

The Constitution and America's Destiny

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 **CAMBRIDGE**
UNIVERSITY PRESS

I

Politics and the Constitution

[T]here can be no doubt but that the result [of the Constitutional Convention] will in some way or other have a powerful effect on our destiny.

– James Madison to Thomas Jefferson, June 6, 1787

What problems were the U.S. Constitution's authors trying to solve? How did they imagine their Constitution would answer these problems? We know the framers intended to change America's destiny, and we know they succeeded. But how did they intend to transform the way American government uses its power and the way Americans use their government? What kinds of politics were the delegates to the Constitutional Convention trying to make – and what kinds of politics *did* their design make? For all that has been written about the Constitution, we do not have satisfactory answers to these questions.

Practicing politicians wrote the Constitution, and they expected politicians to use it. To understand the enduring effects of the Constitution on America's destiny, we need to know what its designers thought they were doing. We need to understand the circumstances that convinced these politicians that they could and should reconstitute the nation's government. We need to understand precisely how these circumstances shaped their strategies for building a new government. We need to reconstruct how these politicians used such strategies to design their Constitution, provision by provision. Better answers to these questions can help us better understand how Americans have used the government they have inherited.

HOW HISTORIANS AND SOCIAL SCIENTISTS HAVE APPROACHED THE CONSTITUTION

I could not find satisfactory answers to these questions in the many published studies of the Constitution. The most prominent historians of the founding era, such as Bernard Bailyn, Gordon Wood, and Douglass Adair, chronicle the sweeping intellectual currents of American culture in the eighteenth century. By eloquently describing evolving ideas about republicanism and liberty, these beautifully narrated and inspiring intellectual histories underscore the breadth and flow of political thought in the founding period.¹ But these narratives do not aim to show how the delegates to the Constitutional Convention used these indefinite principles when they designed specific constitutional provisions, nor do they aim to explain systematically the political process of the Constitutional Convention.

Several historians give politics a much more prominent role in their narratives of the convention. Charles A. Beard memorably wrote that the Constitution was "an economic document drawn with superb skill by men whose property interests were immediately at stake; as such it appealed directly and unerringly to identical interests in the country at large."² Beard's bold explanation of the Constitution as the product of the delegates' material interests became a lightning rod for critics. Forrest McDonald, Robert E. Brown, and James Ferguson each discredited Beard's claim as simplistic.³ McDonald's work provides a more

¹ Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Belknap Press, 1967); Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969); Trevor Colbourn, ed., *Fame and the Founding Fathers: Essays by Douglass Adair* (New York: W. W. Norton for the Institute of Early American History and Culture at Williamsburg, 1974).

² Charles Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Macmillan, 1913), p. 188. As Forrest McDonald pointed out, Beard (p. 73) was not accusing the delegates of writing a Constitution primarily to benefit themselves personally. See Forrest McDonald, *We the People: The Economic Origins of the Constitution* (Chicago: University of Chicago Press, 1958), p. 6.

³ McDonald, *We the People*; Robert E. Brown, *Charles Beard and the Constitution: A Critical Analysis of "An Economic Interpretation of the Constitution"* (New York: W. W. Norton, 1965); E. James Ferguson, *The Power of the Purse: A History of Public Finance, 1776-1790* (Chapel Hill: University of North Carolina Press, 1961), pp. 251-86. According to a survey of 178 randomly selected members of the Economic History Association conducted by Robert Whaples, only a quarter of the economists and historians responding generally agreed with the statement that "The personal economic interests of delegates to the Constitutional Convention generally had a significant effect on their voting behavior." Forty-three percent of economists answering the survey agreed with the statement provisionally; 53 percent of the historians generally disagreed. Robert Whaples, "Where Is There Consensus among Economic Historians? The Results of a Survey on Forty Propositions," *Journal of Economic History* 55:1 (March 1995): 139-54.

politically nuanced account that emphasizes the way the delegates worked out arrangements that accommodated diverse interests, ideas, and personalities.⁴ Jack Rakove provides exceptional insight into the politicians of the founding era and presents the best historian's account of the convention's politics.⁵ Rakove views the convention as both an intellectual and a political process in which the delegates, representing diverse constituencies, balanced differences of ideas and interests as they hammered out constitutional compromises on specific provisions. McDonald, Rakove, Clinton Rossiter, and Lance Banning provide superb, indispensable historical narratives that weave the influence of politics into the story of constitutional design.⁶ These historians provide a necessary starting point for the systematic political analysis of the Constitutional Convention.

These vivid histories could not decisively answer my questions about the Constitution, however. By privileging ideas, historians undervalue the role of politics.⁷ Historians have produced no careful and systematic analysis of delegates' political interests to match the rich literature on republican ideas, even though historians such as Allan Nevins, Jackson Turner Main, and Peter Onuf provide excellent analyses of the political landscape of the states that the delegates represented.⁸ Principle usually

⁴ Forrest McDonald, *E Pluribus Unum: The Formation of the American Republic, 1776-1790*, 2nd ed. (Indianapolis, IN: Liberty Press, 1979); *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985); and *States' Rights and the Union: Imperium in Imperio, 1789-1876* (Lawrence: University Press of Kansas, 2000).

⁵ Jack N. Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York: Alfred Knopf, 1979); "The Great Compromise: Ideas, Interests, and the Politics of the Constitution," *William and Mary Quarterly*, 3rd ser., 44:3 (July 1987): 424-57; *James Madison and the Creation of the American Republic* (Glenview, IL: Scott, Foresman/Little, Brown, 1990); and *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Alfred A. Knopf, 1996).

⁶ Clinton Rossiter, *1787: The Grand Convention* (New York: Macmillan, 1966); Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (Ithaca, NY: Cornell University Press, 1995).

⁷ Historical studies' emphasis on intellectual history probably is compounded by a bias in Madison's convention notes. Madison's records may characterize the principles and logic of positions he supported more carefully than positions he opposed. Not surprisingly, ideas, which are so fully elaborated in the intellectual histories of this era, and which are so central to the theoretically minded Madison, seem to trump interests in explaining the most important convention dispute, on representation. This point also is suggested by Thornton Anderson in *Creating the Constitution: The Convention of 1787 and the First Congress* (University Park: Pennsylvania State University Press, 1993), p. 8113.

⁸ Allan Nevins, *The American States during and after the Revolution, 1775-1789* (New York: Macmillan, 1924); Jackson Turner Main, *Political Parties before the Constitution* (Chapel Hill: University of North Carolina Press, 1973) and *The Sovereign States, 1775-1783* (New York: New Viewpoints, 1973); Peter S. Onuf, *The Origins of the Federal*

speaks for itself in a way political interest seldom does – that is, politicians are more likely to frame issues in terms of principle than in terms of interest because principles legitimate and broaden support for their interests. Even Jack Rakove, who is unusually sensitive to the play of politics, considers the convention's conflict over representation chiefly as a philosophical conflict, distinct and separate from the interest-driven bargaining over the authority of the reconstituted government.⁹ Historians occasionally cite specific social-science studies of the convention, but their narratives do not employ insights about political processes such as state building, policy making, political realignment, or legislative behavior.¹⁰ A more systematic exploration of political interests, alignments, and processes reveals that political maneuvering permeated all of the convention's decisions.

Political scientists have not augmented historians' work with a thorough political analysis of the Constitution's design. Although many political scientists have claimed that the Constitution contributed to enduring political features of American government, they usually choose – more or less arbitrarily – certain “important” features of the Constitution to support a more general point about American politics.¹¹ Not surprisingly, political scientists have widely different views about the design of the Constitution. For William Riker, the Constitution represented a strategic victory for nationalists; for John P. Roche, the success of pragmatic political reformers; for Vincent Ostrom, a shrewdly crafted “compound republic” that promotes public control and economic efficiency; for Barry Weingast, “market-preserving federalism.” Others characterize the founding in different but no less general terms – for

Republic: Jurisdictional Controversies in the United States, 1775–1787 (Philadelphia: University of Pennsylvania Press, 1983).

⁹ Rakove, *Original Meanings*, p. 15.

¹⁰ Rakove notes that historians generally interpret the convention in a familiar narrative that adds “little of interpretive value to our understanding of the framing of the Constitution. Certain stock themes are so essential to all accounts of the Convention as to defy authors to show a spark of originality” (*Original Meanings*, p. 13). On the other hand, Rakove characterizes the analysis of behavioral political science as “fine-milling techniques of roll-call analysis that are commonly used to explain decision-making in Congress, state legislatures, or, for that matter, any city council outside Cook County, Illinois” (p. 15).

¹¹ William H. Riker, for example, trying to illustrate the art of political manipulation (and perhaps captivated by Gouverneur Morris's capacity for sound bites), oversimplifies the position of Madison's allies and opponents and misrepresents the underlying political logic of policy agency at the convention. Compare *The Art of Political Manipulation* (New Haven, CT: Yale University Press, 1986), pp. 34–51, with Chapters 5, 6, and 7 in this volume.

example, as a triumph for protocorporate elites or policy conservatism.¹² Political scientists most frequently have characterized the Constitution as a triumph for interest-group pluralism, using quotations from *Federalist* 10 and 51 to prove the point.¹³

A few social scientists have attempted to study voting behavior at the Constitutional Convention systematically.¹⁴ Calvin Jillson's work, based

¹² William H. Riker, *The Strategy of Rhetoric: Campaigning for the American Constitution* (New Haven, CT: Yale University Press, 1996); John P. Roche, “The Founding Fathers: A Reform Caucus in Action,” *American Political Science Review* 55:4 (December 1961): 799–816; Vincent Ostrom, *The Political Theory of a Compound Republic: A Reconstruction of the Logical Foundations of American Democracy as Presented in the Federalist* (Blacksburg: Virginia Polytechnic Institute, 1971); Barry R. Weingast, “The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development,” *Journal of Law, Economics, and Organization* 7:1 (1995): 1–31; Kenneth M. Dolbeare and Linda Medcalf, “The Dark Side of the Constitution,” in *The Case against the Constitution from the Antifederalists to the Present*, ed. John F. Manley and Kenneth M. Dolbeare (Armonk, NY: M. E. Sharpe, 1987), pp. 120–42; David Brian Robertson and Dennis R. Judd, *The Development of American Public Policy: The Structure of Policy Restraint* (Glenview, IL, and Boston: Scott, Foresman/Little, Brown, 1989).

¹³ David B. Truman, *The Governmental Process: Political Interests and Public Opinion* (New York: Alfred A. Knopf, 1951), pp. 4–5; Paul F. Bourke, “The Pluralist Reading of James Madison's Tenth Federalist,” *Perspectives in American History* 9 (1975): 271–98; John F. Manley, “Class and Pluralism in America: The Constitution Reconsidered,” in Manley and Dolbeare, *The Case against the Constitution from the Antifederalists to the Present*, pp. 101–19. See also Emery G. Lee III, “Representation, Virtue, and Political Jealousy in the Brutus-Publius Dialogue,” *Journal of Politics* 59:4 (November 1997): 1073–95.

¹⁴ On the Confederation Congress, see Calvin C. Jillson and Rick K. Wilson, *Congressional Dynamics: Structure, Coordination, and Choice in the First American Congress, 1774–1789* (Stanford, CA: Stanford University Press, 1994); Keith L. Dougherty, *Collective Action under the Articles of Confederation* (Cambridge: Cambridge University Press, 2001). On the Constitutional Convention, see S. Sidney Ulmer, “Sub-group Formation in the Constitutional Convention,” *Midwest Journal of Political Science* 10:3 (August 1966): 288–303; Gerald M. Pomper, “Conflict and Coalitions at the Constitutional Convention,” in *The Study of Coalition Behavior: Theoretical Perspectives and Cases from Four Continents*, ed. Sven Groennings, E. W. Kelley, and Michael Lieserson (New York: Holt, Rinehart and Winston, 1970), pp. 209–25; Calvin C. Jillson and Cecil L. Eubanks, “The Political Structure of Constitution Making: The Federal Convention of 1787,” *American Journal of Political Science* 28:3 (August 1984): 435–58; Robert A. McGuire and Robert L. Ohsfeldt, “An Economic Model of Voting Behavior over Specific Issues at the Constitutional Convention of 1787,” *Journal of Economic History* 46:1 (March 1986): 79–111; Calvin C. Jillson, *Constitution Making: Conflict and Consensus in the Federal Convention of 1787* (New York: Agathon Press, 1988); Anderson, *Creating the Constitution*; Robert A. McGuire, *To Form a More Perfect Union: A New Economic Interpretation of the United States Constitution* (New York: Oxford University Press, 2003).

When employed without a careful interpretation of the political goals of the delegates, quantitative analysis can produce misleading findings. In his effort to quantify

on an especially perceptive and systematic analysis of each vote at the convention, dovetails with Rakove's conclusions. Jillson showed that coalitions of states shifted as the convention dealt with different issues and argues that philosophical issues divided the delegates in debating "the general institutional structure for the new national government," whereas differences in narrow material interests divided them "when they voted on specific mechanisms for implementing various aspects of the constitutional design."¹⁵

Surprisingly, Jillson is the only political scientist identified with the field of American political development who has tried to analyze the politics of the Constitutional Convention so thoroughly. This is surprising because, according to two of the field's leaders, Karen Orren and Stephen Skowronek, "political development" refers to "a durable shift in governing authority." The Constitution was the most significant and durable shift in governing authority in American history.¹⁶ But until recently, American political development scholars have rarely addressed the early American republic at all.¹⁷ Rather, they draw on perfunctory descriptions

the impact of economic interests at the convention, for example, McGuire's *To Form a More Perfect Union* makes a heroic effort to determine individual delegates' votes and their meaning. Many of his interpretations are uncontroversial, but some are flawed. For example, McGuire incorrectly assumes that the proposal to join judges and the president in the exercise of the veto is an example of support for moderate amendments to the Confederation government, rather than support for a completely new and stronger national government (p. 56). As argued in Chapter 6, James Madison and James Wilson, two of the most determined supporters of a stronger, thoroughly reconstituted national government, introduced this proposal in the belief that the joint veto would strengthen resistance to legislative parochialism in favor of national interests. McGuire generally has great difficulty making sense of the positions of Madison and others in the Virginia delegation in terms of economic interest (pp. 90–1). McGuire concedes that he has stretched quantitative analysis when he admits that "It is plausible . . . that the lack of significant findings for a large number of the economic and other interests results from the relatively weak data set for the Philadelphia convention. . . . It may be that considerable error is introduced into the estimating procedure because the dependent variables (the votes) are themselves based on an inference of a delegate's actual vote on each issue" (pp. 92–3). Because Madison and his fellow Virginians set the initial agenda for the meetings, this interpretive limitation severely restricts the conclusions that can be drawn from his approach.

¹⁵ Jillson, *Constitution Making*, pp. ix–xi.

¹⁶ Karen Orren and Stephen Skowronek, *The Search for American Political Development* (Cambridge: Cambridge University Press, 2004), p. 123.

¹⁷ Richard R. John argues that American political development scholars have invested too little time in the study of the early American history; see "Governmental Institutions as Agents of Change: Rethinking American Political Development in the Early Republic, 1787–1835," *Studies in American Political Development* 11:2 (1997): 347–80. American political development scholars who have studied the early republic include Rogers Smith,

of the Constitution to analyze later eras in American political history. Stephen Skowronek in *Building a New American State* and Theda Skocpol in *Protecting Soldiers and Mothers* both begin their landmark books with brief sketches of the Constitution's complexity.¹⁸ Skowronek's and Skocpol's sketches of the Constitution, in turn, depend almost exclusively on Samuel Huntington's argument that the Constitution implemented English political values of the seventeenth-century. Huntington held that Americans brought Tudor-era political principles to their colonies and, unlike the British, never transcended these ideas. Americans drew up their revolutionary state constitutions on these seventeenth-century precepts. The U.S. Constitution merely implemented the same constitutional notions on a national scale, creating a "Tudor polity." Huntington concluded that "American political institutions are unique, if only because they are so antique."¹⁹

But Huntington's glib portrayal of the Constitution is far too shallow to help us understand its design. From the very beginning, colonists had to adapt their mores and their governments to a situation profoundly different from that in Britain. American land was plentiful and labor was scarce, whereas in Britain land was scarce and labor plentiful. Acute labor

Civic Ideals: Conflicting Visions of Citizenship in US History (New Haven, CT: Yale University Press, 1997); Charles A. Kromkowski, *Recreating the American Republic: Rules of Apportionment, Constitutional Change, and American Political Development, 1700–1870* (Cambridge: Cambridge University Press, 2002); David J. Siemers, *Ratifying the Republic: Antifederalists and Federalists in Constitutional Time* (Stanford, CA: Stanford University Press, 2002) and *The Antifederalists: Men of Great Faith and Forbearance* (Lanham, MD: Rowman & Littlefield, 2003); Samuel Kernell, ed., *James Madison: The Theory and Practice of Republican Government* (Stanford, CA: Stanford University Press, 2003); Keith E. Whittington, *Constitutional Interpretation: Textual Meaning, Original Intent, and Judicial Review* (Lawrence: University Press of Kansas, 1999) and *Constitutional Construction: Divided Powers and Constitutional Meaning* (Cambridge, MA: Harvard University Press, 2001); Rogan Kersh, *Dreams of a More Perfect Union* (Ithaca, NY: Cornell University Press, 2001); James A. Morone, *Hellfire Nation: The Politics of Sin in American History* (New Haven, CT: Yale University Press, 2003), pp. 29–116; Bartholomew Sparrow, *Growing the Nation-State: U.S. Territorial Policy, 1783–1898* (unpublished manuscript, University of Texas at Austin, 2004) and "U.S. Government Lands and the Federal System," paper presented at the meeting of the Social Science History Association, St. Louis, October 2002.

¹⁸ Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920* (Cambridge: Cambridge University Press, 1982), pp. 19–23; Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, MA: Belknap Press, 1992), pp. 67–72.

¹⁹ Samuel P. Huntington, "Political Modernization: America vs. Europe," *World Politics* 18:3 (April 1966): 378–414, and *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968), pp. 93–133 (quotation from p. 98).

shortages undermined the feudal aspirations of early landholders in the Carolinas, the Hudson Valley, and elsewhere. For example, European status distinctions broke down under the pressure of American land and mobility. Americans gradually came to use prestigious titles such as “mister,” “honorable,” and “esquire” to express the status of those holding offices, instead of some natural status of the individuals themselves.²⁰ The presence of Native Americans forced settler communities to develop diplomatic skills and military capacity uncommon in England. The two most decisive factors in shaping American political development – extracting public revenues and mounting military operations – already distinguished the American colonies from Europe even before the American Revolution.²¹

Long before 1787, American politics was diverging steadily from British politics. Male freeholders were having an immediate, powerful impact on state policy that had no precedent in Tudor England; although there were severe restrictions on voting in the colonies, the lower houses of the colonial assemblies better represented public opinion than did the British Parliament. Blessed by abundant land and cursed by incessant conflict over its ownership, Americans constantly engaged in legal disputes. Courts strengthened; litigiousness blossomed in the American character. Judges turned away from British law when it did not suit the colonies’ needs. American lawyers became singularly important quasi-public officials who mediated between private parties and the state.²² As James Morone points out, religion uniquely framed Americans’ approach to all these problems and all their solutions.²³ Presbyterians contested Quakers for political control in Pennsylvania, for example. “New Lights” challenged “Old Lights” for political control in Connecticut, while “up country” Presbyterians contested coastal Anglicans in South Carolina. The defense of religious liberty became a defining issue for such young politicians as James Madison.

²⁰ Jackson Turner Main, *Society and Economy in Colonial Connecticut* (Princeton, NJ: Princeton University Press, 1985), p. 371.

²¹ See Roger H. Brown, *Redeeming the Republic: Federalists, Taxation, and the Origins of the Constitution* (Baltimore: Johns Hopkins University Press, 1993); John Shy, *A People Numerous and Armed: Reflections on the Military Struggle for American Independence* (New York: Oxford University Press, 1976), p. 233.

²² William E. Nelson, *Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760–1830* (Cambridge, MA: Harvard University Press, 1975), p. 10; Peter Charles Hoffer, *Law and People in Colonial America*, rev. ed. (Baltimore: Johns Hopkins University Press, 1998).

²³ Morone, *Hellfire Nation*, pp. 100–16.

Many delegates brought the most modern ideas about economic policy and republicanism to Philadelphia.²⁴ James Wilson professed admiration for the theory of British government but reminded fellow delegates that “we can’t adopt it – we have no laws in favor of primogeniture – no distinction of families – the partition of Estates destroys the influence of the Few –.”²⁵ George Mason, perhaps the delegate more inclined to Tudor ideas than any other, was defeated frequently, refused to sign the final product, and opposed its ratification in Virginia.²⁶ Like modern politicians who evoke revered, time-tested principles to legitimize actions that shatter the existing political order, the framers used widely accepted political axioms (including century-old arguments used against the British court) to justify the fundamental changes they were proposing. Immediate political exigencies, calculations, and compromises explain the Constitution much more fully than these seventeenth-century ideas. The hard lessons of Confederation experience, not a sentimental attachment to a distant English tradition, caused the delegates to consider national reconstitution a necessity.

I failed to find a comprehensive political narrative of the Constitution’s design in any of these accounts. There exists no thorough political analysis of all the Constitution’s provisions, centered on the delegates as politicians at work, moving through a sequence of contingent decisions toward a final product no one imagined in advance. The best historical and political science studies of the convention, by Rakove and Jillson, conclude that the delegates simply veered from material interests to philosophical principles as they voted on individual provisions, and the interests that mattered were unique to each specific choice the delegates made. But anyone familiar with the politics of large, complicated policy decisions will recognize that politicians in these situations tether their individual

²⁴ Madison’s arguments in *The Federalist Papers* suggest that he thought the informed public in New York would not be attracted to a Constitution rooted in Tudor political ideas: “Is it not the glory of the people of America, that whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience?” Alexander Hamilton, James Madison, and John Jay, *The Federalist*, ed. Jacob E. Cooke (Middletown, CT: Wesleyan University Press, 1961), no. 15, p. 88.

²⁵ RFC June 7, 1: 159; see also Edmund Randolph, June 1, 1: 66; Charles Pinkney, June 25, 1: 398.

²⁶ On two occasions at the Constitutional Convention, Mason sought to authorize the national government to pass sumptuary laws, which aimed to restrict public affectations of wealth and privilege.

decisions to deeply held political objectives and strategies. These strategies are flexible and hard to uncover in isolation, but they become more evident in close scrutiny of the *pattern* of choices that make up a complex political product like a constitution.

Existing studies arbitrarily select some "important" convention choices to analyze and ignore others. They downplay issues that may have mattered intensely to the delegates and shaped the outcome but that seem unimportant now because they were left out of the final Constitution. James Madison sought a national government power to veto state laws when he arrived at the convention, fought for it repeatedly during the meeting, and expressed deep regret about its failure afterward. Why? What does this tell us about Madison's political objectives and strategy, his intentions for national authority, national policy making, and the nation's political future? What does it tell us about the delegates who opposed his agenda? It is not sufficient to lay this glaring fact aside, concluding that Madison somehow did not really mean it. In convention narratives, the debate over the presidency fits oddly into the story, as if the delegates discussed the office in isolation from the compromise on representation and the constraints on national power. The story of the Constitutional Convention needs to be retold from a political point of view.

A POLITICAL APPROACH TO UNDERSTANDING THE CONSTITUTION'S DESIGN

The delegates who made the Constitution were first and foremost politicians, not philosophers, political scientists, or plundering speculators.²⁷

²⁷ Many negative connotations burden the term "politician" in the early twenty-first century. I use the term "politician" neutrally and dispassionately to describe an individual who devotes a substantial amount of time and effort to an elective public office or other politically sensitive appointive position. All the delegates who substantially influenced the Constitution's design had political experience, and nearly all soon occupied an elective or appointive office in the reconstituted national government. My experience with American politicians today convinces me that they seem to be motivated by a similar mix of aspirations as the general population. Like politicians today – and, for that matter, our co-workers in organizations of all kinds – the convention delegates generally behaved in a way that reconciled their interests with their principles. As Anderson notes, there is a tendency to think that politicians begin with general principles and reason down to policy specifics, when more often they begin with outcomes and reason back or reconcile them with principles (*Creating the Constitution*, p. 71). Political self-interest rarely can be reduced to simple goals of reelection or officeholding, and often it cannot even be specified fully. To achieve any goals, politicians must gain offices with public authority and must manipulate competing claims on public authority to maximize the achievement of their goals.

These politicians had helped nurture a dozen infant state republics through a devastating war and the turbulence of economic depression. Circumstances forced them to learn the art of sustaining political support while conducting any government's most unpopular activities, such as collecting taxes. These republican politicians had mastered the skills of using policy to balance conflicting demands placed on government. A given set of economic policies could accommodate voters, pacify them, divide them, and selectively mobilize them. At the same time, economic policies could stabilize and grow state economies and secure the support of economic elites. These politicians fully understood that public policy makes politics, and the two are inseparable.²⁸ Those who seek public office must promise to use government in some beneficial way and deliver on these promises, while those who seek public policy depend on those who win and hold government office.

These politicians set out to change the path of American politics, to alter the nation's destiny. They ultimately succeeded by changing the process for selecting national policy makers, by expanding national government authority, and by building a new process for using that authority. They succeeded, first, because pressing political and economic problems made it an opportune moment to reconstitute the national government. The convention met in a political climate that provided some intense but vague and unfocused support for change. Second, they succeeded because the convention's leaders drew on their own diagnosis of the national situation to propose remedies for these problems. These remedies provided a malleable starting point for deliberating constitutional design. Third, they succeeded

²⁸ According to the *American Heritage Dictionary of the English Language*, "politics" is defined variously as "1. The art or science of political government; political science." "2. The policies, goals, or affairs of a government or of the groups or parties within it." "4. The methods or tactics involved in managing a state or a government." In this sense, the study of public policy is neither an analysis of general policy processes explicitly divorced from specific outcomes nor a narrowly applied technical specialty. The French word *politique* – used to express both the English concepts "politics" and "policy" – is a better word for the meaning of policy employed in this study. Scholars of American political development study policy in this broad, politically infused meaning. See, among many other works, Skocpol, *Protecting Soldiers and Mothers*; Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States* (Cambridge: Cambridge University Press, 1992); Elizabeth Sanders, *Roots of Reform: Farmers, Workers, and the American State, 1877–1917* (Chicago: University of Chicago Press, 1999); Robert C. Lieberman, *Shifting the Color Line: Race and the American Welfare State* (Cambridge, MA: Harvard University Press, 1998); Suzanne Mettler, *Dividing Citizens: Gender and Federalism in New Deal Public Policy* (Ithaca, NY: Cornell University Press, 1998); Richard Franklin Bensel, *The Political Economy of American Industrialization, 1877–1900* (Cambridge: Cambridge University Press, 2001).

because most were willing to come to acceptable political compromises about that design, even though none anticipated the final Constitution or found it fully satisfactory.

At the convention, these delegates behaved like republican legislators because most of them *were* legislators. Even though the convention lacked the features of an established legislature today, the delegates employed familiar legislative scripts to develop the Constitution as they would a major change of law: they agreed to rules for debate and voting, used a Committee of the Whole to facilitate the initial consideration of the agenda, took hundreds of votes on substance and procedure, created special committees to deal with difficult issues, and relied on a Committee of Detail to develop a provisional draft.²⁹ Although they understood that a constitution had to be different from ordinary legislation, they conducted the *process* for crafting the Constitution much the way they had made public policy in Congress or in state legislatures.³⁰ The Constitutional Convention, then, can be studied with the analytical tools used to analyze other pathbreaking American policy developments, such as Reconstruction, the Sherman Anti-Trust Act of 1890, the Clayton Act of 1914, the National Industrial Recovery Act of 1933, the Social Security Act of 1935, the Civil Rights Act of 1964, the Clean Air Act of 1970, or other “super-statutes.”³¹ Like legislators today, some delegates attempted to manipulate the terms of the debates and the scope of conflict, and adjusted provisions to enlarge their political support. Through persuasion, bargaining, threats, and evasion, the delegates built coalitions, undermined others, and produced a series of interdependent, politically satisfactory decisions. The Constitutional Convention, of course, was no ordinary legislative process. The stakes were higher. The Constitution affected a virtually unlimited range

²⁹ In contrast to established legislatures today, the convention lacked, among other things, a formal calendar, formal leadership posts (other than the virtually silent convention president, George Washington), a staff (other than a recording secretary, William Jackson), and standing committees with jurisdiction over particular decisions.

³⁰ Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in Early America* (New York: W. W. Norton, 1988), p. 256; *Federalist* 53, pp. 360–2.

³¹ William N. Eskridge Jr. and John Ferejohn, “Super-Statutes,” *Duke Law Journal* 50:5 (March 2001): 1215–76; Richard Rodriguez and Barry W. Weingast, “The Positive Political Theory of Legislative History: New Perspectives on the 1964 Civil Rights Act and Its Interpretation,” *University of Pennsylvania Law Review* 151:4 (April 2003): 1417–1542. Although politics in the 1780s vastly differed from politics today, political *logic* then had much in common with political logic today. The political reasoning in *The Federalist Papers* sounds very modern, because its authors speak to timeless problems of republican politics.

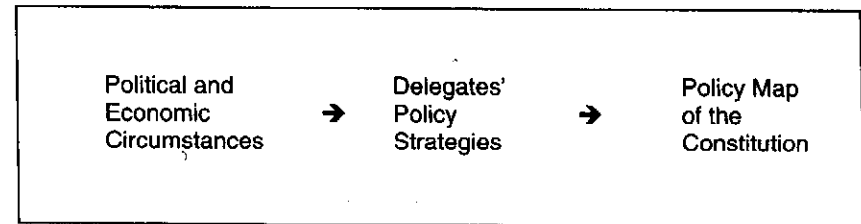


FIGURE 1.1. Framework for Systematic Analysis of the Constitution

of politically significant issues, and the final product necessarily would be more general than a statute law.³²

The Constitution's design resulted from a series of compromises about substantive issues, policy making procedures, and the control of policy makers. The goals of the Constitution are the collective goals of the thirty-nine individuals willing to sign the final product. The central analytical problem for this book is to describe that zone of acceptable compromise and to explain how the Constitution's provisions together satisfied the framers' goals.

Understanding the politics of the Constitution's design systematically requires three analytical steps (Figure 1.1). The study of the Constitution must begin with a methodical understanding of the political and economic circumstances that motivated American politicians to create pathbreaking policy change in 1787. Second, it must provide a framework for interpreting the policy agendas that shaped the convention's politics. Third, it must start with a map that organizes all the Constitution's policy choices, independent of the debates or subsequent political developments, to make it possible to connect political circumstances and policy strategies systematically to constitutional outcomes. These steps are necessary for developing an analytical or institutional narrative of the Constitutional Convention.³³

³² As the Committee of Detail put it during the proceedings, the final product, unlike legislation, aimed “To insert essential principles only, lest the operations of government should be clogged by rendering those provisions permanent and unalterable, which ought to be accommodated to times and events,” and “to use simple and precise language, and general propositions”; *RFC* 2: 137.

³³ Robert H. Bates, Avner Grief, Margaret Levi, Jean-Laurent Rosenthal, and Barry Weingast, *Analytic Narratives* (Princeton, NJ: Princeton University Press, 1998) and “The Analytic Narrative Project,” *American Political Science Review* 94:2 (September 2000): 696–702; Douglass C. North and John V. C. Nye, “Cliometrics, the New Institutional Economics, and the Future of Economic History,” paper presented at the meetings of the Economic History Association, St. Louis, 2002. Explicitly building on the idea of

Political and Economic Circumstances

Precisely what pressing policy problems were the delegates trying to solve? Political and economic circumstances drive demands for pathbreaking political change, create the opportunities for and constraints on specific kinds of change, and shape the experience of the leaders who bring about the change. Circumstances differed profoundly across the American Confederation. The convention delegates acknowledged at least three distinct regional economies whose interests were not wholly compatible. The southern economy, with extensive lands and a long growing season, was an export economy that benefited from free trade, western expansion, and slavery. The middle and northern regions grew a more diverse crop, on smaller farms. New England, with short growing seasons and poor soil, was developing a diversified economy with fishing, trade, and manufacturing. Unlike the plantation South, New England benefited from regulated trade and had little use for slavery. Other economic cleavages cut across these broad regional interests. Poorer backcountry areas resented wealthy creditors and coastal elites. Hemmed-in states with restricted lands resented Virginia and other states with expanses of land that reached far to the west. Massachusetts, New York, and Pennsylvania had port cities that could generate substantial public revenues from tariffs, sometimes at the expense of neighboring states. Other states, such as New Jersey, had suffered more economic damage from the Revolutionary War than others. Heavy public debts burdened South Carolina and Massachusetts more than many states.

State and local boundaries established political interests partially independent of these economic divisions. The states governed land, labor, capital, and commerce in the Confederation. From the perspective of the economic interests within any state, that state's economic authority provided them a valuable asset. For example, states could increase

an analytical narrative, North and Nye describe an "institutional narrative" as "a presentation of a historical case as a sequence of events which allow us to highlight the critical turning points that . . . show us how states came to deal with specific problems or changing circumstances" (p. 9). Both models aim to apply analytical tools, particularly the tools of microeconomic theory, to explain critical historical cases and placing these cases in a larger narrative. In this book, I use economic concepts and public choice concepts (such as fiscal illusion, public goods, and the dilemma of cooperation) and political science concepts (such as agenda setting, issue framing, and coalition building). I contend that "analytical narratives" or "institutional narratives" will provide limited advances in knowledge unless they self-consciously specify, rigorously and exhaustively, the dependent variables that constitute the turning points they seek to explain. The policy map offered here aims to provide this specification for the Constitution.

tariffs on certain products made in neighboring states, thus protecting the market for in-state manufacturers of the product. Influenced by differences in factor endowments, culture, and leadership, each state pursued a different mix of commercial, financial, and other economic policies. The economic depression of the 1780s accelerated state economic policy experimentation. Many states' policies benefited some domestic (that is, in-state) interests by exporting policy costs to neighboring states. Connecticut, New Jersey, Delaware, and Maryland, situated next to the larger states with more economic assets – Virginia's land, New York's port, or Pennsylvania's diverse economy – became key supporters of added national powers if these specific powers could offer protection against their advantaged neighbors.

Like leaders in any organization, state political leaders had developed a stake in protecting their institutions' existence and independence.³⁴ These leaders had helped develop basic policy-making institutions in their respective states and built governing coalitions tailored to each state's unique economic, cultural, and political circumstances. Delaware, for example, the most amorphous creation, was initially considered part of Pennsylvania. Delaware sent residents of other states to represent it in the Continental Congress even in the early 1780s. By 1787, though, Delaware government was more fully institutionalized, and Delaware residents both represented and governed the state.³⁵ The states managed diverse economic assets and enjoyed varied political advantages, including some not under their control, such as relative population size and growth potential. These state leaders naturally resisted the loss of control over taxes,

³⁴ Sociologist James D. Thompson argues that organizations are driven by the need to minimize uncertainty and dependence; see *Organizations in Action* (New York: McGraw-Hill, 1967). W. Richard Scott elaborates on this perspective in *Organizations: Rational, Natural and Open Systems*, 5th ed. (Upper Saddle River, NJ: Prentice-Hall, 2002). This compelling need to retain policy autonomy also provides additional insight into the state governments' motives and relationships in the Confederation period. Many scholars have elaborated the notion that politicians have sunk costs and opportunity costs in their institutional prerogatives. For Congress, see David Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974), and Morris P. Fiorina, *Congress: Keystone of the Washington Establishment* (New Haven, CT: Yale University Press, 1977). For bureaucracy, see Anthony Downs, *Inside Bureaucracy* (Boston: Little, Brown, 1957), and Gordon Tullock, *The Politics of Bureaucracy* (Washington, DC: Public Affairs Press, 1965). In international relations, see Robert Gilpin, *The Political Economy of International Relations* (Princeton, NJ: Princeton University Press, 1987).

³⁵ John A. Munroe, *Federalist Delaware, 1775–1815* (New Brunswick, NJ: Rutgers University Press, 1954).

commerce, and property, the most politically potent policy tools at their disposal.

A systematic analysis of these political and economic interests requires a thorough, inclusive study of economic histories and state histories.³⁶ Concepts drawn from political economy help identify political and economic relationships.³⁷ The concept of public goods, or goods often provided by government (such as national defense) when private suppliers provide little or none, is especially helpful for understanding conflicts over government economic policy in the 1780s.³⁸ Political scientist Keith Dougherty

³⁶ Ferguson, *The Power of the Purse*; Curtis P. Nettels, *The Emergence of a National Economy, 1775-1815* (New York: Holt, Rinehart, and Winston, 1962); Gary M. Walton and James F. Shepard, *The Economic Rise of Early America* (Cambridge: Cambridge University Press, 1979); Alice Hanson Jones, *Wealth of a Nation to Be: The American Colonies on the Eve of the Revolution* (New York: Columbia University Press, 1980); Robert A. Becker, *Revolution, Reform, and the Politics of American Taxation, 1763-1783* (Baton Rouge: Louisiana State University Press, 1980); John J. McCusker and Russell Menard, *The Economy of British America, 1607-1789* (Chapel Hill: University of North Carolina Press, 1985); Roger H. Brown, *Redeeming the Republic: Federalists, Taxation, and the Origins of the Constitution* (Baltimore: Johns Hopkins University Press, 1993); Cathy D. Matson, "The Revolution, the Constitution, and the New Nation," in *The Cambridge Economic History of the United States*, vol. 1: *The Colonial Era*, ed. Stanley L. Engerman and Robert E. Gallman, (Cambridge: Cambridge University Press, 1996); Margaret Ellen Newell, "The Birth of New England in the Atlantic Economy: From Its Beginning to 1770," in *Engines of Enterprise: An Economic History of New England*, ed. Peter Temin (Cambridge, MA: Harvard University Press, 2000), pp. 11-68. Richard Franklin Bensel details geographical conflicts of economic interest in American political development in his major studies, *Sectionalism and American Political Development* (Madison: University of Wisconsin Press, 1984), *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (Cambridge: Cambridge University Press, 1990), and *The Political Economy of American Industrialization, 1877-1900*.

³⁷ Edmund S. Phelps, *Political Economy: An Introductory Text* (New York: W. W. Norton, 1985); Dennis C. Mueller, ed., *Perspectives on Public Choice: A Handbook* (Cambridge: Cambridge University Press, 1997); Allan Drazen, *Political Economy in Macroeconomics* (Princeton, NJ: Princeton University Press, 2000); Torsten Persson and Guido Tabellini, *Political Economics: Explaining Economic Policy* (Cambridge, MA: MIT Press, 2000).

³⁸ Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard University Press, 1965); Duncan Snidal, "Public Goods, Property Rights, and Political Organizations," in *The Moral Dimensions of Public Policy Choice: Beyond the Market Paradigm*, ed. John Martin Gillroy and Maurice Wade (Pittsburgh: University of Pittsburgh Press, 1992), pp. 285-311. More formally, a public good is a good that can be shared by any member of a community without causing less to be available to any other member. Such a good is nonrivalrous in supply (that is, all members of the community receive the benefit) and nonexclusive in consumption (that is, one individual who benefits from the good cannot block others from consuming it without paying for it). A contemporary example is a radio broadcast. These characteristics create two kinds of problems: the free-rider problem (individuals who share the benefits of the good without bearing their share of the cost), and the failure to produce enough of the good to maximize the benefit to society as a whole.

uses the concept of public goods to analyze systematically the financial policies of the Continental Congress.³⁹ As elaborated in Chapter 2, the states provided most of the public goods in the Confederation period, but inevitably produced too few of these goods, stimulating demands for a better-funded, more-credible national authority. A related concept is the dilemma of cooperation, in which one individual, eschewing cooperation and acting instead for personal gain, leaves himself and every other party worse off than they would have been had they cooperated. The states, which governed the American economy with little or no interference from the Confederation government, were caught in a dilemma of cooperation. State politicians sought to control tax, currency, debt, property, and other policies necessary to manage their economics and politics. But state policy control was a double-edged sword. When neighboring states' political leaders made trade, currency, and other policies that harmed their constituents and their economies, state politicians urged national rules. At the same time, the national government's inability to fund its activities and develop commercial agreements with other nations also hurt their constituents. Their states' very policy independence, ironically, compelled the delegates to seek a national government more capable of providing specific public goods.

Policy Strategies for the Constitution

Circumstances created an opportunity for pathbreaking policy change as the delegates arrived in Philadelphia, but circumstances did not decide the Constitution's provisions. What did the delegates make of these circumstances? What solutions did they put forward to address these problems, and how did the delegates negotiate their way to common political ground? The delegates to the Constitutional Convention, like later policy makers confronting the task of constructing pathbreaking policies, had a mandate that was both urgent and ambiguous: making "the federal Constitution adequate to the exigencies of Government & the preservation of the Union."⁴⁰ The delegates had to define problems, interpret the political conditions, weigh policy alternatives, and forecast the likely consequences of each of their policy choices. The delegates framed the Constitution provision by provision over the course of three and a half months. None could have anticipated the twists and turns of the

³⁹ Dougherty, *Collective Action under the Articles of Confederation*.

⁴⁰ "Resolution of Congress," February 21, 1787, in RFC 3: 13-14.

convention's process, and none could have predicted the actual product of the convention when they began on May 25, 1787.

The delegates' policy strategies require systematic analysis because they provide the intellectual bridge that connects the Confederation's circumstances to specific constitutional provisions. Policy strategy refers to the set of related premises about goals, expectations, assumptions, political tactics, and other ideas that policy makers use when they pressure government to act in a specific way.⁴¹ Individuals draw on experience, aspirations, and invention to forge strategies that are linked to circumstances but not determined by them. Policy strategy influences policy outcomes by shaping the policy agenda, the formulation of policy alternatives and structure of choice, and strategies of opposition.⁴² Policy strategy is revealed in statements of support and opposition for specific policy provisions. Policy debate is full of explicit inferences about political necessity, impossibility, interests, tactics, and expectations about policy effects.⁴³

The delegates' strategies matter so much because the framers did not and could not write into the Constitution "directly and unerringly" the interests of the nation's propertied elites. The most influential delegates – particularly James Madison – were rebuilding the American state to make it stable and powerful enough to pursue the nation's long-term interests.⁴⁴ Their government had to nurture the nation's prosperity long into the future. These state builders took it for granted that private property, free markets, and commercial expansion were essential for future prosperity,

and they appreciated that propertied elites were key agents for expanding markets and driving economic development. But many framers viewed the interests of these elites as too narrow, short-term, uninformed, and conflicted to provide much reliable guidance for redesigning the nation's basic political structure and recasting long-term policy.⁴⁵ The framers were trying to balance the government's basic needs (especially for revenue), their own ambitions for the nation's destiny, the clashing claims of different economic interests, and the demands of the more numerous citizens of modest means. Even when they were inclined to implement propertied elites' preferences, policy makers had to balance economic development against the demands of the nation's emerging democracy. Legislators needed a broader constituency to win elections to office. They had to show some responsiveness to the grievances of those with modest means. At the very least, elected policy makers had to make any program of market-driven economic development acceptable and legitimate for a majority of the constituents to whom their political fates were tethered.

In any case, it is impossible to enter the mind of an individual delegate to determine how he balanced principles and interests when he took a position on an issue of constitutional design. Jack Rakove observed that "[w]hat is elusive is the interplay between ideas and interests" in the Constitution's design.⁴⁶ A delegate's idealistic argument for strong national powers may have concealed a driving ambition to elevate his state or to seek the personal prestige and power of national office. Another delegate's defense of state prerogatives may have reflected sincere dedication to the principle of constituent representation and a deeply held belief in the superiority of the social, economic, and political order of his state. We can never know for certain. What is certain is that the delegates used ideas as rhetorical weapons to defend positions that closely matched their political interests. Political calculations shaped delegates' views of the stakes in most of the choices about the Constitution's design. Political calculations and negotiations, not just abstract

⁴⁵ Soon after the Constitution's adoption, when the new Congress convened in 1789, Representative James Madison observed that "I pay great respect to the opinions of mercantile gentlemen, and am willing to concede much to them, so far as their opinions are regulated by experience." But, he continued, "we know there is an essential difference between the interest of merchants and the interest of commerce; we know there may be distinctions also between the interest of commerce and of revenue, and that in some cases we must sacrifice the one to the other" (*DHFC* May 9, 1789, 10: 562-3).

⁴⁶ Rakove, *Original Meanings*, p. 15.

⁴¹ I elaborate on policy strategy in *Capital, Labor, and State: The Battle for American Labor Markets from the Civil War to the New Deal* (Lanham, MD: Rowman and Littlefield, 2000), pp. xiii-xvii, 13-27.

⁴² John W. Kingdon, *Agendas, Alternatives, and Public Policies*, 2nd ed. (New York: Harper-Collins, 1995); E. E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America* (New York: Holt, Rinehart and Winston, 1960); Riker, *The Art of Political Manipulation* and *The Strategy of Rhetoric*.

⁴³ The tools of analytical philosophy are used to reconstruct policy strategy systematically to relate circumstances to policy outcomes. On conceptual analysis in politics and public policy, see Richard E. Flathman, ed., *Concepts in Social and Political Philosophy* (New York: Macmillan, 1973); William E. Connolly, *The Terms of Political Discourse* (Princeton, NJ: Princeton University Press, 1993); Deborah A. Stone, *Policy Paradox: The Art of Political Decision Making*, rev. ed. (New York: W. W. Norton, 2001). On the social construction of public policy, see Frank Fischer and John Forester, eds., *The Argumentative Turn in Policy Analysis and Planning* (Durham, NC: Duke University Press, 1993).

⁴⁴ Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 1984), p. 23.

ideas, settled the disputes these choices engendered. By expanding the concept of interest beyond personal pecuniary gain and selfish parochialism to include political interests, it is much easier to see how closely the delegates' ideas and interests aligned with one another in their policy strategies.

James Madison's policy strategy requires an especially careful analysis because Madison's ideas set the convention's agenda and shaped its politics. Madison's Virginia Plan sought to establish a national policy-making system independent of the state governments and armed with most of the authority to govern the national economy. The national government would assume full authority to manage economic development for the interest of the republic as a whole. Even after the defeat of provisions crucial to his agenda, Madison and his allies fought to inject this strategy into national government powers and institutions such as the presidency. Understanding the politics of the Constitution requires a careful understanding of the way Madison defined the nation's problems and the way his plan would mitigate them. Madison's writings in the years before 1787 and his reported comments during the convention provide the evidence for reconstructing Madison's political reasoning. Chapter 3 analyzes Madison's policy strategy for the Constitution.

By forcing the delegates to consider greater policy independence and authority for the national government, Madison's strategy provided a focal point that brought together the opponents of his scheme. The delegates who resisted Madison's proposals did so for different reasons. Many, like Connecticut's delegates, sought to avoid the unnecessary surrender of state prerogatives to the new national government. Connecticut's Roger Sherman and his colleagues became Madison's chief antagonists and relentless advocates for a rival constitutional strategy. The design of the U.S. Constitution reflects Madison's opponents' influence as much as Madison's. Chapter 4 deals with the policy interests and strategies of Madison's supporters and opponents.

Once Virginia's plan for reconstituting government was introduced on May 29, the delegates considered individual provisions piecemeal. The official journal recorded 569 votes by the time the convention adjourned on September 17. Although Madison brilliantly had supervised the convention's initial agenda, he found that incremental political decisions gradually chipped away at his coalition. Madison, his opponents, and other delegates adapted their strategies to changing opportunities and constraints as the meeting unfolded.

The design of the U.S. Constitution emerged from a dynamic, unpredictable sequence of path-dependent choices.⁴⁷ Each choice influenced and narrowed subsequent political calculations, options, choices, and outcomes. Many of the delegates' votes were so close that the shift of a few votes would have changed the convention's path and altered American government. For example, the delegates very nearly decided that there would be no authority to create federal courts other than the Supreme Court, that all new states would come into the Union with less representation than the original thirteen states, and that the Supreme Court would join the president in vetoing congressional legislation.⁴⁸ Because decisions were contingent on one another, the timing of decisions became critically important. Madison insisted on establishing convention support for proportional representation in both the House and the Senate before the convention considered national authority. But the longer the fight over representation dragged on, the more his opponents drew attention to the national government's authority, causing Madison to lose support for some of the key features of his initial plan. Several choices, therefore, became critical turning points that changed the political calculus of subsequent choices. The decisive victory for the Connecticut Compromise in mid-July caused Madison to support an independent presidency, Sherman to promote the powers of the Senate, and South Carolina's John Rutledge to advocate more limits on national powers. Once they were made, many choices became politically irreversible. When the delegates apportioned the number of representatives in the first House of Representatives on July 10, the number fixed for each state remained locked in despite repeated efforts to change the distribution of seats.

Although its written records provide the primary evidence for the convention's politics, these records are far from perfect. There exists no official record of the debates comparable with the modern *Congressional Record*. The delegates imposed a rule of secrecy on their debates, and they honored this rule. Although the official Journal of the convention is reasonably accurate, it provides only a list of the formal proceedings and a list of votes on each day of the convention, and so has limited utility

⁴⁷ On path dependence, see Stephen J. Gould, *The Panda's Thumb: More Reflections in Natural History* (New York: W. W. Norton, 1980); Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990); Paul Pierson, "Increasing Returns, Path Dependence, and the Study of Politics," *American Political Science Review* 94:2 (June 2000): 251-67.

⁴⁸ RFC June 5, 1: 119, 125; July 2, 1: 510; July 14, 2: 2-3; July 21, 2: 72, 80.

for exploring the policy strategies of the delegates. Several delegates took notes, but most of these notes are quite sketchy. Robert Yates took notes on the proceedings until his departure on July 5, but later Yates's notes were edited heavily for partisan purposes and cannot be relied upon as a fair record. James Madison's notes on the debates provide the most complete and reliable record of the proceedings.⁴⁹ However, because they evidently cover only a fraction of the actual floor discussion and provide virtually no record of the important informal discussions among the delegates off the convention floor, Madison's notes must be corroborated with other reliable records and actual decisions.⁵⁰

Unlike most others who analyze the Constitution's design, I do not depend on *The Federalist Papers* and other evidence from the ratification debates to explain the delegates' intentions. I am explaining the design of the Constitution the delegates completed on September 17, 1787, not the Constitution's subsequent adoption by the states. The *Federalist* essays

⁴⁹ In his unpublished preface to the debates written late in life, Madison wrote "In pursuance of the task I had assumed I chose a seat in front of the presiding member with the other members, on my right & left hand. In this favorable position for hearing all that passed, I noted in terms legible & in abbreviations & marks intelligible to myself what was read from the Chair or spoken by the members; and losing not a moment unnecessarily between the adjournment & reassembling of the Convention I was enabled to write out my daily notes during the session or within a few finishing days after its close in the extent and form preserved in my own hand on my files. . . . In the labor and correctness of this I was not a little aided by practice, and by a familiarity with the style and the train of observation and reasoning which characterized the principal speakers. It happened, also, that I was not absent a single day, nor more than a casual fraction of an hour in any day, so that I could not have lost a single speech, unless a very short one." James Madison, "Preface to Debates in the Convention of 1787," *RFC* 3: 550. William Winslow Crosskey, in *Politics and the Constitution in the History of the United States* (Chicago: University of Chicago Press, 1953), argued that Madison had doctored his notes and falsely represented the content of the debates. James H. Hutson's thorough analysis shows that there is little evidence to support Crosskey's conclusions; see Hutson, ed., *Supplement to Max Farrand's "The Records of the Federal Convention of 1787"* (New Haven, CT: Yale University Press, 1987), pp. xx–xxiv. Later in life, Madison did make some minor edits in his original notes (Max Farrand, "Introduction," *RFC* 1: xviii–xix). In the quotations from Madison's notes in this book, Madison's later edits are indicated by angle brackets. My editorial changes are indicated by square brackets.

⁵⁰ Madison's notes exclude only one important speech – a speech by John Dickinson on May 30 – that is reported in another delegate's notes other than Yates (compare Madison's notes, *RFC* May 30, 1: 33–8, with McHenry's notes, *RFC* May 30, 1: 42). Madison's notes most likely emphasized the kinds of theoretical arguments that he himself wielded with such facility. Madison's own account of his speech on the veto is much more theoretical and abstract than Rufus King's report of Madison's speech. In King's account, Madison spells out the diversity of material interests in the United States (*RFC* June 4, 1: 100, 108).

justify the Constitution, but they do not explain accurately how the convention delegates designed the Constitution. First and foremost, they are polemical tracts written to urge New Yorkers to support ratification.⁵¹ These essays must be used very sparingly, for they necessarily distort the politics of constitutional design by masking the political conflicts from which these provisions emerged.⁵² The delegates agreed to compromises that few would have endorsed had they the power to design and adopt a constitution alone, regardless of the enthusiasm with which they defended the document afterward. Madison notably had a much more nationalized policy system in mind, and his private letters before the convention reveal much more about his true preferences than does his post hoc account of the Constitution in New York newspapers. After the convention, he criticized certain provisions of the Constitution in private correspondence even while his brilliant justification of its provisions were appearing in the *Federalist*.⁵³ Because the written record is so incomplete, it is important to use logic, social science, and the political context

⁵¹ Roche, "The Founding Fathers: A Reform Caucus in Action"; Garry Wills, *Explaining America: The Federalist* (Garden City, NY: Doubleday, 1981); Samuel Kernell, "The True Principles of Republican Government: Reassessing James Madison's Political Science," in *James Madison: The Theory and Practice of Republican Government*, ed. Samuel Kernell (Stanford, CA: Stanford University Press, 2003), pp. 92–125.

⁵² *The Federalist Papers* evidently manipulated the Constitution's intent to ensure a positive reception. For example, its authors emphasized that the separation of judicial powers from the rest of the government had been copied from the constitutions of nine of the states, a claim that clearly exaggerated the comparison between these states and the proposed Constitution (no. 81, pp. 544–5). See William N. Eskridge Jr., "All about Words: Early Understandings of the 'Judicial Power' in Statutory Interpretation, 1776–1806," *Columbia Law Review* 101:5 (June 2001): 990–1106. Scholars who assume that *The Federalist Papers* provides an explanation of the delegates' reasoning sometimes underestimate the founders' political understanding of their own product. Robert A. Dahl concluded that Hamilton misunderstood the Electoral College in *Federalist* 68 because Hamilton expressed the view that the people would choose presidential electors, although relatively few voters actually did choose these electors; see *How Democratic Is the American Constitution?* (New Haven, CT: Yale University Press, 2001), p. 76. It is much more likely that Hamilton's assertion was politically motivated. The Electoral College, like other features of the Constitution, was designed to permit state officials to tailor many political choices to the necessities of state politics, a feature that allowed Hamilton to make this claim to New Yorkers. Hamilton himself had participated in the debate that allowed each state's legislature to determine how electors would be chosen (*RFC* September 6, 2: 525).

⁵³ James Madison to Thomas Jefferson, October 24, 1787, in *PJM* 10: 209–14; Charles F. Hobson, "The Negative on State Laws: James Madison, the Constitution and the Crisis of Republican Government," *William and Mary Quarterly* 36:2 (April 1979): 217; Richard K. Matthews, *If Men Were Angels: James Madison and the Heartless Empire of Reason* (Lawrence: University Press of Kansas, 1995), p. 15.

TABLE 1.1. A Policy Map of the U.S. Constitution's Provisions Categorized by Policy Agency, Policy Authority, and Policy Process

Policy agency	
Article I	
Section 2	House: Selection, eligibility, apportionment, term, vacancies
Section 3	Senate: Selection, eligibility, apportionment, term, vacancies
Section 4	Times, places, and manner of holding congressional elections
Section 5	Judgment of congressional election results and qualifications
Section 6	Compensation and other national offices
Article II	
Section 1	President and vice president: Selection, eligibility, term, vacancies
Section 4	Impeachment
Article III	
Section 1	Judges: Term, compensation
Article IV	
Section 3	New states; territories
Article V	Equal representation in Senate cannot be amended
Article VI	No religious test for office
Policy authority	
Preamble	Purposes
Article I	
Section 1	Allocation of legislative power
Section 8	Enumerated powers; "necessary and proper" clause
Section 9	Specific powers denied to Congress
Section 10	Specific powers denied to States
Article III	
Section 3	Treason
Article IV	
Section 1	Full faith and credit for state laws
Section 2	Privileges and immunities; runaway slaves
Section 3	Territorial law
Section 4	Protection against invasion and domestic violence
Article V	Slave trade protected until 1808
Article VI	National debts; supremacy clause; oath
Policy process	
Article I	
Section 2	House officers; impeachment
Section 3	Senate officers; impeachment
Section 4	Congressional meetings
Section 5	Quorum; attendance; rules; journal; adjournment
Section 6	Congressional privileges
Section 7	Revenue bills originate in the House; veto process
Article II	
Section 1	Executive power; oath
Section 2	Presidential powers
Section 3	State of union; special sessions; responsibilities

Article III	
Section 1	Supreme Court and inferior courts
Section 2	Judicial power; original and appellate jurisdiction; trials
Section 3	Treason
Article IV	
Section 4	Guarantee of republican government in the states
Article V	Amendment process
Article VII	Ratification

to identify unspoken and understated premises that fill gaps in convention argumentation. Identifying these key premises and their relationship depends on a comprehensive blueprint of constitutional decisions.

A Policy Map of the Constitution

A thorough understanding of the Constitution requires a comprehensive policy map of all of the Constitution's provisions, independent of the political controversies at the convention, in the ratification process, or in the subsequent history of American politics. I sorted the Constitution's provisions into three categories of policy choice: policy agency, policy authority, and policy process (Table 1.1). Chapters 5, 6, and 7, respectively, provide analytical narratives of the way the delegates developed constitutional provisions in each of these categories.

I used this map to guide my analysis of who the framers intended to govern the economy, for what purposes they intended it to be governed, and how they intended it to be governed. The map is essential for several reasons. First, a policy map forces us to observe and account for every choice the delegates made, not just an arbitrarily selected set of decisions. We must assume that any overt conflict over a constitutional provision had political significance for the delegates, no matter how seemingly minor or arcane.⁵⁴ It is our responsibility to identify and understand the

⁵⁴ Some of the passages in the Madison's notes present formidable challenges to interpretation. Here is an example of one of the most opaque sentences in the debates, and one that illustrates the political jockeying that pervaded the proceedings. After the delegates had begun to discuss the proposed Electoral College for selecting the president, "Mr Madison & Mr. Williamson moved to insert after 'Electors' the words 'who shall have balloted' so that the non voting electors not being counted might not increase the number necessary as a majority of the whole - to decide the choice without the agency of the Senate -" (RFC September 5, 2: 515). This nearly impenetrable sentence must be understood in the context of the deep, protracted political struggle between delegates like Madison who wanted to reduce the power of the Senate and those who sought to maximize its policy influence. The convention was considering whether the president would be elected

significance of such a conflict, not to choose which conflicts should or should not “count” in the narrative because of our arbitrary notions of their importance. Second, a policy map enlarges our vision of convention politics by forcing us to interpret an entire category of policy choices, instead of isolating each constitutional provision. By identifying a set of choices to be explained, this conceptual map forces us to relate all debates about agency, authority, and process to each other from the beginning of the convention to the end. The map makes it crucial to examine the relationship and the sequence among decisions within and across the categories of choice. Third, a policy map provides additional information about policy strategy by placing each choice in the context of related decisions. A better understanding of the political importance of a provision helps explain why the delegates viewed seemingly arcane choices about the definition of treason or the control of the militia as part of a broad struggle between competing models of American governance. Finally, a policy map forces us to interpret provisions that were defeated at the convention and to gain from those rejected proposals further insight into the delegates’ intentions.

Policy agency refers to decisions about who governs, that is, about the persons who occupy policy-making positions and the control of policy-making offices. These decisions include the eligibility and rewards for different offices, the rules for selecting and removing officeholders, and the number and apportionment of officeholders. How many individuals are engaged formally in national policy making, and in what policy-making bodies? How are they chosen, and who do they represent? What are

by a majority of the votes of the presidential electors, but Madison wanted the president elected by a majority of those actually voting, not the potentially larger majority of all possible electors from all the states. Without a majority in the Electoral College, the Senate would elect the president, with each state casting an equal vote. Madison’s motion aimed to increase the chances that the Electoral College instead of the Senate would choose the president, and to reduce the chance that electors from a given state would try to game the outcome of the presidential election by refusing to vote, therefore throwing the election into the Senate. Larger states would wield relatively more influence over presidential selection in the Electoral College, smaller states would have more influence in the Senate. The motion lost, four votes to seven, with states expecting larger than average electoral votes favoring the motion and smaller states against. Immediately after the motion’s defeat, the convention moved to reduce political gaming by providing that the majority would be constituted by “the whole number of the Electors *appointed*” by the states (emphasis added), forcing states to appoint electors to influence the selection of the president. Later in the convention, the delegates provided that the House, not the Senate, would decide presidential elections in the event that no candidate had a majority of the Electoral College vote.

the rules for selecting or removing members, and who controls these processes?

Debates over representation at the convention were no mere philosophical disputes. If the Constitution had been merely an exercise in republican institution building disconnected from urgent political and economic problems, it would have failed politically. The delegates fought so hard over the selection of key legislators, the president, and other national policy makers because they perceived that the rules for selecting these officeholders had a direct policy impact on vital state and national policy interests. The delegates’ disagreed about the states’ relative influence over the choice of policy makers, and this disagreement deadlocked the convention in early July. States with large populations, such as Virginia and Pennsylvania, supported proportional representation in both houses of Congress because such representation would give these states much more influence over national policy outcomes than the power they currently exercised in the Confederation Congress. States with smaller populations insisted on equal state representation to protect a measure of the policy influence they enjoyed in the Confederation Congress. After the delegates compromised on proportional representation in the House of Representatives and equal state representation in the Senate, this dispute spilled over into other battles, most notably over the selection of the president. Chapter 5 deals with the design of policy agency.

Policy authority refers to decisions about the scope of public policy, that is, the legitimate right to make policy in a given field. What is governed? What is government allowed to do? What are the limits of public authority? These decisions involve the definition of legislative powers, the limits on those powers, and conditions under which the limits may be exceeded. The delegates generally agreed that the national government should have more authority to tax and to govern commerce, but they were divided over the scope of these powers and the need for even greater authority. As the distribution of seats in Congress became clearer in mid-July, delegates scrambled to set boundaries of national power in a way that permitted national policies to benefit their constituents while also making it difficult to enact policies that would harm their state. The delegates thus agreed to authorize national public goods that would benefit every state, such as commercial treaties, national revenue, and national defense. They also withdrew state powers to interfere with commerce. But the delegates left substantial economic authority in state hands, and did so to protect the political orders they had helped tailor to each state constituency. Chapter 6 examines the design of policy authority.

Policy process refers to decisions about how policy is made, that is, the rules for formulating, legitimating, and implementing public policy. The Constitution created policy-making roles for the House of Representatives, the Senate, the executive branch, and the courts. It guaranteed a republican government in every state and specified the processes of constitutional ratification and amendment. It forced separate institutions to share power, enabling different institutions to participate in formulating policy in ways that were unanticipated but not wholly unpredictable. After July 5 the delegates jockeyed to ensure a process that would make it difficult for the national government to make policies that could harm their state. Madison and his allies pressed to increase the power of the president in the process because the president was more likely to pursue purely national interests. The Connecticut delegates defended the policy influence of Congress in general and the Senate in particular because these institutions were more likely to protect the existing policy prerogatives of the states. The policy-making processes approved by the delegates, then, depended on the policy outcomes they expected these processes to produce. Chapter 7 analyzes the design of the policy process.

THE POLITICS THE CONSTITUTION MADE

The Constitution was both pathbreaking and path making. The politicians who wrote the Constitution sought a government that would produce better policies than the Confederation government. They tried to design a government more apt to protect national sovereignty and encourage market-driven economic development. Path-making policy projects like the Constitution always have emerged from intense, tortuous, and exhausting processes thoroughly permeated by politics. These grand policy initiatives usually have fallen short of their most ardent supporters' hopes, and when they do, supporters comfort themselves that their product is satisfactory, repairable, and the best that could be done under the circumstances. Today's policy makers would recognize instantly Benjamin Franklin's assessment of the political results of the Constitutional Convention.

[W]hen you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those 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. . . . I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that

it is not the best. . . . If every one of us in returning to our Constituents were to report the objections he has had to it, and endeavor to gain partizans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects & great advantages resulting naturally in our favor among foreign Nations as well as among ourselves, from our real or apparent unanimity.⁵⁵

Franklin and his colleagues understood that their Constitution would encourage and structure politics in the future.

Chapter 8 examines the Constitution's enduring effects on the path of American politics and policy. The Constitution's early years illustrate many of its enduring features: the use of the Constitution itself as a political weapon, the struggle between state and national policy authority, the struggle among separated national institutions to control public policy, and the difficulty and expense of using American government to solve public problems. The constitutional framework helps explain how American politics became so different from politics in comparable nations around the turn of the twentieth century.

In late May 1787, none of the delegates who later signed it could have predicted the Constitution's final design, much less its durability and impact on America's destiny. But the delegates did not set out on an unmarked path. Immediate crises and experiences set the direction for the convention. The Constitution principally aimed to solve immediate political and economic dilemmas that appeared to have put the Confederation on the brink of political disaster.

⁵⁵ RFC September 17, 2: 642-3.