment Tell students to suppose that they have boarded a time capsule and traveled back to the year 1787. Assign students the role of a journalist covering the story of the Philadelphia Convention. Encourage them to focus on the grueling task of the delegates to develop a new, workable Constitution. Encourage students to report about this historic meeting in a way that they feel will best capture the event.

Recent Scholarship

A subject of serious debate in politics today is whether current interpretations of the Constitution should be based on the Framers’ original intent. Originalists argue that the best way to interpret the Constitution is to determine how the Framers intended it to be interpreted. In Original Arguments: Constitutional Interpretation, Textual Meaning, Original Intent and Judicial Review, Keith E. Whittington buttresses the originalists’ argument by making the case that originalism, or original intent, should be the preferred method of constitutional interpretation, as it is the method best suited for a democratic government.

On the opposite side of the spectrum, in Original Meanings: Politics and Ideas in the Making of the Constitution, Jack Rakove argues that there was no single “original intent” among the Framers. Rakove analyzes the sharply different perspectives of the Framers and points to how those differences led to dynamic debate and compromise.
Differentiated Instruction

Share the following quotation with students:

You see, the men that laid out our Constitution in the first place looked far enough ahead to see, in fact they must have had a premonition that at some time in the distant future there would be a bunch of men in there that didn’t know any more about Government than I know about Einstein’s theory.

Well, those old fellows in those days almost made it foolproof, so due to their farsightedness no one we put in can do us a whole lot of damage.

The old founders of the Constitution made it so it didn’t matter who was in office, things would drag along about the same.

—Will Rogers

Discussion Ask students to describe Rogers’s attitude toward the Framers, toward the Constitution, and toward modern politicians.

Point-of-Use Resources

Simulations and Data Graphing CD-ROM offers data graphing tools that give students practice with creating and interpreting graphs.

Answer to . . .

Interpreting Tables If representation were based on population, then counting slaves would give the southern States greater political power.

States feared that they would not be able to protect their interests. Tempers flared on both sides. The debate became so intense that Benjamin Franklin suggested that “henceforth prayers imploring the assistance of Heaven . . . be held in this Assembly every morning before we proceed to business.”

The Connecticut Compromise

The conflict was finally settled by a compromise suggested by the Connecticut delegation. Under the Connecticut Compromise, it was agreed that Congress should be composed of two houses. In the smaller Senate, the States would be represented equally. In the House, the representation of each State would be based upon its population.

Thus, by combining basic features of the rival Virginia and New Jersey Plans, the convention’s most serious dispute was resolved. The agreement satisfied the smaller States in particular, and it made it possible for them to support the creation of a strong central government.

The Connecticut Compromise was so pivotal to the writing of the Constitution that it has often been called the Great Compromise.

The Three-Fifths Compromise

Once it had been agreed to base the seats in the House on each State’s population, this question arose: Should slaves be counted in the populations of the southern States?

Again debate was fierce. Most delegates from the southern States argued that slaves should be counted. Most of the northerners took the opposing view. The table on this page shows the significant percentage of slaves among the populations of the southern States.

Finally, the Framers agreed to the Three-Fifths Compromise. It provided that all “free persons” should be counted, and so, too, should “three-fifths of all other persons.” (Article I, Section 2, Clause 3. For “all other persons” read “slaves.”) For the three-fifths won by the southerners, the northerners exacted a price. That formula was also to be used in fixing the amount of money to be raised in each State by any direct tax levied by Congress. In short, the southerners could count their slaves, but they would have to pay for them.

This odd compromise disappeared from the Constitution with the adoption of the 13th Amendment, which abolished slavery, in 1865. For 140 years now, there have been no “all other persons” in this country.

The Commerce and Slave Trade Compromise

The convention agreed that Congress had to have the power to regulate foreign and interstate commerce. But there were concerns about preserving the economic importance of the southern States. To address these concerns, the Three-Fifths Compromise was included in the Constitution.

Interpreting Tables The agricultural economy of the southern States relied on slave labor to produce cotton, tobacco, and other crops. Why did the southern States want slaves counted in their States’ total population?

Slavery in the United States, 1790

<table>
<thead>
<tr>
<th>State</th>
<th>Total Population</th>
<th>Slave Population</th>
<th>Percent Slave Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Connecticut</td>
<td>238,000</td>
<td>2,648</td>
<td>1.11</td>
</tr>
<tr>
<td>Delaware</td>
<td>59,000</td>
<td>8,887</td>
<td>15.06</td>
</tr>
<tr>
<td>Georgia</td>
<td>83,000</td>
<td>29,264</td>
<td>35.26</td>
</tr>
<tr>
<td>Maryland</td>
<td>320,000</td>
<td>103,036</td>
<td>32.20</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>476,000</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>142,000</td>
<td>157</td>
<td>0.11</td>
</tr>
<tr>
<td>New Jersey</td>
<td>184,000</td>
<td>11,423</td>
<td>6.21</td>
</tr>
<tr>
<td>New York</td>
<td>340,000</td>
<td>21,193</td>
<td>6.23</td>
</tr>
<tr>
<td>North Carolina:</td>
<td>394,000</td>
<td>100,783</td>
<td>25.58</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>434,000</td>
<td>3,707</td>
<td>0.85</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>89,000</td>
<td>958</td>
<td>1.39</td>
</tr>
<tr>
<td>South Carolina</td>
<td>249,000</td>
<td>107,094</td>
<td>43.01</td>
</tr>
<tr>
<td>Virginia</td>
<td>692,000</td>
<td>292,627</td>
<td>42.29</td>
</tr>
</tbody>
</table>

Sources: Historical Statistics of Black America; Historical Statistics of the United States, Colonial Times to 1870

Careers in Government—Preservationist

The original Constitution is displayed in the National Archives Building in Washington, D.C., where thousands of people around the world view it each year. Its excellent condition is owed to the work of preservationists, so-named because they preserve historical documents. Many preservationists work in American government, at such places as the National Archives and Records Administration, the Library of Congress, and the Smithsonian Institution.

Skills Activity Direct pairs of students to conduct research on how an old book could be repaired. Then have individual students write paragraphs explaining why they would or would not be interested in a career as a preservationist.
trade. To many southerners that power carried a real danger, however. They worried that Congress, likely to be controlled by northern commercial interests, would act against the interests of the agricultural South.

They were particularly fearful that Congress would try to pay for the new government out of export duties, and southern tobacco was the major American export of the time. They also feared that Congress would interfere with the slave trade.

Before they would agree to the commerce power, the southerners insisted on certain protections. So, according to the **Commerce and Slave Trade Compromise**, Congress was forbidden the power to tax the export of goods from any State. It was also forbidden the power to act on the slave trade for a period of at least 20 years. It could not interfere with “the migration or importation of such persons as any State now existing shall think proper to admit,” except for a small head tax, at least until the year 1808.\(^{18}\)

**A “Bundle of Compromises”**

The convention spent much of its time, said Franklin, “sawing boards to make them fit.” The Constitution drafted at Philadelphia has often been called a “bundle of compromises.” These descriptions are apt, if they are properly understood.

There were differences of opinion among the delegates, certainly. After all, the delegates came from 12 different States that were widely separated in geographic and economic terms. The delegates often reflected the interests of their States. Bringing these interests together did require compromise. Indeed, final decisions on issues such as selection of the President, the treaty-making process, the structure of the national court system, and the amendment process were reached as a result of compromise.

But by no means did all, or even most, of what shaped the document come from compromises. The Framers agreed on many of the basic issues they faced. Thus, nearly all the delegates were convinced that a new *national* government, a federal government, had to be created, and had to have the powers necessary to deal with the nation’s grave social and economic problems. The Framers were also dedicated to the concepts of popular sovereignty and of limited government. None questioned for a moment the wisdom of representative government. The principles of separation of powers and of checks and balances were accepted almost as a matter of course.

Many disputes did occur, and the compromises by which they were resolved came only after hours and days and even weeks of heated debate. The point here, however, is that the differences were not over the most fundamental of questions. They involved, instead, such vital but lesser points as these: the details of the structure of Congress, the method by which the President was to be chosen, and the practical limits that should be put on the several powers to be given to the new central government.

**Sources of the Constitution**

The Framers were well educated and widely read. They were familiar with the governments of ancient Greece and Rome and those of contemporary Great Britain and Europe. They knew the political writings of their time, of such works as William Blackstone’s *Commentaries on the Laws of England*, the Baron de Montesquieu’s *The Spirit of the Laws*, Jean Jacques Rousseau’s *Social Contract*, John Locke’s *Two Treatises of Government*, and many others.

More immediately, the Framers drew on their own experiences. Remember, they were familiar with the Second Continental Congress, the Articles of Confederation, and their own State governments. Much that went into the Constitution came directly, sometimes word for word, from the Articles. A number of provisions were drawn from the several State constitutions, as well.

**The Convention Completes Its Work**

For several weeks, through the hot Philadelphia summer, the delegates took up resolution after resolution. Finally, on September 8, a committee was named “to revise the style and arrange the articles which had been agreed to” by the

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\(^{18}\) Article I, Section 9, Clause 1. Congress promptly banned the importation of slaves in 1808, and in 1820 it declared the slave trade to be piracy. The smuggling of the enslaved into this country continued until the outbreak of the Civil War, however.
The New Jersey Plan called for equal representation in two houses, including a Senate with equal representation and a House with representation based on population. The Virginia Plan called for representation based on a State’s population or monetary contributions. It also called for one federal executive. The Virginia Plan was accepted with equal representation and a Senate with representation to be based on a State’s number of men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does . . .

—Notes of Debates in the Federal Convention of 1787, James Madison

On Franklin’s motion, the Constitution was signed. Madison tells us that

“... Doctor Franklin, looking toward the President’s chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters had found it difficult to distinguish in their art a rising from a setting sun. I have, said he, often and often in the course of the Session . . . looked at that behind the President without being able to tell whether it was rising or setting. But now at length I have the happiness to know that it is a rising and not a setting sun.”

—Notes of Debates in the Federal Convention of 1787, James Madison

Three of the 41 delegates present on that last day refused to sign the proposed Constitution: Edmund Randolph of Virginia, who later did support ratification and served as Attorney General and then Secretary of State under President Washington; Elbridge Gerry of Massachusetts, who later became Vice President under Madison; and George Mason of Virginia, who continued to oppose the Constitution until his death in 1792. George Read of Delaware signed both for himself and for his absent colleague John Dickinson.

8. Possible answer: Yes; it represents a consensus of opinion, which was achieved through numerous compromises.