

INTRODUCTION

What are the principles that form the foundation of the American Republic? What values do they protect? The Constitution is more than a black-and-white text. It is a legal document composed of multiple strands of political, legal, economic and social principles woven together to form a self-governing democracy.

The values trace their source to pre-Revolutionary days and were expressed in the *Declaration of Independence*: “*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.—That to secure these rights, Government are instituted among Men, deriving their just powers from the consent of the governed . . .*”²

That is freedom, equality, and a state where the ultimate source of authority rests with its people.

Our early leaders believed in and incorporated other values that were critical to their vision. Among them was a conviction that power corrupts, and the best way to control it is to divide it; and that private citizens, “virtuous individuals,” were better equipped than the king and his servants to manage their republic.

Different values emphasized the importance of the individual and free enterprise, not an over-extended government in the economy. After all, individuals who live the facts know a lot more about achieving the best results than disengaged officials sitting at far-away desks. To that end, a limited government whose role as referee not regulator preserved an environment in which individuals could compete in fair and competitive markets; and local governments not a distant central government made the best decisions because they were on site.

The delegates firmly believed in a government of laws not men. Their main concern, “who writes these laws?” underscored the need for competent and honest leaders.

Their values emphasized respecting the rights and liberties of individuals across multiple social and cultural groups; held that people should be treated fairly and like people should be treated in a like manner; and, an individual’s freedom to follow the dictates of their conscience and religious beliefs were the measure of a vibrant society.

Finally, our early leaders were concerned with the nation’s defense; and, protecting their values from those who would trample them.

To implement these values, the Framers incorporated multiple principles in the Constitution. Some are obvious from the text: natural rights, federalism, restraints on a single source of power, judicial review, free trade/free markets, direct but limited government involvement in the economy, and national defense. Others are implicit in the nature of a written constitution such as social contract and common law. Others are clear from the Convention’s debates: for example, public virtue, separation of church and state, equalitarian society, and pluralism. Still others are present in the Constitution but needed a name: adversary system of justice and private ordering.

The College Board (which administers the entrance exams) recently acknowledged the importance of these values and principles. They identified two sets of knowledge they felt young people need to succeed in life. A well-respected journalist summarized the first rule. Noting that this knowledge rested on understanding our government, he wrote, “if you want to be an empowered citizen in our democracy — able to not only navigate society and its institutions but also to improve and shape them, and not just be shaped by them — you need to know how the U.S. Constitution works.”

He goes on to write, “the words of the Constitution give rise to the structures of our government. Understanding how government works is the essence of power. To be a strong citizen, you need to know how the structures of our government work and how to operate within them.”³

That vision unfolded two hundred and thirty years ago, when delegates from the former English colonies gathered to draft a plan of self-government for their new nation. In post-revolutionary America, growing economic uncertainty and a failing political system alarmed the country’s early leaders. In James Madison’s words, “[No] money comes into the public treasury, trade is on a wretched footing, and the states are running mad after paper money.”⁴ The postwar depression that hit the colonies in 1783 bottomed in the summer of 1786. Because the national government had no authority to tax, the Continental Congress had amassed ever larger foreign and domestic debts. In addition, a uniform and stable currency had not yet been established. Increasingly worthless paper money flooded the states.

In September 1786, motivated by economic necessity and political reality, the state of Virginia called a conference in Annapolis to address these concerns. It was formally entitled “Meeting of Commissioners to Remedy Defects of the Federal Government.” Delegates from only five states attended. Those present realized that resolving these problems went beyond their small numbers. They sent a letter to the Continental Congress proposing a more ambitious gathering.

During the winter of 1786–87, two thousand farmers in Western Massachusetts rose in armed rebellion under Daniel Shays, a Revolutionary War veteran. The local militia easily put down the uprising, but other states had their own poor areas and unhappy debtors. News of the conflict hastened the decision by all states except Rhode Island to send delegates to the Constitutional Convention in Philadelphia

in May 1787. United by their recent victory in the fight for independence and their desire to “form a more perfect union,” many of the country’s early leaders met at the Convention to debate their differences and try to settle them. As Madison noted, the “want of a general power over Commerce, led to an exercise of the power separately, by the States”; and “a general decay of confidence & credit” left few choices.⁵

The early leaders who gathered in Philadelphia shared beliefs inspired by the era’s foremost thinkers and shaped by their own experience. These values were reflected in a distinct set of principles, incorporated into their ultimate achievement, the United States Constitution.

The Convention delegates spent most of their time discussing what the new government could and could not do and sorting out responsibilities among its different branches and among the former colonies. They searched for a basis on which sectional interests could participate fairly in a unified government.

The Constitution reflects the political theory of its authors, a social contract which holds that “governments derive their just powers from the consent of the governed.”⁶ In designing this compact between citizens and their elected officials, the authors of the Constitution had few examples to follow: England had Parliament, but the king held too many cards. The delegates were also familiar with the colonial assemblies and Continental Congress. These institutions served their purpose but did not meet the new country’s emerging needs.

Our country’s early leaders devised one of the most innovative ideas in history for creating a stable democracy. Concerned about both the abuse and the concentration of power, as well as the government’s ability to achieve its objectives, they parceled out the authority derived from a single source—the people—among multiple branches and levels.

The authority for their new republic flowed not from a Supreme Being or apostolic legate, but from the very electorate itself. It was—and remains—the most durable foundation for a viable democracy.

Their “checks and balances” operated internally, through separation of powers among three branches, and vertically, through a federal structure. They created national and state levels of government and partitioned legislative, executive, and judicial responsibilities between the national and state levels. They enumerated certain powers, while leaving the rest to the states. The Supreme Court would later expand the central government’s reach through “implied” powers.

The Convention delegates worried about the qualifications of those who would occupy elected office. They established an electoral process that insulated the government from direct participation by class or moneyed and religious interests. They hoped the system would promote experienced and virtuous leaders to public office—because the delegates realized that no matter how carefully they balanced competing interests within the constitutional framework, their ultimate success depended on the individuals chosen to lead the new republic.

George Washington and his fellow delegates also recognized that economic prosperity was a precondition to political stability; and that, in turn, political stability was essential to economic progress. The Constitutional Convention envisioned a commercial system founded on free trade *and* a level playing field. To ensure that everyone had an equal chance, the government would act as a referee, stepping in when necessary to settle disputes and address inequities and unfair advantages. Government would enforce private contracts and intervene in the markets only when necessary.

The Framers supported “judicial review,” making the Constitution the supreme law of the land and mandating the courts to explain and apply

its provisions. They drew upon their English common-law heritage and adopted an adversary system of justice, the legal equivalent of the “every man for himself” model of open markets and free trade. Through “private ordering,” they incorporated the individual’s right to chart his own destiny and to influence others subject to the limits of our legal system.

The Constitutional debates also reflected important social values. The delegates intended their new country to be a pluralistic society that respected human dignity and accommodated different cultural values—a society that afforded infinite second chances and the opportunity to earn unprecedented wealth for those willing to stay late and take risks. In America’s “can do” society, “you made a mistake? So what? Try again!” became the advice we all give our children.

And the Constitution promoted an equalitarian society. “Our greatest goal is to give the average family the opportunity to earn an income, to own a home, to educate their children, and to have some security in their later years,” said former Speaker of the House Tip O’Neill. “I believe it is wrong for the people who made it up the ladder to pull the ladder up behind them. This is an alien philosophy. We Americans believe in hard work, in getting ahead, but we also believe in looking out for the other guy.”⁷ In an equalitarian society, *winning* isn’t the only thing but *how* you play the game that counts as well.

The principle of equality only extended so far: blacks, women, and minorities were left out. The failure to end slavery was the Convention’s most egregious failure. The moral, political, and economic dimensions of slavery were well understood and provided a constant point of friction among the delegates. The examples are many—notable among them is a lengthy debate on August 22 in which seventeen delegates participated.⁸ In the end, the delegates opted for union over slavery. It would take the Civil War and its aftermath of segregation to end it. The Framers might well have agreed that their

inability to end slavery was contrary to their values and the Convention's biggest failure—without in any way implying that the Convention itself was a failure.

Women would wait until the Nineteenth Amendment and the Twentieth and Twenty-First centuries to press forward. Today, our policy towards immigrants remains the front line of implementing the Convention's social values and principles.

The Framers protected multiple points of view and encouraged the formation of associations and groups. They separated church and state and further reinforced the foundations of an open society that respected individual beliefs and religious freedom.

The final principle (some say the first) is national security: government's obligation to protect its citizens at home and abroad from those who would undermine our way of life. The principle of national security fosters our national interest. This national interest is aimed at protecting our citizens' welfare, and, uniquely among nations, seeks to promote core values of political liberty and economic opportunity.

The Constitution embodies the delegates' goal to distribute decision-making by creating multiple centers of authority and by defining the limits of what government could do. Throughout all the turmoil inherent in a system founded on competing centers of authority, the delegates hoped to protect liberty and promote equality. They believed that a political equilibrium would result, welding the colony's diverse interests into a coherent nation and effective government.

Their principles married the colonists' basic aspirations for a free and just society to their experience with representative government. And over the years that followed, the nation has worked to make this union a

success. The Framers knew they couldn't create a perfect union—only a *more* perfect union.

While the delegates hoped the words of the Constitution were sufficient, its text and phrases rested on a set of principles that act as a foundation for those seeking to interpret the Constitution. What follows identifies these values and principles, and how they have fared over the past 230 years. And, in the process, at a time when few agree on anything, restates values and principles that we all share and are worth keeping. They are certainly relevant for our courts but even more important for our elected officials. They stand as a guide for creating and writing the laws which govern our society.

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Political principles address the underlying legitimacy of government and describe its purpose, role, and structure. There are five political principles: (1) social contract, (2) natural rights, (3) federalism, (4) restraints on a single source of political authority, and (5) public virtue.

The Constitution was and remains a legal document, both in itself and in the judicial system that interprets it. It includes four *legal principles*: (8) common law, (9) judicial review, (10) adversary system of criminal justice, and (11) private ordering.

Economic principles frame the economic means and goals of the republic. There are two economic principles: (6) free trade/free markets; and, (7) direct but limited government role in the economy.

The Constitution rests equally on values reflected in the social conditions and ideals that existed in early America. There are three *social principles*: (12) pluralism, (13) equalitarian society, and (14) separation of church and state.

The *final principle* is (15) national security.

Sources. The principles' sources lie in the values and ideas expressed in the debates, letters, and notes that immediately surround the Constitution as well as the Constitution itself. George Washington underscored the challenge the Convention delegates faced on June 28, 1787: "We have gone back to ancient history for models of government, and examined the different forms of those Republics which having been formed with the seeds of their dissolution [that] now no longer exists. And we have viewed Modern States all around Europe but find none of their Constitutions suitable to our own circumstances."⁹