

# Chapter

# 1

## Putting It in Writing

### In This Chapter

- ◆ Laying the groundwork for democracy
- ◆ Saying good-bye to royal rulers
- ◆ Writing new laws for a new land
- ◆ Federalists vs. Anti-Federalists

In modern times, the United States has been the one and only superpower, with a strong central government serving as a model of democracy for the rest of the world. Ever wonder how this came to pass?

The United States Constitution, ratified in 1790, is the oldest written Constitution still in use, and without it the American government would be powerless. Getting to this point, however, was the result of tedious negotiations and power struggles. The road to freedom was long and began in the thirteenth century. But as the adage says, you have to crawl before you walk, and the process to outright democracy and freedom took many baby steps.

### The Great Charter

The British laid the groundwork for American democracy and individual freedoms nearly 800 years ago with the Magna Carta, also known as the Great Charter. It became a source of great inspiration to the American colonists



### Inside the Beltway

Dating back to feudal law, a **scutage** is a fee paid in lieu of military service.

seven centuries later, but in its infancy it seemed almost irrelevant because the king who signed it into law in 1215 virtually ignored it.

King John, poor and unpopular as a result of military defeat at the hands of the French, attempted to levy a *scutage* on the barons who had not joined in his campaign against the French. The barons protested and sides were drawn. While the king had far more resources than the barons did, they unexpectedly captured London, and with that John had to listen to them.

What the barons wanted was simple: traditional rights to be recognized, written down, and confirmed by the Royal seal, and sent to be read to all the freemen in the counties in England. What they got was a different thing altogether. Instead of granting universal protection of the ancient liberties to freemen, the Magna Carta was seen as a document that granted protection to the rights and property of the few powerful families living in England. Its primary purpose was to call for majority rule and recognize the rights of the masses as opposed to the few. It included an enforcement council or *parlemenz*.

In September 1215, a mere four months after signing the document, which was first known as the Article of the Barons, King John asked Pope Innocent II to void it, saying that it had been forced on the king by violence and fear.

A year later, in the midst of civil war, King John died and his nine-year-old son was crowned King Henry III. With the nobles restless, the king's regents reissued the charter. It would be revised and reissued again several times, with the final version coming in 1225. But this final version omitted one of the most important aspects

of the original document, the need for an advisory council. This removed one of the important gains the nobles had made. While the document and the idea behind it are important in the view of history, the Magna Carta was virtually irrelevant in its own time.

Over the next 400 years, the Magna Carta was relegated to obscurity until Sir Edward Coke, the attorney general for Queen Elizabeth I, resurrected it in an effort to thwart the



### On the Record

The Magna Carta is a "shameful and demeaning agreement [that was] forced upon the king by violence and fear."

—Pope Innocent II, *The Magna Carta and Its American Legacy*. The National Archives and Records Administration, 1996.

### We Hold These Truths

Each time a revision was made to the Magna Carta or a copy was sent out to a county, a brand new copy was created. Of the numerous copies that were made, 17 have survived. Billionaire businessman, founder of the Reform Party, and two-time presidential candidate H. Ross Perot owns one of them, which is on permanent display in the National Archives.

power of the rival Stuart kings in Scotland. Coke said even the monarchy must obey common law. It was Coke's interpretation that helped the colonists to start demanding rights and privileges for themselves, and helped to start the ball rolling toward independence—and ultimately to the written Constitution that America has today.



### On the Record

"In the name of God, Amen. We whose names are underwritten, the loyal subjects of our dread sovereign Lord King James, by the grace of God, of Great Britain, France, and Ireland ... do by these presents solemnly and mutually in the presence of God and of one another, covenant and combine ourselves together into a civil body politic for our better ordering ..."

—The Mayflower Compact, 1620

## Bringing Self-Government to America

Settlers to the New World began coming to America on a regular basis in the early seventeenth century. Among them were the Pilgrims, who fled England in 1620 in hopes of finding religious freedom and tolerance in the new land.

The Pilgrims wanted to protect the rights of all the men who came to America (women did not receive full rights, including the right to vote, until the 19th Amendment was ratified in 1920). These rights included religious freedom and rested on the consent of the governed. To this end, 41 members of their contingent wrote and signed the Mayflower Compact, the first written agreement for self-government in America. They agreed to obey the officers they would elect and the laws these officers might pass.

Over the next 150 years, the various colonies began establishing different rules, depending on the status of their *charters*. For the most part, these charters included some variation of free elections, no taxation without representation, the right to trial by jury, as well as other things.



### Inside the Beltway

A **charter** is a formal written statement describing the rights and responsibilities of a territory or a state and its citizens.

## Saying Good-Bye to Royal Control

In the eighteenth century, relations between the colonies and Great Britain began deteriorating at a fast pace. To punish the colonists for a wide variety of defiances, including not paying taxes and hosting the Boston Tea Party, the British Parliament passed the Coercive Acts of 1774. Called the Intolerable Acts by the colonists, they restricted the

rights of colonists in Massachusetts to hold town meetings, among other things, and required all colonists to provide food and housing to British soldiers living in the colonies.

Tired of having to bend to rules and regulations passed by a government in which they had no representation, the colonists decided to take things into their own hands and convened the First Continental Congress in September 1774 in Philadelphia. Delegates to the congress, including representatives from all of the colonies except Georgia, decided to take several actions, including a boycott of British goods. They also drafted a declaration to King George III and the English Parliament outlining the position of the congress. This work is known as the Declaration of Rights and Grievances.

## Declaring Rights

Among other things, the Declaration of Rights and Grievances said that the foundation of English citizenry is the people's right to participate in their legislative council. Since the English colonists were not represented—and couldn't properly be represented in the British Parliament—they were entitled to free and exclusive power of legislation in their provincial legislatures. The Declaration went on to say the Intolerable Acts were null and void in the colonies and until the colonists received representation in the Parliament, all laws passed on their behalf would not be recognized.



### On the Record

"That our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural born subjects within the realm of England.

That by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they were, and their descendants now are entitled to the exercise and enjoyment of all such of them, as their local and other circumstances enable them to exercise and enjoy ...."

—The section of the Declaration of Rights and Grievances detailing the rights of British subjects

Before leaving Philadelphia, the delegates agreed to meet again the following spring to discuss new developments and reassess the situation.

Naturally, the British government and the monarchy didn't like the colonists' action. They were concerned that the settlers in North America aimed to separate themselves from the mother country. If they succeeded, it would be a serious blow to England's reputation, not to mention a decrease in revenue due to taxes that would no longer be collected.

The delegates to the First Continental Congress met again in May 1775. This meeting came to serve as the first national government of the new United States of America. It met in one chamber and had both legislative and executive functions. During this convention, which lasted until the end of the Revolutionary War in 1781, delegates issued paper money, borrowed funds to finance the war, purchased supplies, and raised an army and a navy. George Washington of Virginia was named the first commander-in-chief of the colonial army.

Over the next year, tensions between England and the colonists accelerated. At Lexington and Concord, British militia and colonial militia fired at each other. Two months later, British troops attacked colonists at Breed's Hill (in reports, however it was misidentified as Bunker Hill), with both sides suffering heavy casualties. King George III, now furious, sent more troops across the Atlantic, including 10,000 German soldiers he hired to quash the Americans.

## War Time

Until the spring of 1776, most colonists thought they were fighting unjust laws, not fighting for independence. Most were reluctant to attempt a final break with England. If they lost, they could be tried for treason.

By June 1776, the colonists and the delegates at the convention had had enough of British oppression. Richard Henry Lee, a delegate from Virginia, introduced a resolution on behalf of the entire congress, stating that these "United States are and of right ought to be, free and independent states."



### On the Record

"Let this happy day give birth to an American republic. Let her arise, not to devastate and to conquer, but to reestablish the reign of peace and of law. The eyes of Europe are fixed upon us: she demands of us a living example of freedom, that may exhibit a contrast in the felicity of the citizen to the ever-increasing tyranny which desolates her polluted shores. She invites us to prepare an asylum, where the unhappy may find solace, and the persecuted repose ...."

—Richard Henry Lee, in a speech before the Continental Congress, June 7, 1776

Three days later, Lee, a prominent Virginian whose family had lived in the colony for generations, was unexpectedly called home for a family emergency. The congress, so as not to waste time, postponed debate on his resolution but ordered a committee, headed by fellow Virginian Thomas Jefferson, to prepare a declaration in support of it.

The committee presented its draft to the congress on June 28. Lee was still detained in Virginia, so Jefferson stood in his place and oversaw the debate. The congress adopted Lee's proposal on July 2 and signed Jefferson's Declaration of Independence two days later.

For the delegates and for the new nation, the Declaration of Independence served three purposes:

- ◆ It established the principle of equality for all. The most moving lines start at the very beginning of the second paragraph: "We hold these truths to be self-evident, that all men are created equal." While at the time the document intended to mean only white men, these lines helped pave the way for freedom for minorities and women in the nineteenth and twentieth centuries.
- ◆ It enumerated the colonists' reasons for separating from England. The delegates called King George III an "absolute tyrant" and painted him as a horrible leader with no thought or care for the rights of the colonists. In addition, they outlined more than 25 major areas of disagreement, distrust, and objection to his behavior and expressed their need to separate from him.
- ◆ It served as a declaration of war. By pledging their loyalty to the new nation, the signers turned their backs on the British government.

Communication between the colonies was primitive, as was communication between the new nation and its old government. Formal reaction to the Declaration was limited. The British believed they would easily win and would have to deal with the traitors after the war. In the meantime, battles between the two nations began almost immediately. The outcome is well known, but it took five years to accomplish and many lives were lost.

## Uniting the Colonies

The Declaration of Independence said what the colonists were willing to fight for, but it said nothing about how they would be administered. With the formal declaration made, the colonists now needed a document to unite the colonies under one central government.

The first attempt at forming a central government was a document called the Articles of Confederation. It was introduced within days of the Declaration of Independence, but the congress only approved it after 16 months of strenuous debate by the delegates. Some wanted a strong central government with an executive authority. Others, including Benjamin Franklin, wanted to make sure that the new American government was no stronger than the governments of the individual states.

Ultimately, the states' rights backers prevailed. They wanted to retain the power and influence of their own states, and they feared that too much government control or influence would be reminiscent of the monarchy in England.

When all was said and done, the Articles of Confederation both established the first government for the new nation and gave it its new name—the United States of America. Each state, however, kept its “sovereignty, freedom and independence” from the other states regarding powers not expressly given to the new federal government.

The new government would have only one branch, the legislative. This congress, composed of only one house, would be comprised of delegates selected from their respective state legislatures. Each state could have anywhere from two to seven delegates, but when they came to vote, all must vote as one. The legislative branch would also administer executive and judicial functions. When the congress was in recess, a Committee of the States—a group of delegates selected from each state legislature—would be in charge.

### We Hold These Truths

By any measure, the Articles of Confederation were weak and flawed. The nation was poor and needed resources, but the Articles didn't give the federal government the power to levy taxes. A two-thirds majority vote would be required to decide important matters. Amending the Articles would take unanimous support from all 13 states—not an easy task when the new states all had different agendas. Finally, the Articles didn't establish a national trade policy, so the federal government had no control or authority over trade and commerce between the states and each other, or between the states and foreign governments.

While the war was going on with England, another battle brewed between the states regarding ratification of the Articles of Confederation. Different states had different interests and continually squabbled with one another. Slavery was an issue; the northern states didn't want it, and southern states claimed they needed it. Agricultural states such as North Carolina and Massachusetts had different needs than more industrial states such as New York and New Jersey. Other states, such as Maryland and Virginia, were almost always in a battle over state boundaries.

On March 1, 1781, five years after it was introduced, the Articles of Confederation were finally ratified by all 13 states.

Four months later, American forces handed the British their final defeat at the Battle of Yorktown. While the formal treaty was not signed until 1783, British Admiral Charles Cornwallis surrendered his entire army on October 19, 1781. The Revolutionary War was over.

### We Hold These Truths

Another roadblock to getting all the states to ratify the Articles was the question of western lands. Some states, such as New York and Virginia, had claims to lands outside their borders, including present-day Michigan and Tennessee. Smaller states, such as Maryland, did not have the land claims and worried that their influence would suffer as a result. Ultimately, the states gave up their land claims.

## The Constitutional Convention

The Articles of Confederation was a good start to making sure that America stood tall and proud in the New World. But, as previously mentioned, the document remained relatively weak in power and scope. For example, it lacked the power to regulate finances, so each state had its own currency. It also couldn't control trade, so the states set their own policies with foreign nations. And the document lacked the power to enforce treaties.

Representatives of five states—New York, New Jersey, Pennsylvania, Delaware, and Virginia—met in Annapolis, Maryland, on September 11, 1786, to amend the Articles of Confederation. However, they realized that substantive work couldn't take place with only five states represented, so they decided to suspend their efforts and reconvene the following summer.

The national convention was slated to start on May 14, 1787, in Philadelphia, where the Declaration of Independence had been signed 11 years earlier. Due to weather and difficult terrain, however, it took 11 days for a majority of the delegates, meaning 7 states, to arrive.

### We Hold These Truths

The secrecy surrounding the Constitutional Convention kept official records from being released until 1818, years after it was adjourned. James Madison, considered a chief architect of the final document, kept his own personal record of the events, which proved much more beneficial than the official record, but it wasn't released until his death in 1836.

Representatives from 12 states (Rhode Island, or Rogue Island, as some delegates called it, refused to send a representative) eventually made it to Philadelphia to work on a new governing document for the new country. After a long, hot summer, the supreme law of the land was born.

The delegates set strict rules for their work at the convention. Fearing discord among the states, they decided to keep their discussions private, thinking it best to present a united front by ironing out their differences behind closed doors.

## Key Issues of Debate

The delegates had every right to be concerned as they engaged in many heated debates. One key issue regarded congressional representation. Two plans were presented, one from Virginia, a larger state, and the other from New Jersey, a smaller state. The plans were very different, and the debate over them raised tensions to high levels.

Virginia's plan, introduced by its governor, Edmund Randolph, and primarily written by James Madison, established the three branches of government that we have today. Its legislative branch was a Congress with two houses—a lower house elected by those qualified to vote and an upper house whose members would be nominated by the legislatures in each state and approved by the lower house.

Under Virginia's plan, the Congress would elect the chief executive, who would serve only one term and could be removed only in the event of an impeachment. The judicial branch would have a supreme court and lower courts. Judges would be appointed by the Congress and would serve for life.

William Paterson, a fiery delegate from New Jersey, flatly refused to have any part of Virginia's plan, saying it benefited solely the larger states and that smaller states would eventually crumble as a result. He also strongly objected to the idea of one chief executive, fearing it would bring back the kind of tyranny that caused many to flee from England.

Paterson's plan, which became known as the New Jersey Plan, called for only one congressional house, with all members elected by the state legislatures, not by individuals. Each state would have only one vote, with no proportional representation.

Instead of a single chief executive, there would be at least two, who would be elected by the Congress and would serve one term. This executive could be removed if the majority of states dictated it.

Finally, a supreme court would be the only governing judicial body, with its members appointed for life by one of the chief executives.



### On the Record

"I will never consent to the present system, and I shall make all the interest against it in the state which I represent that I can. Myself, or my state will never submit to tyranny or despotism."

—William Paterson, in a speech before the delegates at the Constitutional Convention, 1787

## Getting to Yes

Throughout the course of the summer, many compromises would be made between the delegates on a wide variety of issues. Of them, the Great Compromise, or the Sherman Compromise, named after Roger Sherman of Connecticut, proved to be the most vital.

**On the Record**

"We were on the verge of dissolution ... scarce held together by the strength of a hair, though the public papers were announcing our extreme unanimity."

—Maryland delegate Luther Martin on the congress's mood before the Great Compromise, *Miracle at Philadelphia*, 1986

Without it, the larger and smaller states would never have come to agreement, and the convention would have folded.

Sherman, an attorney and judge, devised a compromise that took elements from both proposed plans. It called for two congressional houses—a lower house that would be proportional to the size and population of eligible voters, with each state having at least one representative, and an upper house composed of senators, with two from each state, no matter how large or small, thus giving each state equal representation.

**Other Points of Contention**

The delegates faced other contentious issues during that long, hot summer. Those related to slavery were the most divisive. While many despised slavery and felt it inherently evil, they also believed their hands were tied. Many in the South did not want slavery discontinued, for fear that it would hurt their economy and make them weaker than their northern neighbors.

George Mason, an aristocratic plantation owner from Virginia, was an exception to the rule. He owned more than 200 slaves, and he wanted to see slavery abolished so he could free them.

Several northern delegates felt slavery needed to continue because their states had benefited from the trade of slaves on ships in their ports.

Without the support of the southern states, the emerging document had little chance of being effective. Recognizing this, delegates agreed to postpone the elimination of the slave trade and proposed a 21-year cool-down period, lasting until 1808, during which the slave trade could continue as it was. Many felt slavery was dying out anyway and would die on its own.

**On the Record**

"We ought to attend to the rights of every class of people ... [and] provide no less carefully for the ... happiness of the lowest than of the highest order of citizens."

—George Mason, *Miracle at Philadelphia*, 1986

Another issue concerned how people of color would be counted when it came to their representation in Congress and taxation. Southern delegates wanted slaves counted for the purposes of representation but not taxation. Northerners, on the other hand, wanted slaves counted strictly for tax reasons and not for representation.

In the end, the delegates approved what is known as the three-fifths compromise, which would remain in place until after the Civil War. It stipulated that each slave

would count as three-fifths of a person for purposes of both taxation and representation. If a community had 25,000 free citizens and 25,000 enslaved, according to the compromise, 40,000 would be the number used in assessing their taxes and their representation.

Selection of the chief executive, or president, also posed a difficult question for the delegates. Many feared giving too much control to the people, who were generally viewed as uneducated and uninformed, and wanted him selected by either the Congress or only a limited number of people. Other delegates wanted direct election of the president by the people and only the people.

After much debate, the delegates decided to compromise by creating a separate body of electors equal to the number of delegates each state had in Congress, plus two for the senators. The electors would be selected by the state legislatures, and these people—the electoral college—would ultimately vote for the president.

### We Hold These Truths

The delegates assumed that the popular vote of the country would be in line with the vote totals of the electoral college. For the most part, it has been. Of the more than 50 presidential elections since the electoral college was established, in only three of them—1824, 1876, and 2000—has the winner of the popular vote not won the electoral vote.

## Taking It to the States

With all their differences ironed out, the delegates adjourned on September 17, 1787. Of the 55 delegates who attended the Constitutional Convention, 39 signed the new document, now known as the Constitution. The reasons for dissension varied. Some delegates feared giving too much power to the common man, while others did not like the omission of a Bill of Rights.

The next round involved presenting the Constitution to the states, which had to ratify it in order to make it law. Nine of the 13 states were needed for approval. Fearing that the states' legislatures would turn down the document because they didn't want to cede any more power to the federal government, the framers of the Constitution decided to call special conventions in each state to explain the Constitution and to have the conventions themselves, rather than the state legislatures, decide on ratification.

## Federalists vs. Anti-Federalists

Opinions regarding the Constitution were widely divided. Some farmers in the west were afraid urban cities would get all the attention while they would be taxed through the roof. Then there were city dwellers who worried that the federal government would be too centralized and that the powers would be taken away from the states.

Those who supported the Constitution and the new framework it established came to be known as Federalists, meaning they supported a strong central government with shared powers between the states and the national government. Those who were opposed were known as Anti-Federalists.

The three main Federalists were Alexander Hamilton, James Madison, and John Jay. Together they wrote a series of anonymous essays about the Constitution that appeared in newspapers. Writing under the pseudonym Publius, in reference to Publius Valerius Publicola, a founder of the Roman Empire, their essays, today referred to as *The Federalist Papers*, or simply *The Federalist*, laid out the foundational principles of the Constitution—representation of the people in the government, separation of powers, checks and balances, and the inherent freedom of a nation’s people—and are often cited in court cases, legal arguments, and presidential directives.

### We Hold These Truths

Widely respected since its publication, *The Federalist* has been used by lawmakers, judges, and scholars to interpret the Constitution. The first 77 articles were published in newspapers, many in New York, in an effort to garner that state’s crucial support. The complete set was published in 1788. Hamilton wrote the majority of the essays, with 51 total. Madison wrote 29, while Jay wrote only 5.

Meanwhile, the Anti-Federalists published their own series of essays to argue for a looser coalition of the states and a weaker national government. Led by some of the most prominent Americans who had fought against the British during the War for Independence—including New York Supreme Court Justice Robert Yates, who signed his essays Brutus, and Richard Henry Lee of Virginia, who used the pen name The Federal Farmer—they took issue with the Federalists on many points.

Patrick Henry, the leading legislator from Virginia, feared the presidency would become nothing more than a tyrant’s soapbox, where the executive would be beholden to no one other than himself. John Hancock, the man who so largely displayed his signature for the king to read when he signed the Declaration of Independence, agreed. Others felt that the need for a vice president, outlined in the second article of the Constitution, was useless, unnecessary, or even scary.

The Federalists and Anti-Federalists disagreed on several other critical points, including what representation of the people in government meant. Anti-Federalists argued that representatives must be a true representation of the people—and only smaller governments could truly understand the desires of its people. They also said representatives would be

too far physically removed to adequately represent the interest of their states. Laws would not be followed, the Anti-Federalists said, unless there was a military presence nearly everywhere.

Federalists were adamant, however, that representatives act on behalf of the people as well as have independent judgment. This way, the Federalists argued, the long-term national interest would be first served over immediate public sentiment. They also scoffed at the notion that force would be necessary because of the distance between representatives and their constituents, with Hamilton arguing that one central government would be better able to serve the people than several competing governments.

Anti-Federalists and Federalists also wrote about the threat of tyranny, or one power-hungry group ruling over the people unjustly. The Anti-Federalists were most concerned with those institutions that did not have any direct link to the people to be held accountable—such as the president and the Senate. The Federalists were concerned with a popular majority working in concert to override justice. But Madison explained that checks and balances of each branch of government on the other would alleviate the threat of that tyranny.

A final area of dispute the Anti-Federalists and Federalists wrote about was what exactly limited government meant. How would powers be limited between the states and the national government? Anti-Federalists argued that the national government should be more limited than state governments. But the Federalists said that the national government should have broad authority, with checks and balances to stop potential abuses of the powers.

The Anti-Federalists were also concerned that the Constitution created a centralized government at the expense of states' rights. While the states fought for independence together, they viewed each other as separate. Many feared too much control at the hands of the national government, which at that time was located in New York City.

The biggest problem that many seemed to have with the new Constitution was that it did not provide for a bill of rights, laws that were expressly granted and stated for all citizens in the United States. The public wanted these rights listed so that no one would question or dispute the fundamentals such as freedom of speech or religion. Many feared that if they were not written in stone, the government would start to control daily aspects of their lives. As a way to calm these fears, the framers agreed that the newly created congress would write a bill of rights, addressing such issues as freedom of religion, speech, and assembly and the right to bear arms after the Constitution was ratified. (See Chapter 3, “The Bill of Rights,” for more on how this document came about and what it contains.)

Delaware was the first state to ratify the Constitution, doing so on December 7, 1787. New Jersey and Pennsylvania followed shortly afterward. By early June 1788, nine states had ratified the Constitution. But the critical states of New York and Virginia had not. Of the two, Virginia had the most spirited debates regarding ratification. Patrick Henry led the charge against it and had an answer for any question or counterpoint produced.



### On the Record

"There will be no checks, no real balances in this government. What can avail your specious, imaginary balances, your rope dancing, chain rattling, ridiculous ideal checks and balances!"

—Patrick Henry, in a speech before the Virginia ratifying convention, June 5, 1788

But on June 25, by a narrow 10-vote margin, the Virginia convention voted to approve the document. One month and one day later, by just a three-vote margin, New York, despite the efforts of upstate farmers fearing excessive taxation, approved the document as well. Rhode Island, which had not sent any delegates to the convention, became the last state to ratify the Constitution, approving it by a 34–32 vote in May 1790.

## The Least You Need to Know

- ◆ The Constitution is the oldest written Constitution still in use, and it is also one of the shortest, using approximately 6,700 words to establish the supreme law of the land.
- ◆ The Declaration of Independence served three purposes: It established a new theory of government, listed the reasons for separation from England, and declared war.
- ◆ While there were 13 states at the time of the Constitution's drafting, only 12 took part in its development because Rhode Island refused to send a delegate.
- ◆ It took four months to compile a document that a majority of the delegates could agree on, and it took another nine months to get the necessary number of state conventions to approve it.