

# HOW THE FIRST STATE CONSTITUTIONS HELPED BUILD THE U. S. CONSTITUTION

DURING THE AMERICAN REVOLUTION, THE FORMER ENGLISH COLONIES EACH ADOPTED THEIR OWN CONSTITUTIONS. THESE FIRST STATE CONSTITUTIONS PROVIDED THE BUILDING BLOCKS FOR THE U. S. CONSTITUTION, INCLUDING THE BILL OF RIGHTS.

After the Revolutionary War, delegates from the thirteen American states met at Philadelphia to draft a new constitution for the United States. They were unhappy with the weakness of the national government under the Articles of Confederation. But where did the delegates get their ideas for what became the U. S. Constitution?

The delegates understood England's "unwritten constitution," based on centuries of customs, rights, common law court decisions, and the acts of kings and Parliament. But these constitutional elements were sometimes ignored or violated by the king since there was no written guarantee that the monarch must obey them.

Closer to home, the delegates knew how their colonial governments had evolved from royal charters and land grants to a significant degree of self-rule. A majority of the delegates at the Constitutional Convention in 1787 also had been members of one or both of the Continental Congresses that met during the Revolutionary War. More importantly, most of them had been involved in debating and writing the constitutions for their own states. These first state constitutions proved to be the greatest source of ideas for drafting the U. S. Constitution and later the Bill of Rights.

## First State Constitutions

Four colonies adopted constitutions even before the Declaration of Independence was proclaimed on July 4, 1776. After that date, all the colonies



"PATRICK HENRY Before the Virginia House of Burgesses" (1851) by Peter F. Rothermel shows Patrick Henry making a speech against the Stamp Act of 1765, when he famously declared, "If this be treason, make the most of it!"

referred to themselves as states of the United States of America.

The states went about adopting constitutions in three ways. Eight states relied on their regularly elected colonial legislatures renamed "provincial congresses." Three states elected delegates to a constitutional convention. Two states, Connecticut and Rhode Island, did not write new constitutions, but instead simply revised their colonial charters.

On January 5, 1776, New Hampshire's provincial congress adopted the first state constitution. This constitution was intended to be a temporary fundamental law "during the present unhappy and unnatural contest with Great Britain." It set up a basic structure of government but did not provide for a governor, bill of rights, or amending process. A state convention added these things in a second constitution adopted in 1784.

Massachusetts was the last of the states to write and adopt its first constitution. In 1778, the provincial congress submitted a draft constitution to the voters at town meetings, but they turned it down.

A convention was then elected specifically to draft a constitution. John Adams wrote most of it, which included a bill of rights. Massachusetts voters finally approved this constitution by the required two-thirds vote in 1780. This was the first time voters ratified a state constitution. It remains the world's oldest written constitution still in effect.

Vermont was not recognized as a state at this time because the neighboring states disputed its boundaries. Nevertheless, in 1777, Vermonters met in a convention and adopted a constitution anyway. It was the first state constitution to prohibit slavery.

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## Building Blocks

A written constitution generally describes the structure of a government. It may also identify rights guaranteed to citizens. A written constitution is superior to all laws enacted by a legislature. For example, the U. S. Constitution declares itself to be “the supreme Law of the Land.”

By 1780, all the first state constitutions plus that of Vermont had created most of the building blocks that were used to draft the U. S. Constitution at the Philadelphia Convention in 1787.

## Overriding Principles

All the states accepted the idea of “popular sovereignty.” This means that all the powers of government originally came from the people. Delaware’s constitution stated, “Persons entrusted with the legislative and executive Powers are the Trustees and Servants of the Public.”

Based on popular sovereignty, each state created a “republican” form of democracy (republic) in which representatives elected by the voters made the laws. This differed sharply from the system in England where elected members of the House of Commons had to share lawmaking power with the king and House of Lords, both of which usually inherited their government positions.

The states made clear that the rule of law would control their republican governments. John Adams of Massachusetts wrote that a republic is “an empire of laws, and not men.”

## Separation of Powers

In 1748, France’s Baron de Montesquieu wrote *The Spirit of the Laws*. He described a “separation of powers” that included a legislature making the laws, an executive enforcing the laws, and a judiciary interpreting the laws. He used as his example the English system of king, parliament, and courts.

Most of those who were involved in drafting their first state constitutions had read or were familiar with

Montesquieu’s theory of the separation of powers. However, he seemed to overlook the reality that the powers of government in England were not always clear-cut. For example, Parliament’s House of Lords could act as the highest court of appeals.

The states sought to keep the three branches of government independent of one another as a way to prevent one branch from becoming too powerful. Virginia’s Constitution designed its government so that no branch would exercise powers that belonged to one of the others.

## Bicameral Legislature

All the state constitutions assumed that the legislature would be the most important part of the government. Legislators were elected by voters to represent their interests, the essence of republican democracy.

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Who were the voters? Of course, women and slaves were excluded from voting at this time, and most free black men and Indians could not vote. White adult males had to prove they were a resident, owned a certain amount of land, possessed private property worth so much money, paid taxes, or some combination of these.

All but two of the states created bicameral (two-house) legislatures. Pennsylvania and Georgia had unicameral (one-house) legislatures, believing they were more democratic. The lower house in bicameral legislatures, most commonly called the house of representatives, was the

larger of the two houses. Lower house and unicameral members represented towns, counties, or other districts and were considered closest to the people in the government.

Lower house members usually had to qualify as voters, sometimes with a greater property requirement. The only age qualification was the minimum age for voting (21). Several state constitutions had a “religious test,” which required their lower house members to be Christians.

All states elected their lower house representatives for one-year terms except South Carolina with two-year terms. All “money bills,” those that dealt with taxes and spending, had to originate in the lower house of bicameral legislatures.

Bicameral upper houses were often called the senate. Members were directly elected by the people except in Maryland where an elected convention chose among its delegates to represent each county in the upper house. Members usually had to own more property than those in the lower house. A few states had a religious qualification. The minimum age requirement ranged from 21 to 30. Members served terms between one to five years.

Upper houses had full lawmaking powers, but could not initiate “money bills.” However, they had to approve those and all other bills passed by the lower house before they could become laws. The upper houses in some states conducted the trial of government officers who had been impeached (charged) by the lower house.

## Chief Executive

The first state constitutions called their chief executive either governor or president. In eight states, the legislature chose the chief executive. In the remaining five states, the voters directly elected him. Most chief executives served one-year terms.

Some state constitutions had age, property, or religious qualifications for the chief executive. But, more than half the constitutions

named no qualifications at all. Maryland required its governor to be “a person of wisdom, experience, and virtue.”

Most of the first state constitutions greatly limited the powers of the chief executive, fearing he might become another tyrant like King George III. New York and Massachusetts were exceptions.

Along with high court judges, the New York governor, elected by the voters, was a member of the Council of Revision that could veto laws passed by the legislature. Only the Massachusetts constitution empowered its voter-elected governor to act alone to veto laws.

### Judiciary

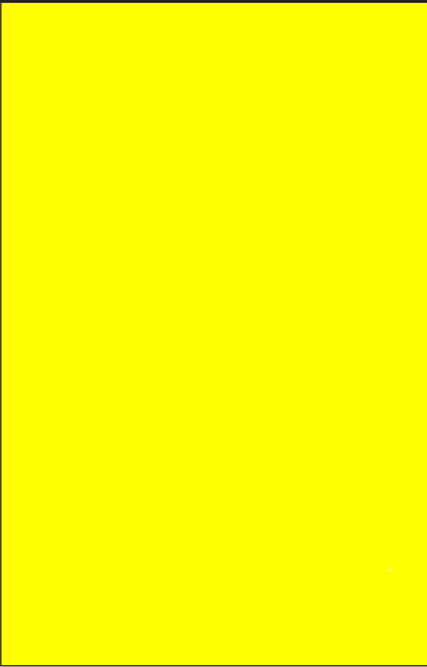
The courts made up the weakest of the three branches of government in all the first state constitutions. Judges in various states were appointed by the chief executive, the legislature, or by both acting together. The courts acting alone had no power to declare laws unconstitutional.

Some states limited the terms of their judges to a certain number of years. Other states followed the English tradition of lifetime appointments for “good behavior.” This meant a judge could be impeached and removed from office if he abused his power like taking bribes.

### Checks and Balances

Built into the first state constitutions were “checks and balances” to limit the powers of government. The short, mostly one-year, terms of office were designed to prevent lawmakers and chief executives from acquiring too much power. A saying at that time warned, “Where annual elections end, there slavery begins.”

Bicameral legislatures pitted the lower against the upper house so neither could pass laws without the other’s approval. New York and Massachusetts set up procedures that involved the chief executive to check the legislature by vetoing laws. But, in both states, the legislature could



CHARLES-LOUIS DE SECONDAT, Baron de Montesquieu, was a philosopher of the Enlightenment who developed the theory of the separation of powers.

balance that check by overriding the veto by a two-thirds vote.

There was no judicial check on the constitutionality of laws at this time. However, Pennsylvania’s first state constitution included a Council of Censors, which was elected by the voters to meet every seven years to examine all laws passed by the legislature. It could recommend that the legislature repeal laws that the Council believed to be unconstitutional.

### Bill of Rights

A majority of the American colonies produced written guarantees of rights such as trial by jury based on the “rights of Englishmen.” Americans considered these to be “inalienable rights,” natural rights that could not be taken away by any power or even freely given up.

The first colonies to write bills of rights were Maryland in 1639 and Massachusetts in 1641. These written rights limited the power of government far more than in England. However, they were still acts of a colonial legislature, which could be overruled by the king.

Led by Virginia in 1776, six states plus Vermont wrote formal

bills of rights into their first state constitutions. Four more states wrote certain rights into the body of their constitutions.

By 1780, the first state bills of rights together accounted for all but one of the rights that ended up later in the U. S. Bill of Rights. The six rights most frequently listed by the states were (1) free exercise of religion, (2) jury trial in criminal cases, (3) freedom of the press, (4) due process of law, (5) no excessive bail, and (6) no unreasonable searches and seizures. The one right missing in the state constitutions was that the drafters failed to reserve that other unnamed rights were “retained by the people” (Ninth Amendment of the U. S. Bill of Rights).

### Amendment Process

Seven of the thirteen states provided a procedure for amending their first state constitutions. Three of these states did this solely through action by the legislature. Four states required a constitutional convention to meet and approve amendments. None of the first state constitutions called for submitting amendments to the voters for ratification.

### The Federal Constitution

By the time the delegates arrived at the Philadelphia Constitutional Convention in 1787, they brought with them the basic building blocks from their own first and, in some cases, second state constitutions. These building blocks provided the basis for most of the debates at Philadelphia, although the state constitutions often differed over the specifics. In addition, the delegates had the advantage of witnessing their state constitutional governments in operation.

One scholar has linked provisions in the U. S. Constitution to similar ones in the state constitutions plus the charters used by Connecticut and Rhode Island. He found more than 200 links. The first state constitutions with the

most links to the federal Constitution were those of Massachusetts (53) and New York (51).

The state constitution building block that the Philadelphia delegates did not adopt was a federal bill of rights. Most felt it was not needed since the states provided their own protections. But, this proved to be a mistake. The chief argument of those who opposed ratifying the Constitution was the lack of a bill of rights to prevent federal abuses of individual liberties.

Supporters of ratification finally promised to amend the Constitution with a bill of rights. James Madison led the effort in the First Congress to add a number of amendments to the Constitution based almost entirely on rights found in the state constitutions.

Ten amendments, containing over two dozen specific rights, were finally ratified by the required three-fourths the states in 1791. Thus, the federal Bill of Rights was added to the U. S. Constitution.

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Among the thirteen states, all but Massachusetts eventually replaced their first constitutions, or charters in the case of Connecticut and Rhode Island. The states often revised their constitutions to be more in line with the U. S. Constitution. Pennsylvania and Georgia adopted a bicameral legislature in their updated constitutions. No state constitution today has an enforceable property or religious requirement for voting or holding public office.

## DISCUSSION AND WRITING

1. Why did each of the thirteen states adopt a written constitution and not an unwritten one like that of England?



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2. How were the first state constitutions similar to and different from the U. S. Constitution in the following areas?
  - a. bicameralism
  - b. qualifications and terms for members of the legislature and chief executive
  - c. selection and terms of judges
  - d. bill of rights
3. Why do you think the first state constitutions and the U. S. Constitution included “checks and balances”?
4. Imagine you were a member of the Constitutional Convention. Would you have added another right you thought important? If so, what would it have been? And why would you have added it?

## ACTIVITY

At the time the first state constitutions were drafted, some states included a “religious test” that required public officials to swear an oath that they held a certain religious faith. This had been the practice for many years in England where Catholics, Jews, and Protestants who did not conform to the official Church of England were excluded from holding government office.

Below are excerpts from five state constitutions that were in effect before the U. S. Constitution was drafted in 1787.

1. In small groups, rank the five states in order from the one that had the most restrictive religious test to the one that had no religious test.
2. Determine which state came closest to what the U. S. Constitution says about religious tests in Art. VI.
3. Discuss whether you think elected officials in your state should be required to swear the following oath before taking office. “I believe in one God and the right of every individual to worship Him as one chooses.”
4. Report your conclusions and reasons to the rest of the class.

“And each member, before he takes his seat, shall make and subscribe the following declaration: ‘I do believe in one God, the creator and governor of the universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration.’”

“That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this State...and a declaration of a belief in the Christian religion.”

“Any person chosen governor, lieutenant-governor, councilor, senator, representative, and accepting the trust, shall, before he proceed to execute the duties of his place or office, make and subscribe the following declaration: ‘I do declare, that I believe the Christian religion, and have a firm persuasion of its truth...’”

“... this convention doth further...declare, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State...”

“No person shall be eligible to sit in the house of representatives unless he be of the Protestant religion...” Similar language applied to members of the senate, governor, and the executive council.



**National High School U.S. History Standard 3:** Understands why the Americas attracted Europeans, why they brought enslaved Africans to their colonies and how Europeans struggled for control of North America and the Caribbean. Understands social and economic characteristics of European colonization in the 17th and 18th centuries (e.g., changing immigration and settlement patterns of Puritans...).

**National High School U.S. History Standard 4:** Understands how political, religious, and social institutions emerged in the English colonies. Understands characteristics of religious development in colonial America (e.g., the presence of diverse religious groups and their contributions to religious freedom...the major tenets of Puritanism and its legacy in American society... Puritan objections to their ideas and behavior). Understands the similarities and differences in colonial concepts of community (e.g., Puritan's covenant community...).

**Common Core Standard RH.11-12.1:** Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

**Common Core Standard RH.6-8.1:** Cite specific textual evidence to support analysis of primary and secondary sources.

**Common Core Standard SL.11-12.4:** Present information, findings, and supporting evidence, conveying a clear and distinct perspective, such that listeners can follow the line of reasoning, alternative or opposing perspectives are addressed, and the organization, development, substance, and style are appropriate to purpose, audience, and a range of formal and informal tasks.

**Common Core Standard SL.8.4:** Present claims and findings, emphasizing salient points in a focused, coherent manner with relevant evidence, sound valid reasoning, and well-chosen details; use appropriate eye contact, adequate volume, and clear pronunciation.

**National High School World History Standard 3:** Understands the major characteristics of civilization and the development of civilizations in Mesopotamia, Egypt, and the Indus Valley. (3) Understands features of trading networks in Egypt.

**National High School World History Standard 8:** Understands how Aegean civilization emerged and how interrelations developed among peoples of the Eastern Mediterranean and Southwest Asia from 600 to 200 BCE. (7) Understands how Egyptian society saw itself in relation to its gods and how attitudes towards women are indicated in representations of its goddesses.

**National High School World History Standard 9:** Understand how major religious and large-scale empires arose in the Mediterranean Basin, China, and India from 500 BCE to 300 CE. (1) Understands shifts in the political framework of Roman society (e.g., major phases in the empire's expansion through the 1st century CE; how imperial rule over a vast area transformed Roman society, economy, and culture; the causes and consequences of the transition from Republic to Empire under Augustus in Rome; how Rome governed its provinces from the late Republic to the Empire...).

**Common Core Standard RH.6-8.8:** Distinguish among fact, opinion, and reasoned judgment in a text.

**Common Core Standard RH.9-10.8:** Assess the extent to which the reasoning and evidence in a text support the author's claims.

**Common Core Standard WHST.6-8.1:** Write arguments focused on *discipline-specific content*. (b) Support claim(s) with logical reasoning and relevant, accurate data and evidence that demonstrate an understanding of the topic or text, using credible sources.

**Common Core Standard WHST.9-10.1:** Write arguments focused on *discipline-specific content*. (b) Develop claim(s) and counterclaims fairly, supplying data and evidence for each while pointing out the strengths and limitations of both claim(s) and counterclaims in a discipline-appropriate form and in a manner that anticipates the audience's knowledge level and concerns.

**California History/Social Science Standard 6.2:** Students analyze the geographic, political, economic, religious, and social structures of the early civilizations of Mesopotamia, Egypt, and Kush. (3) Understand the relationship between religion and the social and political order in Mesopotamia and Egypt. (6) Describe the role of Egyptian trade in the eastern Mediterranean and Nile valley.

**California History/Social Science Standard 6.7:** Students analyze the geographic, political, economic, religious, and social structures during the development of Rome.

(1) Identify the location and describe the rise of the Roman Republic, including the importance of such mythical and historical figures as...Julius Caesar....

(3) Identify the location of and the political and geographic reasons for the growth of Roman territories and expansion of the empire, including how the empire fostered economic growth through the use of currency and trade routes. (4) Discuss the influence of Julius Caesar and Augustus in Rome's transition from republic to empire.

**National High School U.S. History Standard 7:** Understands the impact of the American Revolution on politics, economy, and society. Understands the differences among several state constitutions (e.g., various applications of 18th-century republicanism, such as virtue in government, balancing the interests of different social groups, service to the common good, representation, separation of powers, judicial independence, and the legitimacy of slavery).

**National High School U.S. History Standard 8:** Understands the institutions and practices of government created during the Revolution and how these elements were revised between 1787 and 1815 to create the foundation of the American political system based on the U.S. Constitution and the Bill of Rights. Understands influences on the ideas established by the Constitution (e.g., the ideas behind the distribution of powers and the system of checks and balances....

**Common Core Standard RH.11-12.1:** Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

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**California History/Social Science Standard 8.3:** Students understand the foundation of the American political system and the ways in which citizens participate in it. (1) Analyze the principles and concepts codified in state constitutions between 1777 and 1781 that created the context out of which American political institutions and ideas developed.

**California History/Social Science Standard 8.9:** Students analyze the early and steady attempts to abolish slavery and to realize the ideals of the Declaration of Independence. (2) Discuss the abolition of slavery in early state constitutions.

**California History/Social Science Standard 11.1:** Students analyze the significant events in the founding of the nation and its attempts to realize the philosophy of government described in the Declaration of Independence. (2) Analyze...the debates on the drafting and ratification of the Constitution, and the addition of the Bill of Rights.

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