

# The Political Community of the U.S. Constitution

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There will be no fireworks to celebrate the 232nd anniversary of Constitution Day, nor public readings of the document. Most will pass the day without even a moment's reflection on the event that redefined the political community of the United States. September 17, 1787 was the day that the newly drafted Constitution was signed by those whose work had begun on May 25, 1787.

The new Constitution was ratified 12 years after the 1776 Declaration of Independence from the British. From the time of the first settlers on the shores of what was to become a new nation, the United States has had three identifiable political communities: colonial America under the auspices of the British, a confederation of states, and a nation governed by the current Constitution. Understanding the political community that the U. S. Constitution forms tells us much about America and its current divisions.

The first political community in colonial America did not have a distinct identity and purpose because of the competing forms of governance that developed over nearly a century and a half. Settlement in America was spurred by two sources: on the one hand, colonists seeking religious freedom and economic opportunities and on the other, European nations establishing a presence in new lands.

Monarchy was the predominant form of government in Europe and while these monarchical practices carried over into the settlements, the separation by an ocean from the mother countries required the colonists to engage in governing themselves. The Mayflower Compact is among the first of such efforts. The Plymouth settlers drafted a compact that bound them into a body politick for better ordering and preservation, to enact and frame just and equal laws, acts, and constitutions for the general good of the colony. Others followed suit.

The posture of the British was both protector and beneficiary against the backdrop of their monarchical and parliamentary government. In addition to setting up their own governing structures, the colonists eventually sought representation in the British parliamentary body and recognition of their rights, but to no avail. Their response to British intransigence and aggression was the formation of the Continental Congress, which reflected the growing democratic and republican influences within the colonies. Among its purposes was to speak with a singular voice to resolve their differences, but British inflexibility spurred the colonists to move toward declaring independence. This conflict set up the end of the first political community.

In the month prior to the Declaration, the Second Continental Congress called upon the 13 colonial assemblies to craft constitutions. Its request included the charge to “adopt such a government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of the constituents in particular, and America in general.” These efforts by the colonial assemblies, which were incorporated into the states after independence, are important steps in America’s subsequent political development.

The monarchical and parliamentary governance exerted by the British was gone. The colonial foundations of the township, county, and former colonies turned states provided a governmental structure, but a government for the new United States was required. This was imperative as the nation was fighting to maintain its independence while finding its footing as a new nation. The Articles of Confederation drafted by the Continental Congress recognized the relationship between the states as “a firm league of friendship” with each state retaining its sovereignty, freedom, and independence. The new government did not have an executive power, had limited judicial functions, and gave a minimal grant of authority to the Congress to regulate affairs for the nation. The Congress circulated the Articles to the states for ratification and became the Confederation Congress. The second political community was defined by the authoritative element that was largely within the states. It was arguably the best regime that the circumstances allowed.

By the mid-1780s, however, the weaknesses of the confederated government became apparent. James Madison and others began efforts to assemble representatives from the states to address and remedy the deficiencies.

The discussion of whether the nation needed to be reconstituted began years before the convening of the 1787 Philadelphia convention. The resulting termination of the confederation of states and the United States as defined by a new Constitution initiated the third political community. Instead of a decisive break in 1787 as there had been with the British in 1776, America was reconstituted by modifying the governing relations between the citizens, the states, and the national government and by embracing the principles of the Declaration.

President John Quincy Adams understood the deficiency of the Articles of Confederation as a departure from the principles of the Declaration of Independence because of the substitution of state sovereignty instead of the constituent sovereignty of the people as the foundation of the Revolution and of the Union. While the Declaration identifies why the separation from Britain was necessary, more importantly, it states the rights, principles, and ideals that any future American government was to secure. The Constitution had the potential to fulfill what the Declaration intended: *to create a more perfect union*, in the words of the Constitution’s preamble.

The connection between the Declaration of Independence and the Constitution is made clear by President Calvin Coolidge in his statement that governments do not make ideals, but ideals make governments. He described the ideals, the immortal truths of the Declaration of Independence, this way:

Three very definite propositions were set out in its preamble regarding the nature of mankind and therefore of government. These were the doctrine that all men are created equal, that they are endowed with certain inalienable rights, and that therefore the source of the just powers of government must be derived from the consent of the governed.

The constitutional convention held in Philadelphia resulted in a new Constitution that was presented on September 17 to the people for their consideration and, if acceptable to them, ratification—thus fulfilling the Declaration’s requirement of consent of the governed. Recall the charge of the Declaration: “That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.” The goal was to form a more perfect union that relies on the sovereign authority of the people with the aim of securing the rights of the citizens and effecting their safety and happiness as called for in the Declaration.

The features of the Constitution as designed promote justice and a just people. Establishing justice was the second item listed in the preamble: “in order to form a more perfect Union, establish Justice.” The four features—the republican form of government, the separation of powers, the bicameral legislature, and federalism—underscore the efforts by the drafters of the Constitution to institute a government that represents the citizenry, secures their rights, and allows for their participation in governance at a local, state, and national level.

Yet given the statement of self-evident truths in the Declaration and the words of the preamble to secure the rights of the people, why did slavery and the denial of even the most basic rights and dignity to a segment of the population continue?

Slavery had been present in the colonies for more than one hundred years in America, brought to colonial settlements by the British, the Dutch, and other European powers. Jefferson’s attempt to make clear in the Declaration that efforts to end slavery were prohibited by the powers that brought it to the colonies failed to make it in the final draft. There is no mention of slavery in the Constitution, but there are three relevant clauses that speak implicitly about it. The provision in Article I, section 2 apportioning representatives and taxes by adding the whole number of free persons and three-fifths of all other persons. This provision ensured slave states that denied fundamental rights to some could not benefit and further enhance their power within the Union through outsized representation from their numbers. The ban on importation of persons after 1808 (Article I,

section 9) was done with the belief that it would lead to the end of the institution. Article IV, section 2 provides that a person “held to Service or Labour in one State” who escapes into another must be returned to the person to whom the service or labor was due.

These three clauses were clear compromises with slavery, but they must be counterbalanced both by the implication in the non-importation clause that the Congress could (and in fact did) ban the importation of slaves after 1808. They must also be counterbalanced by the Republican Guarantee in Article IV, section 4. The clause required the United States to guarantee to each state a republican form of government—that is, one grounded in the consent of the governed, an idea articulated in the Declaration of Independence that is wholly incompatible with slavery.

These are but a few examples to demonstrate that the drafters of the Constitution did as much as they possibly could at the time to check slavery and the forces that supported it in order to achieve a Union. Had they attempted to implement an outright ban on slavery, there likely would have been no new Union, the Articles of Confederation would have remained in place, the internal dissension would have only grown worse, thus subjecting the new nation to conquest by European powers and destroying any hope of ending slavery in the slave states.

The effort to condemn slavery in the Declaration failed, but the recognition that all human beings are created equal and that they are endowed by their creator with unalienable rights stayed. Frederick Douglass, Martin Luther King, Jr., and many others have looked to this language to bolster their demands that the country live up to its ideals.

The third political community is defined by the Declaration of Independence and the Constitution. In the words of John Quincy Adams on the Jubilee of the Constitution, “this act [the Constitution] was the complement to the Declaration of Independence; founded upon the same principles, carrying them out into practical execution, and forming with it, one entire system of national government.” That system included, as stated in the Preamble, establishing justice, regulating internal and foreign affairs, and promoting the welfare and securing the liberty of those currently living and for future generations. The citizens gave their consent to this government and remain the sovereign authority as held in the Declaration.

The kind of political community that the U.S. Constitution forms is a just community and the noble actions of the citizenry reflect the principles of the Declaration. We must, however, recall Publius’ words in *Federalist* 51, “but 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.” While justice may be the end of government and a good, noble, and virtuous people desirable, it must be cultivated with recognition that we may fall short or with perseverance, succeed.

There are deep divisions in America, but taking seriously the governing structure and constitutional development provide welcome opportunities to seek remedies. The Constitution unifies the nation in the sense that its framework provides a vehicle for deliberation between the branches and the people. It does not guarantee unanimity. That would risk tyranny. But it affords an opportunity for justice and the general good to prevail, a sentiment embraced by the settlers at Plymouth and those who followed, and by Publius in the *Federalist Papers* and by many in America today.

It is a fair question to ask if the same political community that grew out of the 1787 Constitution exists in America today. Yes and no. Though there have been 27 constitutional amendments with a few making fundamental changes to the structural design such as direct taxation and the direct election of senators (16th and 17th Amendments), the greater challenges have been from events such as the Civil War, the Progressive movement, Franklin Roosevelt's New Deal, and activist judges. These events explain, in part, why we have such discord in our modern day political discourse.

Rather than wring our hands, we should embrace the debate fully. A good starting point is understanding the political community formed by the 1787 Constitution.

***Editor's note:*** This essay is based on a lecture delivered on July 23, 2019 at St. John's College Graduate Institute, Santa Fe, New Mexico. It was dedicated to the late Don MacIver, who was a long-time friend, student, and former president of St. John's College.