

# **Original Meanings: Politics and Ideas in the Making of the Constitution Study Guide**

**Original Meanings: Politics and Ideas in the Making of the Constitution by Jack N. Rakove**

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# Plot Summary

*Original Meanings* is concerned with the meaning and content of the United States Constitution, how did it come into being as a result of numerous discussions and debates at the Federal Convention in Philadelphia and the following period of ratification. Rakove looks at how certain phrases or content become a part of the Constitution. The delegates to the Convention come to Philadelphia charged with “fixing” the deficiencies in the Articles of Confederation. The deficiencies of the Articles of Confederation are so serious that the national government has no authority to compel the states to comply with national treaties or policies. The Congress has no way of raising the revenues it needs to function as a government. The United States’ ten-year experiment with republicanism is floundering because the power of the states basically exceeds that of the Congress. A Convention is called for to overhaul the deficient Articles of Confederation.

When the Convention opens on May 14, only two states have delegates present. Most of the delegates are approximately two weeks late in arriving. This gives the Virginia delegation the opportunity to draft a plan for government based on Madison’s study of governments as he prepared for the Convention. This plan, known as the Virginia Plan, serves as a framework for the Convention’s work. The major elements of this plan become the basis for the Constitution they end up writing. Interestingly enough, if the delegates had arrived on time, the Virginia delegation would not have had the time to draft the Virginia Plan and we might not have the Constitution that we have today.

The book examines the discussions and debates, as well as the concessions and compromises that resulted in the formulation of the United States Constitution. Once the Convention delegates decide that the Confederation is defective, they then have to decide what is required to make a functional government? They need a document explaining the breadth and scope of that government, or they need to define the government in terms of the issues of federalism, representation and the presidency. This is what they accomplished in a little over four months in Philadelphia.

The Constitution comes into being as a result of concessions and compromises. There are two obstacles that block any progress at the Convention: the big state-little state conflict and the North-South slavery issue. Without the resolution of these issues the Convention will be able to do nothing and there is a strong probability that the Union will splinter. Both obstacles are tied to the method of representation and solved with the adoption of equal representation in the Senate and representation based on population in the House, with three-fifths of the slave population counting as the state’s population. The North-South compromise called for no restrictions on slavery for twenty years and no taxes on exports.

With these two hurdles overcome, the Convention then moves on to defining the ratification process and the presidency. Throughout the book the background information allows us to examine the formation of the thinking taking place during the Convention and the period of ratification.



# Chapter 1, The Perils of Originalism

## Chapter 1, The Perils of Originalism Summary

The Federal Convention of 1787 takes place in Philadelphia, Pennsylvania. This is the convention that leads to the formulation of the United States Constitution, the basis for the American democracy. There are no televisions or radios. There are no tapes to play to tell us what goes on. Yet, that piece of paper that emerges from this convention is still with us today and its meaning is still the subject of intense discussion and debate. How do we know what the original authors of the Constitution mean with their phraseology? This is the basis for the debate concerning originalism.

The only records are the written records of the participants. Some participants, like James Madison, sense the monumental significance of the task they are undertaking. "So Madison urged friends and correspondents to preserve their vital papers, and he took great care to gather and safeguard his own: letters, memoranda, and most prized of all, the notes of debates which he regarded as his "great testamentary legacy to the American republic" (pg. 4). This is the only means by which the original meaning, or intent, of the framers is known. The diaries and notes of the participants are what tell us what is going on during the debates and meetings, what it is that the participants react to and what they are thinking. What they are thinking and reacting to is what leads to the wording of the document and the intent and original meaning of the authors.

Rakove distinguishes between the authors and framers of the Constitution and those who ratify the document when it comes to interpretation. What did the authors and framers mean or intend by the wording? What did those who ratified it comprehend or think they were ratifying? They had to either accept or reject the document in its entirety.

Rakove points out the difference between the roles of jurisprudence and history. The lawmaker is more concerned with the original meaning of the terms in the Constitution. Rules of law are based on the original meaning being applied and binding. The historian is concerned with how different meanings are attached to different terms and clauses. The historian performs the function of interpreting the original meaning of the Constitution for the judiciary. He does not concern himself with rules of law, because that is the domain of the legal field. The interpretation is necessary because the Constitution does not include a glossary of terms. It does not define what it means by the vesting of executive power or the establishment of religion.

How are differences of opinion resolved? There are two approaches used. One is the textual approach, which involves an examination of the papers and writings of the time. Here they look at what the originally involved parties had to say about a particular term or phrase. When the writings and papers prove to be inadequate to the question at hand, then a contextual approach is used. This involves trying to reconstruct the situation by making assumptions concerning the situation and trying to figure out the



way the participants are thinking. In other words, given a certain set of assumptions, how do the participants respond and what do they react to?

The Constitutional Convention, like any other legislative voting body, is a mix of principles and ideas of what should be combined with the reality of special interests. It is a clash of the ideals of what should be theoretically with the realities and practicalities of the representatives trying to do what is best for their particular area or special interest group. The ratification period witnesses the clash of the Federalists with the Anti-Federalists. This is where the battle is waged between those wanting a strong federal government and those fearing a strong national government and wanting the powers to reside with the states. Documentation regarding the thought processes of the ratifiers is sketchy because the state conventions did not maintain good records. Madison feels that the views of the state conventions are more relevant than those of the Federal Convention.

What can be said is that all of them acted in response to the political situation of the time – a reaction against what they saw wrong in the monarchy - and form of government and the treatment they experienced as colonies and under the Articles of Confederation. After all, this is what led to the rebellion against the throne and the Declaration of Independence. This is what led to ten years of experimenting with republican forms of government under the Articles of Confederation.

## **Chapter 1, The Perils of Originalism Analysis**

It is impossible to know what the framers of the Constitution are thinking as they begin their monumental work. Written records are sketchy or non-existent. Some of the participants keep notes and diaries; others don't. The Convention Secretary does not keep good records, which is why there are no good records of what takes place in Philadelphia. The same thing is true of the ratification period. The only written records consist of newspaper accounts and personal notes.

Rakove tells us of the two approaches used by historians. The first has just been described above as the textual approach. The second, the contextual approach of basically trying to predict what particular characters will say or how they will react in a given situation, seems to be guesswork since you have the historian reading his own views into the situation. There is really no way of knowing what the participants think or what their intentions are unless it is written down at the time.



# Chapter 2, The Road to Philadelphia

## Chapter 2, The Road to Philadelphia Summary

In the years following the revolution, there is a great deal of interest in the United States and how it is progressing in the establishment of, and experimentation with, republicanism. The Articles of Confederation are fundamentally weak, and movements to amend the document are underfoot before the first federal charter becomes effective on March 1, 1781. In short, the new government needed revenues and needs to impose taxes. (Taxation is what started the revolution.) The Articles of Confederation do not give the Congress the authority it needs to raise revenues or to function properly in the area of foreign policy. Because of this, trade is suffering as the British ban Americans from their West Indian ports and cut American importers out of their trade deals in America. The Congress does not have the authority to retaliate under the terms of the Articles of Confederation.

A second problem arises from the peace treaty, which allowed injured parties to sue for compensation for confiscated property. The Congress is bound by the terms of the treaty, but has no way to enforce the terms on the states. There is nothing that says the states have to comply with the national commitment. The noncompliance of the states causes the British to maintain their presence in what was then the Northwest (Detroit, Niagara, etc.). This causes problems with the Indian tribes and the national plans for a national domain. This also leads to the third problem of the national domain and westward expansion. The Congress does not have the authority to intervene in the problems that the states and settlers are having with foreign powers. The Congress also needs more authority to regulate foreign and interstate commerce. All of these things require ratification by the states, which is neither an easy nor quick process.

The average Americans are not very interested in national politics. Their interests are more at the state and local levels since those are the jurisdictions that more affect their lives. The states, too, are more concerned with their own problems than with national issues and problems. All of these factors contribute to the movement for constitutional reform and a way to somehow liberate the national level from its dependence on the states.

All of these factors pave the road to the Federal Convention in Philadelphia in 1787. Most do not have high hopes for the convention, given all of the problems with the states. They feel that, if anything, it will be another attempt to apply band-aids to the Articles of Confederation. The states are required to approve amendments to the Articles, and during the six year period, not one is approved, even most of the revenue requirements. The Congress itself is weakening in its authority and reputation.

Strangely enough, the impetus for reform comes from the states. The state of Virginia proposes a meeting, known as the Annapolis Convention, which several states agree to participate in. They call for the election of delegates to attend a convention in



Philadelphia to devise a way to make the necessary provisions for the adequate functioning of the federal government. By this time it is recognized that if they don't do something, there is a strong probability that the union will divide, since the Congress can't satisfy the wants of all the divergent regions with the authority it has.

The United States' experiment with republicanism is coming to an end, even though most of the powers that be of the time do not yet realize it. Unrest is appearing in the states with the explosion of Shay's rebellion in Massachusetts, which was thought to have had one of the best state constitutions. The political situation is disintegrating steadily, a fact that Madison feels that Thomas Jefferson, living in France for three years, does not appreciate. Madison, "as he examined what he called 'the vices of the political system of the United States' in the early months of 1787, he became convinced that the agenda of the coming convention could not be confined to the important but familiar problems of the Confederation alone. The time had come, Madison concluded, not only to free the Union from its dependence on the states but to free the states from themselves by taking steps that would undo the damage done by the excesses of republicanism" (pg. 34).

## **Chapter 2, The Road to Philadelphia Analysis**

It is apparent that changes are necessary. The Articles of Confederation are ineffective to allow for the proper functioning of the national government. Attempts to repair the Articles have been going on for ten years, and there has been no satisfactory outcome. The problem with the Articles of Confederation is that they do not properly define the relationship between the national governments and the states. The national government needs authority to compel the states to provide revenues and comply with national treaties, etc.

The involved parties know they have a problem with the Articles of Confederation, and that if they don't provide a framework for the adequate functioning of the national government that the Union could disintegrate. They can't have individual states functioning as little countries, which is effectively what they under the Articles. The period, known as the experiment with republicanism, is coming to an end, one way or another.



# Chapter 3, The Madisonian Moment

## Chapter 3, The Madisonian Moment Summary

“In framing a system which we wish to last for ages, we shd. not lose sight of the changes which ages will produce.... [I]t was more than probable we were now digesting a plan which in its operation will decide forever the fate of Republican Govt.” (pg. 33-34). These are the words of James Madison as he addresses the convention in Philadelphia on June 26, 1787. Madison, like few other attendees, appreciates the grandeur of the moment. Experienced in service at both the state and national levels, Madison sees the shortcomings in the Articles of Confederation and the form of government it resulted in: a weak Congress with no authority to force the states to comply with national policy and no way to raise the revenues necessary for running a national government.

Madison prepares himself for the Annapolis Convention and the Federal Convention by studying different forms of government and takes notes on his readings and studies. He studies the constitutions of each and delineates what he calls the “vices of the constitution” for each form of government. Madison laments the fact that the Annapolis Convention will probably be limited to matters of commercial reform and will continue the practice of gradual reform of the Articles of Confederation that he sees failing so miserably. The big issue for Madison at this time is navigation rights along the Mississippi River and the limitations imposed by Spain on the use of the Mississippi.

Madison is convinced that the national level cannot rely on the states for support. He is becoming more and more suspicious and critical of the majority rule of republicanism. He sees a need for reform of the structure of government. The national government needs more autonomy in its functioning and needs to cut its dependence on the states in order to function effectively. The national government needs a way to compel the states to comply with its decisions. Each of the thirteen states puts its own priorities before the national interests. The dissimilarity of interest among them precludes them from supporting the national interests. Therefore, a stronger national government is needed, one that can impose its will on the state governments. Of course, this means that the states will see some overlap in authority with the federal government and they will also experience some surrendering of powers. A state intent on thwarting a national policy will find a way to do so. The only way around this, according to Madison, is the adoption of a national veto.

Madison envisions a national government with separation of powers. He sees the need for a bicameral national legislature as part of a legislative branch of the national government. Election to the upper house would be based on the ownership of property, a carry-over from the British days, and would be insulated from the pressure of the populace. He also sees the need for separate executive and judicial branches. He calls for the national veto power to rest with an executive-judicial joint council. His views come from what is called the theory of faction, the idea that groups will form and act in





concert to promote or defeat various legislation. Madison also believes that representation at the national level should be based on population. States should not have equal representation in both parts of the bicameral legislature. It is not the states who are being represented at the national level. It is the people who are being represented. Therefore the larger more populous states should have more representation than the smaller less populous states should.

Madison knows he is going into the Federal Convention with some radical views. He is not supporting further amending of the Articles of Confederation, but is calling for a restructuring of the national government and its relation to the states.

## **Chapter 3, The Madisonian Moment Analysis**

Madison, who attended the Annapolis Convention, spends the time until the Philadelphia Convention studying various forms of government. He knows that there is a serious problem with the Articles of Confederation and that the continued existence of the union is in jeopardy. He looks at what is right and wrong with different forms of government and then applies it to the situation in the United States. His studies lead him to radical conclusions regarding the framework of government in the country.

Madison isn't interested in trying to "fix" the Articles of Confederation. They have been trying to do that for ten years. He is proposing a total restructured form of government with a different defined relationship between the states and the national government. It is interesting how closely his views parallel what comes out of the convention.



# Chapter 4, The Politics of Constitution-Making

## Chapter 4, The Politics of Constitution-Making Summary

The outcome of the Constitutional Convention is the result of compromise, as is true with any legislative voting assembly. Two compromises, in particular, stand out. The first involves equal state representation in the Senate. It is said if the larger states hadn't accepted this compromise, the Convention would have ended and the Union probably would have fallen apart. The second compromise allows the Southern states to count three-fifths of their slaves as population. This allows the South greater representation in the House. As with all compromises, these two represent concessions to various special interest groups. Every group at the Convention receives concessions of one kind or another.

When the Convention begins, most delegates are late in arriving. This gives the Virginia delegation the time to draft a plan, known as the Virginia Plan, based on Madison's ideas. This plan gives the Convention a direction it might not have had if the delegates had arrived on time. The Virginia Plan is presented to the Convention on May 29, 1787 and is the subject of the first two weeks debates and discussions. The strategy of the proponents of the Virginia Plan is to have the Convention first reach agreement on the structure of the new form of government and to delay the discussion of the specifics as to what kind of powers it will have. It quickly becomes apparent that no progress will be made until the issue of the basis for representation is resolved. John Dickinson of Delaware correctly foresees that the issue will end in compromise.

The opposition of the smaller states to the idea of representation based on population leads to the development and presentation of the New Jersey Plan. This differs from the Virginia Plan in that it calls for a unicameral legislature with an equal vote for each state.

This plan does not give the national government the authority it needs to function effectively. The New Jersey Plan is rejected within several days. After this, for the next month, most of the discussion centers on the apportionment issue. If population is to be the factor in determining representation, then the Southern states want the slave population to be counted in some way. Eventually a committee is appointed to reach a compromise on the issue. This committee considers different methods of apportionment and representation in both houses. After exhausting several different committees and proposals, the Convention still uses the Virginia Plan as its working model.

Little by little the various committees and the Convention hammer out the details of the Constitution, going article-by-article, and phrase-by-phrase, and compromise-by-compromise. The larger states compromise with the smaller states; and the free states compromise with the slave states. The representation issue is resolved with equal



representation in the Senate while representation in the House is to be based on populations with slaves counting as three-fifths of a person. The concession to the larger states is that appropriations bills will originate in the House and can't be amended in the Senate. This compromise is arrived at in mid-July. Once past this issue, the other points more or less fall into place, and by August the work of the Convention is speeding to its conclusion.

The next biggest issues are that of slavery and the taxation of exports. The Southern states are obviously protective of their slavery and their exports. They opposed the restriction of the slave trade, the taxation of slaves and the taxation of exports. The compromises reached call for a twenty-year delay in restrictions on slavery and a tax on imported slaves. By the last week of August, the biggest issue remaining is the election of the President, length of term, etc. which they resolve during the first week of September. During the last week of the Convention they come to terms on the ratification and amendment procedures.

In four short months of discussions, debates, concessions and compromises, the delegates to the Federal Convention structure a new form of federal government for the United States. They learned from the shortcomings of the Articles of Confederation. The new Constitution, if ratified, will give the national government the authority it needs to function. The national government will not be constrained by the states, as it is under the Articles. The new federal government will have the authority to raise the revenues it requires and the power to compel the states to respect its authority.

The new Constitution has thirty-nine signers. The three who refused to sign it are George Mason, Edmond Randolph and Elbridge Gerry. Now it must be ratified by the states.

## **Chapter 4, The Politics of Constitution-Making Analysis**

The Constitutional Convention formulation of the United States Constitution, like other forms of negotiation, is a process of compromise. The delegates' tardiness in arriving allows the Virginia delegation to develop a plan for the government based on Madison's proposal. The Virginia Plan becomes the basis for the Constitution, as it is modified through the process of give and take, and the delegates do what they have to do to devise a workable government for the country. It is interesting to wonder what would have happened had the delegates not been late. The Virginia delegation would not have had the time to formulate the Virginia Plan and it would not have functioned as the working plan the convention delegates keep coming back to.

It is clear that the delegates sense the urgency of the situation. They don't spend time trying to work through the Articles of Confederation. They clearly sense that the situation created by the Articles is unworkable. Once the Convention is underway, they are talking of the structure of the new government, not how do we "fix" the old one. When

differences in opinion and views exist, the only solution is compromise, and this is what they do at Philadelphia.



# Chapter 5, The Concept of Ratification

## Chapter 5, The Concept of Ratification Summary

“On September 17, moments after the Convention adjourned for the last time, the Pennsylvania delegate, Thomas FitzSimons, took the literal first step toward ratification of the Constitution. From the legislative chamber on the main floor of the statehouse, he climbed forty-two stairs to the hall where the Pennsylvania assembly was also sitting to inform its members that their delegation stood ready to report at the first opportunity” (pg. 94). His actions express the urgency of the situation. The framers want the Constitution ratified as soon as possible. The longer ratification takes, the more discussion that takes places, the more questions are asked, and the less likely it is that ratification will take place. The terms of ratification mean that the Constitution must be accepted or rejected in its entirety. The states cannot attach amendments or provisions on their own.

The concept of ratification is not a new issue to the population of the United States. Each of the state governments has constitutions to be ratified. They spent years debating the “how” of ratification. Two principles emerged from the Massachusetts ratification of their state constitution. First, a constitution should be formulated by a convention solely elected for that purpose; and second, the ratification process should involve some form of popular consent. Madison and Jefferson share these views concerning popular consent. “A Federal constitution ratified through an overt expression of popular sovereignty would rest on stronger foundations than all those state constitutions that had not been framed by special conventions or subsequently approved by the citizenry. On this basis, it could legitimately make ‘inroads’ in the governing authorities of the states; and the ensuing conflicts between national and state law could be more readily resolved in favor of the federal government, even by judges holding commissions under the states” (pg. 101). These views are also consistent with those of the Continental Congress, which set three conditions for the Conventions. First, the convention’s purpose is to revise the Articles of Confederation; second, the Continental Congress must approve any revisions; and third, the state legislatures must approve the revisions.

Another issue the Convention delegates have to decide is the number of states required for approval. A unanimity requirement would probably have meant failure, since Rhode Island refused to send representatives to the Convention and since several other state delegates withdrew before the end of the Convention. In the end, they adhere to the rules of the Articles of Confederation and set the number at nine, with ratification to take place through state conventions. The states could not amend the Constitution: they have to accept or reject the document as a whole. The framers want the debates to center on the adoption or rejection of the Constitution, not on what changes the states want to see included in it. This is one of the factors that lead to the withdrawal of Randolph, Mason and Gerry.



The argument concerning the lack of ability to amend the document echoes in the Congress as well.. Amendments are proposed and the proper role of the Congress in the matter is discussed. In the end, on September 28, the Congress passes the Constitution on to the states requesting that they comply with the ratification procedures. The Congress did not vote to accept or reject. Madison *et al* would have preferred the Congress to approve the Constitution, but felt it wasn't worth the effort or time involved for discussions and debates.

The big issue in the ratification period is the restriction on the states' ability to propose and attach amendments. This is a hotly contested issue between the Anti-Federalists and the Federalists. The position of the Anti-Federalists is embodied in the following quote:

“The people have an undoubted right to judge of every part of the government which is offered to them. No power on earth has the right to preclude them; and they may exercise this choice either by themselves or their delegates legally chosen to represent them in the state convention. I venture to say that no man, reasoning upon revolution principles, can possibly controvert this right” (pg. 114). The Federalist answer is that they can debate and discuss whatever they want at the state conventions. They can object to whatever they want. But in the end, there is only one decision – to accept or reject the Constitution as a whole. Examining the wording and taking things line-by-line just delays the whole process.

The Federalist view prevails and the states of Delaware, New Jersey, Georgia, Pennsylvania and Connecticut quickly approve the new Constitution by January 1788. By May, Maryland and South Carolina also vote for ratification. Massachusetts ratifies in February and New Hampshire follows in June. The United States Constitution is now ratified and official. Virginia also votes for ratification in June, New York in July, North Carolina in November of 1789 and Rhode Island in March of 1790.

## Chapter 5, The Concept of Ratification Analysis

The founders, in recognizing the possibility of the disintegration of the union, want the Constitution ratified as quickly as possible. They know there will be problems since the ratification process calls for acceptance or rejection of the document without any changes being allowed. The ten-year experiment with republicanism has taught them about the problems involved in ratification with the state constitutions. They try to circumvent these problems in defining the ratification process for the federal constitution.

They know they have to have acceptance by the states, but they don't want the states to be able to propose changes. Amendments can be added after the Constitution is ratified. If they hadn't made this restriction, the ratification process would probably have taken years. As it is, they have enough opposition from the Anti-Federalists and many of the states over the issue.



# Chapter 6, Debating the Constitution

## Chapter 6, Debating the Constitution Summary

The debate over ratification also takes place among the population in the public *venue*. This is evidenced by the many writings that appear supporting both the Federalist and Anti-Federalist positions. There is no way to ascertain the consensus of popular thinking on the subject. In many ways, individual opinions rested upon the prestige and popularity of the delegates who wrote the Constitution, like Washington and Franklin. As a Boston newspaper writes: "The framers were a' band of Patriots and Philosophers, who would have adorned the history of Greece and Rome, in their most brilliant areas'; even the 'punctuality' with which they assembled 'and the long time they spend in the deliberations of each day (sometimes seven hours) are proofs, among other things, how much they are entitled to the universal confidence of the people of America'" (pg. 136).

Since the Convention was cloaked in secrecy, little was known about the proceedings while they were in progress. In the months following the end of the Convention, the goings-on become public, like the reasons for the dissent of Mason, Randolph and Gerry.

The delegates, themselves, also write about the events at the Convention, some of them anonymously using pen names. Madison keeps writing his series of *The Federalist*. Others publicly support their positions and actions at the Convention. This battle is waged in the press.

One Convention delegate, James Wilson of Pennsylvania, makes a speech in October, after the end of the Convention responding to the Anti-Federalists. Wilson says he wants the Constitution to be considered on substantive grounds. He points out that it omits a Bill of Rights, guarantees a trial by jury in criminal cases, provides for a standing army, limits the power of the states and gives Congress the right to levy direct taxes, and presents his explanations of why. These points are the focal point of the national debate regarding ratification, amidst Anti-Federalist charges that the press has prepared the populace to accept the Constitution on trust, before its contents were even known.

The interpretations of the terms and clauses and meanings of the Constitution become formulated during the debate on ratification. "...the ratifiers are not interpreting the Constitution merely to decide whether it would take effect; they were also investing their notions of its meaning in the document itself, thereby obliging later interpreters to treat those understandings as binding sources of authority, These understandings of 1787-88 thus become *original* in at least two senses: in point of time, as the *initial* forays in interpretation, providing the best historical evidence of what the Constitution meant to its adopters and thus explaining why it was adopted; but also as the *originating* source of its supreme authority, and therefore crucial to ascertaining legally binding meanings for later interpreters" (pg. 149-150).



Madison, interestingly enough, also writes about the inadequacy of language and words to express the ideas one is trying to express. The Convention knew what it envisioned, the separation of powers to be, yet they did not have the words to express their concept.

They try to defuse the arguments of the Anti-Federalists, even though some of the Federalists are calling for a Bill of Rights by this time. Only the experience of living under the new Constitution would disprove the Anti-Federalists claims of tyranny and conspiracy.

## **Chapter 6, Debating the Constitution Analysis**

The debate over the Constitution is waged publicly, between the Federalists and the Anti-Federalists. The Anti-Federalists protest is not organized. They never mount a united attack against the Constitution. They all seem to feel the need for a Bill of Rights and object to the limitations and restrictions on the powers of the states. They also criticized the small number of representatives, compared to the size of the population, and the legislative, judicial and executive combinations that certain functions were assigned to, like the role of the Senate and executive branch in treaty formulation and adoption. They also harbor an inbred mistrust of the judiciary. It is the Anti-Federalists that did the questioning and raised the issues during the ratification period. They more or less force the issue of interpretation.

If the Anti-Federalist movement had been organized there might have been more opposition and the ratification process might have taken longer. They bring up some good points that require answers from the Federalists. Many of the framers are now agreeing that a Bill of Rights is needed.





# Chapter 7, Federalism

## Chapter 7, Federalism Summary

The role of Federalism versus states rights continues to be the focal point of debate. What exactly is the relationship of the states to each other and to the federal government?

The major flaw in the Articles of Confederation is that it didn't give the Congress any power over the states. Without a national government strong enough to control them, territorial disputes and splintering factions had led to the formation of new states from existing states. The power vested in a strong national authority would bring this practice to a halt. The formation of a National Domain means that newly formed states entering the Union would be on an equal footing with the existing states.

The role of the framers of the Constitution was to define limits on the powers of the states and the powers of the national government. They had to define where the states' powers ended and the national powers began. They also had to define the overlapping areas. This is exemplified in the configuration of the legislative branch. The equality of the states is embodied in the Senate, with equal representation from each state, regardless of size and population. The number of representatives to the House depends on the population of the state. The big concern is that the population's loyalty would be to the state and not to the national government. In effect, they would be citizens first of the state, and then secondly, of the country.

Another concern of the Convention is how to define and guarantee the supremacy of the national government. There has to be some form of judicial enforcement of national law to guarantee compliance. Where will national laws be enforced...by the state courts?

This concern leads to the formulation of the supremacy clause in the Constitution that defined national laws to be superior to the state laws. This situation laid the basis for the doctrine of judicial review. The Convention members thought that this would trickle down to the states. Their fear is that a state court or legislature may try to declare the Constitution itself legally void.

The framers of the Constitution also have to define the legislative role of the national government. Many delegates envision this role as only regulating commerce and raising required revenues and to handle matters of war. They debate the issue of, and the meaning of, direct taxation. In the end, they give the legislative branch the authority to enact whatever laws it needs to perform its functions. This is known as the necessary and proper clause. The framers end up with a document that is more federal in nature than many of the plans they had rejected.



The Anti-Federalists use the term *consolidation* in their criticism of the Constitution. They feel that the states are being consolidated into a national government. The individual states were not only losing their power, they were also losing their identities.

This group fears a strong federal government and supports states rights. They do not think that state sovereignty could coexist with federal sovereignty. The Anti-Federalists see the Constitution as a blueprint for abuse of power. They do not want the states to lose their power and identities as republics. The position of the Anti-Federalists is summed up in a statement by the entity known as Brutus. “The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them, when they misbehave,” he wrote.

Yet the proposed Congress could never satisfy these conditions. So elite a body could not ‘resemble those who appoint them’ or ‘represent the feelings, opinions, and characters of a great multitude’. Its members would be little known to their own constituents, much less to residents of other districts who would have to vest trust in Congress collectively; while the very diversity of interests it represents would make it impossible for it to respond to the particular needs and concerns of individual states. Under such conditions, Brutus concluded, it was evident that the people ‘will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass.’ For the designing rulers of this short-lived national republic, there could be only one recourse: to summon the armed forces, including the militia of the states, to execute national law upon a sullen populace. “And a government that was prepared to enforce its dictates at the point of a bayonet could hardly permit the state governments to retain any authority that mattered.” Almost all of the Anti-Federalist arguments against the Constitution are presented in this quote.

Brutus goes on to attack the judiciary branch in other essays. He makes it clear that he sees the Constitution creating a real monster of a federal government that will swallow the states.

## Chapter 7, Federalism Analysis

The debate over the Constitution in many ways seems to be a debate concerning the nature of man. Is man basically good or evil? If one were to contrast Brutus and Madison, it would be to say that Brutus views mankind as basically being corrupt and selfish, whereas Madison views mankind as being rational, logical and capable of doing the right thing. This, in many ways, is the impression of the Anti-Federalist versus Federalist debate regarding the Constitution. The Anti-Federalists seem to be saying that if you give a politician the chance to do something corrupt and wrong, he will do it. The Federalists seem to be saying the opposite. ‘Yes it’s possible these corrupt acts could occur, but the public official is a responsible person and wouldn’t do anything like that. And if he does, then there is the system of checks and balances to handle the

situation'. They included the impeachment procedure to remove public officials involved in serious wrongdoing.

Much of the debate undoubtedly arises because of the vagueness of the terminology in the Constitution. The vagueness of the terminology results in a flexible document that will last for years and grow as the country grows. The vagueness of the terminology means it is broad enough to cover most situations without requiring an amendment. The Convention delegates don't want to have another Convention in ten years. They wanted a document that provides for a framework of government that will cover all situations.



# Chapter 8, The Mirror of Representation

## Chapter 8, The Mirror of Representation Summary

The form representation should take is the big issue at the Convention. The thinking is that the representatives should not only represent the people, they should be mirror images of the people. The problem is how are they to accomplish this? An alternative view is that the representative should be experienced and an independent thinker that people want to represent them. This leads the Convention into examining the duties and functions of the lawmaker. Does the lawmaker exist to protect citizens from government or does he provide the mechanism through which citizens obtain the enactment of productive and gainful legislation? These are the issues discussed at the Convention and also during the period of ratification.

An examination of the British system of representation reveals what the framers found to be good and bad in it, as did their study of representation under the Articles of Confederation. Some delegates favor a professional representative, an individual who dedicates his life to public service. They are leery of the short-term servers and the lack of experience they bring to the office. Also at issue is how to elect these representatives. Should they be elected by popular vote or by the legislatures or by some other mechanism? They conclude that the elections to the House should be accomplished by popular vote and that members of both houses are to be paid by the national government.

The hope of the framers is that a better class of leaders will emerge as a result of the Constitution. The only requirements included in the Constitution are age and citizenship. "In the end, the framers rested their hopes on two plausible, but problematic conditions: that a small Congress would give better-qualified candidates a political advantage over the ward heelers of their day; and that an open process of political recruitment, coupled with the promise of exercising serious responsibilities of national government, would somehow encourage the right men to seek office in the first place.

For the new government to succeed in this respect, however, it would have to rely on the actual circumstances of political life rather than on the formal requirements that the framers failed to impose" (pg. 227). Since the Constitution lists few requirements as qualifications for national legislatures, it leaves public service at that level open to anybody who could fulfill the few requirements it does impose. In other words, it is up to the public to decide.

## Chapter 8, The Mirror of Representation Analysis

Representation is an important issue if the framers are to overcome the inadequacies of republicanism and the Articles of Confederation. The representatives in government are supposed to represent the people. The delegates debate how to accomplish this. In the

end they adopt the simplest and best solution. They define citizenship and age requirements and basically leave the rest up to the population. They can choose whoever they want to represent them as long as the requirements of citizenship and age are met. Any other forms of restriction would have resulted in less flexibility and more problems because they could not cover all situations. This would have led to conflicts and disputes over qualifications. The simplest way of stating requirements in terms of age and citizenship, as they did, gives the population greater freedom of choice in whom they can select as representatives to the national government.



# Chapter 9, Creating the Presidency

## Chapter 9, Creating the Presidency Summary

The executive branch of the government is formed from the vaguely worded Article II of the Constitution: "The executive power shall be vested in a president of the United States of America" (pg. 244). Nowhere in the Constitution does it define what executive power is. These fifteen words give rise to the most powerful position on earth. But the executive branch, like the other two branches, is a part of the system of checks and balances built in to the Constitution.

Rakove discusses the history of the British system, how it evolved, what parts of it are accepted and what parts are rejected by American thinkers. The British greatly shaped American thinking. They began separating the executive from the legislative in 1777, when New York enacted legislation allowing for the governor to be elected by popular vote, independent of the legislature, but subject to a council of revision.

This movement toward separation of the two branches is further strengthened by Massachusetts in 1780. The former colonists are reluctant to vest power in one executive because of the memory of living under the monarchy in England. Further, the different schemes are considered at the Convention for the executive branch. Roughly speaking, by early June the framers begin the discussion that eventually results in them deciding on a one-person executive, and by mid-July they are examining different forms of election and tenure.

The framers consider three schemes for electing the executive. The schemes they consider are election by the national legislature, election by an Electoral College and election by popular vote. The first is discarded because it could lead to factions and deals in the election of the executive. The second is seen to be flawed because the populous North would decide the elections. This leaves them with the concept of an electoral college and how to devise one. They consider different schemes, trying to make sure that there is no way for a faction to determine the election of the president. They want the election of the president to be insulated from pressures or factions in the legislature. Once they decide on the form of the Electoral College, the Convention has to solve the issues of reelection, term, length and impeachment. They are careful to construct an executive office that gives the president the powers he needs, keeps the executive branch independent of the Senate and does not result in a monarch-type president. Reelection and term length result in expertise and experience in office, a trait they are looking for at the national level. Impeachment provides a method of removal in case of severe wrongdoing.



## Chapter 9, Creating the Presidency Analysis

Creating a presidency that would exist within the system of checks and balances involves consideration of different plans and proposals. The Convention delegates carefully examine and debate each proposal and finally decide on a one-person presidency. Fear of a monarchy-type situation is why there is resistance to a one-person presidency, but the framers are careful to devise a system of checks and balances that prevents this situation from arising.

It is interesting to note that many of the powers the President ended up with resulted from the framers suspicions of the Senate. They feared the Senate would end up being comprised of the elite and would function as an aristocracy. Because of this, in the last days of the Convention, many of the duties assigned to the Senate are shifted to the executive branch, doing away with the almost purely ceremonial role of the executive.

# Chapter 10, Rights

## Chapter 10, Rights Summary

During the last week of the Convention, George Mason and Elbridge Gerry ask to have a Bill of Rights included in the Constitution. They feel that it will only take a few hours to create a Bill of Rights. However, the Convention votes against the motion. It is during the period of ratification that the framers realize that they made a mistake in not including a Bill of Rights. "Some rights, then, were protected in the Constitution, but the list was clearly piecemeal in composition and partial in coverage. None of these provisions invoked the natural rights and first principles that Americans expected a declaration of rights to contain. The omission leaves the framers open to the charge that they had contrived to deprive people of their fundamental rights. They thought the charge absurd, but its repetition carried greater conviction as Federalists struggled to justify their oversight" (pg. 318). The inclusion of a Bill of Rights would have made the ratification process much simpler. The Bill of Rights was not formulated until the First Federal Congress in 1789. Madison authored the amendments. Most of the states had bills of rights defined in their state constitutions.

If rights were defined simply as religious freedom, standing armies, and freedom of press and assembly, the Federalists probably wouldn't have had the problems they had by omitting a Bill of Rights. The Federalists position is that just because something isn't explicitly mentioned as a given right, that does not mean it is reserved because there is nothing in the Constitution that gives government the power to take away that right. The Anti-Federalists respond by pointing out that the Constitution explicitly gives the right to trial by jury in criminal cases and explicitly prohibits the government from suspending the writ of habeas corpus. Why are these rights mentioned in the Constitution? The Anti-Federalists claim this represents a partial Bill of Rights. What about the rights that aren't mentioned? Why isn't a jury trial guaranteed in civil cases? Some Anti-Federalists take this omission to mean that trial by jury in civil cases is abolished.

Americans have always been concerned with their rights, as were the colonists before them. Exactly what do they mean by rights? British historian John Philip Reid has performed a comprehensive study of rights and what they mean during the period of the British monarchy and the American Revolution. The two rights rated most highly are the right to representation and the right to trial by jury; and these date back to the seventeenth century. Most rights are procedural, with the exception of religious liberties. Procedure means that government has to follow the process defined in the law. If they aren't mentioned in the law, many people take this to mean that they don't exist and they, therefore, do not have the protection they would have if the rights were stated. This is the basis for the Anti-Federalist position during the ratification period.



## Chapter 10, Rights Analysis

The inclusion of a Bill of Rights would have made the ratification process easier. The oversight is responsible for most of the debate during the ratification period. Since all of the states have a Bill of Rights in their state constitution, a federal Bill of Rights is expected to be a part of the federal Constitution; and by the participants own admission, it would not have taken long to formulate one.

The framers had the opportunity to formulate a Bill of Rights and include it in the Constitution at Philadelphia. They refused every time the point was brought up. If they had addressed the issue, wouldn't they have had to address at that time the issue of slavery on the basis of fundamental rights of the individual? This may be why they did not want to include the issue. They would have lost the support of the South and the Constitution would not have been ratified.



# Chapter 11, Madison and the Origins of Originalism

## Chapter 11, Madison and the Origins of Originalism Summary

The concept of originalism refers to the framers original intent or meaning of the words and terms used in the Constitution. Rakove distinguishes between the written Constitution and its amendments and the body of precedents and concepts about how the system should function. The term interpretation refers to the way people understand the meaning. The first interpretation of the Constitution is during the period of ratification. The second phase begins when they have to implement it into a working form of government. The authors understood these two stages of interpretation and tried to use phraseology that would be accepted for ratification and that would be possible to implement.

Obviously, the implementation of the Constitution leads to questions about interpretation right away. One of the first questions involves the removal of appointed officials, mainly Cabinet members. Cabinet members are appointed by the President with the required approval of the Senate. A second question involves the establishment of a national bank. Did they have the right to grant an article of incorporation? Madison suggests they use as a guide the intent of the framers... thus, the birth of originalism.

Another related issue emerges with the Jay Treaty. A furor arises when a treaty with Britain is ratified without the House. Since the treaty concerns commerce and appropriations are required to implement the treaty, the President authorized the treaty and the Senate ratified it without the House. The question arises because appropriation bills originate in the House and the House is also involved in the regulation of commerce. Republicans in the House feel they have a right to have a say in treaty ratification. Several of those who had participated in the Constitutional Convention pointed out the original intent of the framers is stated in the Constitution. Authority for the approval of treaties rests with the President and the Senate.

## Chapter 11, Madison and the Origins of Originalism Analysis

After the Constitution is ratified it has to be implemented and put into practice. This requires and interpretation of the terminology in order to structure a functioning government. As expected, questions arise immediately. Madison tells them to use the original intent of the framers as guidance. This is an interesting answer because there, for the most part, is nothing recorded that tells them what the original intent is. This is

the birth of originalism. The only thing they could do is to ask questions of the Convention delegates to find out what their original intent is.

# Coda

## Coda Summary

In the *Coda*, America is described as a forward-looking country that rarely looks back, until it comes to the Constitution. The Constitution is a document that is continually being interpreted and reinterpreted, from the moment it was released to the public in 1787 to modern times. Every now and then the original intent or the original meaning of the framers is appealed to. Originalist interpretations are resorted to when it is expedient to do so and is basically an academic argument, according to Rakove.

## Coda Analysis

The Constitution has proven to be a durable document. The amendment process and the vague wording allow the interpretations to evolve to fit the times and cover modern day circumstances, a testimony to the wisdom of the framers and authors. The document written in 1787 has evolved and, now in the present day, covers technology in a modern world that was never dreamed about in 1787.



# Characters

## James Madison

James Madison is one of the central characters in the book. He is also a central character in American history. Madison, a historian and well read in law, is a graduate of Princeton and an experienced statesman. He participated in the Constitutional Convention, the Continental Congress and the Virginia state assembly. He is also one of the participants in the formulation of the Virginia state constitution. Prior to the onset of the Convention, Madison spends months studying various forms of governments, noting the good and bad points of each. He recognizes the serious flaws in the Articles of Confederation and the resulting deficiencies in the national government and realizes that something drastic must be done to save the Union from splintering.

The national government cannot function under the Confederation. It does not have the authority to compel the states to comply with national policies and treaties, nor can it raise the revenues it needs to function. Trying to “fix” the Articles of Confederation will not solve the nation’s problems, as it had not done in the last ten years. Since most of the Convention delegates are tardy in arriving at Philadelphia, the Virginia delegation drafts the Virginia Plan based upon Madison preparation and notes.

This plan sets the tone for the Convention with Madison figuring prominently in the debates and the adoption process. Many of the Madison’s concepts become a part of the Constitution. Madison is also one of the authors of the *Federalists* papers series. During the period of ratification he writes in support of adoption of the Constitution, supporting and defending the Federalist position. After ratification, he is still in the position of defending and explaining the Constitution, as it is implemented into a working form of government. He is also one of the principle framers of the Bill Of Rights. Madison’s papers and writing are the main records of the events at the Constitutional Convention.

## George Washington

George Washington is a Virginia planter and Commander of the Continental Army that defeated the British in the American Revolution. He is a reluctant Convention delegate and is appointed Chair of the Constitutional Convention.

## Alexander Hamilton

Alexander Hamilton of New York is a statesman, lawyer and financier. Like Madison, he recognizes the shortcomings of the Articles of Confederation and the problems in the relationship between the states and the Continental Congress. Hamilton figures prominently in the events at Philadelphia. As a principal ally of Madison, Hamilton is



also co-author of the *Federalist* series. He, too, publicly writes in support of the adoption and ratification of the Constitution and in support of Federalist positions.

## John Dickinson

John Dickinson of Delaware played a role in the resistance to Britain. As a member of the Congress, he tried to bring about reconciliation with Britain before the end and the announcement of independence. He thought the colonies would be unstable on their own and wouldn't be able to survive. He authored the *Letters from a Farmer in Pennsylvania* and played a role in authoring a draft of the Articles of Confederation in 1776. He instructed the Delaware delegation to support the equal state rule and voting, and not to support any other forms of representation. At the Convention he changes his position, stating that there must be equal voting status in one of the houses. He is also very active in events at Philadelphia playing mediator and helping negotiate concessions and compromises, including the plan for a bicameral legislature.

## William Jackson

William Jackson serves as the Secretary of the Constitutional Convention in Philadelphia. The inadequacy of his note-taking results in inadequate public records of the historic Convention. As the Secretary, he is the fortieth signer of the Constitution.

## George Mason

George Mason is a rich Virginia planter, active in the Virginia legislature. He is one of the framers of the state constitution. He is also a popular speaker at the Philadelphia Convention. As influential as he is in the debates and compromises, he decides not to sign the Constitution during the last two weeks of the Convention. Mason disagrees with the structure of the three branches and the lack of a Bill of Rights.

## Edmund Randolph

Edmund Randolph is a Virginia politician and statesman. He is governor of Virginia and a delegate to the Federal Convention. He introduces the Virginia Plan to the Convention and is one of the formulators of the three-fifths rule that settled North-South issue. Even though Randolph is on the committee that writes the first draft of the Constitution, he is one of the three delegates that refuse to sign it at the end.

## Elbridge Gerry

Elbridge Gerry of Massachusetts is a Harvard educated businessman. He is active in the Provincial Congress in 1775 and the Continental Congress in 1776. He is a signer of the Declaration of Independence and the Articles of Confederation, but he refuses to

sign the Constitution due to his disagreement over the issue of representation and the lack of a Bill of Rights.

## **John Adams**

John Adams of Massachusetts is a Harvard educated lawyer-diplomat. He was a delegate to both the First and Second Continental Congresses and active in the movement for independence from Britain. He is the American Ambassador to Britain at the time of the Federal Convention. He authored the *Defence of the Constitutions of Government of the United States*. Volume I of this three-volume work appeared right before the Convention at Philadelphia.

## **James Wilson**

James Wilson, a European educated Pennsylvania lawyer, is a principal ally of Madison and Hamilton. He is well versed in law and politics. A Signer of the Declaration of Independence, he also served in the Continental Congress, and is a member of the committee that writes the first draft of the Constitution.



## Objects/Places

### **Pennsylvania Statehouse**

Pennsylvania Statehouse is the site of the Constitutional Convention in Philadelphia beginning in May 1787.

### **Montpelier**

Montpelier is the Virginia home of James Madison. This is where he performed his study of governments that became the basis for the Virginia Plan.

### **Annapolis, Maryland**

Annapolis, Maryland is the site of the Annapolis Convention in September 1786 that led to the Federal Convention in May of 1787.

### **New York, New York**

New York, New York is the home of the Continental Congress and the national government under the Articles of Confederation.

### **Mississippi River**

The Mississippi River is the object of a struggle between Spain and the United States over navigation rights.

### **Boston, Massachusetts**

Boston, Massachusetts is the site of the state convention that ratifies the Constitution but has a struggle over the inability to attach amendments.

### **Exeter, New Hampshire**

Exeter, New Hampshire is the site of the New Hampshire state convention, where on June 25, 1788 the Constitution becomes officially ratified. New Hampshire is the required ninth state.





## **Richmond, Virginia**

Richmond, Virginia is the site of the Virginia state convention that becomes the tenth state to vote for ratification.

## **Poughkeepsie, New York**

Poughkeepsie, New York is the site of the New York convention that becomes the eleventh state to vote for ratification.

## **Hillsborough, North Carolina**

Hillsborough, North Carolina is the site of the North Carolina convention that becomes the twelfth state to vote for ratification.

## **Rhode Island**

Rhode Island state convention is the last to ratify in May 1790.

# Themes

## Originalism

This book examines the making of the Constitution in terms of three methods of comprehension, for lack of a better word, or themes that occur at different points in time. The first theme is the concept of originalism. This concept has to do with original meaning or intent of the framers, or authors, of the Constitution. What do they mean by the words and terms they chose to use in writing this historic document? Why do they chose these terms and words? And more than two hundred years later, how can we ascertain the original intent of various words and terms?

Rakove shows us how. The Secretary of the Convention, William Jackson, does not take adequate notes of the goings on in Philadelphia. But others, principally James Madison, do. The writings of Madison, Hamilton and others provide the insight that we need to examine the behind the scenes concessions and compromises and the debates and discussions. Looking at the positions of the various delegates and how they change during the course of the Convention shows us how certain words and terms come into being and why the structure of the Constitution is the way it is.

The Constitution comes into being as a result of concession and compromise. An example of this is the three-fifths rule for slavery and the basis for representation based on population. A background examination reveals the framers had to find a way to appease both the North and the South, just as they had to in the big state-little state issue. The small states obviously want equal representation in both houses. The bigger, more populated states, want apportionment based on population. The result is a bicameral legislature composed of a Senate with representation based on equal votes and a House with representation based on population with a three-fifths rule for slaves. Without these compromises, there wouldn't have been any Constitution. The original intent of the framers is to devise a document with a structure of government that can be implemented into practice. This is what is accomplished at the Federal Convention in Philadelphia.

## Understanding

A second theme is also concerned with comprehension and can be called understanding. This occurs during the period of ratification and applies to the state conventions and the public. What do these entities understand what the words and terms mean? What do they understand to be the structure of the resulting government? An example of this is the omission of a Bill of Rights. This did not seem to be too problematic to the framers at the time of writing the Constitution; but it becomes a big issue during the period of ratification and after, so much so that a second convention is held in 1789 for the purpose of writing the amendments that are the Bill of Rights.



The framers, when writing the Constitution, didn't see the need for a Bill of Rights because certain rights existed by virtue of common law and custom. The government they are designing is not taking anything away what they already have, like free speech, by not mentioning it. Most of the critics, basically the Anti-Federalists, feel that if the rights are not stated explicitly, they do not exist. From their point of view, including a statement guaranteeing the right to a jury trial in all criminal cases and not mentioning civil cases means that there is no guarantee of a trial by jury in civil cases. Why? Because there is nothing in the document that explicitly gives them that right. Some Anti-Federalists went so far as to describe the Constitution as a blueprint for tyranny. States rights are being abolished by giving the national government the stronger rights that it needs to survive and function, and the states will be consolidated within the federal structure. The problem here is that these people do not have the same understanding of the document that the authors have. The words, or in this case, the lack of words, have a different meaning to the different groups.

## Comprehension

The last theme or method of comprehension we want to mention can be called interpretation. What meaning do these words and terms have over time? Two hundred years later we look at the Constitution. What do the words and phrases mean? The authors of the Constitution came up with wording that allows the interpretation and the government to evolve and develop over time. The document, written over two hundred years ago, still applies to the world and the technology of today. This is one of the functions of the Supreme Court – to apply and interpret the Constitution.

The reason why it is still a functional document has to do with the wording. It is broadly worded, so broadly worded that the details of any situation fit into its structure. This is why the document worded over two hundred years ago still functions to govern the situations of today. If there is a situation that it doesn't cover, then there is an amendment procedure that allows for changes for the inclusion of situations that it doesn't cover. We do not face the same issues today that they faced in 1787. The usurpation of states rights or the possibility of consolidation isn't even mentioned or relevant. Yet the same wording in the Constitution stirred up a big controversy over these issues two hundred years ago. And as for the original intent or meaning of the wording, that too is more of an academic argument.



# Style

## Points of View

Rakove writes the book in the third person with quotes where they exist from written documentation. He readily fills in with background material. This allows the reader to go behind the scenes at the Constitutional Convention. He lets the reader see how situations develop and how they are resolved. The reader has to appreciate this because it is a view of the Constitution that we rarely, if ever, see.

Rakove uses a variety of documents including diaries, notes, letters, and press items to reconstruct the activities that take place prior to the Convention, at the Convention and during the period of ratification. He interprets these activities in an academic fashion and brings in relevant theory and facts when necessary.

## Setting

The setting for the book is the ten years following the Articles of Confederation, or the 1780s on the East Coast. Philadelphia is the site of the Constitutional Convention, where the debates take place, the compromises are made and the Constitution is written. The setting for ratification is in each of the states where the conventions take place and the vote for ratification occurs. At the time the national government is located in New York.

There are other locations mentioned in the book, primarily wherever a character lives or travels to. Thomas Jefferson, the Ambassador to Paris, is also mentioned via his communications.

## Language and Meaning

The book is written in an objective tone. There is no emotionalism in it. It is a clear presentation of facts, as any academic work is. The book is interesting: even though the reader knows the outcome, the reader still wants to know how they arrive there. Rakove states that if one wants to know the original intent of the framers, one has to look at the background situation they are operating in. This way one can see how the different conflicts came into being, what the logic is in the different positions and the concessions that are made to reach a compromise to resolve the situation. Then one can look at the language in the Constitution and see how it was arrived at. When the information is presented in this manner, it is relatively easy to figure out the meaning or intent of the framers because you know what it is that they are trying to accomplish and why; and you also know what it is that they are trying to avoid and why.

Why is the Constitution written in such vague terms? The Constitution is written in vague terms because the framers are trying to define the structure of a new government



that would avoid the deficiencies of the Confederation. They are trying to come up with a plan that others will be able to implement. What is the goal? the goal is to form a more perfect union. What does this mean? It means whatever it is interpreted to mean at any point in time. This is why the Constitution is a document that withstands the rigors of time. The reader is left to draw these conclusions on his own. Rakove does not force any facts or issues on the reader. He presents the facts objectively and lets the reader draw his own conclusions as to why and how. This is why the book isn't boring. The reader is waiting to see who does what next or how do they resolve this conflict or that conflict.

## Structure

*Original Meanings* consists of eleven chapters and it is rather quick reading for a book with the kind of detail it involves. Since James Madison is a central figure in the book, the second chapter is basically concerned with the preparations Madison did for the Constitutional Convention, which leads into the third chapter on the Madisonian Movement at the Convention. Madison's pre-convention research is formulated into the Virginia Plan, which is at the basis of what Rakove terms the Madisonian Movement.

The book, for the most part, is not in chronological order. There are parts that are repetitious, as Rakove admits. The book is organized according to topic, with the topics comprising the major issues the framers face as they construct the Constitution: ratification, debates, federalism, representation and the creation of the presidency. Presenting the material in this way accomplishes Rakove's purpose of showing how the different issues and conflicts are dealt with and how compromises are reached. The relevant issue is followed from its beginning to its conclusion. A pure chronological approach would have avoided much of the repetition but the themes of original intent, understanding and interpretation would have been lost.

The reader, if trying to follow an issue to its resolution and inclusion in the Constitution, would have to jump around the book trying to find where the different pieces appear in a chronology. Basing chapters on themes and topics provides a much better format than divisions based on time frames would.



## Quotes

“It has been the misfortune of history,’ he (Madison) wrote in 1823, ‘that a personal knowledge and an impartial judgment of things rarely meet in the historian. The best history of our Country, therefore, must be the fruit of contributions bequeathed by contemporary actors and witnesses to successors who will make an unbiased use of them. And if the abundance and authenticity of the materials which still exist in the private as well as public repositories among us should descend to hands capable of doing justice to them, the American History may be expected to contain more truth, and lessons certainly not less valuable, than those of any Country or age.” Chapter 1, pg. 4

“To borrow a dictum from John Marshall, the great chief justice (and constitutional ratifier), historians can never forget that it is a debate they are interpreting. They have a further obligation not easily reconciled with the strong form of originalism. With its pressing ambition to find determinate meanings at a fixed moment, the strict theory of originalism cannot capture everything that was dynamic and creative, and thus uncertain and problematic, in the constitutional experiments of the Revolutionary era – which is why, after all, the debates of this era were so lively and remain so engaging. Where we look for precise answers, the framers and ratifiers were still struggling with complex and novel questions whose perplexities did not disappear in 1788.” Chapter 1, pg. 10

“The consensus could not be built by the scare tactics that Robert Morris had used in 1782 and 1783, when he tried to pressure Congress by fomenting unrest among the public creditors and within the Continental army, and by threatening to resign if his program was not approved. It would require instead a reasoned approach that would involve both accommodations among the interest represented in Congress and a prudent regard for the difficulty of mobilizing support for reform within the states. At the same time, Madison thought ‘it better to trust to further experience and even distress, for an adequate remedy,’ than to adopt ‘temporary’ expedients which might prove inadequate to the permanent needs of the Union.” Chapter 3, pg.39

“Then the delegates might first have had to feel their way gingerly into the business – perhaps by discussing the general state of the Union or by asking just what the national government should be expected to do – while postponing any discussion of its structure. This was the ‘more simple mode’ of action that John Dickinson of Delaware proposed when the Virginia Plan was first discussed on May 30. Rather than seek agreement on broad principles, he argued, the Convention need only agree ‘that the Confederation is defective; and then proceed to the definition of such powers as may be thought adequate to the objects for which it was instituted.” Chapter 4, pg. 59

“In the lexicon of American politic, few words evoke as ambivalent a response as compromise. On the one hand, compromise (or better yet, its spirit) symbolizes the necessary pragmatism expected of politics in a pluralist society. It suggests a preference for consensus over confrontation, a willingness to meet opponents halfway rather than strive for ideological purity. Yet compromise just as often connotes moral



failure, a weakness of nerve or worse, of conscience. Here the willingness to compromise betrays a lack of inner conviction, a disposition to sacrifice vital principle to attain more tangible rewards.” Chapter 4, pg 57

“A federal constitution ratified through an overt expression of popular sovereignty would rest on stronger foundations than all those state constitutions that had not been framed by special conventions or subsequently approved by the citizenry.” Chapter 5, pg. 101

“The people have an undoubted right to judge of every part of the government which is offered to them. Now power on earth has a right to preclude them; and they may exercise this choice either by themselves or their delegates legally chosen to represent them in the state convention. I venture to say that no man, reasoning upon revolution principles, can possibly controvert this right.” Chapter 5, pg. 114

“Heretofore, most governments have been formed by tyrants and imposed on mankind by force. Never before did a people, in time of peace and tranquility, meet together by their representatives and, with calm deliberation, frame for themselves a system of government.” Chapter 6, pg. 131-132

“In this view, the ratifiers were not interpreting the Constitution merely to decide whether it would take effect; they were also investing their notions of its meaning in the document itself, thereby obliging later interpreters to treat those understandings as binding sources of authority. These understandings of 1787-1788 thus become *original* in at least two senses: in point of time, as the *initial* forays in interpretation, providing the best historical evidence of what the Constitution meant to its adopters and thus explaining why it was adopted; but also as the *originating* source of its supreme authority, and therefore crucial to ascertaining legally binding meanings for later interpreters.” Chapter 6, pg. 149-150

“Yet precisely because Madison and Hamilton knew how extensive a network of compromises and partial solutions shaped the final text, they also knew that the Constitution could be accurately described only in its details, and that the very process that produced it belied the sinister motives Anti-Federalists attributed to its framers. It was their involvement in drafting the Constitution that enable them to understand and thus explain why ‘the Convention must have been compelled to sacrifice theoretical propriety to the force of extraneous consideration’ and ‘forced into some deviations from that artificial structure and regular symmetry which an abstract view of the subject might lead an ingenious theorist to bestow on a Constitution planned in his closet or in his imagination.” Chapter 6, pg. 156

“What these essays make clear, in their emphasis on the necessity for *unlimited* national powers, is that Hamilton still believed that the great conceptual problem of federalism was not to explain how the states would retain sufficient sovereignty but to make Americans realize that a vigorous national Government was essential to their security and welfare.” Chapter 7, pg. 196



“The majority deserved not so much to rule as to be protected from misrule; not so much to legislate in pursuit of its interests as to be secured against statutes that would reflect the high ambitions of the privileged class. A full representation was necessary for two purposes: to prevent the adoption of measures, especially taxes, that would distribute the *burdens* of government unequally across society; and to instill in the people the confidence in government that would obviate the need to resort to coercion (that is, armed force) to enforce the laws.” Chapter 8, pg. 233

“No feature of the Constitution stimulated the organization of political parties more than the recognition that control of the national government depended on control of the presidency. That was hardly the result the framers intended, nor was it even an outcome that they could plausibly imagine.” Chapter 9, pg. 268

“Treat it not as a uniform rule of conduct but as a danger to be prudently against, however, and the idea of making the president ultimately responsible for the administration of government, and jointly responsible with a distinct Senate for other executive functions, could be defended as a reasonable solution to a manageable problem.” Chapter 9, pg. 279

“And this meant that the problem of rights was no longer to protect the people as a collective whole *from* government but to defend minorities and individuals against popular majorities acting *through* government.” Chapter 10, pg. 313

“Some rights, then, *were* protected in the Constitution, but the list was clearly piecemeal in composition and partial in coverage. None of those provisions invoked the natural rights and first principles that American expected a declaration of rights to contain. The omission left the framers open to the charge that they had contrived to deprive the people of their fundamental rights. They thought the charge absurd, but its repetition carried greater conviction as Federalists struggled to justify their oversight.” Chapter 9, pg. 318

“The framers believed that their concept of a constitution broke decisively with the prior understanding they inherited from Britain. Yet in one sense that break was less radical than it seemed. For since 1789 Americans have always possessed two constitutions, not one: the formal documents adopted in 1787-88, with its amendments; and the working constitution comprising the body of precedents, habits, understandings, and attitudes that shape how the federal system operates at any historical moment. The problem of originalism is about the relation between these two constitutions. Originalism asks whether some aspect of law or governance should be brought nearer to its constitutional source.” Chapter 11, pg. 339-340



# Topics for Discussion

Regarding the concept of originalism, how does the view of the legal profession differ from those of the historian regarding its significance?

Why did Mason, Randolph and Gerry refuse to sign the Constitution?

What are the two big compromises that take place at the Convention? Why are they important?

What are the deficiencies in the Articles of Confederation? Why did this present a problem?

Why did the Anti-Federalists insist on a Bill of Rights? The fact that a delineation of rights is missing from the Constitution connotes what meaning? Why?

What are the positions of the Anti-Federalists regarding states' rights? Why?

What would the existence of slavery in the South have to do with the omission of a Bill of Rights when the Constitution was ratified? Do you think the omission was accidental or intentional? What could be gained by an intentional omission?

What is meant by the American experiment with republicanism? What did the experiment prove?

The Anti-Federalists claim that the Constitution will result in consolidation of the states. What does this mean?