

The Constitutional Convention

The Constitutional Convention was a central event in the founding of the United States. Activities explore how slavery and the status of enslaved Blacks impacted key compromises about the framework of U.S. government, including the Great Compromise. The overriding contradiction of slavery in American life is examined by two documents: Thomas Jefferson's Draft Constitution (1776) and Thurgood Marshall's Bicentennial Speech (1987). The question of a constitutional amendment to abolish slavery as punishment for a crime is considered and a Media Literacy Connection looks at racism toward Black Americans in the media.

Standard 2.3: The Constitutional Convention

*Identify the various leaders of the Constitutional Convention and analyze the major issues (e.g., distribution of political power, rights of individuals, representation and rights of states, slavery) they debated and how the issues were resolved (Massachusetts Curriculum Framework for History and Social Science) **[8.T2.3]***

FOCUS QUESTION: What Were the Major Compromises at the Constitutional Convention and how Have They Impacted American Life and Government?



Mural of the Constitutional Convention at the United States Capitol

["The Constitutional Convention, 1787"](#) | Public Domain

On May 25, 1787, 55 delegates from every state except Rhode Island arrived at the Pennsylvania State House in Philadelphia to begin the **Constitutional Convention**. Ranging in age from 26 (New Jersey's Jonathan Dayton) to 81 (Pennsylvania's Benjamin Franklin), the delegates met from May to September and debated the structure of the new government, representation in Congress, the rights of individuals, and the issue of slavery and its future. The compromises they made have continued to dramatically impact the nation's history to the present day.

Once the meeting began, George Washington was elected President of the Convention. Although the attendees were sworn to secrecy, [James Madison](#), the future 4th President, [kept notes of nearly every day's proceedings](#) and other delegates kept notes as well. Based on that recorded history, historians and everyday citizens have the opportunity to explore the history-shaping developments of the Constitutional Convention and its key compromises: The Great Compromise; the Three-Fifths Compromise; the Commerce Compromise; the Slave Trade Compromise; and the Electoral College Compromise.

The men who wrote in the Constitution's Preamble that "we the people" seek to "form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty" did so in a country that allowed and profited from African slavery. It was **a contradiction between ideals and realities** that America lives with to this day.

In his doctoral dissertation about the African Slave Trade written more than 125 years ago, **W.E.B. Du Bois** (1896) framed the contradiction thusly: "It was the plain duty of the colonies to crush the trade and the system in its infancy: They preferred to enrich themselves on its profits." Du Bois continued: "It was the plain duty of a revolution based on 'Liberty' to take steps toward the abolition of slavery: It preferred promises to straightforward action" (p. 152).

Modules for this Standard Include:

1. [INVESTIGATE: The Great Compromise - The Virginia and New Jersey Plans](#)
2. [UNCOVER: Thomas Jefferson's Draft Constitution \(1776\) and Thurgood Marshall's Bicentennial Speech \(1987\)](#)
3. [ENGAGE: Is a Federal Constitutional Amendment Needed to Abolish Slavery as Punishment for a Crime?](#)
 - o MEDIA LITERACY CONNECTIONS: Representations of and Racism Toward Black Americans in the Media

1. INVESTIGATE: The Great Compromise - The Virginia and New Jersey Plans

At the outset of the Constitutional Convention, delegates were divided over how much power should be given to each state in the new government.

The [Virginia Plan](#), also named the "Large-State Plan," called for a two-house, bicameral legislature (law-making body), a chief executive (the president), and a court system.

The [New Jersey Plan](#), also named the "Small-State Plan," called for a one-house or "unicameral" legislature where representation would be equal for all of the states. Under that plan, each state would get one elected official and one vote.



["Assembly Room, Independence Hall, Aug 2019"](#)

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Delegates from the larger states tended to support the Virginia Plan because it would give them more power if representation was based on population, while smaller state representatives supported the New Jersey Plan because it would give them more power if representation was uniform across all states.

The **Great Compromise** created two houses of the national legislature: a House of Representatives whose membership was based on population and a Senate where each state had two voting members. There is more information about this compromise at a *resourcesforhistoryteachers* wiki page [Constitutional Convention and the Founders](#).

Suggested Learning Activities

- **Role Play the Constitutional Convention**
 - Conduct one of two [Constitution Role Plays](#): Whose “More Perfect Union”? and “The Constitutional Convention: Who Really Won?” (registration required from Zinn Education Project)
- **Analyze How Amendments Became Part of the Constitution**
 - **The Founders realized that the Constitution was not perfect, and this led them to discussing and agreeing on the need for Constitutional Amendments and Ratifications, what became [Article V: Amendment Process](#).**
 - Read [this](#) article about the 13th Amendment: Abolition of Slavery.
 - Ask yourself: Why did this amendment need to take place and how did it come to happen? What would have happened if amendments to the Constitution were impossible?
 - Read [this](#) article about the 19th Amendment: Women’s Right to Vote.
 - Again, ask yourself: Why did this amendment need to take place and how did it come to happen?
 - What similarities can you find between these two events in American history? What differences?
 - What do each say about the importance of constitutional amendments as a way to make fundamental changes in American democracy? (A version of this activity was suggested by Shai Bocarsly, April 2022)

Online Resources for the Constitutional Convention

- [The Constitutional Convention: Lesson Plan for Act II \(Virginia and New Jersey Plans\)](#), Teaching American History, Ashland University
- [Analyzing the Great Compromise, 1787](#), Gilder Lehrman Institute of American History (log-in required)
- [The New Jersey Plan](#), classroom learning activities
- [Why Is John Adams Standing on Thomas Jefferson's Foot?](#) A visual analysis of John Trumball's famous presentation of the Declaration of Independence to the Second Continental Congress.

2.UNCOVER: Thomas Jefferson's Draft Constitution (1776) and Thurgood Marshall's Bicentennial Speech (1987)

Two documents—one by **Thomas Jefferson**, the other by **Thurgood Marshall**—written some 200 years apart, demonstrate the complicated connections between slavery and the Constitution.

Thomas Jefferson was a major slave owner; at any given time some 130 people were enslaved at his Monticello plantation ([Slavery FAQs - Property](#) from *Thomas Jefferson's Monticello* website). However, in his [Draft Constitution for Virginia](#) of 1776 (never debated and now largely forgotten) [Jefferson called for](#) ending slavery, specific rights for native peoples, outlawing most capital punishment, eliminating any standing army, and not allowing politicians to run for reelection.

More than 200 years later, on May 6, 1987, **Thurgood Marshall**, grandson of a slave, attorney in the *Brown v. Board of Education* school desegregation case and first African American Supreme Court Justice gave what has become known as the [“Bicentennial Speech”](#) to a patent and trademark law group meeting in Hawaii. Marshall stated that the Constitution was “defective from the start.”



["Thurgood Marshall, 1967"](#)

by Okamoto, Yoichi R. | Public Domain

While the founders avoided using the term in the text of the document, the Constitution, in Marshall's mind, provided important protections to slavery (notably the Three-Fifths clause) that have undermined and contradicted American ideals since its signing. Here is the full [Text of Remarks of Thurgood Marshall at the Annual Seminar of the San Francisco Patent and Trademark Law Association](#).

Suggested Learning Activities

- **State Your View**
 - Do you agree or disagree with Thurgood Marshall's conclusion that the Constitution was "defective from the start"?
 - Why was Thomas Jefferson's draft Constitution not adopted?

3.ENGAGE: Is a Federal Constitutional Amendment Needed to Abolish Slavery as a Punishment for a Crime?

Although the [13th Amendment to the Constitution](#) abolished slavery in 1865, it did so "except as a punishment for a crime." In recent years, lawmakers throughout the country have introduced amendments to [state constitutions](#) to eliminate that exception. Tennessee removed slavery and involuntary servitude from its state constitution in 2022. Utah and Nebraska did so in 2020. Still **10 states' constitutions allow slavery and involuntary servitude as punishments for a crime** ([Ballotpedia](#)).

Will those remaining states choose to change their constitutions or **is a federal constitutional amendment needed to fully eliminate slavery from law?**

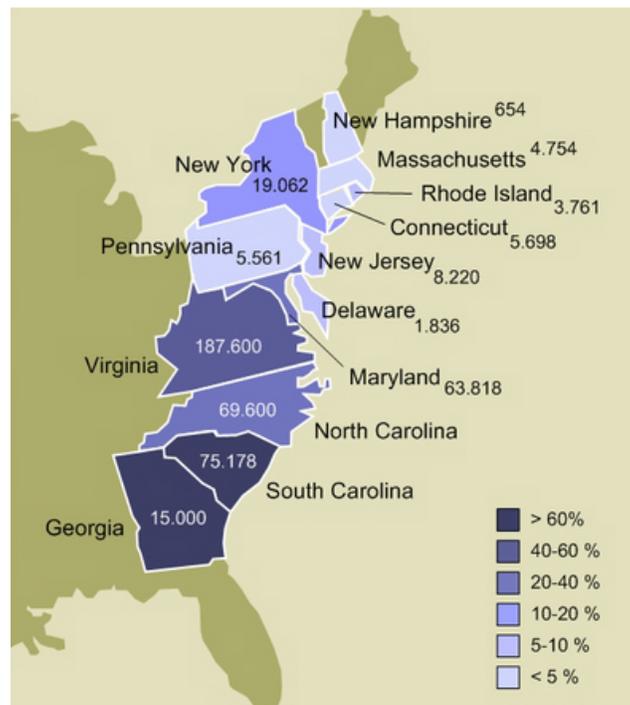
Slavery and the Constitution

The issue of slavery and its place in state and federal law extends back to the Constitutional Convention's debates about the slave trade, the economics of plantation agriculture, and the morality of human bondage in a nation where the Declaration of Independence had declared "all men are created equal."

Slavery of Africans had existed since the beginnings of European colonization. Although the first Africans arrived at the Jamestown colony in 1619, it is estimated that beginning in the early 1500s, more than 500,000 Africans had been brought to the Americas against their will. In total, [concluded Henry Louis Gates](#), 12.5 million Africans were sent to the New World, however, only 10.7 million survived the [Middle Passage](#).

Massachusetts was the first slave-holding colony in America—its colonial governor, John Winthrop, helped write the first law **legalizing slavery in North America in 1641**. Massachusetts abolished slavery in 1783 and declared the slave trade illegal in 1788 ([The Case for Ending Slavery](#), Massachusetts Historical Society).

By 1787, **18% of the population of the United States were slaves**; while in Virginia nearly 40% of the population was enslaved. In other states, slavery was in decline—Vermont was the first of the original colonies to abolish slavery in 1777; Pennsylvania in 1780.



["Slavery in the 13 colonies"](#) by Stilfehrer is licensed under [CC BY-SA 3.0](#)

At the Constitutional Convention, delegates debated **whether slaves should be counted as part of the population in determining representation in Congress**. Disagreement over this question led to bitter tensions among delegates. The southern slave-holding states wanted slaves counted to gain more representatives in Congress; the northern non-slave states disagreed.

In the [Three-Fifths Compromise](#), it was agreed that slaves would be counted as three-fifths of a person for Congressional representation and taxes. While some delegates favored abolition of slavery, no one at the Convention proposed that African Americans should be granted citizenship.

The Three-Fifths Compromise gave states in the South, in the words of historian Garry Wills, a "slave power" whereby they received one-third more seats in the House of Representatives than if only the free population was counted. Wills concluded that "right up to the Civil War, the management of **the government was disproportionately controlled by the South**" (Wills, 2003, p. 6). A White Southerner from Virginia was President for 32 of the nation's first 36 years (Washington, Jefferson, Madison, and Monroe).

After the passage of the 13th Amendment, officials in the Jim Crow-era South routinely arrested Black people for petty crimes, placing those arrested in forced labor.

The Abolition Amendment

In 2021, Oregon Senator Jeff Merkley and Georgia Congresswoman Nikema Williams introduced the [Abolition Amendment](#) to the federal constitution, prohibiting the use of slavery and involuntary servitude as a crime.

Given the oppressive legacy of slavery, what impact would a federal constitutional amendment have on people's historical memories and current criminal justice activities?

Media Literacy Connections: Representations of and Racism Toward Black Americans in the Media

Powerful, persistent, and pervasive White racism toward Black Americans - built into the structures of American government at the Constitutional Convention - has been perpetuated throughout history by negative media stereotypes.

Emory University professor [Nathan McCall tracked the development of this imagery](#) from the founding of the U.S. to the Presidency of Barack Obama.



[Black Lives Matter Shirt NYC](#) by Shanluan is licensed under [CC BY-SA 4.0](#)

The following activities ask you to analyze media representation of Black and African Americans to uncover stereotypes and, in response, design media that affirm and celebrate Black lives and culture.

- [Activity 1: Uncover Media Stereotypes Toward Black and African Americans](#)
- [Activity 2: Analyze Social Media Content Creators' Videos](#)
- [Activity 3: Curate a Collection of Images of Black Lives and Culture](#)

Suggested Learning Activities

- **Analyze the Evidence**
 - How did the Three-Fifths Compromise Impact the Electoral College and Who Was Elected President from 1800 to the 1850s?
 - [Election Results, 1789 to 2016](#), The American Presidency Project
 - [The Union Wasn't Worth the Three-Fifths Compromise on Slavery](#).
- **State Your View**
 - Was the Constitution a Pro-Slavery Document?
 - [The Constitution and Slavery](#).

Online Resources on the Three-Fifths Compromise

- [History of the Three-Fifths Compromise](#)
- [Massachusetts Anti-Federalists Oppose the Three-Fifths Compromise](#)
- [A Compact for the Good of America? Slavery and the Three-Fifths Compromise](#), African American Intellectual History Society
- [Lesson plan](#) on the Constitutional Convention, focusing on the issue of slavery

Standard 2.3 Conclusion

The basic structure of American government was assembled through the debates and compromises of the Constitutional Convention of 1787. **INVESTIGATE** examined the "Great Compromise" that created the national legislature with a Senate and a House of Representatives. **UNCOVER** explored the visions of equality and justice in Thomas Jefferson's Draft Constitution (1776) and Thurgood Marshall's Bicentennial Speech (1987). **ENGAGE** asked whether the "Three-Fifths Compromise" made the Constitution a pro-slavery document.



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