**Section 1: The Federalists, Anti-Federalists, and the Bill of Rights**

It is a common misconception that the Framers of the U.S. Constitution were united in their efforts and desires to move past the Articles of Confederation and form a federal system that protected the nation from foreign and internal aggressors, and united the nation in their efforts to experience representative democracy, separation of powers, checks and balances and federalism.

In fact, those who attended the 1787 Constitutional Convention were divided along three dimensions in their opinion as to the best direction for government to take. The dominant perspective sought to retain the Articles of Confederation with some modification to address the concerns that weakened the Articles of Confederation. The year before the Constitutional Convention, in 1786, the Annapolis Convention included 12 delegates from five states (New Jersey, New York, Pennsylvania, Delaware, and Virginia) that unanimously called for a constitutional convention. That convention, which began in May 1787 and ended the following September 17, was originally called the “Meeting of Commissioners to Remedy Defects of the Federal Government.” Most of those who attended the May 1787 convention did so because they wanted to “remedy defects” and not restructure the government. A second, smaller (and, at first, secret) group were those who supported a restructuring of government that would shift power from the states to a shared power system between the national and state governments. This second group was led by Virginia delegate James Madison who was soon joined by fellow Virginian, General George Washington and Alexander Hamilton, the New York delegate who drafted the resolution calling for the constitutional convention in the first place. This third, and smallest group, were those who supported returning to status as British subjects. Their memories of the stability they experienced living under British rule were fresh enough that they preferred returning to a known system than pursuing an unknown system (proposed federal system) or fixing an unworkable system (Articles of Confederation).

The dominant conflict at the convention was between the Federalists (those supporting a new federal system) and the Anti-Federalists (those who wanted to retain the structure of the Articles of Confederation). One of the key dimensions of conflict was whether the new federal constitution should include a listing of rights that protected individuals from government abuse of power. The resolution of this conflict, discussed in detail below, was achieved with the Bill of Rights.

**Section 2: Key Arguments Favoring the New Federal Constitution**

The group that favored the new federal Constitution was the Federalists. They made the following arguments favoring the new federal Constitution:

1. The separation of powers and checks and balances system protected the people. No one group could control the other two.
2. The Constitution lacked a specific enumeration of rights. This approach actually protected the people because a list of protected rights might suggest that rights that were not on the list could then be violated.
3. The Constitution would more closely unite the states as one nation.
4. A strong central government would foster the commercial growth of the new country.

**Section 3: Key Arguments Opposing the New Federal Constitution**

The group that opposed the new federal Constitution was called the Anti-Federalists. They made the following arguments against the new federal Constitution.

1. The Constitution gave too much power to the national government at the expense of the state governments.
2. The Constitution lacked a specific enumeration of rights which was needed in order to protect the people from the national government.
3. The Constitution would allow the national government to maintain an army in peacetime.
4. The “necessary and proper” clause (also called the “elastic clause”) gave too much power to Congress. The “necessary and proper” clause is found in Article I, Section 8 of the U.S. Constitution. It allows Congress to do what it believes is “necessary and proper” in order to carry out its other responsibilities.
5. The executive branch held too much power.
6. The new constitution created a new and untested form of government
7. The method selected for ratifying the Constitution violated the Articles of Confederation (the decentralized, state-centered government in place at the time that the Constitution was being debated)
8. A country as large as the United States could not be controlled by one national government

**Section 4: The Addition of the Bill of Rights as compromise?**

The most effective argument presented by the Anti-Federalists was the lack of a specific enumeration of rights. The American Revolution, in which the American people fought to defend their rights, had ended just 10 years earlier, and remained fresh in the minds of Americans. Americans feared that the newly formed and empowered national government might withhold those rights. The lack of a bill of rights became the centerpiece of the Anti-Federalists’ arguments against the new federal Constitution.

Article VII of the new constitution required that nine of the existing 13 state legislatures (or their conventions) ratify the document. This meant that several state governments, elected under a state-centered political system, had to be convinced that a shift in power to a shared system was in their best interests. The Anti-Federalists could take advantage of these circumstances, as it was the original purpose of the Second Continental Congress that began in May 1787, to retain the Articles of Confederation (provided that some fixes were made). However, the result of that process was a federal system. Put another way, most current state legislators expected that the Articles of Confederation would be retained, and likely supported the decentralized system, at least in principle. Anti-Federalists could capitalize on these state legislators’ concerns.

Concerns about a shared power system were especially experienced by farmers and tradesmen who were less likely to be a part of the wealthy elite that was overrepresented at the Second Continental Congress (A convention of representatives from the original 13 colonies that met beginning 1775 soon after the Revolutionary War began. The Second Continental Congress disbanded in 1781). The most vocal Anti-Federalists included Patrick Henry, the American Revolutionary War hero best known for the phrase “Give Me Liberty or Give Me Death” who later served as Governor of Virginia, and George Mason, another Virginian and American Revolutionary War hero who later served as a delegate to the U.S. Constitutional Convention.

While the first nine states ratified the new Constitution in 1788, within the first nine months of its completion in September 1787, it was not until 1790 that Rhode Island agreed to support the new document. Still, the Anti-Federalists’ concerns did have an impact, as in 1791, state legislatures voted to add the first 10 amendments to the Constitution. These 10 amendments are, together, called the Bill of Rights. Together, this means that the new federal Constitution was ratified without a bill of rights; soon after all states ratified the document, and not just the minimum nine needed per Article VII of the U.S. Constitution, the Bill of Rights was added to the Constitution. Both the Federalists’ desires for a federal system, and the Anti-Federalists’ concerns about the absence of a bill of rights, were both addressed by 1791. The Bill of Rights represents a compromise between the Federalists and the Anti-Federalists in that it enumerated the specific protections that the Anti-Federalists were so concerned were missing from the Constitution. The Bill of Rights also demonstrates that the Federalists kept their promise to the Anti-Federalists by insuring that the new Congress of the federal government considered enumerating specific protections.

The Bill of Rights was intended to protect the people from the federal government abusing its power, specifically as to the rights of political expression, the rights and protections accorded individuals accused of crimes, private property protection, and the rights of the people as they relate to federal and state laws. The original Bill of Rights had 17 amendments. These 17 amendments were voted on by the first House of Representatives. The first Senate voted on the amendments on June 8, 1789, but ratified 12 of these on September 25, 1789. The 12 amendments were reduced to 10 after Congress’ vote. The 13 states voted on these provisions between November 1789 and December 1791 at which time the Bill of Rights was formally added to the U.S. Constitution.

The first word of the Bill of Rights, “Congress”, speaks to the focus of the Bill of Rights on the federal government. Under the Bill of Rights, citizens are guaranteed the right to free speech and religious exercise, assembly, and the right to petition the government. Citizens are also guaranteed that Congress will not establish a religion, which is a right related to, though different from, freedom of religious exercise. The Bill of Rights also protects those accused of a crime in that they are entitled to due process of law, and are protected from incriminating themselves, “cruel and unusual” punishment, unreasonable search and seizure and being tried twice for committing the same crime. The concept of “due process” also includes the right to legal representation in criminal trials, the right to face one’s accuser, and the right to trial by jury. The Bill of Rights also protects property rights in that citizens may not be forced to house military personnel during peacetime and only during wartime by an act of Congress. Further, citizens’ property may only be taken with “just compensation”.

**Section 5: Vocabulary**

|  |  |
| --- | --- |
| **Word/Term** | **Definition** |
| **Anti-Federalist Papers** | a series of essays written to counter and defeat the proposed U.S. Constitution |
| **Anti-Federalists** | a group of people in the early United States who opposed ratification of the U.S. Constitution because they feared a strong national government and a lack of protection for individual rights |
| **Bill of Rights** | the first ten amendments to the U.S. Constitution, establishing rights and protections for American citizens |
| **Federalist Papers** | a series of essays written to explain and defend the proposed U.S. Constitution |
| **Federalists** | a group of people in the early United States who favored the establishment of a strong national government and who worked for ratification of the U.S. Constitution |
| **Ratification** | the process of formally approving something; ratification of the U.S. Constitution |

**Section 6: Washington as Statesman at the Constitutional Convention Artwork Viewing Guide**

**Section 7: Federalists and Anti-Federalists**

During the period from the drafting and proposal of the Constitution between May and September, 1787, to its ratification in 1788 there was an intense debate on ratification. During this period, people basically divided into two groups, the Federalists and the Anti-Federalists.

People opposed to the ratification of the Constitution were called the Anti-Federalists. They were concerned that the Constitution gave too much power to the federal, or national, government at the expense of the state governments. They were also concerned that, within the federal government, the legislative and executive branches were too powerful. Specifically, the Anti-Federalists were concerned that the “necessary and proper” clause in Article I, Section 8 of the Constitution, which allows Congress to do what it believes is “necessary and proper” in order to carry out its other responsibilities, was too broad and would give Congress too much power.

Anti-Federalists were also concerned that the Constitution lacked a specific listing of rights. They believed that a bill of rights was essential to protect the people from the federal government. The Revolutionary War had just been fought because the American people needed to defend their rights. With the war experience still in mind, the Anti-Federalists did not want a powerful national government taking away those rights. The lack of a bill of rights became the focus of the Anti-Federalist campaign against ratification. To communicate their concerns, Anti-Federalists such as Patrick Henry wrote essays and newspaper articles to spread their point of view and these writings became known as the Anti-Federalist Papers.

The supporters of the proposed Constitution called themselves Federalists. For the Federalists, the Constitution was necessary in order to protect the liberty and independence that was gained from the American Revolution. The main arguments in favor of ratifying the Constitution were stated in a series of essays published in newspapers written by James Madison, Alexander Hamilton, and John Jay called the Federalist Papers.

They believed that the three branches of the national government separated the powers and protected the rights of the people. Each branch represents a different aspect of the people, and because all three branches are equal, no one group can assume control over another. They also believed that a listing of rights can be a dangerous thing. If the federal government were to protect specific listed rights, what would stop it from violating or abusing rights that were not listed? Since they cannot list all the rights, the Federalists argued that it is better to list no rights at all.

Overall, the Federalists were more organized in their efforts. By June of 1788, the Constitution was close to ratification. Nine states had voted to ratify it (eight voted “yes” and New York at first voted “no”), and only one more (New Hampshire) was needed. To achieve this, the Federalists agreed that once Congress met, it would draft a bill of rights. Finally, New York and Virginia approved, and the Constitution was a reality. Interestingly, the Bill of Rights was not originally a part of the Constitution, and yet it has proved to be highly important to protecting the rights of the people.