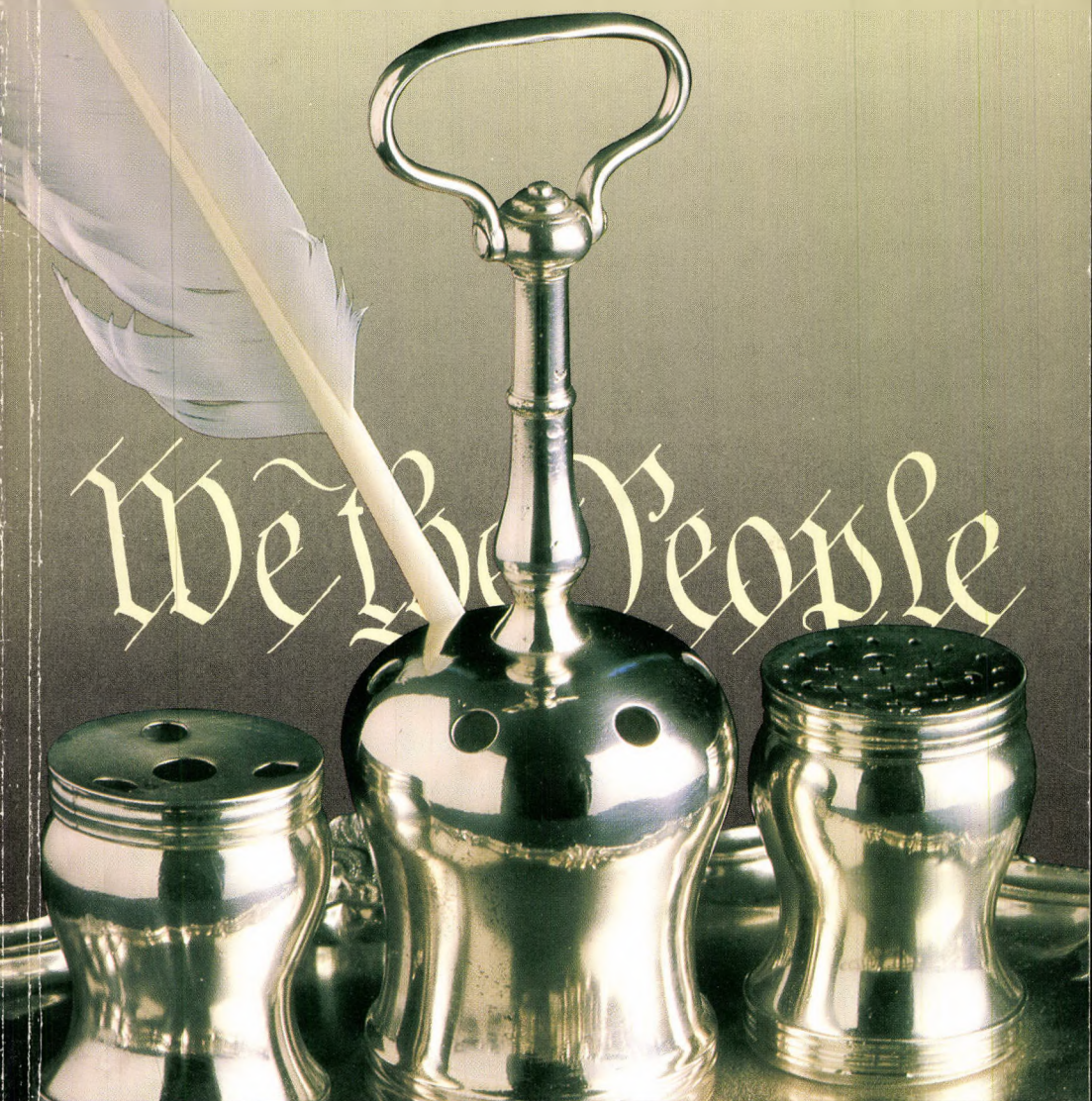


# The Framing of the Federal Constitution

*The year was 1787. The place, the State House in Philadelphia. Delegates from 12 of the 13 States, sitting in long, often heated sessions, drafted a new constitutional basis for the American nation. This book is a fresh retelling of a story vital to free men everywhere.*



# Handbook 103

# **The Framing of the Federal Constitution**

**Text by Richard B. Morris  
Drawings by Leonard Baskin**

**Produced by the  
Division of Publications  
National Park Service**

**U.S. Department of the Interior  
Washington, D.C. 1986**

### *About This Book*

The American system of government springs from the work of 55 delegates meeting in convention in Philadelphia during the summer of 1787. The document they wrote and presented to their countrymen for approval was the Federal Constitution. This work gave the nation a national government based on the principle of popular sovereignty and the paradoxical idea of a "sovereign union of sovereign states." That a people could, by purposeful deliberation, make themselves into a nation was an event heretofore without parallel.

In *The Framing of the Federal Constitution* Richard B. Morris tells the story of that fateful summer. Published by the National Park Service on the occasion of the Bicentennial of the U.S. Constitution, this handbook depicts the men, the setting, the events, the finished work, and the struggle for ratification of the great document. A concluding section describes the later years of the document, when it suffered much from neglect, and reproduces the original text and later amendments.

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# Part 1



# The Setting



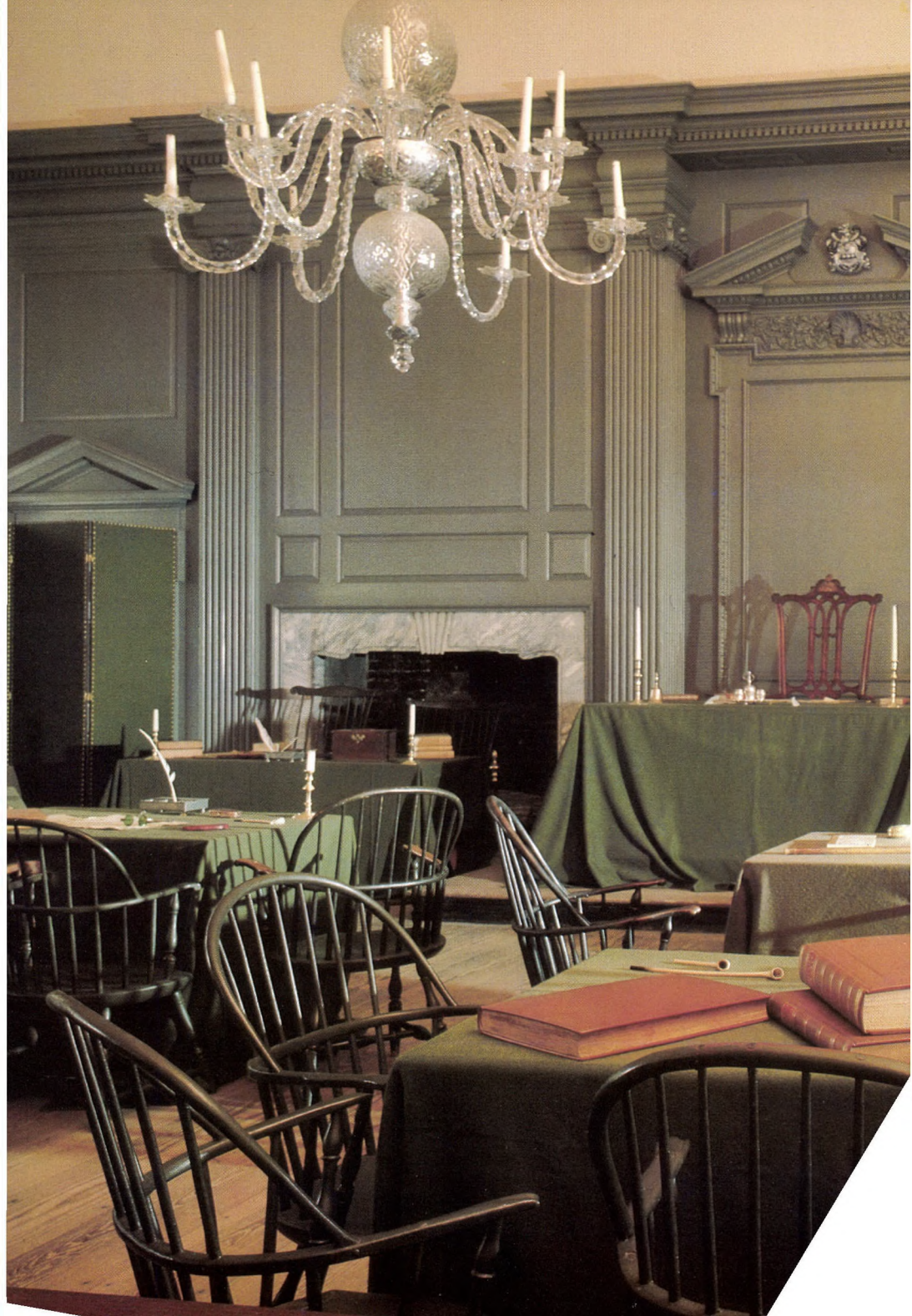
In the summer of 1787, some 55 delegates met in convention in the State House in Philadelphia and devised a new national government, then loosely allied in a "league of friendship" under the Articles of Confederation. The delegates sat almost daily for for four months and argued out their ideas in long, often heated sessions behind closed doors. In mid-September they gave to their countrymen the final document, four pages of parchment setting forth a plan of union calculated "to secure the Blessings of Liberty to ourselves and our Posterity."

This document was the Federal Constitution. It provided for a sovereign government with clearly defined powers and responsibilities. In spare, eloquent language, the delegates created a central government with authority in national affairs while reserving local affairs to the States. They steered between the equal dangers of tyranny and ineffectualness with a system of checks and balances: a two-house legislature, one representing the people at large and the other the States; an executive branch with a single head; an independent judiciary; strict limitations on powers granted; a provision for amendments; and the vesting of sovereignty in the people themselves and not in offices and institutions. That delegates of widely diverse interests could unite on such a system was, for George Washington, "little short of a miracle." In London, John Adams declared the convention "the greatest single effort of national deliberation that the world has ever seen."

This book is a succinct account of that pioneering experiment in self-government. The text is by Richard B. Morris, author of many works on 18th-century American society. His story draws on long study of the Nation's constitutional origins to take us to the heart of the issues facing the country in 1787. The drawings of the principal actors in the drama are by the noted artist Leonard Baskin and were made from life portraits by contemporaries. The scene of the Federal Convention and several related sites are preserved in Independence National Historical Park, and these we now see in a series of photographs forming a prelude to this book.

Preceding page: *Delegates to the Federal Convention often strolled in the State House yard between sessions. This view by the Philadelphia artist William Birch shows the building as it appeared in 1787. The original steeple had been replaced a few years earlier with a hipped roof capped by a finial. The soaring steeple on the building today (opposite page) was built in 1828 to the design of William Strickland.*







Preceding page: *The Assembly Room of the State House (Independence Hall) is the most historic political meeting place in the United States. Here the Declaration of Independence was debated and adopted in 1776, the Articles of Confederation were ratified in 1781, and the Federal Constitution was framed in 1787.*

*The room has been restored to its appearance in that period. A delegate described it at the time as "neat but not elegant," true to the Quaker spirit of the host city. Except for the silver inkstand on the president's table and his chair, the furnishings are reproductions of pieces likely to have been in the room at the time.*

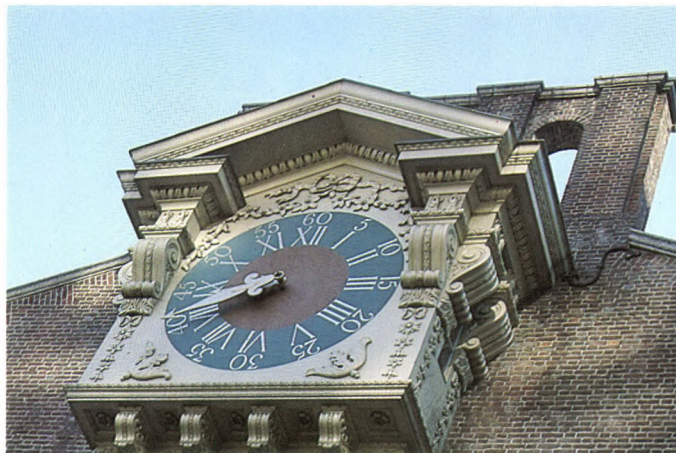




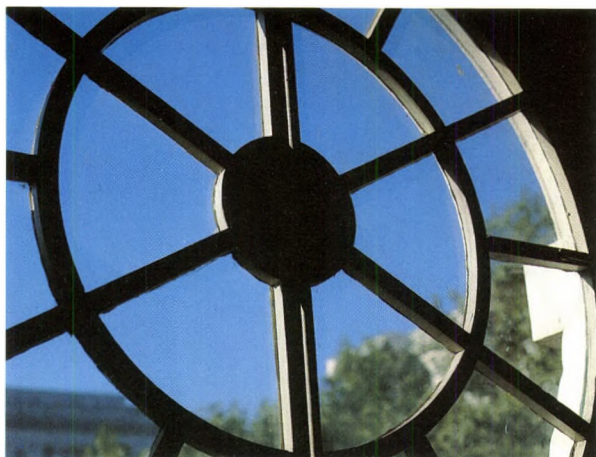
*This silver inkstand, designed by Philip Syng in 1752 for the Pennsylvania Assembly, was used by the delegates to sign the Federal Constitution.*



*Benjamin Franklin summed up his feelings toward the work of the convention with his famous anecdote on the rising sun carved on the back of the president's chair. As James Madison recorded the story, Franklin "observed to a few members near him, that painters had found it difficult to distinguish in their art a rising sun from a setting sun. I have . . . often and often in the course of the session, and the vicissitudes of my hopes and fears as to its issue looked at that behind the president without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting sun."*



*Three details of restored  
Independence Hall.*



*Green and spacious Independence Square, formerly the State House Yard, has been a public walk for Philadelphians for over two centuries.*





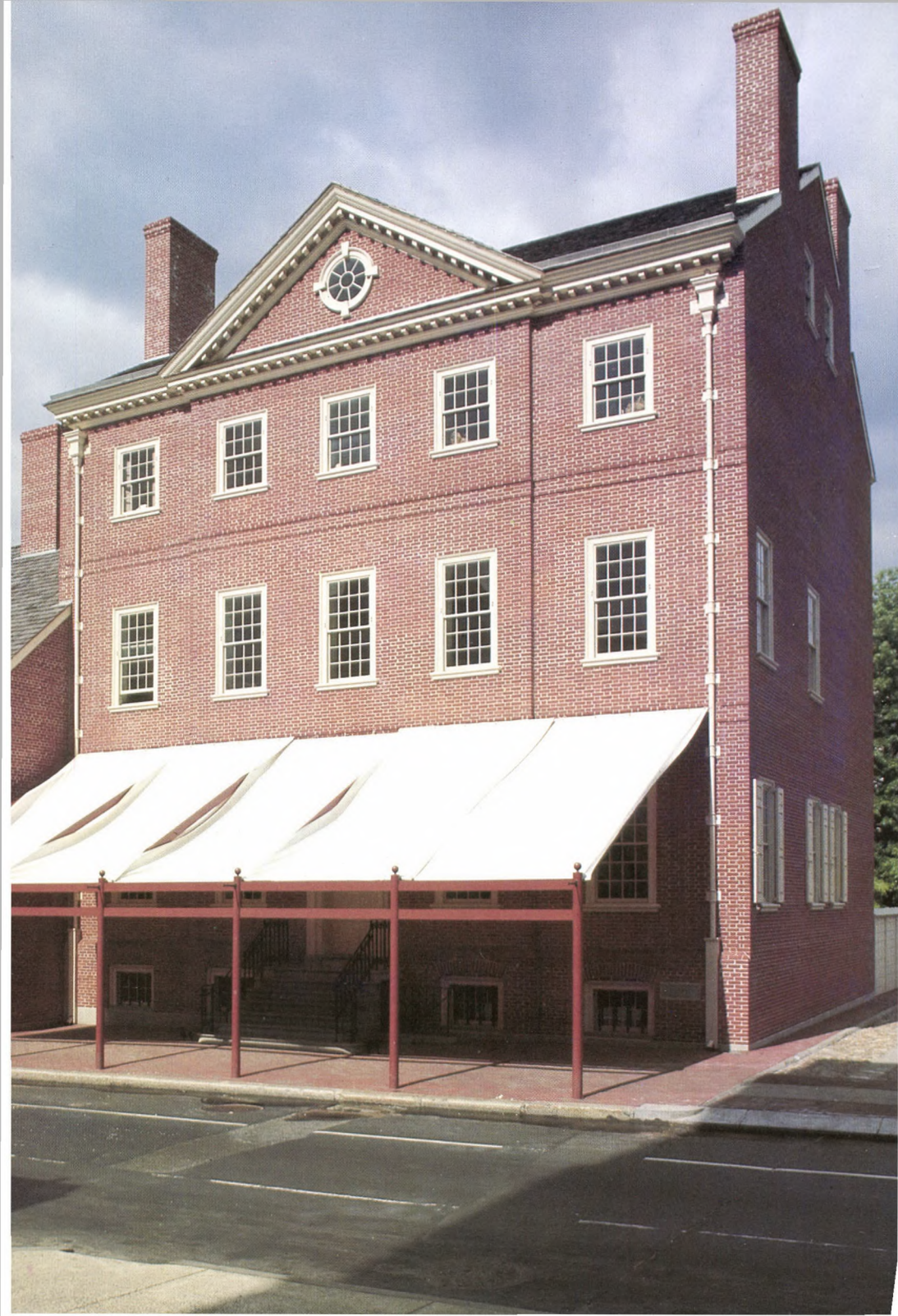
*Elfreth's Alley, an elegant strip of row houses crowded between Front and Second Streets above Arch, is a good representation of late 18th-century Philadelphia.*

*Artisans, small merchants, and perhaps a few industrious workers would have lived here with their families about the time of the Federal Convention.*



*Steel frames now outline the site of Benjamin Franklin's printshop and house in Franklin Court. The house stood from 1765 to 1812, an imposing brick structure which he once described as "a good*

*house contrived to my mind." In the summer of 1787, he frequently sat with delegates to the convention under a large mulberry tree in the yard.*



*City Tavern on Second Street was one of the most distinguished hostelrys in America in 1787. It was built in 1773 "at great expense by a voluntary subscription of the principal gentlemen of the city," who wanted a place in which to eat, drink, and entertain their friends and generally emulate their wealthy counterparts across the sea.*

*The Federal Convention brought a crush of business to the tavern trade that summer, and City Tavern no doubt shared in it. At least one delegate—William Samuel Johnson of Connecticut—boarded here, and many others must have passed in and out. George Washington dined here several times and also was entertained by the city's light horse troop. On the convention's last day, he noted in his diary, the members "adjourned to the City Tavern, dined together and took a cordial leave of each other."*

*The present building is a faithful reconstruction of the original, which was torn down in 1854.*



# We the People

insure domestic Tranquility, provide for the common Defence, promote the general Welfare, and bind ourselves and our Posterity, to ordain and establish this Constitution for the United States in

## Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, in each State shall have <sup>at least one</sup> Representative, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, seven Years, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be added within the first Year after the entry of this Article, by adding to the whole Number of free Persons, including those bound to Service for a Year, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress, and within every subsequent Term of ten Years, in such Manner as they shall direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

When vacancies happen in the Representation from any State, the Executive thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall choose their Speaker and other Officers, and shall determine the Rules of their Proceedings.

Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for a Term of six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Meeting of the Senate, the Senators of the first Class shall be vacated at the Expiration of the second Year, the Senators of the second Class at the Expiration of the fourth Year, and the Senators of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; but if any Vacancies happen in the Senate, the Executive thereof may make temporary Appointments to fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, and shall hold Office for a Term of four Years.

# The Framing of the Federal Constitution

and States, in order to form a more perfect Union, establish Justice, insure the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do hereby propose to the States of America.

Congress of the United States, which shall consist of a Senate and House of Representatives.

Representatives and Delegates shall be chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors in the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who, when elected, shall not, when chosen.

Representatives and Delegates shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, including those bound to Service for a Term of Years, and excluding Indians not taxed, which shall be determined once in three Years after the first Meeting of the Congress of the United States, by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand Persons, until such enumeration shall be made, the State of New Hampshire shall be reckoned among the States, and the States of New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina five, and Georgia three.

The Executive Authority thereof shall issue Writs of Election to fill such Vacancies. The Senate shall have the sole Power of Impeachment.

Two thirds of the Senators present shall constitute a Quorum; and two thirds of the Members present shall constitute a Quorum.

Each Senator shall have one Vote. In the Election, they shall be divided as equally as may be into three Classes. The first Class shall serve for the first Term, the second Class for the second Term, and the third Class for the third Term; and if Vacancies happen by Resignation, or otherwise, during the Term of any Senator, such Vacancies may be filled by the Appointment of the State, until the next Meeting of the Legislature, which shall then fill the Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall, when elected, not be an Inhabitant of that State in which he shall be chosen.

Senators and Representatives shall have no Vote, unless they be equally divided.

To many of the Founding Fathers the Federal Constitution was the culmination of the great events inaugurated by the American Revolution. As John Quincy Adams observed years later: "The Declaration of Independence and the Constitution of the United States are parts of one consistent whole, founded upon one and the same theory of government." It is more than chance that both the Great Declaration and the Constitution were debated and adopted at the Pennsylvania State House in Philadelphia, a shrine now called Independence Hall. Both documents enlisted the wisdom and statecraft of many of the same men. These men recognized that winning independence did not suffice. They knew the newly emerging Nation would have to be soundly structured.

How well they performed their task may be judged from the ability of their instrument of government to surmount the trials and crises of almost two centuries. That the Constitution has shown its durable qualities over a period of time when dozens of constitutions adopted in other nations went into the scrap heap is a tribute to the prescience, innovative capability, and drafting skills of the convention delegates.

### **A Nation Emerging from Colonialism**

Building a durable governmental structure for an emerging Nation like the United States posed an unprecedented challenge and raised some vexing questions. No republic had ever been instituted to govern so vast a territorial empire as the Peace of Paris of 1783 had formally recognized. The new United States stretched from the Atlantic Ocean on the east to the Mississippi River on the west, and from British Canada on the north to Spanish Florida on the south. Save by the Indians, half of the new Nation was neither occupied nor reached by effective government.

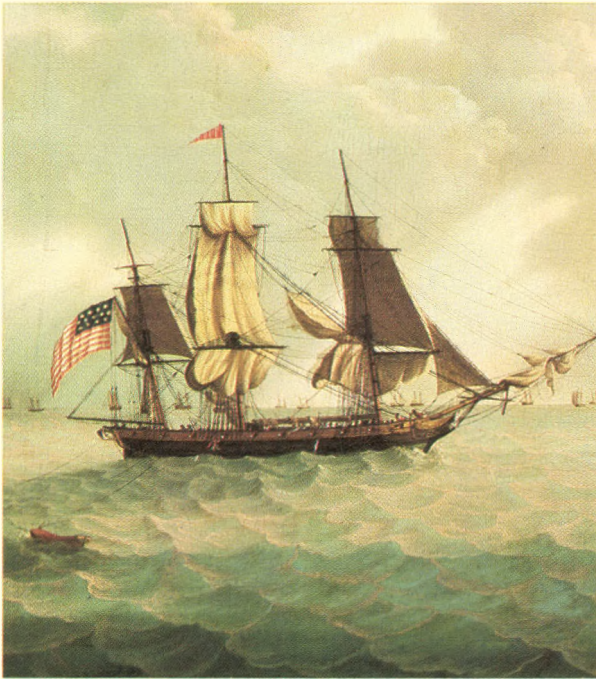
Could a republic effectively control so huge an area and could it command the allegiance of so rapidly expanding a population? As if to fill the vast open spaces on the new American map, the popula-

tion of the 13 States grew extraordinarily between the end of the American Revolution and the establishment of the new Federal Government under the Constitution. On the eve of the Revolution, the 13 Colonies numbered some 2,600,000 persons, including a half million blacks, mostly slaves. The census of 1790 revealed a figure of over 3,900,000 people, almost a fifth of whom were blacks. Two factors accounted for this rapid population growth: the resumption of a heavy flow of immigrants from Europe that set in once war had ended, and the peacetime phenomenon of large families.

To assimilate this unprecedented wave of immigrants, which included many new settlers of non-English background, would have taxed the resources of any well-established society. Fortunately, the great unsettled and newly opened lands provided space for migrants from both Europe and the Eastern seaboard. John Jay, Secretary for Foreign Affairs during the years of the Confederation, talked of "a rage for emigrating to the western country" and saw "a great people" daily "planting beyond the mountains." People moved across the Alleghenies, down the mountain valleys into the back country of Virginia, the Carolinas, and Georgia, while New Englanders rushed into the north country, to Maine and Vermont. To meet this demand for new and better lands both the national government and the seaboard States opened up land offices. Many of the new frontier communities were in fact largely settled by Revolutionary veterans converting their paper land warrants into good tillable soil.

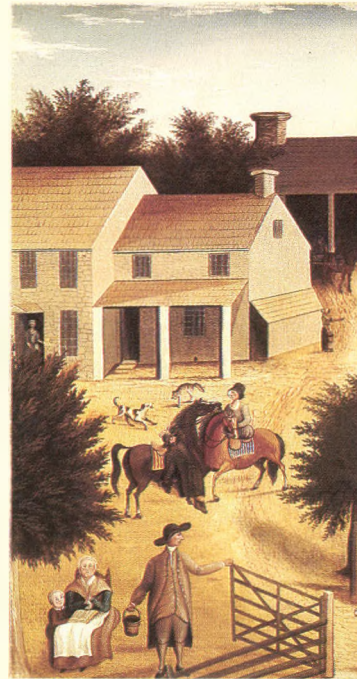
Although the French minister to the United States predicted that these frontier settlers would form "free societies" and never be subject to Congress, he failed to anticipate the miracles that would be wrought by improved communication, the rapid growth of national sentiment, and the establishment of an effective Federal Government. Leaders like George Washington encouraged programs to develop water connections with the West, while the building of turnpikes, the beginnings of a network of canals and locks, and in later years the introduction of the steamboat on the western waters would bring such dreams to reality.

In his last "Crisis" paper Thomas Paine declared:



*Salem vessels traded goods the world over. America was typical of the merchantmen*

*that made regular calls on European and eastern ports in the 1780s.*



*This charming painting by Edward Hicks recalls his boyhood in rural Pennsylvania in 1787.*

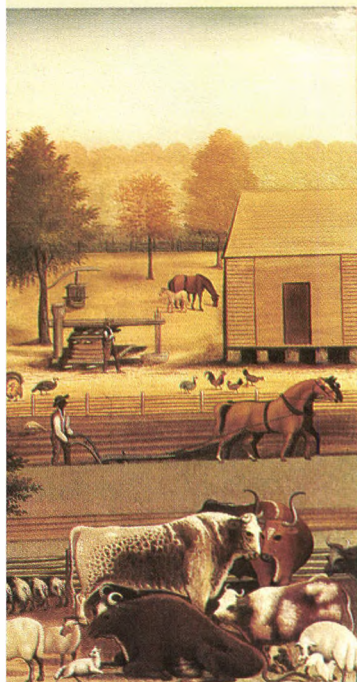
Americans emerged from the Revolution the heirs to half a continent. The new Republic stretched from the Maine woods almost to the Gulf of Mexico and westward from the Atlantic to the Mississippi. Most of this land was a vast wilderness. Settlement was light except along the seaboard. Travel, even in the settled parts, was arduous. Most roads were difficult going except in summer. Bridges and ferries were chancy, stagecoaches and inns uncertain. The easiest way to travel north-south was by coastal vessel. The cheapest way was to walk, which is what a person did who couldn't afford a horse.

If the Indians living along the frontier are included, the population numbered about 3½ million and was growing

rapidly. Most Americans, perhaps as many as 80 percent, made their living as farmers or in farm-related activities. One estimate is that about ten percent worked in such industries as fishing and the production of naval stores, and the same proportion in commerce, "as a merchant, a lawyer, a sailor, a clerk, or cartman." Compared with Europe, laborers were well paid here. It was not unusual for a skilled immigrant to get off the boat and go right to work.

The Revolution had not entirely washed away all class distinctions in American society. There was a top, middle, and bottom, but with important differences. The lines between the groups were less rigid and the middle was





*A map of the United States printed in Philadelphia in 1786.*



*Few communities could do without a blacksmith. This painting by John Neagle por-*

*trays a late 18th-century Philadelphia smith.*

larger than in England. Enterprise and energy counted for more than birth. Reliable figures are elusive, but the historian Clinton Rossiter estimates that the "better sort"—rich merchants, large landowners, and successful lawyers—made up about three percent of the population. The "middling sort"—sturdy farmers, shopkeepers, and independent artisans—were by far the largest part of the population. Beneath this body were the laborers, marginal farmers, and frontier settlers—perhaps a fifth of the population—who lived more or less in poverty. On the bottom were blacks, the great majority of whom labored as slaves in the States south of Pennsylvania.

Distinctions were also visible between the sections of

the country. New England, the Middle States, the South, and the West beyond the Appalachians already had identities they would carry for generations. But more important than sections in the political life of the country were the States, which still commanded the allegiance of most persons. They had yielded only a minimum of their sovereignty to the Confederation government, far too little for it to operate effectively. While most Americans were conscious of belonging to a Nation, many were still fearful of giving over too much power to a national government. Madison and his like-minded friends had to allay much suspicion as they set about to create an effectual government, worthy of the people's respect.

“Our citizenship in the United States is our national character. Our citizenship in any particular state is only our local distinction. . . . Our great title is AMERICA.” To be an American meant to Paine to exhibit “on the theatre of the Universe a character hitherto unknown,” having “as it were, a new creation intrusted to our hands.” Paine’s phrasing had epitomized the major problem facing the Founding Fathers: to shape a new government to fit a newly emerging national character, one that, as statesmen like Washington and Jay viewed it, would have a continental-wide outlook, and would even, as Noah Webster conceived it, have a distinctive American language and literature.

It seemed appropriate that Philadelphia should be chosen to resolve this great problem. America’s principal city, centrally located, and numbering some 40,000 souls by the time of the Federal convention, Philadelphia had gained a reputation for its cosmopolitan outlook, its religious pluralism, its bustling commerce, its skilled craftsmen, and its elegant residences and magnificent churches. Its notable State House, which had served as the scene of the Second Continental Congress’s deliberations during the years of the Revolution, would once again play host to the leaders of the Nation.

### **Doctrinal Views of the Framers**

The framers were not doctrinaire theoreticians but practical men guided by experience. John Dickinson, one of the most learned of the delegates, went so far as to assert that “experience must be our only guide,” but even he did not rule out theories of government well supported by history. In fact, there was fairly general agreement among them about political principles. Their views had been well aired during the controversy with Great Britain and in the debates over the drafting of the State constitutions. According to Abraham Baldwin, a delegate from Georgia, “they kept the same ground as the Revolution had taken, and which was seen in all the state governments. They took their principles from that set of political economists and phi-

losophers now generally denominated in the English language Whigs, and consecrated them as a Constitution for government of the Country.”

They shared the convictions that government originated in a compact among equal men and that the best form of government was a republic. They conceived of a republic as one in which the chief executive was elective, not hereditary, and in which the government was popular, representative, and responsible. Deeply committed to the notion that power corrupts, they were determined that their government would be controlled by a division of powers and a system of checks and balances. They believed, too, that inherent in government was the protection of the right to life, liberty, property, happiness, and freedom of conscience.

The framers were all advocates of the principle of *constitutionalism*. According to that principle, constitutions are distinguished from ordinary acts of legislation. They are charters of fundamental laws, drafted by extraordinary assemblages and ratified by special conventions chosen by the people. As supreme law, they cannot be annulled by legislative fiat. First tested in the drawing up of the State constitutions, notably in the Massachusetts Constitution of 1780, which was submitted to the people for ratification, the principle was exemplified in the machinery devised to draft and ratify the Federal Constitution. To this day constitutionalism stands as one of the most original and distinctive contributions of the American system of government.

Like the signers before them, the framers recognized that *the people are sovereign*. The Declaration of Independence speaks of the necessity “for one people to dissolve the political bands which have connected them with another,” and the preamble of the Federal Constitution ascribes authority for establishing the Constitution to “We the People of the United States.” As Chief Justice John Jay later ruled, the people had acted as “sovereigns of the whole country,” or as Chief Justice John Marshall put it “the Government of the Union” is “*emphatically and truly a government of the people.*”

The notion that the people are sovereign rested upon the facts about the origin of the Federal Union. When the First Continental Congress convened in

## Philadelphia in 1787

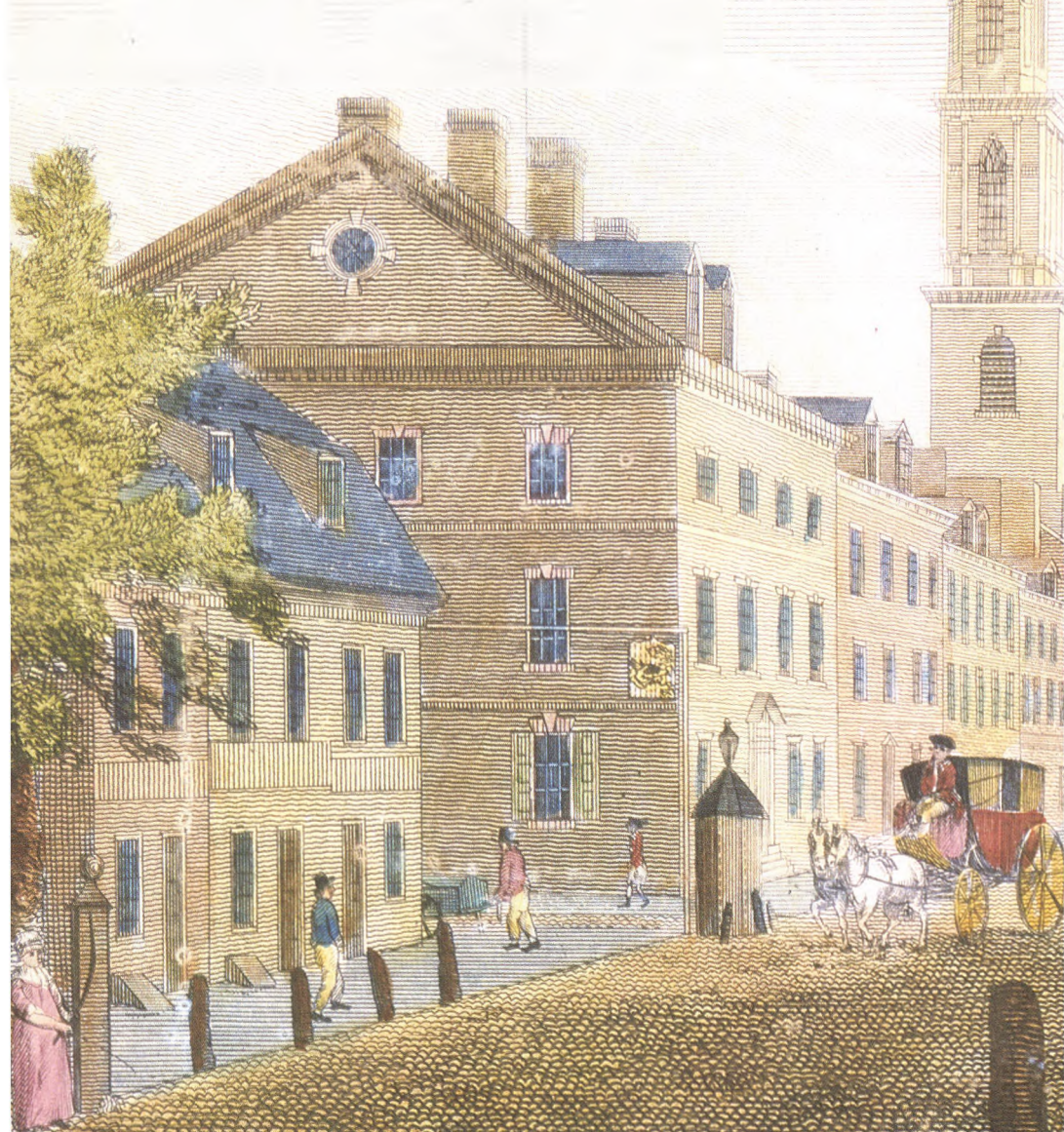
William Birch's engraving of Arch Street is a close likeness of the city during the Federal Convention. Straight streets, tall churches, orderly rows of two- and three-story brick townhouses mixed here and there with shops and frame houses, water pumps, and watch boxes were characteristic of the Nation's leading city. Yet Birch's view launders out many details of everyday life. Philadelphia in this year

had no distinct residential section. Families shared their streets with tanneries, soap-makers, breweries, and shops of every description. This mix made it an easy city to move about in at a time when most persons walked where they were going.

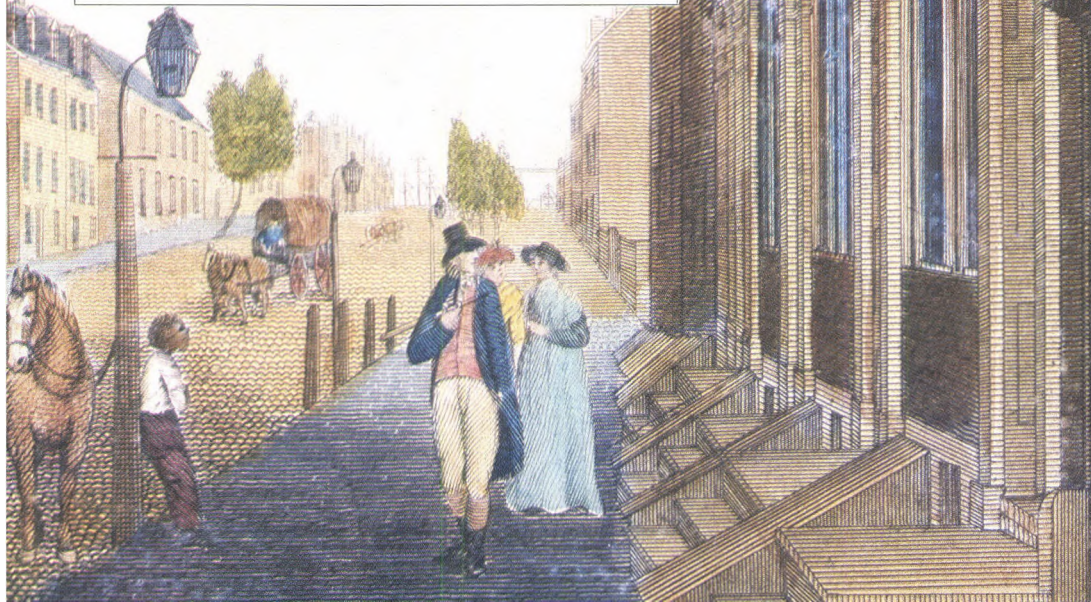
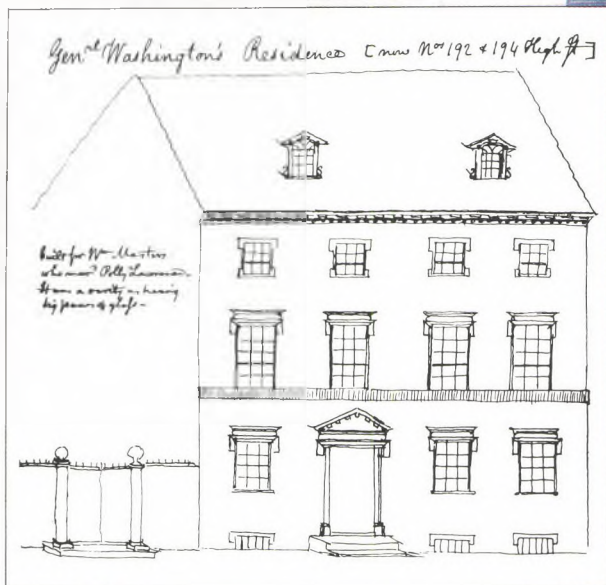
Most of the population of about 25,000 lived within several blocks of the waterfront. The city stretched from Vine Street on the north to South

Street. Beyond Fifth the population thinned out. Most businesses were clustered near Market Street. All the known residences of delegates to the convention, as well as nearly every house to which they were invited, lay within three blocks of Market.

One of the finest houses in town, shown in the drawing at right, was the residence of Robert Morris, a Pennsylvania delegate. It stood near the



southeast corner of Sixth and Market. The year before the convention opened, Morris rebuilt the burned-out mansion of Richard Penn in a more elegant style. Here he entertained fellow delegates, among them George Washington, his old friend and house-guest that summer. During Washington's two terms as President here, 1790-97, this house served as the Presidential Mansion.



Philadelphia in 1774, its delegates had in the main been selected not by the legally existing colonial governments but by the people of the colonies, and in a number of different ways—through revolutionary committees, through polling freeholders, through elections by illegal assemblies, and through revolutionary conventions. In turn, it was the First Continental Congress and not the colonial governments that summoned the Second Congress to convene on May 10, 1775. It was this Congress which called on the colonies to organize as States and adopt their own constitutions. It was in response to the initiative of Congress, as well as in accordance with its authority, that the 13 colonies transformed themselves into 13 States exercising internal sovereignty.

As practical men, the framers were to adapt these shared principles to the constitutional mechanism they hammered out at the Philadelphia convention.

Two distinct periods marked the constitutional history of the early Republic. The first was a period of congressional government, from the convening of the First Continental Congress on September 5, 1774, until the Second Continental Congress adjourned on February 28, 1781. Thereafter Congress governed under the Articles of Confederation. In both periods Congress exercised external sovereignty, though in the latter period its authority over internal affairs was severely circumscribed. The First Congress, for example, adopted nonimportation, nonexportation, and nonconsumption agreements against products from Great Britain and the British West Indies. The Second Congress assumed war powers. It imposed an embargo on all provisions to the British fisheries in America. It created a military establishment and a Continental Navy. It emitted bills to finance the defense of the colonies. It waged war and asserted sole control over treaties of commerce and alliance with foreign nations.

The issue of the distribution of powers between Congress and the States was raised as early as July 1776, when a committee headed by John Dickinson proposed a set of "Articles of Confederation and Perpetual Union." Under Article III of Dickinson's draft each colony reserved to itself "the sole and exclusive regulation and government of its internal police, in all matters that shall not interfere with the

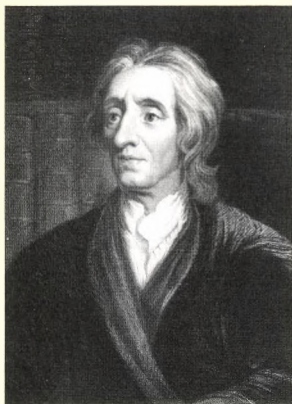


*John Dickinson's proposal to give each State an equal voice in one branch of the legislature became the basis of the Great Compromise.*

The Constitution was a product of the Age of Enlightenment, that movement of liberalism and rationality that sought a more humane basis for life. It drew on the learning and experience of both classical and modern times. Like most educated persons of the day, the Framers had read the works of such ancient thinkers as Polybius, Aristotle, and Plutarch and such moderns as James Harrington, John Locke, David Hume, and the French philosopher Montesquieu. Madison, Hamilton, Wilson and many others knew the arguments of these writers for a written constitution,

with State constitutions. Since 1776, many States had framed their own constitutions, and many delegates had taken part in this work. One absent fellow-revolutionary helped the deliberations along by summarizing his thoughts on government in *A Defence of the Constitutions of Government of the United States of America*. John Adams, ambassador to Great Britain, published this important work in London in early 1787. It was circulating in Philadelphia in the weeks before the convention. Ranging across the history of government in the modern world, Adams argued

and then no balance was attempted but between aristocracy and democracy. This, in the nature of things, could be no balance at all, and therefore the pendulum was forever on the swing. . . . Without three orders, and an effectual balance between them, in every American constitution, it must be destined to frequent unavoidable revolutions; though they are delayed a few years, they must come in time." For Adams, the best government was the one that combined the three perennial tendencies in any society into a stable equilibrium: monarchy, aristoc-



John Locke

the distribution of powers between the branches of government, the social contract, an independent judiciary, and a government resting on the consent of the governed—matters we take for granted today.

Even so, the delegates were guided more in their day-to-day deliberations by experience than by theory. They were realists who knew the dismal record of human liberty in the past and who understood that while free government was possible, it was hardly inevitable.

Some of their experience stemmed from previous work



David Hume

for a system of checks and balances as the best guarantee of free government. "We shall learn to prize the checks and balances of free government," he wrote, "and even those of the modern aristocracies, if we recollect the miseries of Greece, which arose from its ignorance of them. The only balance attempted against the ancient kings was a body of nobles; and the consequences were perpetual alternations of rebellion and tyranny, and the butchery of thousands upon every revolution from one to the other. When kings were abolished, aristocracies tyrannized;



Montesquieu

racy, and democracy. These "three branches of power have an unalterable foundation in nature. . . . If all of them are not acknowledged in any constitution of government, it will be found to be imperfect, unstable, and soon enslaved."

Adams' analysis was fairly influential. He posed a solution to an old dilemma—how to establish a government strong enough to act but not strong enough to turn into a tyranny. And he reminded delegates that their own collective experience in constitution-making was a valid guide into a future no one could confidently foretell.

A  
D E F E N C E  
OF THE  
CONSTITUTIONS OF GOVERNMENT  
OF THE  
UNITED STATES OF AMERICA.

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By JOHN ADAMS, LL.D.  
AND A MEMBER OF THE ACADEMY OF ARTS AND SCIENCES  
AT BOSTON.

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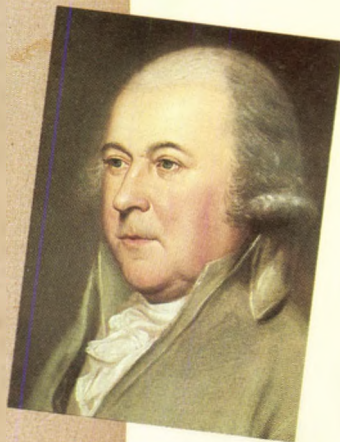
All nature's difference keeps all nature's peace.      P O E T.

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M.DCC.LXXXVII.



*John Adams*

Articles of Confederation.” States’ rights advocates, fearing that this draft article invested Congress with too much power, substituted an article (known as Article II in the final document) that reads: “Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.” Significantly, the Tenth Amendment to the Federal Constitution later defined the Federal system somewhat differently by declaring that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Thus, by leaving out the word “expressly,” the Tenth Amendment permitted the Federal Government certain implied powers of far-ranging consequence.

So far as external sovereignty was concerned, however, the Articles of Confederation did not seriously restrict the Congress, which was conceded by the Articles to have the exclusive power of war and peace as well as of treaty-making with foreign nations. Indeed, the Congress of the Confederacy passed a resolution in April 1787, declaring that treaties were part of the law of the land, and that a State could in no way abridge these obligations.

If the Congress under the Articles possessed external sovereignty, its domestic authority was strictly limited. The Articles failed to confer upon the Confederation government either an effective taxing power or the power to regulate interstate commerce or to levy tariffs. It signally omitted a provision for an executive, obliging Congress to conduct the war in its closing years through committees and a system of secretaries, which were the prototypes of the later cabinet offices. In short, the Confederation government had far too little authority to deal constructively with the vast problems unleashed by achieving independence and the coming of peace in 1783.

## **Crisis of Government**

The one centripetal element in the Confederation was Congress, but that body proved a frail founda-

tion on which to build. By the later years of the Confederation the prestige of Congress had declined to such a degree that some States no longer bothered to send delegates. Those who were appointed often were chronic absentees. In fact, there were long periods of time when a quorum could not be obtained. Even the presidency of the Congress was taken so lightly that John Hancock, elected in 1785, never bothered to come to New York for its sessions. Understandably, the men who sat in Congress during its latter years were rarely noteworthy statesmen. An encounter in 1788 with the president and several members of Congress prompted John Adam's daughter to write: "Had you been present you would have trembled for our country, to have seen, heard, and observed the men who are its rulers."

One might well ask what had happened to the great figures of earlier years. They had removed themselves from the national scene, some accepting missions abroad, like Jefferson to France and John Adams to Great Britain, others returning to private life or state politics. Alexander Hamilton, already an ardent nationalist, was practicing law in New York. James Madison was serving in the Virginia House of Delegates. Robert Morris, the financial wizard of the Revolution, had quit his position as Superintendent of Finance in 1784 to devote his energies to private business ventures. Patrick Henry, George Clinton, and John Hancock left national affairs to others while they governed their States.

It did not take long for the consequences of an ineffectual central government to make itself manifest both at home and abroad. Between the States all sorts of conflicting claims to land titles and boundaries existed, claims which could only be resolved by united action. More than once a shooting war broke out between the States. Pennsylvania and Virginia took up muskets over the Pittsburgh region until both sides agreed upon an extension of the Mason-Dixon line. Connecticut settlers, claiming the Wyoming Valley of Pennsylvania on the basis of their State's ancient coast-to-coast charter, were met by Pennsylvania guns, and the final settlement in favor of Pennsylvania dragged out for years. Land settlers threatened to bring about the secession of Tennessee from North Carolina and Kentucky from

Virginia. In Tennessee, settlers actually organized the free state of Franklin, electing John Sevier as their governor. James Wilkinson, as unsavory a character as bestrode the western scene, a man given to lying, bullying, or fawning as circumstances directed, devoted himself to the task of separating Kentucky from Virginia in order to turn it over to Spain, for whom he served as a secret agent. In Vermont the controversial Allen brothers, who, during the Revolution, had entered into talks with the British about making Vermont a province of Canada, allowed rumors of such continuing talks to persist during the Confederation years. Very likely theirs was a tactic to pressure Congress into supporting Vermont's claims to be admitted as a separate State, a proposition which New York, laying claim to the area, stoutly opposed. All these secessionist claims had to be deferred until the establishment of a new Federal Government, when Kentucky, Vermont, and Tennessee were granted admission to the Union.

Perhaps no issue was more divisive than that of the conflicting claims to title to the trans-Appalachian West. Some States like Virginia and Massachusetts founded their claims on their ancient charters. Other States with fixed western boundaries like Maryland denied the validity of these grants. As early as 1754 Benjamin Franklin proposed that the whole western domain be turned over to a central authority. In 1777 Maryland revived Franklin's proposal, refusing to ratify the Articles of Confederation until Virginia renounced her claims. One Maryland delegate summed up his State's feelings: "No colony has a right to go to the South Sea [the Pacific Ocean]! They never had. They can't have. It would not be safe to the rest." After interminable debates, Congress took action to placate Maryland, calling upon all claimant States in 1780 to cede their lands to the United States. The ceded lands were then to be disposed of for the benefit of the whole. In the end, all the States complied.

Having acquired a vast domain, Congress began to develop a program for its regulation. In 1785 it adopted a land ordinance providing for rectangular surveys to divide the new lands into 6-mile square townships. Each township in turn was to be sub-

*Franklin was the spirit of compromise at the convention. Urging approval of the final document, he said: "I consent to this Constitution because I expect no better, and because I am not sure that it is not the best."*



divided into 36 sections of 640 acres apiece, the minimum amount authorized for sale at a dollar an acre. County lands were reserved for veterans, and each township had one section set aside for a public school.

Indubitably the greatest achievement of the Confederation Congress was the enactment in 1787 of the Northwest Ordinance. Providing for a three-stage transition from territorial government to statehood, the ordinance guaranteed freedom of worship, civil liberties, and public support of education, while prohibiting involuntary servitude except as punishment for crime. Had Jefferson had his way, according to a plan he had proposed back in 1784, slavery would have been barred after the year 1800 from all the territories, whether north or south of the Ohio. But that was not to be. Most important, the Northwest Ordinance established a precedent for treating new territories not as conquered provinces but as future States to be admitted into the union on an equal footing with the original 13. This extraordinary innovation in statecraft stands, along with the Constitution itself, as a durable achievement which has shaped the expansion of the Nation along federal lines.

While Congress had settled most of the controversial territorial issues by the time the Constitution was adopted, it proved far less successful in other areas. In fiscal management it revealed an utter lack of capacity. In view of the staggering debt of \$40 million it had piled up by the end of the war (not including the debts of the several States), this incapacity was a major flaw.

Central to the fiscal problems of Congress was the fact that under the Articles of Confederation it had no power to tax. It had two alternative ways of raising money. The first was to continue its practice of requisitioning funds from the States, in effect pleading for money. The second was to amend the Articles to give it a taxing power, but such an amendment required unanimity. One State could block it.

Requisitioning proved a humiliating experience because the States paid in to Congress only a fraction of what they had been asked to pay. Superintendent of Finance Robert Morris had found that



asking the States for money was “like preaching to the dead.” That the requisition system had entirely collapsed is revealed in this terse announcement appearing in the *New York Packet* for October 1, 1787: THE SUBSCRIBER *has received nothing on account of the quota of this State for the present year.* (Signed) ALEXANDER HAMILTON, Receiver of Continental Taxes.

As far back as 1781, Congress had sought to amend the Articles to permit a 5 percent Federal duty on imports to pay the interest and principal on the national debt, but Rhode Island refused to approve the plan. Two years later, Congress again made the proposal in a modified form. This time New York, which derived the bulk of its revenue from imports, blocked it. Henry Knox, then Secretary of War, was incensed. “Every liberal good man,” he exclaimed, “is wishing New York in Hell!”

When the war ended, the new Nation enjoyed a short-lived business boom, followed quickly by a severe depression. British merchants took advantage of the war’s end to unload their heavy inventory of manufactured goods on the American markets. Such excessive imports stifled the native industries and drained away precious specie. Neither a national tariff nor an embargo was practical, for Congress lacked the power to regulate commerce, while retaliatory action by individual States had proven ineffectual. Thus, when Massachusetts tried to prevent dumping, New Hampshire readily absorbed the imported goods.

Other trade grievances compounded the business difficulties. Once the American States had won independence, they were no longer a part of the British Empire and therefore no longer eligible for the preferential trade treatment accorded British ships and goods. Southerners no longer enjoyed the bounties that had been paid for naval stores and the special treatment that had been accorded their rice exports. New England and the Middle States, which had traditionally exported fish and lumber to the British West Indies in exchange for sugar, rum, and molasses, were now barred from that area. Had Congress possessed the power to wage commercial warfare on nations discriminating against the United States, the British might well have modified their

*Hamilton was small and lean in stature but a giant in intellect. “There is no skimming over the subject with him,” wrote a colleague, “he must sink to the bottom to see what foundation it rests on.”*



stance, but the British shipping interests convinced their government that a weak Confederation was powerless to retaliate and that the new United States would quickly resume its trade role of colonial dependency once the war was over.

If British trade discrimination helped trigger the depression, interstate trade restrictions accentuated and prolonged it. States like New Jersey and Connecticut erected trade barriers for their own advantage. For example, New Jersey's citizens exported most of their produce directly, but their imports were funneled through Philadelphia and New York City. Yielding to the pressures of local businessmen, New Jersey levied a duty on foreign goods not clearing directly through her ports. In retaliation, New York charged a discriminatory entrance and clearance fee on foreign goods from Connecticut and New Jersey. Pennsylvania enacted a protective tariff in 1785, taxing both foreign goods and products made in other States.

As business continued its downward course to the year 1787, with commodity prices continuing to sink for at least another year, public policy was increasingly focused on currency instability and debtor-creditor issues. As a result of a scarcity of hard money, businessmen were forced to transact affairs in goods rather than in coin. Paper money issued by the States to ease the situation depreciated rapidly. In no area did the monetary problems cause as much alarm as in New England. In Rhode Island, debtor groups lobbied a bill through the legislature which made it obligatory for creditors to accept paper money. This law was soon tested in the courts, and was declared unconstitutional.

Hardest hit by debt was Massachusetts, for here the conservative State government refused to introduce any remedial measures. By the close of 1786 mortgage foreclosures reached a record high. The jails of the central and western parts of the State were crowded with debtors. Still other debtors were sold into service to satisfy judgments against them. The plight of these debtor farmers touched off a wave of popular indignation, targeted against both the lawyers who were pressing the claims of the creditors and the courts which enforced them. The crushing burden of debt, hitting both individuals

and whole communities, spurred calls for tax reduction. "We are almost ready to cry out under the burden of our taxes as the children of Israel did in Egypt when they were required to make bricks without straw," exclaimed the people of Coxhall, for "we cannot find that there is money enough to pay." Critics of the Massachusetts government argued that the State, by rapidly amortizing its debt, had shifted the tax burdens from the commercial interests to the farmer.

When the Massachusetts legislature adjourned on July 8, 1786, without heeding the farmers' petition for paper money or stay laws, discontent escalated to violence. Armed men broke up the courts at Worcester and Northampton. Militiamen confronted the Supreme Court sitting at Springfield and forced the court to adjourn.

The discontented had found a leader in Daniel Shays, a debt-ridden farmer and veteran of the Revolutionary War. Shays moved against the Springfield arsenal, but he and his followers were routed by a whiff of grapeshot from General Shepherd's defending forces. Gen. Benjamin Lincoln with some 4,400 troops then took over. The morale of the insurgents weakened, and Shays retreated. At Petersham, after a forced 30-mile march through a blinding snowstorm, the militia surprised the rebels, captured 150 of their number, and scattered the rest. Shays himself fled to Vermont, and by the end of February 1787, the uprising had been completely crushed. The voters, however, repudiated the State administration for its uncompromising stand, and a newly elected legislature of 1787 enacted laws lowering court fees and exempting clothing, household goods, and the tools of one's trade from debt process, while refraining from imposing any direct tax that year.

In retrospect Shays' Rebellion appears to have been a localized protest against economic conditions. To contemporaries, however, it was a frightening specter. The event clearly spurred the nationalists to advance and sharpen their arguments for a stronger Federal government. Property-conscious men feared what they called the Shaysite Creed, which, as defined by Henry Knox, meant that "the property of the United States had been protected from confisca-

tion by Britain through the joint exertions of *all*, and therefore ought to be the *common property* of all." But men like Washington, Jay, and Madison were less worried about the prospect of the socialization of wealth than about the trend toward anarchy that the rebellion exemplified. They viewed it as a striking example of the dangerous disorder that stemmed from having an impotent central government. "I do not conceive we can long exist as a nation," Washington remarked, "without having lodged somewhere a power which will pervade the whole Union in as energetic a manner as the authority of the state governments extends over the several states."

In no area was the impotence of the Confederation government more apparent than in foreign affairs. The United States had enormous difficulty in getting Great Britain to carry out the provisions of the Peace Treaty of 1783. Britain refused to withdraw its troops from the frontier posts as the Treaty called for, and their presence on the frontier posed a threat to American security. Peace with the Indians was unobtainable so long as the British stood on American soil.

John Jay, Secretary for Foreign Affairs, advocated a strong defense posture to preserve peace on the frontier, but the United States did not have the military strength to pacify the Indians, much less take on the redcoats. The Americans in turn flagrantly disregarded their treaty obligations, and these violations were standing proof of the weakness of the Federal government. State after State put up obstacles in the way of the collection of prewar debts due British creditors from American businessmen and planters. In State after State the property of the Loyalists continued to be confiscated in the postwar years. The Confederation government was powerless to protect either British creditors or American Tories or to force the States to observe the treaty. It could not even prevent the lynching of Tories in the South.

The ineffectual Confederation government was in a poor bargaining position with the British government. In London, John Adams, the American minister, was treated with studied coolness and received no trade concessions. It was apparent to both Adams and Jay that a trade treaty with Britain could not

*Washington contributed prestige and dignity to the proceedings. He presided with wisdom over the often acrimonious debate, and gave the delegates a model for the office of chief executive.*



be won until Congress had acquired the power to regulate commerce and impose tariff reprisals and prohibitions. As John Adams saw it, the conduct of foreign affairs was the most critical link in the American system of government. "I may reason till I die to no purpose," he declared in June 1785. "It is unanimity in America in measures," he added, "which will ever produce a fair treaty of commerce."

Equally frustrating to Secretary Jay were the negotiations with Spain. Again, the futility of these protracted negotiations reflected the weakness of the Confederation government. The central issue was the claim of the United States to the free navigation of the Mississippi. During the peace negotiations Spain had opposed American claims to the trans-Appalachian West, and in the postwar period formally closed the Mississippi to American citizens and levied taxes on all American products coming down the river to New Orleans. Such actions dealt a crushing economic blow to western settlers, who relied upon the Mississippi as a route for shipping farm produce to east coast cities.

Fearing a joint move by Spain and Britain to cut off the West from the Union, Jay was persuaded to recommend a treaty by which the United States would forbear the use of the Mississippi for the life of the treaty. He was convinced that within 20 or 30 years the United States would be sufficiently strong to assert its rights unchallenged. As he could not persuade two-thirds of the States in Congress to agree to his half-hearted proposal, the issue was deferred until a stronger Federal government could tackle it.

No more glaring example of America's impotence in foreign affairs can be found than the inability of the United States to respond effectively to the enslavement of American mariners by the Barbary States. During the years of the Confederation, pirates from Algiers, Tripoli, Tunis, and Morocco preyed upon American merchant ships. In 1787 the United States purchased a treaty from Morocco at the bargain price of less than \$10,000. The other Barbary States fixed their blackmail price much higher, and Congress was far too impoverished to meet their demands. Neither could she afford to build the navy needed to protect her commerce.

While deploring America's plight, Jay took comfort in the knowledge that the Nation's inability to put down the pirates might well contribute to the rising sentiment for a stronger union. "The more we are ill-treated abroad," he observed, "the more we shall unite and consolidate at home."

The totality of evidence—a sick economy, domestic disorders, Congress's fiscal impotence, and the Nation's lack of credibility abroad—disturbed the Founding Fathers. Washington saw the country as "fast verging to anarchy and confusion." Although completely suppressed by the early part of 1787, Shays' Rebellion brooded on the minds of nationalist leaders. "The nearer the crisis approaches," James Madison confessed, "the more I tremble for the issue." Leaders like Washington and Madison were not content to sit back and wring their hands. Instead, they initiated measures to save the Nation.

### **The Federal Remedy**

At this point in national affairs, technological developments spurred the movement for a stronger union. Experiments in steam navigation opened up the possibility of a canal connection from the headwaters of the Ohio to one of the rivers flowing into the Atlantic. As president of the Potomac Navigation Company, Washington, who had long nurtured a vision of east and west united by a navigable water system, advocated linking the western waters with the Potomac River, which would be especially advantageous to his own State of Virginia. Any such plans for a network of connecting canals required the concurrence of Maryland and the permission to use the branches of the Ohio within Pennsylvania's boundaries. To work out such arrangements, commissioners from Virginia and Maryland met at Mount Vernon in March 1785. Out of the Mount Vernon Conference emerged the Maryland legislature's proposal that Pennsylvania and Delaware be invited to join them in adopting a uniform commercial system. At this point James Madison seized the opportunity to propose a convention of all the States to discuss commercial conditions

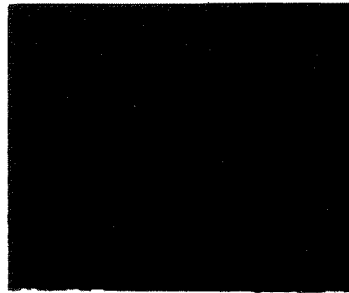
and report an amendment to the Articles of Confederation.

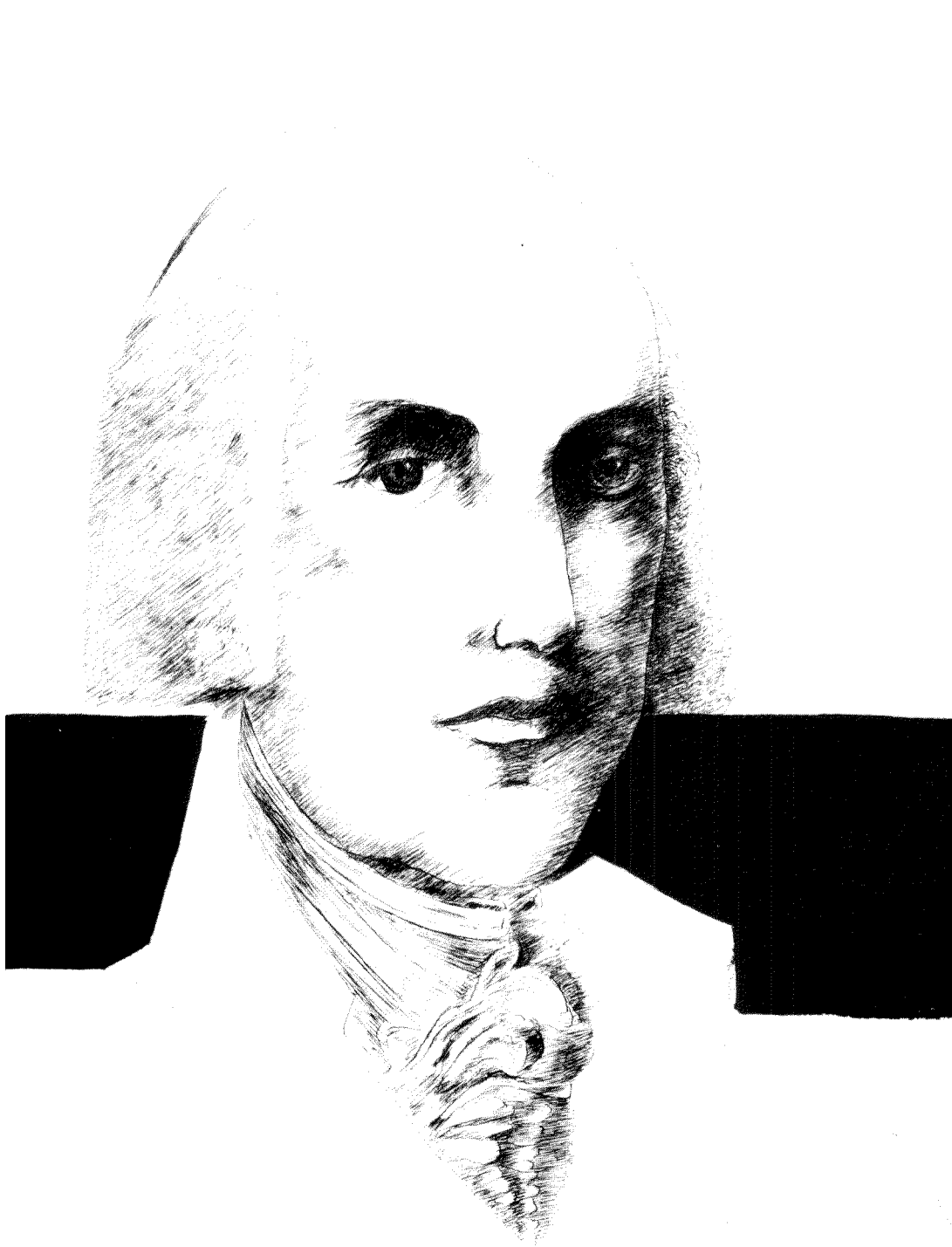
Taking its cue from Madison, Virginia issued invitations for a convention to be held at Annapolis. Nine states accepted, with only Georgia, South Carolina, Connecticut, and, strangely, Maryland, taking no action. In fact, only the middle States of New York, New Jersey, Delaware, and Pennsylvania arrived in time to participate with Virginia. So small a group obviously could not proceed to study interstate commercial problems or to speak with authority under the Articles of Confederation, which required unanimity for amendment and nine States for adoption of major legislation. Instead, they decided to issue a call for a new convention, and to this end an invitation was drafted by Alexander Hamilton. The place was to be Philadelphia; the time, May 1787. The proposed topics for discussion this time, however, were not just confined to commercial problems, but embraced *all* matters necessary "to render the constitution of the Federal Government adequate to the exigencies of the Union." With understandable reluctance, Congress now issued a call for a convention, with the explicit understanding that it was to be "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein."

The Constitutional Convention, then, had two different mandates. The call issued at Annapolis was much broader than that of Congress. Significantly, 8 of the 12 States to be represented at the Philadelphia Convention instructed their delegates to operate under the Annapolis formula, while the remaining four confined them merely to revising the Articles as authorized by Congress. The 13th State, Rhode Island, mired down in paper money experiments, refused to name a delegation.

The nationalists now had their big chance to revise and strengthen the central government. No one knew for sure how far they would go. Would a completely new structure emerge out of the convention or would the Articles reappear in revised form? History offered little precedent for a republican government extending its sway over so extensive a geographical area, nor did the Nation's

*Mainspring and tireless chronicler of the convention, Madison blended the politician with the scholar. "He always comes forward," said a delegate, "the best informed Man at any point in debate."*





experience under the Articles provide much ground for optimism.

Had the convention been a direct confrontation of nationalists and particularists (who would be called today States-righters or special-interest groups) it is doubtful that any durable results would have been achieved. Fortunately, this did not happen. A majority of the delegates agreed on both the urgency of their task and the lines that strengthening central authority must follow. Concurrence in numerous peripheral areas made it possible to confront the central issues at once and avoid dissipating energies in fruitless controversy over trivia.

The Philadelphia convention might be considered a nationalist rally. Although the delegates felt no sense of alienation from the people, the constituency for which they spoke lived in the cities and commercial areas, while the back country was not well represented. Indeed, most Antifederalist leaders refused to attend. Patrick Henry perhaps summed up their attitude when he declined, saying he "smelt a rat." In absenting themselves, the Antifederalists permitted the convention to achieve a consensus by avoidance of certain controversial issues and the settlement of others by sensible compromise. At the convention the differences between the large and the small States proved far more serious than did any divergences stemming from opposing economic and propertied interests. The delegates did not have to be persuaded about the evils of cheap money or of State laws impairing the obligation of contracts. On these issues they stood in basic agreement. They were practical men, determined to write their Constitution on the basis of experience.

Thomas Jefferson was later to refer to the convention as "an assembly of demi-gods," for, with a few notable exceptions, virtually all of America's big names were found on the roster of delegates. "If all the delegates named for this Convention at Philadelphia are present," commented the French *chargé d'affaires*, "we will never have seen, even in Europe, an assembly more respectable for the talents, knowledge, disinterestedness, and patriotism of those who compose it." On the whole these men were not neophytes as political leaders. Three had been in the Stamp Act Congress, seven in the First

Continental Congress. Eight had signed the Declaration of Independence, and two, the Articles. Two would become President, one Vice-President, and two Chief Justices of the Supreme Court. Sixteen had been or would later hold State governorships. Forty-two at one time or another had sat in one or another of the Continental Congresses, while at least 30 were Revolutionary War veterans. Many of them had also served their States with distinction, drafting constitutions and codifying their laws.

A composite portrait shows the framers to have been mature native-born Americans, many college-trained, and although only about a dozen were practicing lawyers, three times that number had studied law. Many were cosmopolitan in outlook, at least 18 having worked or studied abroad, while eight of the framers were born outside of the United States, all, however, in what was the British Empire.

Indubitably, the convention's greatest asset was its presiding officer, George Washington. The unanimous choice to chair the sessions, Washington had endeared himself to the people not only by his triumphant military achievements but also by his role as a symbol of patriotism and austerity. A military man but never a militarist, Washington eschewed uncurbed adventurism and "untrammelled ambition." Nothing became him more than the style in which he left the war, refusing to assume the dictatorial powers with which some conspiring officers and public creditors would have invested him. Devoted to republican institutions and concerned that the civil arm of the government remain supreme over the military, Washington possessed a keen perception of the national interest and of the need to develop a national character. Fearful as many delegates may have been about conferring too much power upon the executive, they nevertheless generally expected that Washington would assume the presidency if a new constitution were adopted and ratified. This feeling had much to do with persuading doubters about accepting so great a departure from the traditions of the Revolution. During the long argument as to whether the Nation should have three presidents or one and whether the chief executive should be given a salary or serve unpaid, Washington sat silent.

Aside from Washington, Virginia sent a delegation of formidable talents. George Mason, a close friend and neighbor of Washington, was renowned as the author of his State's Bill of Rights as well as its constitution. Edmund Randolph, then the State's governor and long-time attorney general, was to give momentum to the nationalist cause at the convention by introducing the plan that bears his name. Having doubts about the final document, he withheld his signature, but then was persuaded to support the Constitution at his State's ratifying convention. The most erudite member of the Virginia delegation was 37-year-old James Madison. Long a supporter of the Federal impost, Madison's firsthand knowledge of the fiscal impotence of the Confederation government had converted him into an ardent nationalist. His continentalist point of view was enhanced from insights gained by outstanding service on congressional committees dealing with foreign affairs.

Any delegation that claimed Benjamin Franklin as its senior member would certainly match Virginia's in distinction. Such was the case with Pennsylvania. At the time serving as President of his state's Executive Council, the 81-year-old sage of Passy brought to the assemblage not only his unrivaled experience in the service of empire, colonies, State, and Nation, but his international renown as diplomat, scientist, and humanitarian. His disarmingly candid manner masked a very complex personality, but his accommodating nature was time after time to conciliate jarring interests. Franklin's fellow delegate, James Wilson, was widely known as a lawyer and patriot pamphleter. Speaking with a pronounced Scotch burr, he was to join persuasive argument and oratorical gifts on behalf of the nationalist cause. In financial prestige Robert Morris, the former Superintendent of Finance and huge business operator, was the Nation's number one figure. A large, good-humored man, whose handsome residence provided hospitality for General Washington during his stay, Morris was more effective behind the scenes than in public debate. At the convention there is no record of his having made a single speech. Doubtless he counted on his views being voiced by his brilliant young associate,

Gouverneur Morris, a native New Yorker but now a Pennsylvania resident, who added wit and dash to a relatively sober company. A worldly bachelor, not known for discretion, this Morris had an important hand in drafting the final text of the Constitution.

South Carolina dispatched to Philadelphia John Rutledge, a first-class legal mind with firm credentials as a Revolutionary War leader. A moderate nationalist, he guided the labors of the important Committee on Detail. He was ably supported by the two Pinckneys, Charles Cotesworth, whose devotion to his State and section did not hamper him from aiding the cause of strong government, and his 24-year-old cousin Charles, who spoke frequently and contributed at critical places to the grand design being shaped on the floor of the convention.

No really famous men appeared in the Bay State delegation, which included two lesser-known nationalists, Nathaniel Gorham and Caleb Strong, along with Elbridge Gerry of Marblehead, a signer of both the Declaration and the Articles. A tried-and-true republican, Gerry was a committed anti-nationalist, who at the same time happened to be the largest holder of continental securities of any person at the convention as well as a major investor in western lands. Rufus King, barely 32, had served in Congress, where he imbibed nationalist notions from such friends as Alexander Hamilton and James Madison. A principled Federalist, he was to win a national reputation in the years ahead.

The delegations representing the smaller States were by no means lacking in attainments. New Jersey's governor, William Livingston, headed his State's delegation. Renowned as a Whig pamphleteer and father-in-law of John Jay, he could be counted on to support a nationalist program. Star of the Delaware delegation was the eminent John Dickinson, whose *Letters of a Pennsylvania Farmer*, written in response to Parliamentary tax measures in the 1760's, had long since established his credentials as a profound constitutional thinker. Connecticut's delegation proved not only accomplished but unusually effective at the convention. William Samuel Johnson, a lawyer and jurist, had just been named President of Columbia College, while Roger

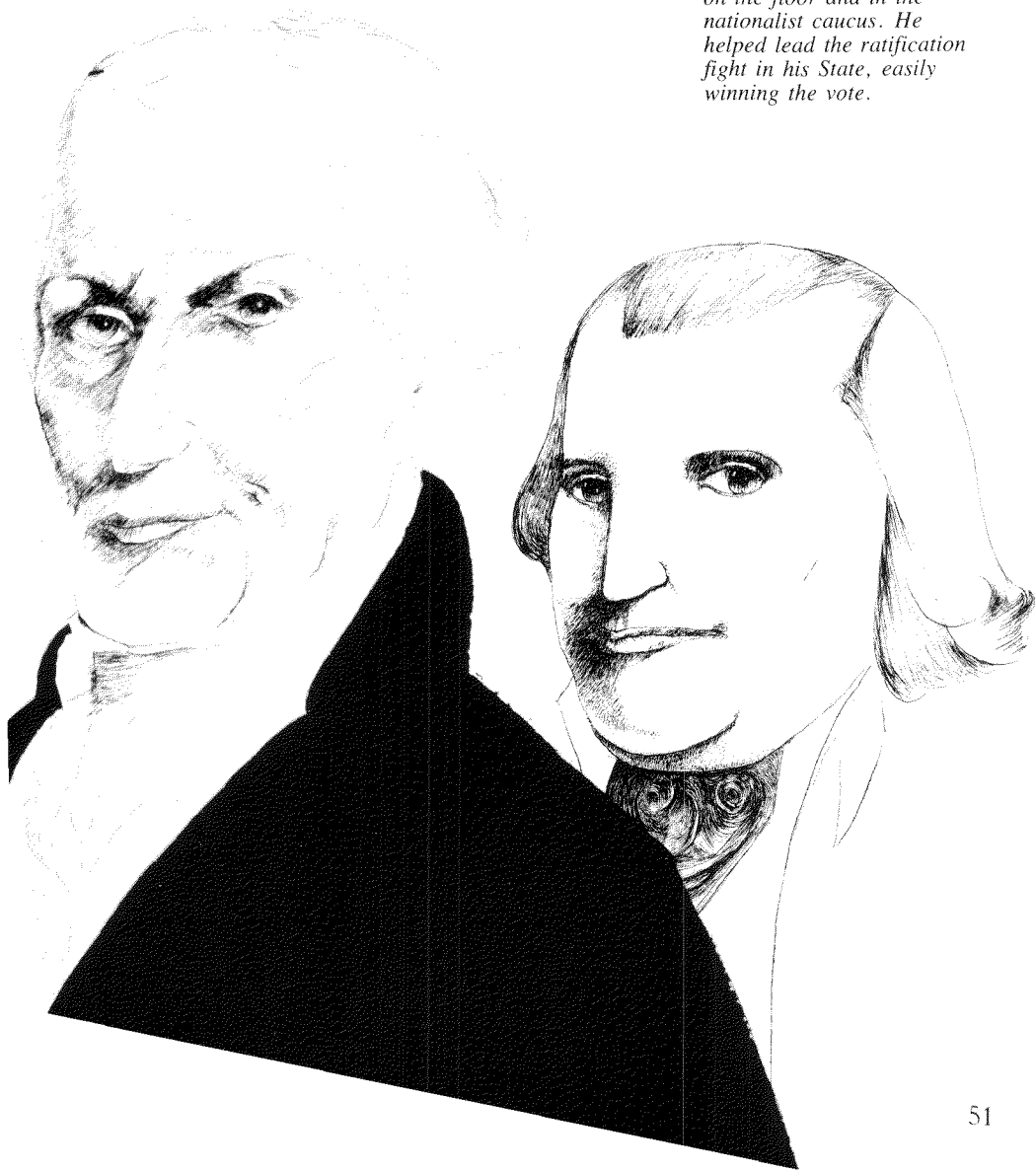
*George Mason preferred his life as a planter to political wrangling, but he attended every session and argued for the nationalist side. Suspicious of the powers granted the new government, he thought it would end in either monarchy or a tyrannical aristocracy and refused to sign the final document.*

*The learned Scottish lawyer James Wilson labored for a strong executive and a legislature responsible to the people. "No man is more clear, copious, and comprehensive, yet he is no great Orator," said a delegate. "He draws the attention not by the charm of his eloquence, but by the force of his reasoning."*



*Elbridge Gerry was an active, if erratic and inconsistent, member of the convention. This "stern republican" of the Revolution now professed a fear of "the leveling spirit" and both refused to sign the Constitution and vigorously opposed its ratification. Ironically, he later served under it as Vice President.*

*Charles Cotesworth Pinckney, a South Carolina Federalist, was prominent on the floor and in the nationalist caucus. He helped lead the ratification fight in his State, easily winning the vote.*



Sherman and Oliver Ellsworth were to play central roles in the formulation of the most important compromise of the convention. The most voluble as well as the most intemperate anti-nationalist hailed from Maryland. He was Luther Martin, who quit the convention before it ended, leaving the signing to his fellow delegates, James McHenry, Daniel of St. Thomas Jenifer, and Daniel Carroll.

The only State to dispatch an Antifederalist delegation was New York, where an Antifederalist legislature passed over John Jay and appointed two anti-nationalists, John Lansing and Robert Yates, both upstate lawyers. This pair outvoted the third delegate, Alexander Hamilton, junior in years but more venturesome and knowledgeable by far as to the needs of the Nation. Chosen as a concession to downstate Federalists, Hamilton, an erstwhile aide of Washington, was a man of immense talents and consuming ambition. Unfortunately for him, the extremist solutions he would propose on the convention floor served to create a jarring rather than a conciliatory note, and when his two colleagues quit the convention, the State he represented was in effect deprived of a vote.

For a convention that completed its great business so expeditiously, its start was hardly auspicious. May 14, the scheduled opening day, found only Pennsylvania and Virginia in attendance at the State House. Heavy rains had mired roads deep in mud, and it was not until May 25 that a quorum of seven States could be found. Before the sessions began Washington talked to the delegates, urging them to create a plan of government of which they could be truly proud. "Let us raise a standard to which the wise and honest can repair," he is reported to have said. "The event is in the hands of God."

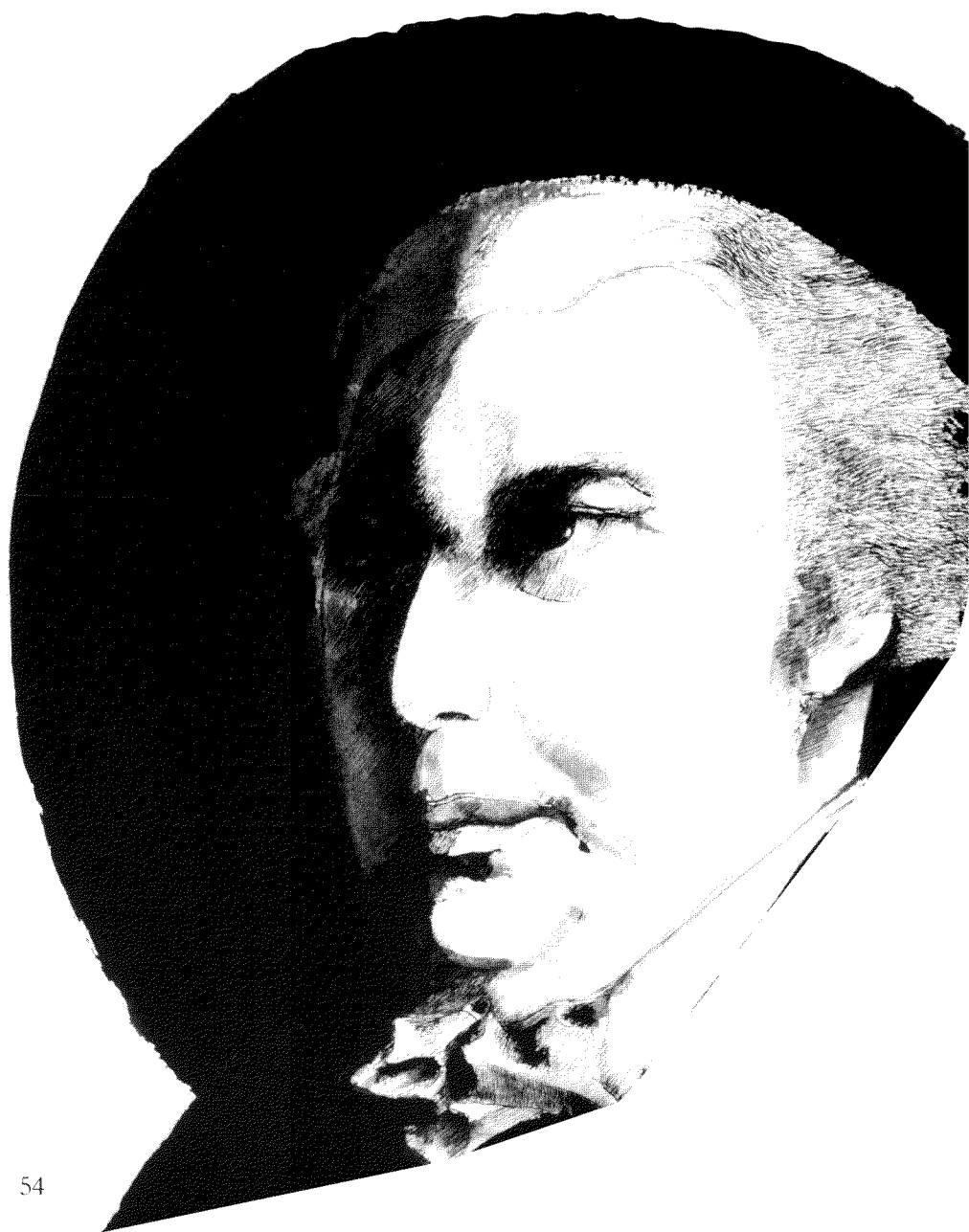
The first order of business was the election of a presiding officer. On the motion of Robert Morris, seconded by John Rutledge, Washington was unanimously elected and escorted to the chair by his two co-sponsors. In a brief speech he thanked his fellow delegates for the honor conferred upon him and asked their indulgence for any errors he might commit in the execution of that post. Then the delegates picked as secretary William Jackson, a former army officer, and decided on the rules to be followed.

It was agreed that a majority of the States present could decide any question, each State to have an equal vote. This was an initial victory for the small States and one which conformed to the voting rules of the Confederation Congress. Then a rule of secrecy was adopted, the delegates feeling that they could talk more freely and be willing to modify declared initial positions if word of what they said did not leak out to their constituents back home. This rule, with strict injunctions from the presiding officer, was vigilantly respected. No one raised the issue of "the right to know."

Fortunately for posterity, James Madison chose a seat up front. Not missing a single day, the diligent Madison took systematic notes, providing us with the principal source of the debates in the convention. Some seven others also took notes, but none is as full, as impartial, or as accurate as Madison's.

**The Virginia Plan** On May 29 the serious business began. Edmund Randolph proposed 15 resolutions known as the Virginia Plan. Inspired by Madison and endorsed by Washington, the plan would in essence have demolished the Articles of Confederation and erected in its stead a strong national government on a popular foundation. Under the Randolph plan, really Madison's brainchild, Congress would be bicameral, the lower house chosen by popular election, the upper house picked by the lower from the candidates named by State legislatures. Each house's representation was to be proportional to population. This Congress was to have the right to make laws "in all cases in which the separate states are incompetent" and to nullify any State laws contrary to the Federal Constitution.

The Virginia Plan provided for a president to be called the National Executive who was to have all the executive powers granted Congress under the Articles. With the concurrence of a number of Federal judges, the president would have veto power over congressional acts. He was to be chosen by Congress and would serve for a term of 7 years. The plan also provided for a system of Federal courts. This audacious plan transcended a mere revamping of the Articles, proposing in its stead the creation of a balanced three-part government, supreme over the States.



*The witty and arrogant Gouverneur Morris flourished in the debates. He took the floor more than any other delegate, but saved his important speeches for the most timely moment. "He charms, captivates, and leads away the sense of all who hear him," said a colleague.*

The advocates of the Virginia Plan moved at once into high gear. On the motion of Gouverneur Morris, the convention voted six to one "That a national government ought to be established consisting of a supreme Legislative, Executive, and Judiciary." Once taken and never reversed, the vote on the Morris resolution was perhaps the most significant decision made by the convention, amounting as it did to a commitment to set up a supreme central government.

**The New Jersey Plan** For a number of days, beginning on June 14, the small States sought desperately to head off the trend toward centralization and control by the large States. They were especially perturbed by a vote of the convention to have representatives of the lower house elected by the people instead of the State legislatures. Under the Virginia Plan, as they saw it, the small States would be completely out-voted in a national legislature by a few large States if seats were apportioned according to taxes paid or the number of the State's free inhabitants.

An alternative proposal was a certainty. By June 15 it was clear just what form it would take. This was the small-State plan presented by William Paterson of New Jersey. The New Jersey Plan, as it is generally called, proposed a one-house legislature, elected by States regardless of population, with a plural executive elected by Congress, and a Supreme Court chosen by the executive. Paterson made one obeisance to a national system. He would have declared the acts of Congress and all treaties "the supreme law of the respective states," binding upon the State courts, regardless of what State law said. Otherwise, save for granting Congress the right to tax and regulate commerce, his plan would have continued almost intact the old Articles of Confederation.

Franklin, who had always been congenial to a unicameral legislature such as his own State possessed, caused some gossip by reputedly letting slip to a friend his concern about a bicameral system. The latter he compared to a snake with two heads. "One head chose to go on the right side of the twig, the other on the left, so that time was spent in the contest; and before the decision was completed the

*William Paterson was an able spokesman of small-State interests. He offered the New Jersey Plan—essentially a revision of the old Articles—to protect the sovereignty of the separate States.*



poor snake died with thirst.” Whether or not these were the old Doctor’s precise words—and Madison failed to record them—any sentiment in behalf of a one-chambered legislature comparable to the Congress under the Articles quickly evaporated. In fact, it had already been evident that the delegates would not content themselves with an amended set of Articles. Such a proposal was too little and came too late. After 3 days of sharp debate, the New Jersey Plan was rejected seven to three, a decisive vote which amounted to a complete rejection of the Confederation frame of government.

If Paterson’s plan was too weak, what Hamilton had in mind was too high-toned, centralized, and even monarchical for the delegates. On June 18, the day before the New Jersey Plan was rejected, Hamilton revealed his own plan. According to this, the States would be reduced to mere subdivisions, an executive in each State would be appointed by the national government, the chief executive would be elected for life by electors chosen in turn by electors popularly chosen. Compounding these horrors was Hamilton’s notion of a Senate chosen for life and his investment of the executive with an absolute veto power. While Hamilton criticized both the Virginia and New Jersey Plans as being too democratic, it is likely that his extremist solutions were offered to offset the latter rather than in any hope that they would prevail. As events proved, despite Hamilton’s own indiscreet remarks, he himself would in essence back the basic Virginia Plan as the best obtainable.

**The Great Compromise** The first business, however, was to settle the bitter controversy between the small and large States over the issue of proportional representation versus State equality. The second was to review the resolutions of the committee of the whole (the modified Virginia Plan) and reach final decisions. After days of animated debate, a compromise was reached on the first issue. Roger Sherman proposed that each State be given an equal vote in the Senate and that representation in the lower house be made proportional to population. The solid support given this plan by his fellow delegates from Connecticut, Oliver Ellsworth and William Samuel Johnson, led it to be called the

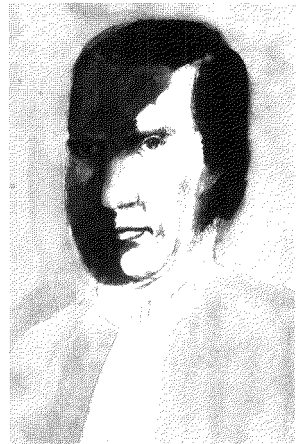
Connecticut Compromise. The United States, Dr. Johnson eloquently reminded his fellow delegates, was for many purposes "one political society" composed of individuals, while for other purposes the States also were political societies with interests of their own. These notions were not contradictory. On the contrary, "they were halves of a unique whole," and as such "ought to be combined" to the end that "in *one branch* the *people* ought to be represented, in the *other* the *states*."

Strict nationalists led by Madison viewed the Connecticut Compromise as a surrender to the principle of State equality and fought it fiercely. On the critical motion for equal representation in the upper house they succeeded in obtaining a tie vote. The resolution of the issue was now assigned to a special committee made up of one member from each State, an arrangement favorable to the small state group. On July 5 that committee reported in favor of Sherman's plan, and a week later the convention agreed that representation in the lower house should be based on the total of its white population plus three-fifths of its slave population. This last proposal was made by James Wilson to gain Southern support for basing representation on population rather than on property, population to be determined by a census ordained by the Constitution. On July 16 the convention removed the last element in the controversy by accepting the principle of equal representation in the Senate.

The major issue settled, the convention continued to demonstrate its extraordinary talent for compromise. The South agreed to grant Congress the power to pass navigation acts which the North wanted, and, in exchange, the North agreed to prohibit congressional interference with the importation of slaves for 20 years. The real struggle over the slave trade, however, was actually waged between the States of the lower and upper South rather than between the areas moving toward freedom and those growing more deeply committed to slavery. The strongest denunciation of the slave traffic came from a Virginian, George Mason, who prophesied national calamities in retribution for national sins.

Subsequently, critics charged that the three-fifths clause and the slave trade clause, as well as a provi-

*Roger Sherman, awkward in manner but formidable in debate. "In his train of thinking there is something regular, deep, and comprehensive," said a fellow delegate, "no Man has a better Heart or a clearer Head."*



## The Antifederalists

The name was hung on them by their opponents, and it was not at all accurate. The "anti-Federalists" were not opposed to federalism. They were, in fact, supporters of the Articles of Confederation, which was federalist to the core.

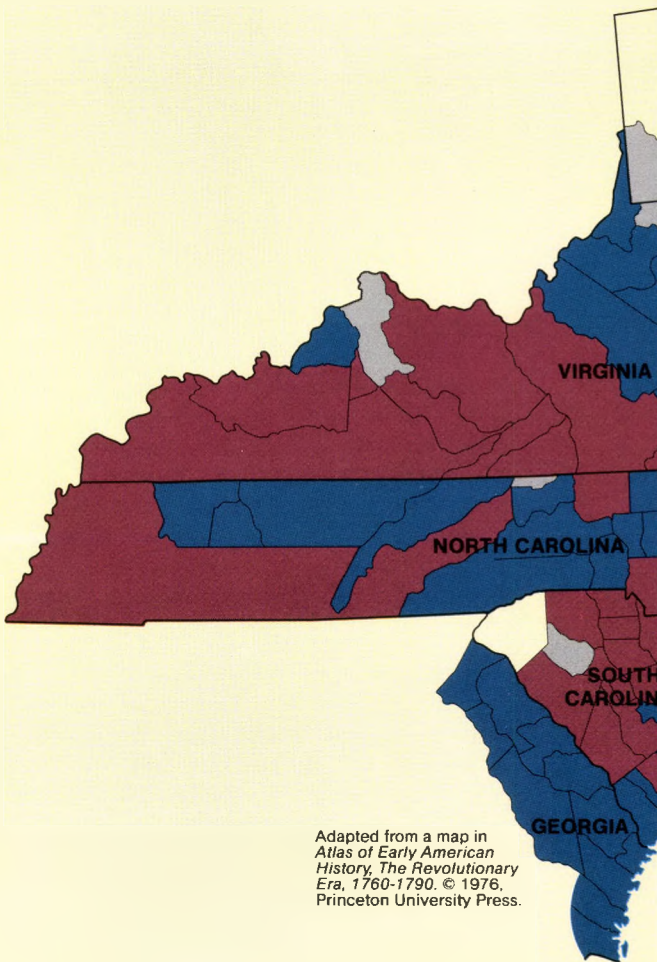
The "anti-Federalists" were not the ignorant and unprincipled men their opponents made them out to be. Nor were they the spokesmen of the laboring classes, as some

historians have claimed. They represented as varying a part of the population as the Federalists. Their opposition arose generally from one of three points of view. Some were not concerned with any level of government beyond local government, and therefore opposed to fundamental changes which might limit the scope of local government. Others were persuaded that States were the largest political unit at

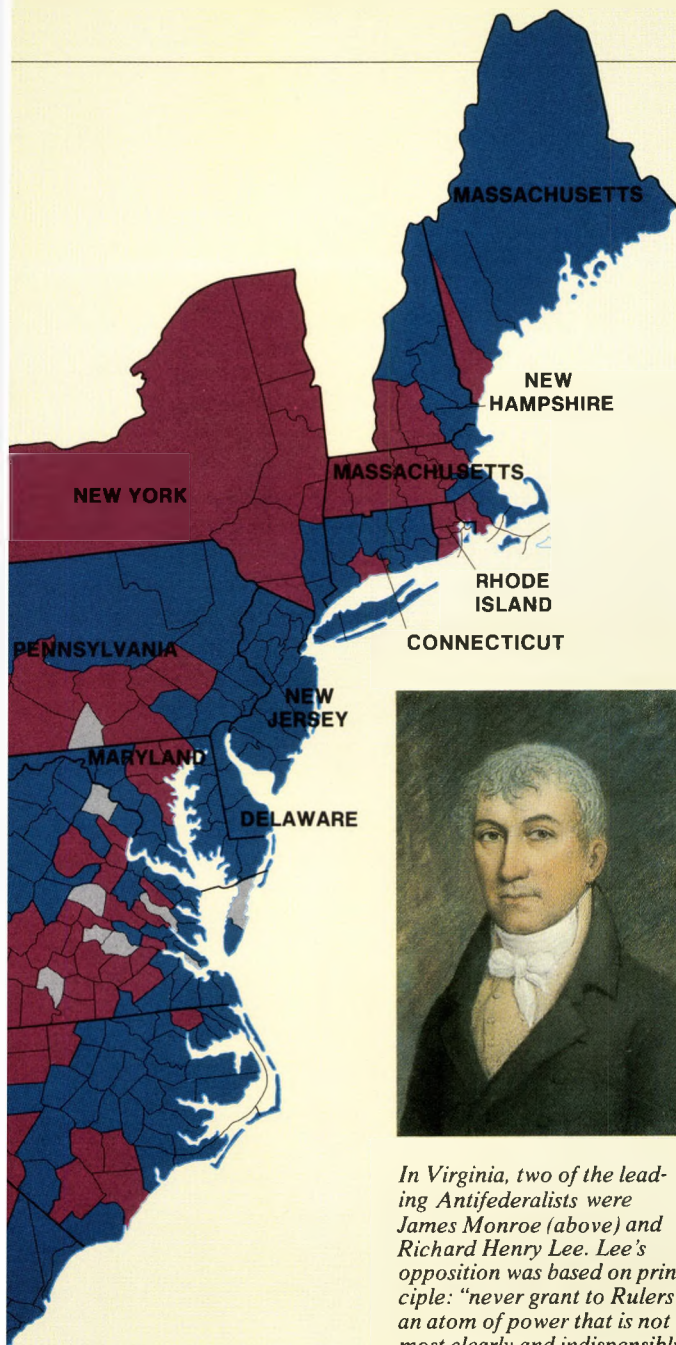
which republican government could be maintained and therefore wanted nothing more than a loose confederation of States. Still others believed that the remedy needed was to give the existing Confederation government more authority, but not so much as to threaten either State government or republican institutions, as the new Constitution would do.



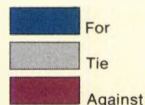
*Opposition to the Constitution took many forms. Gov. George Clinton of New York favored giving the Confederation more tax power, but only if the States appointed the collectors. He wanted the benefits that accrued from his State taxing imports destined for neighboring States. He also feared the rise of an aristocracy within a strong central government.*



Adapted from a map in  
*Atlas of Early American  
History, The Revolutionary  
Era, 1760-1790.* © 1976,  
Princeton University Press.

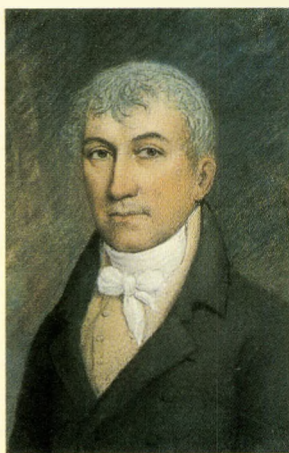


As this map shows, economics and regional interests motivated much opposition to the Constitution. The real wonder, though, is not that a sizable minority opposed such a radical undertaking, but that a majority could rise above disparate interests to agree on a new basis for governing the Nation.

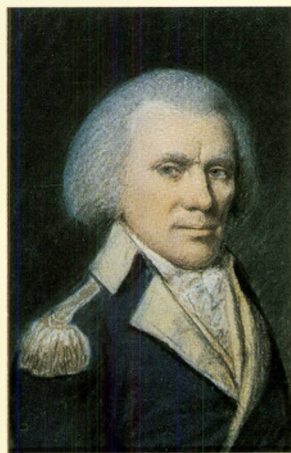


#### Vote on the Constitution

The vote in North Carolina shows results in the second ratification convention, November 1789.



*In Virginia, two of the leading Antifederalists were James Monroe (above) and Richard Henry Lee. Lee's opposition was based on principle: "never grant to Rulers an atom of power that is not most clearly and indispensably necessary for the safety and wellbeing of Society." Monroe saw the national government as a threat to Southern interests.*

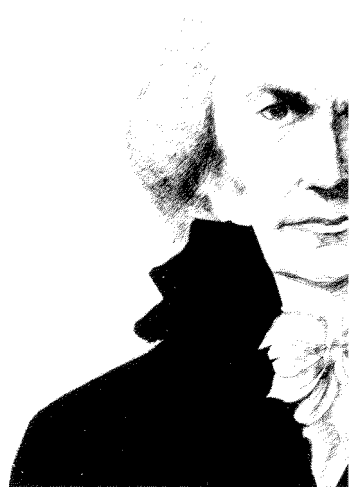


*Thomas Sumter, the South Carolina partisan fighter, was an example of a wealthy landowner who opposed the Constitution because it gave too much power to the central government. A states-right man before that doctrine became a sectional issue, he was on the losing side in the heated debate over ratification in his State.*

sion included in the Constitution for the recovery of persons "held to service or labour in one state" escaping to another, gave a constitutional sanction to slavery. Some have seen it as more than a coincidence that, at the very moment when the convention in Philadelphia was incorporating into its draft of the Constitution a set of compromises on slavery, Congress sitting in New York was taking steps to bar slavery from the territory north of the Ohio, thereby sanctioning it by implication in the territories to the south. This is speculation, of course, for the issue of slavery itself was never directly debated in the convention. Yet, the principal framers, regardless of their detestation of slavery, recognized, as James Madison conceded, that "the real difference of interests lay not between the large and small" States but "between the Northern and Southern states" over "the institution of slavery." Accordingly, to press the slavery issue on the floor of the convention would, as they saw it, prevent the formation of the Union, which was their paramount concern. Many of them hoped that in time slavery would wither away, while others regarded this as a problem that would have to be confronted by the succeeding generation.

The manner of electing the president provided another divisive issue. The original Virginia Plan would have had the chief executive elected by the national legislature, a proposal that in time was dropped. The framers were torn by considerations that would make the head of state responsible directly to the people rather than to the States and by fears that so democratic a system would be too extreme for the time. Those committed nationalists James Wilson and Gouverneur Morris eloquently argued the case for having the president elected directly by the people, while the aristocratic Mason, although a foremost civil libertarian, considered Wilson's proposal as unnatural as asking a blind man to pick out colors. The final decision, after countless proposals, was to have the president elected by electors who would be chosen in each State "in such manner" as its legislature might "direct." The electors would vote by ballot for two persons, of whom one could not be an inhabitant of the State. The person having the greatest number of votes would

*Oliver Ellsworth, who preferred compromise to doing nothing at all.*



*John Rutledge, a wealthy Carolina planter and distinguished lawyer, championed both the nationalist cause and Southern interests.*



become president; the second highest, vice-president. It was Roger Sherman who proposed that if no one person gained a majority of the electors, the House of Representatives should choose the candidate from the top five, each State's delegation casting one vote. The plan, perhaps conceived to propitiate the States, proved a victory for both nationalism and democracy, for very shortly after 1789 nearly all the States legislatures provided for the election of their States' presidential electors by popular vote.

How long should the president's term be and should he be eligible for reelection? Hamilton at first indicated his preference for a life term, others for a 7-year term without eligibility to run again, and toward the end Hamilton opted for a mere 3 years. The convention finally settled on a 4-year term without placing a limitation on the President's right of reelection.

A vexing issue at the convention was where to locate the power to declare State laws unconstitutional. Even ardent nationalists shied away from granting this power to Congress. In the end it was a bitter States'-rights man who hit upon a satisfactory solution. Drawing upon phraseology in the now discarded New Jersey Plan, Luther Martin inserted a clause making the Constitution and the laws and treaties of the United States "the supreme law of the land," binding upon the judiciary of each State. The supremacy clause, as it is called, became the cornerstone of national sovereignty when Congress, in 1789, passed a Judiciary Act providing for appeals from State courts to Federal judiciary. The convention prudently abstained from spelling out just what body would have the right to declare acts of Congress unconstitutional, but from the sense of the debates it was implied that the Federal judiciary would exercise that power.

What stands out in the debates of the convention are the points of similarity among the various plans proposed rather than their differences. Both the Virginia and New Jersey Plans had granted Congress the power to levy and collect taxes; and every plan presented at the convention gave Congress the right to regulate foreign and interstate commerce. The convention was unanimous in vesting in Congress the power to pay the debts and "provide for the com-

*The popular William S. Johnson presided over the Committee of Style that drafted the final document.*

*Edmund Randolph set before the convention the first ideas on which it acted. Uncertain of his constituency, he refused to sign the Constitution, but later warmly supported its ratification in Virginia.*





incorporating into the Constitution a prohibition of the issue by the States of paper money.

**The Committee of Detail** The degree of consensus among the delegates and their mental receptivity to other people's ideas were reflected in the speed with which they completed their formidable task. The convention convened on May 25, and by July 26 the basic plan of the Constitution had been adopted and sent to a Committee of Detail, chaired by John Rutledge. For that committee, Edmund Randolph turned out the proposed draft, which, as he explained it, was "to insert essential principles only" to make it possible to accommodate the Constitution "to times and events," and "to use simple and precise language and general propositions." Randolph's notion of confining a constitution to broad principles rather than cluttering it up with unnecessary details was a master stroke which accounts for that document's enduring adaptability and relevance. James Wilson then put the Randolph draft into smoother language, and the printers were ordered to print just enough copies for each of the delegates.

The most important contribution of the Committee of Detail was to list 18 specific powers of Congress, to which it added the crowning power "to make all laws" that appeared "necessary and proper" to carry "into execution" these and "all other power vested" in the government. It is on the basis of this clause that Alexander Hamilton based his doctrine of "implied" powers set forth in a classic state paper supporting the chartering of a national bank and penned as Washington's Secretary of the Treasury. Secondly, the Committee of Detail included a list of prohibitions upon the States, which were forbidden to coin money, to make treaties, or grant titles of nobility, among other curbs.

**The Committee of Style** Within 10 days the Committee had hammered out the basic charter of government. The delegates debated the committee's draft clause by clause from August 6 to September 10, when the Constitution was approved and referred to a Committee of Style. Again, the convention selected some of the most talented penmen

among the delegates. William Samuel Johnson was the Committee's chairman, with Gouverneur Morris, Madison, Rufus King, and Alexander Hamilton serving under him. It was Morris, however, who is largely responsible for the final phraseology of the Constitution, producing in just 2 days a document distinguished for its precision of language and clarity of style. Morris's most noteworthy contribution was in changing the wording of the preamble. Since the new government would go into operation upon ratification of nine States, and no one could be certain which States would ratify, Morris very sensibly reworded the preamble as drafted earlier by the Committee of Detail. Instead of "We the people of the States of New Hampshire, etc. do ordain, declare and establish the following Constitution for the government of ourselves and our posterity," Morris's preamble designated the people as the source of authority, thereby elevating the sights of government and couching its purposes in incomparable language. As he reported it, the preamble read:

WE THE PEOPLE of the *United States*, *In Order 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 to ourselves and our Posterity, do ordain and establish this* CONSTITUTION *for the United States of America.*

One other point Rufus King persuaded his colleagues on the Committee of Style to add, and that was a clause forbidding any State from passing any "law impairing the obligation of contracts."

Just 2 days after the Committee of Style submitted its final draft to the convention, it was approved, and on September 17 the convention adjourned. On that last day of the convention, the engrossed Constitution was read and adopted, but not before a number of moving speeches were heard. Old Doctor Franklin expressed certain reservations, but admitted that if he lived long enough he might change his mind. "The older I grow," he remarked, "the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others." He did not consider himself infallible, and told of the French lady, who in a dispute with her sister, remarked, "I don't know how it happens, sister, but I

# From First Resolves to the Final Document

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How was it that a committee of 55 persons, half of them lawyers, managed to condense months of spirited debate into a few pages of well crafted prose that have helped shape

the destiny of a continent? The outline below describes the principal parliamentary mechanisms used in framing the fundamental law of American society.

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## The Committee of the Whole

One standard parliamentary procedure of the time used by the convention was the Committee of the Whole. Invented by the House of Commons in Elizabethan England, this device allowed the convention to resolve itself into a committee and thereby operate informally under less strict rules. Some of the convention's most important work was

done in this way, notably the long debates over the Virginia and New Jersey Plans, culminating in the Connecticut Compromise. This agreement settled the issue of representation by giving every State an equal vote in the Senate and by basing representation in the House on population. It also provided for all money bills to originate in the House.

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## The Committee of Detail

When the convention had agreed on a set of 23 resolutions, it appointed a Committee of Detail, with John Rutledge of South Carolina as chairman and four members from the major sections of the country, to shape those general ideas into a more organized form. The convention adjourned for 11 days while the committee prepared its report. The document it drafted and laid before the convention on August 6 set off new rounds of debate. For

true to its name the committee was delving into details implicit in the earlier resolutions but by no means resolved. A page from George Washington's annotated copy of the committee's draft is shown on the opposite page.

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## The Committee of Style

Another month of debate produced the essential consensus that carried over to the final document. On September 8 the convention appointed a five-member Committee of Style, consisting of Gouverneur Morris, Alexander Hamilton, James Madison, and Rufus King, under the chairmanship of William Samuel Johnson of Connecticut. It took this group only four days to return with a draft, which underwent few revisions on the floor. In boldness and

clarity this document owes everything to the fluent pen of Gouverneur Morris. Looking back years later, he said that "having rejected redundant and equivocal terms, I believed it to be as clear as our language would permit."

WE the People of the States  
of New-Hampshire, Massachusetts,  
Rhode-Island and Providence Plan-  
tations, Connecticut, New-York, New-Jersey, Penn-  
sylvania, Delaware, Maryland, Virginia, North-Caro-  
lina, South-Carolina, and Georgia, do ordain, declare  
and establish the following Constitution for the Govern-  
ment of Ourselves and our Posterity.

## ARTICLE I.

The title of this Government shall be, "The United States of America."

### II.

The Government shall consist of supreme legislative, executive and judicial powers.

### III.

The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives, and a Senate; ~~each of which shall, in all cases, have a negative on the other. The Legislature shall meet on the first Monday in December in every year.~~

### IV.

Sec. 1. The Members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.

Sec. 2. Every Member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least ~~seven~~ years before his election; and shall be, at the time of his election, ~~an inhabitant~~ of the State in which he shall be chosen.

Sec. 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner herein after described, consist of sixty-five Members, of whom three shall be chosen in New-Hampshire, eight in Massachusetts, one in Rhode-Island and Providence Plantations, five in Connecticut, six in New-York, four in New-Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North-Carolina, five in South-Carolina, and three in Georgia.

Sec. 4. As the proportions of numbers in the different States will alter from time to time; as some of the States may hereafter be divided; as others may be enlarged by addition of territory; as two or more States may be united; as new States will be erected within the limits of the United States, the Legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the ~~ratio~~ the rate of one for every forty thousand. ~~Provided that every State shall have at least one Representative.~~

Sec. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public Treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

Sec. 6. The House of Representatives shall have the sole power of impeachment. It shall choose its Speaker and other officers.

Sec. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the executive authority of the State, in the representation from which they shall happen.

meet with nobody but myself that's always in the right." Hamilton conceded that no man's ideas were "more remote" from the final plan than his were known to be, but offered the delegates the choice "between anarchy and Convulsion on one side, and the chance of good to be expected from the plan on the other." Randolph indicated that he would not sign because he wanted to feel uncommitted as to what his final judgment would be about the Constitution, while Gerry warned that the Constitution would promote dangerous divisiveness in his State, and could not therefore, by signing the document, pledge himself to abide by it at all events. In all, 39 delegates signed. Washington's diary tells us that after that last session the delegates "adjourned to the City Tavern, dined together and took a cordial leave of each other."

### **The Battle over Ratification**

The delegates were sober realists. They knew that their tasks were far from completed and that the greatest battles lay ahead. The convention had overstepped its instructions. Instead of recommending amendments to the Articles, the delegates were in actuality proposing an entirely new government. Under these circumstances the convention had been understandably reluctant to submit its work to the Confederation Congress for approval. Having defied Congress, the convention decided to pursue what amounted to a revolutionary course by declaring ratification by nine states sufficient "for the establishment of this Constitution between the States so ratifying the same." In other words, the Constitution was being submitted directly to the people. Not even the Congress, which had summoned the convention, would be asked to approve its work. Still, Congress interposed no measures to block endorsement by the people. Above all States, all factions, and all interest groups, stood the people, as the preamble felicitously reminded the country, and it was to the people through ratifying conventions that the Federal Convention appealed for endorsement of its handiwork. In utilizing an institution innovated by




the Massachusetts ratifiers in 1780, the convention shrewdly bypassed the State legislatures, attached as they were to States' rights and which required in most cases the agreement of two houses. If speedy ratification was a reasonable objective, then the single-chambered, specially elected State ratifying conventions rather than the State legislatures seemed to offer the greatest promise of agreement.

Lines were quickly drawn. The country was far less united over the merits of the Constitution than were the delegates who adopted it. Its supporters drew their strength from the commercial and manufacturing interests, from the people resident in or accessible to main arteries of commerce, both along the seaboard and in the interior, from creditors, Revolutionary War officers, and professional men. Its opponents—States'-righters, agrarians, paper money men, various categories of debtors, and other particularists and special interests not represented at the convention—displayed anything but enthusiasm for the Constitution.

The Federalists, as the supporters of the Constitution quickly were called, had one solid advantage: they came with a concrete proposal. Their opponents, the Antifederalists, were opposing something with nothing; their objections, though often sincerely grounded, were basically negative, not constructive. The Antifederalists stood for a policy of drift while the Federalists were providing clear signposts. The former claimed to be the democratic party, but the touchstone of their democracy in the States was their insistence on more explicit guarantees of personal liberties and their advocacy of a unicameral legislature, a popularly-elected judiciary, and a weak executive.

In fact, the opposition on the part of the Antifederalists did not necessarily spring from a more democratic view of government than that presented by their adversaries. Many of the Antifederalists were as distrustful of the masses as their opponents. In New York, for example, Gov. George Clinton, the leader of the State's Antifederalists, criticized the people for their fickleness and their tendency to "vibrate from one extreme to another." Elbridge Gerry, who refused to sign the Constitution, asserted in the convention that "the evils we experience flow



*Rufus King of  
Massachusetts, an eloquent  
voice for the nationalists.*

from the excess of democracy," and expressed great concern at "the danger of the levelling spirit." John F. Mercer of Maryland professed little faith in his neighbors as voters, for "the people cannot know and judge the character of candidates. The worst possible choice will be made." The Antifederalists often constituted a vested interest group of State and local officeholders. It is true, however, that these men were more concerned than the Federalists about the threat posed to individual liberties by a powerful central authority. The Federalists, while sharing their opponents' fear of tyranny, had directed their full attention to the problems of investing the central government with power, energy, and efficiency adequate to its needs. The Antifederalists, by concentrating their heaviest fire on the absence in the proposed Constitution of safeguards for civil liberties, contributed significantly to the final product, the Constitution with the initial Ten Amendments.

At the convention it had been the small States who staged the biggest battle against setting up a strong central government. Once reassured by the crucial Connecticut Compromise, which gave them an advantage beyond their numbers or wealth, the small States fell into line, and quickly. Thus, the Constitution, which Washington felicitously called this "child of fortune," was ratified in haste and with little or no discussion by Delaware, New Jersey, Connecticut, and Georgia. The battles, it grew evident, would be fought in the large States.

The first real battle occurred in Pennsylvania. There the Antifederalists sought frantically to delay action; they wanted to get more information. By refusing to attend a session of the legislature, they killed a quorum and kept it from acting. A band of Constitutionals broke into their lodgings, dragged them through the streets to the State House, and forcibly kept them in the Assembly until a vote was taken to call a ratifying convention. The feverish haste with which the convention was summoned and the fact that only a fraction of the voters of Pennsylvania balloted for delegates provided the Antifederalists with plenty of ammunition. The debate over ratification in Pennsylvania revealed a deep sectional cleavage between the pro-Constitution forces in commercial Philadelphia and their agrarian

opponents in the western part of the State, with overtones of class antagonism evident. The "low born" and the "six hundred well born" were accused of trying to ram this document down the throats of the rest. However, the strategy of urgency accrued to the Federalists' advantage. The convention adopted the Constitution by a vote of 46 to 23.

For a time it looked as though the Federalists were gaining everywhere. In Massachusetts, the leaderless Antifederalists poured grape and canister upon the Constitution, but were powerless to stem the tide of ratification. The little men fought bravely, with more passion than reason. "These lawyers and men of learning and money men," declared Amos Singletary, one of the Antifederalists, "that talk so finely, and gloss over matters so smoothly, to make us poor illiterate people swallow down the pill, expect to get into Congress themselves; they expect to be the managers of this Constitution, and get all the power and all the money into their own hands, and then they will swallow up all us little folks like the great *Leviathan*. Yes," he added, "just as the whale swallowed up Jonah." Hancock may have appraised the situation that way in allowing himself to be won over by the pro-Constitution forces. As a result of the defection of several leaders, the Shaysites and other hard-core yeomen opponents were nosed out by a mere 19 votes out of 355. The opposition managed to gain one significant concession from the victors: the convention's approval was accompanied by a recommendation for certain amendments to the Constitution.

Now the struggle picked up momentum. By May 28, Washington could estimate that "a few short weeks will determine the political fate of America." That fate was not to be decided on any field of battle, but in assemblages convened in Richmond, Va., and Poughkeepsie, N. Y.

In Virginia both sides concentrated on electing their own slate of delegates to the convention. The opponents of the Constitution insinuated that the government would tax away the poor man's property and give away the Mississippi. As Washington saw it, the Antifederalists employed "every art that could inflame the passion or touch the interest of men." The Federalists countered with prestigious

None of the delegates believed they had created a perfect form of government. Most had compromised on issues they considered just short of sacred, several had left in disgust, and three refused to sign. George Washington spoke for many when he wrote Patrick Henry: "I sincerely believe it is the best that could be obtained at this time, and with a constitutional door opened for amendment hereafter, the adoption of it . . . is in my opinion desirable."

Proponents gradually went over to a more forceful line of argument, calculated to persuade most Americans that the

new Constitution was the best hope for republican government. The Federalists, as they now called themselves, were well organized. They directed their greatest efforts at the large States, where a complex of interests made ratification more difficult.

Pennsylvania was one of the first contests. A convention approved the Constitution by a two-thirds majority in December 1787, the first large State to ratify. The measure carried so easily because its opponents lacked enough time to organize. In Massachusetts and Virginia, the Antifederalists mounted far better cam-

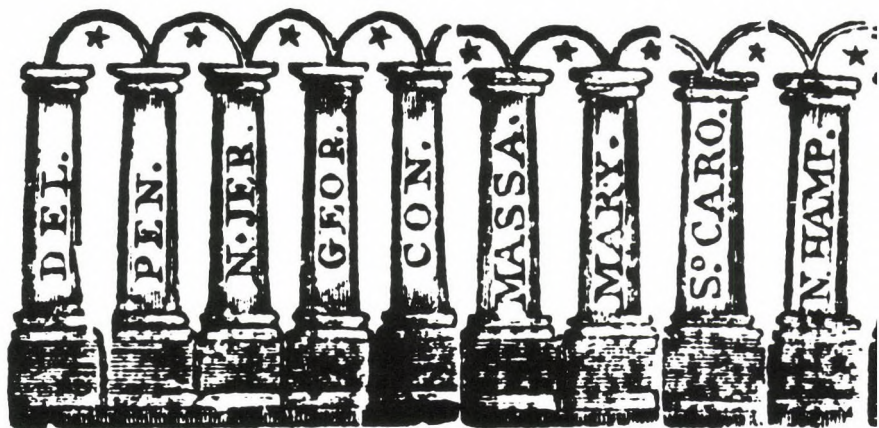
paigns but lost on close votes.

New York was another bitter contest. The governor and his associates led the opposition; John Jay and Alexander Hamilton headed the Federalists. After news arrived of Virginia's decision, New York voted for ratification by a small margin. The approval of these four large States virtually decided the issue.

One lasting result of the ratification contests was *The Federalist*, a series of articles by Hamilton, Madison, and Jay. These essays advance the best arguments then and now on what the Framers intended in the Constitution.

## The C E N T I N E

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The FEDE

T H E

# FEDERALIST:

A COLLECTION

O F

## E S S A Y S,

WRITTEN IN FAVOUR OF THE

NEW CONSTITUTION,

VOL IX

AS ADDED UPON THE FEDERAL CONSTITUTION,

IN A REGNA.

h PILLAR of the great Na-

to felicitate "OUR DEAR COUNTRY."

Rise it  
will.

NEW-YORK.

PRINTED AND SOLD BY J. AND A. MANTON.

No. 41, MANHATTAN-SQUARE.

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The foundation  
good—it may yet  
be SAVED.

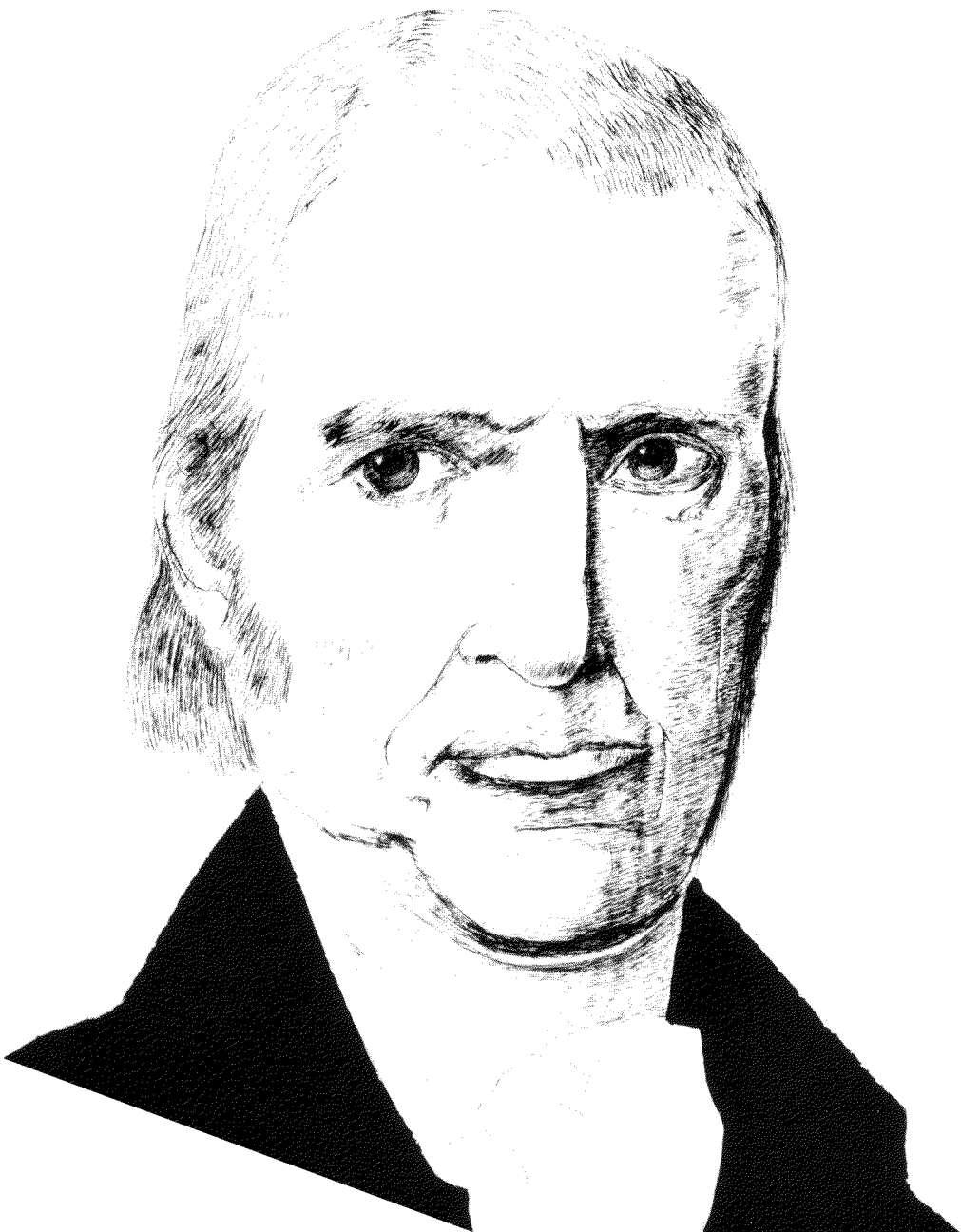


L EDIFICE.

The anonymous newspaper articles by Hamilton, Madison, and Jay advocating ratification of the Constitution were published in 1788 as a book (left). Below is an allegorical cartoon from the Massachusetts Centinel, August 2, 1788, celebrating ratification by the 11th State, New York.

*John Marshall helped turn back the Antifederalist challenge in the Virginia ratification convention. He later served as Chief Justice of the Supreme Court for 34 years. His court handed down many land-*

*mark decisions that established the power of the judicial branch. Among them was the far-reaching doctrine of judicial review, an idea the convention flirted with but never expressly adopted.*



names and strong talents—with Washington, Henry (“Light Horse Harry”) Lee, James Madison, and John Marshall.

Prestige and intellectual equipment were not enough, for the Federalists soon realized that theirs was an uphill battle. As Madison informed Jefferson in February 1788, after it seemed that the Constitution would be quickly approved in Virginia, “the tide next took a sudden and strong turn in the opposite direction.” Patrick Henry, convinced that he spoke for four-fifths of his State, joined with George Mason and Richard Henry Lee to contest the Constitution point by point. But this proved a fatal error. For rather than capitalize quickly on their numerical strength, they gave the Federalists a chance to erode it by oratorical skill and persuasion. One of the first and certainly the Federalists’ most impressive convert was the State’s governor, young Edmund Randolph. The Antifederalists had counted on Randolph as an ally, for he had left the Federal Convention without signing the Constitution. To their surprise and consternation, Randolph rose to warn his fellow Virginians that the world looked upon Americans “as little wanton bees, who had played for liberty, but had no sufficient solidity or wisdom” to keep it. “I am a friend to the Union,” he announced dramatically. For the Federalists, James Madison took the floor, arguing the Constitution on its merits, clause by clause, while a tall ungainly young lawyer named John Marshall persuasively defended the judiciary provisions of the instrument whose most celebrated interpreter he was destined to become.

Contributing little beyond loose and reckless assertions, the Antifederalists finally stooped to personal vilification and class animosity. Patrick Henry termed the Constitution a threat to liberty, a large standing army a threat to peace, and the “great and mighty President” little less than a monarch. “I wish not to go to violence,” he declared, “but will wait with hopes that the spirit which predominated in the Revolution is not yet gone, nor the cause of those who are attached to our Revolution not yet lost.” George Mason castigated the supporters of the new government as Tories. When he looked about him, he thought of “the story of the cat trans-



*Patrick Henry, in fiery speeches to the Virginia ratification convention, denounced the new Constitution as “radical” and a threat to liberty. It took all the skill of the Federalists to best him.*

formed to a fine lady; forgetting her transformation and happening to see a rat, she could not restrain herself, but sprang upon it out of the chair.”

The vote was taken and the Federalists carried the day by 89 votes to 79. But to conciliate the opposition and to meet their most valid criticism, the convention proposed certain amendments to the Constitution. The Virginia Federalists kept their word. When the first Congress met in 1789, James Madison proposed 12 amendments, of which 10 were approved by the States and incorporated into the Constitution as the Bill of Rights.

In New York, Federalists braced themselves against the attack led by Gov. George Clinton. On October 27, 1787, the first in a series of 85 letters was published in the New York press under the pseudonym of “Publius.” In May 1788, the entire series was collected in book form, entitled *The Federalist*. Although the identity of Publius was a secret, the authorship of the letters ultimately leaked out. It is now established that John Jay contributed five letters, that Madison wrote 30 (a few with Hamilton’s collaboration), and that the rest were from Hamilton’s own pen. The letters exposed the weaknesses of the Confederation, and argued the need for a strong Union. What unfolded in their arguments was a classic exposition of the Constitution, more significant in its long-term influence on American constitutional thought than in its immediate impact on the ratification struggle.

Hamilton had closed the *Federalist* letters on a note of “trembling anxiety” for the fate of the Nation. Nor was his anxiety misplaced, for the New York ratifying convention which met at Poughkeepsie was at the start overwhelmingly hostile to the Constitution. The upstate Antifederalists commanded a seemingly decisive majority of the delegates. Realizing that a full discussion of the Constitution was essential if the opposition was to be persuaded against their initial prejudices, Hamilton vowed that the convention would not adjourn “until the Constitution is adopted.” This meant keeping the pot simmering for six sizzling summer weeks.

Time was on the side of the Federalists. Once the magic number nine was reached, the new mechanism of government had a built-in device for

getting started. The eyes of New Yorkers were on Virginia and New Hampshire. On June 21 New Hampshire, the ninth pillar, as it was called, ratified, and Virginia's approval came 4 days later. The futility of a "No" vote was now apparent even to the diehard opponents of the Constitution. The most they could hope for was to approve the new instrument conditionally upon incorporation of a bill of rights. The prestigious Federalist contingent stoutly opposed conditional ratification. Hamilton was the main Federalist orator, but he was considered an arrogant extremist by his opponents and his pleas failed to turn the tide. He and Robert R. Livingston then let it be known that New York City would secede and ratify on its own if the State withheld approval. John Jay proved the more tactful and understanding in efforts to reassure the Antifederalists. The most dramatic moment of the convention came when Melancton Smith, a leading opponent of the Constitution, rose and conceded that he had been convinced of the inutility of pressing for conditional ratification. Worn down by logic and events, the Antifederalist forces were shattered. By a slender margin of three votes the convention approved the Constitution, along with a circular letter that Jay drafted calling for another convention to propose amendments to the Constitution. The adoption of the Bill of Rights made a second convention unnecessary.

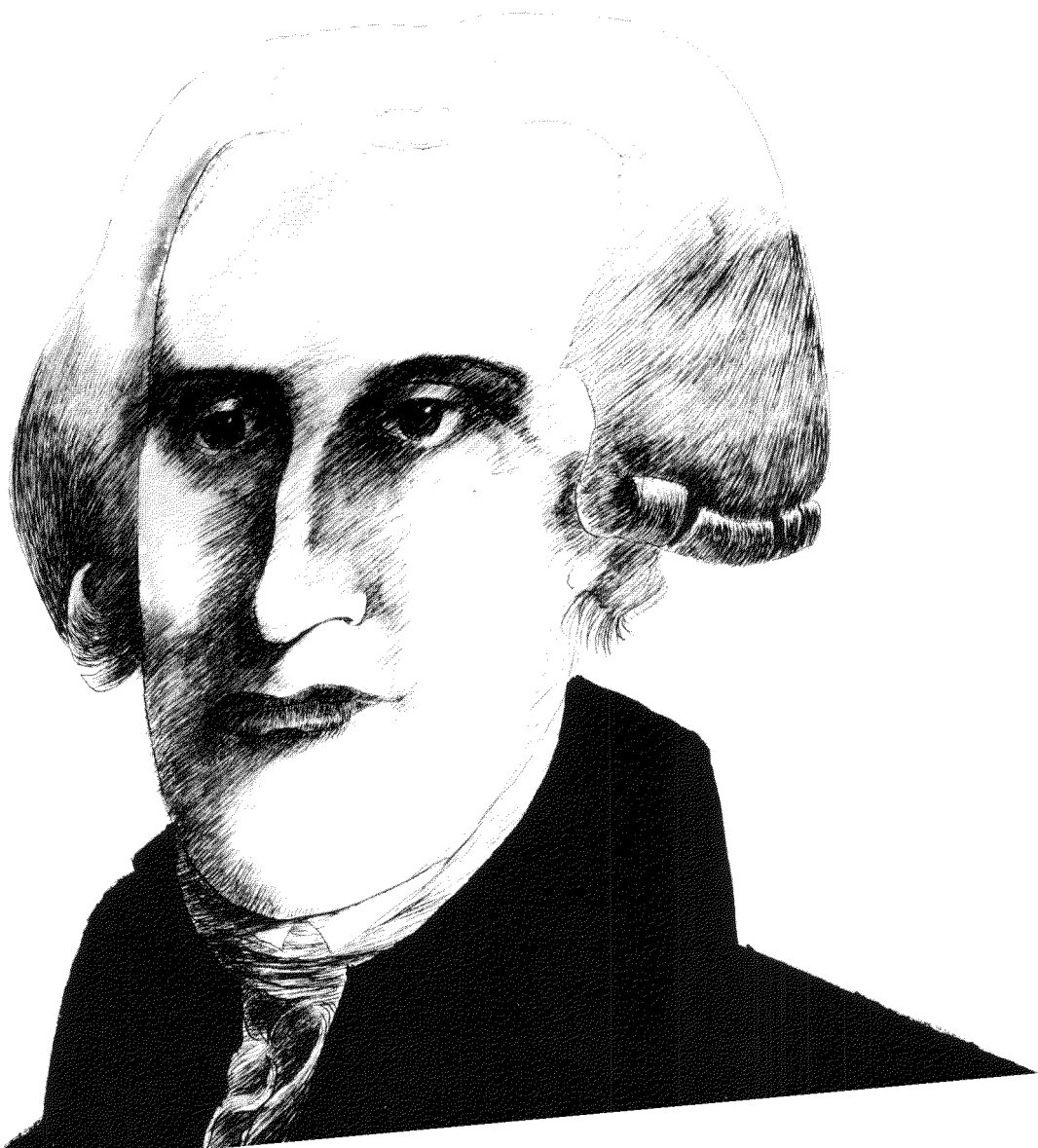
The Federalists had in fact won a clear-cut victory. Eleven States were now in the Union, but two remained for a time in shabby isolation. In North Carolina a second convention had to be summoned before approval was obtained in November 1789. Rhode Island, which had sent no delegates to the Philadelphia convention, did not come into the Union until May 1790.

For some two generations, 20th-century historians have debated the alleged economic motives of the Founding Fathers. Was the Constitution the result of a conspiracy? Were the men who drafted and ratified the Constitution governed by personal property considerations, by economic concerns that had been adversely affected by conditions during the Confederation years? Was there in fact an alignment in the battle over ratification between, on the one hand,

holders of specie or public securities and those connected with manufacturing, commerce, or shipping, and on the other hand, the rural and landed interests? The evidence fails to support any theory of a conspiracy, nor does it even permit us to draw a clear-cut line between the interests of the pro- and anti-Constitution forces. Rather than regard the framers and ratifiers as committed to the defeat of democracy and the protection of property rights, as some critics have alleged, it would be in better balance to recognize their deep concern for the creation of a political system that would give the central government power to act effectively for the general welfare. With their strong national attachment and their continental vision, the Federalists considered themselves committed to carrying out the purposes for which independence was declared. They created a system of republican federalism that would survive foreign and domestic wars and the strains and stresses of two centuries.

Once the Constitution was ratified, Dr. Benjamin Rush, the Pennsylvania Federalist, summed up the grave events succinctly, "Tis done. We have become a nation." That Nation has now celebrated the 200th anniversary of its birth and the commemoration of the Bicentennial of its Constitution. Both the men who built so well and their charter of government that has not only endured but still functions so effectively command our ungrudging tribute.

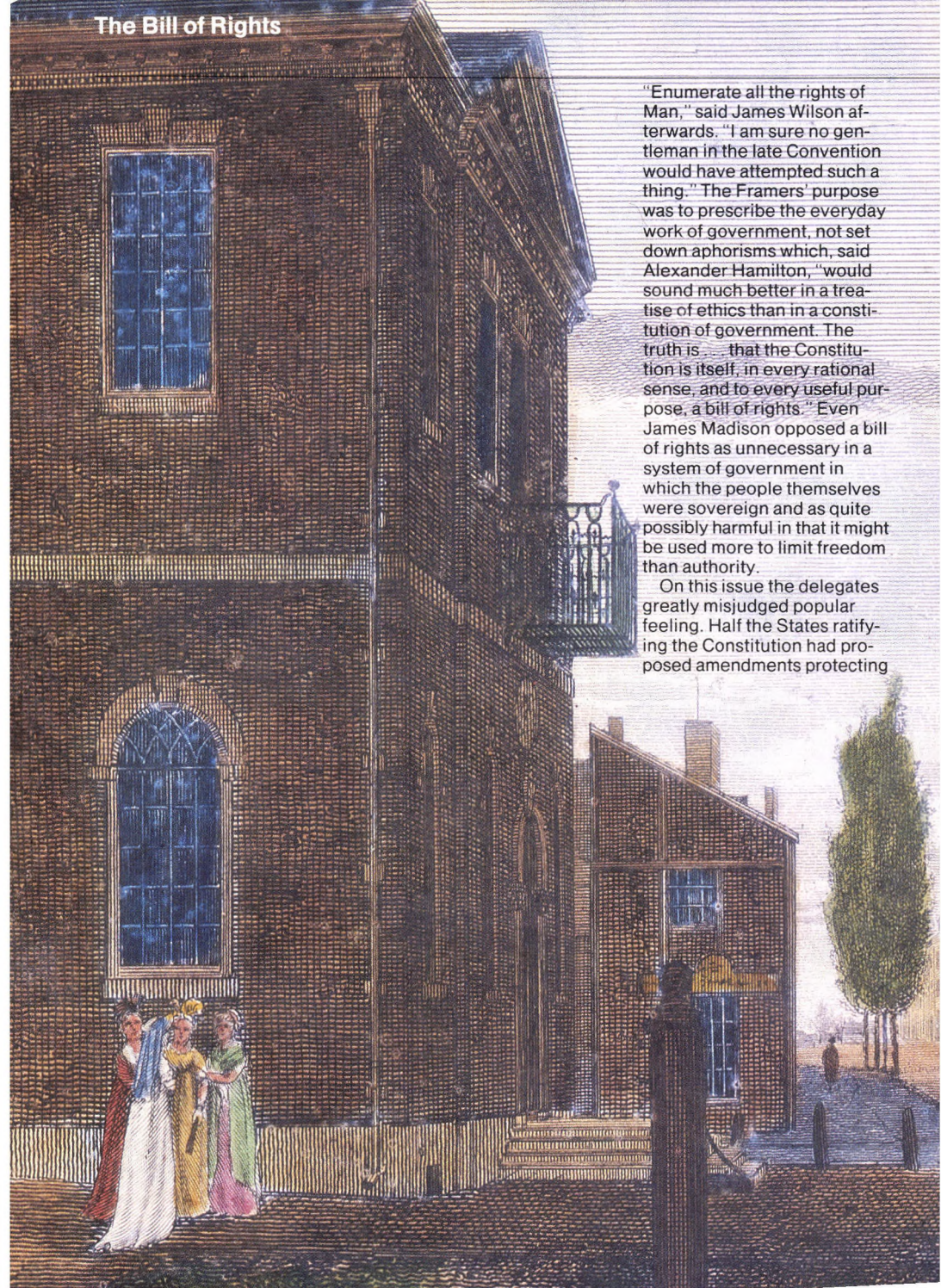
*John Jay, future Chief Justice, was Hamilton's ally in the ratification battle in New York. He wrote five of The Federalist papers, still the best guide to understanding the Constitution and federalism.*



## The Bill of Rights

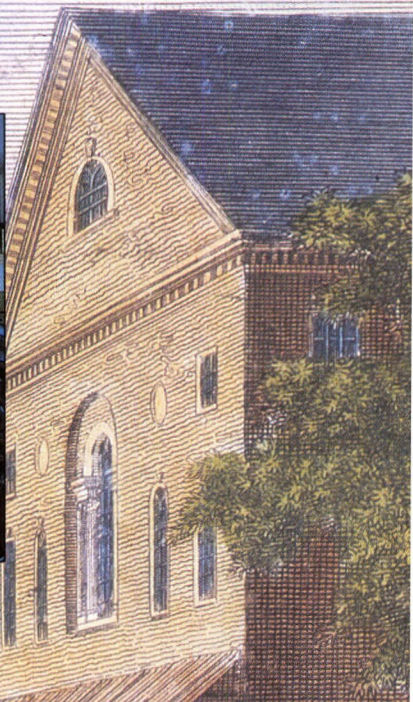
"Enumerate all the rights of Man," said James Wilson afterwards. "I am sure no gentleman in the late Convention would have attempted such a thing." The Framers' purpose was to prescribe the everyday work of government, not set down aphorisms which, said Alexander Hamilton, "would sound much better in a treatise of ethics than in a constitution of government. The truth is . . . that the Constitution is itself, in every rational sense, and to every useful purpose, a bill of rights." Even James Madison opposed a bill of rights as unnecessary in a system of government in which the people themselves were sovereign and as quite possibly harmful in that it might be used more to limit freedom than authority.

On this issue the delegates greatly misjudged popular feeling. Half the States ratifying the Constitution had proposed amendments protecting

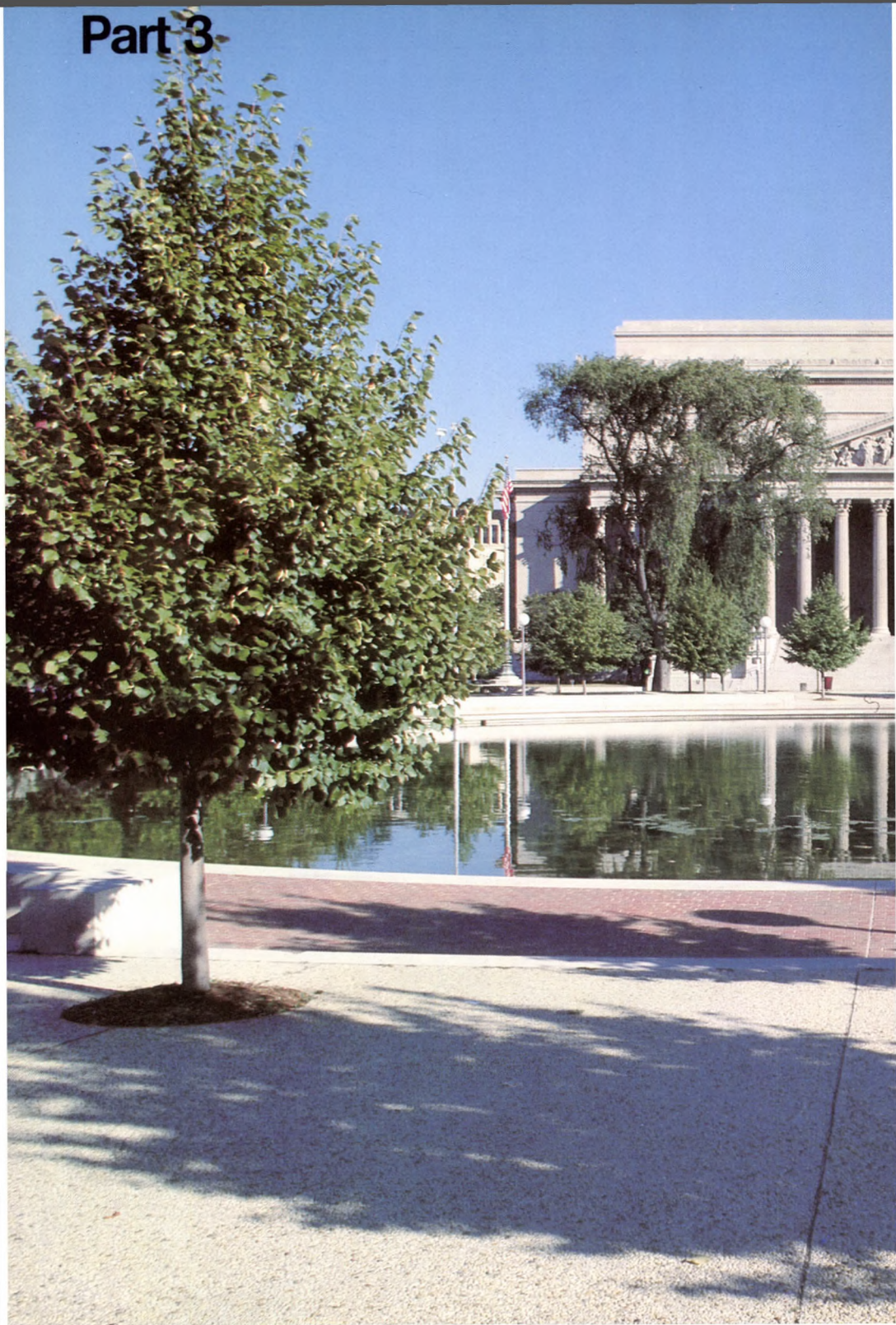


a range of liberties. When the first Congress under the new Constitution convened in New York City in 1789, one of its first pieces of business was to consider these proposals. Madison himself undertook to guide this work. He condensed the State proposals, 78 in number, into their fundamental elements. After much wrangling in committee, Congress submitted 12 to the States,

of which 10 were eventually ratified. These amendments, which protect rights essential to the life of a free people, are known as the Bill of Rights. They were formally added to the Constitution while Congress was in session in the Philadelphia County Court House (Congress Hall) in 1791. The photograph below shows the House chamber of Congress Hall, now restored to its appearance in the 1790s.



# Part 3



# The Great Document



**T**he Federal Constitution is one of our most revered national charters. Along with the Declaration of Independence and the Bill of Rights, the original document is impressively exhibited in the National Archives Building in Washington, D.C. Every year many thousands pay homage to this ancient compact from which so much in our national life has followed.

It took over a century and a half for the Constitution to find a permanent home. During the early years of the Republic, it migrated with the seat of government: first to New York for 2 years and then to Philadelphia for 10 before being shipped to the new city of Washington in 1800. There it languished with other important State papers, traveling from office to office as its custodians did. In August 1814 came a hasty flight in a wagon out of the city to escape a British army. Then again into obscurity for years. Only occasionally did anyone disturb the document. Secretary of State John Quincy Adams checked its punctuation in 1823 during a political dispute, a publisher used it in 1846, and the historian J. Franklin Jameson, who found it packed away in a box in a closet, examined it in 1883. Ironically, this official neglect helped the Constitution survive in much better condition than the Declaration, which was exhibited continuously for the better part of a century and has now faded badly.

The first adequate treatment of both documents came in 1921, when the Library of Congress took them into its care. Three years later they went on display under proper conditions for the first time. Except for several years at Fort Knox during World War II, they remained at the Library until 1952. In that year the Librarian of Congress and the Archivist of the United States agreed to transfer the Declaration and the Constitution to the Archives and put them on display using the latest conservation techniques. Working with the National Bureau of Standards, the Archives devised a way to exhibit the documents without subjecting them to the hazards of handling, atmospheric pollution, and fading. They are sealed inside bronze and glass cases, and lowered at night into a massive vault beneath the floor.

Preceding page: *The National Archives, Washington, D.C.*

*The Declaration, the Constitution, and the Bill of Rights are displayed in Exhibition Hall of the National Archives (opposite).*



## The Federal City

Although the Constitution made no provision for a capital, it was clear to the Founders that the new nation must have a permanent seat of government. Philadelphia, the leading city, confidently expected to be chosen. Politics ruled otherwise. In 1790 a political bargain between Thomas Jefferson and Alexander Hamilton placed the capital along the lovely shores of the Potomac.

George Washington himself chose the site, a 10-mile-square tract just upriver from

his home at Mount Vernon. To plan the new city, he picked Pierre L'Enfant, the French-born artist and architect. L'Enfant laid out a city of broad boulevards, sweeping vistas, spacious parks, fountains, and public buildings expressive of the bright future ahead. The Capitol—housing what the Founders thought would be the main organ of government—was located on Jenkins Hill, which L'Enfant called “a pedestal waiting for a monument.” The President’s house stood a mile away at the other end of

a grand avenue bordered by tidal marshes and a creek aptly named Tiber. The judiciary, the branch with the least power in the original scheme of things, made do initially with a first-floor chamber in the Capitol. Even in the city’s first years, the symbolism was inescapable. Today, the powers and responsibilities lodged in the White House, the Capitol, and the Supreme Court energize the American version of representative government.





*Three buildings in the Nation's Capital embody the fundamental principles of American government: the Capitol, the Supreme Court,*

*and the White House (left). The pastoral backdrop is Constitution Gardens, a spot of natural greenery within the formal precision of the Mall.*



### Preamble

We the People of the United States, in Order 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 to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

### Article I

*Section 1.* All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

*Section 2.* The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, [which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]<sup>1</sup> The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

<sup>1</sup> *Superseded by the Fourteenth Amendment.*

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

*Section 3.* The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,]<sup>2</sup> for six Years; and each Senator shall have one Vote.

<sup>2</sup> *Superseded by the  
Seventeenth Amendment.*

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]<sup>3</sup>

<sup>3</sup> *Modified by the  
Seventeenth Amendment.*

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the

Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

*Section 4.* The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.] <sup>4</sup>

*<sup>4</sup> Superseded by the Twentieth Amendment.*

*Section 5.* Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

*Section 6.* The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

*Section 7.* All bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States. If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

*Section 8.* The Congress shall have Power To

lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority

of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

*Section 9.* The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.<sup>5</sup>

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the

<sup>5</sup> *Modified by the  
Sixteenth Amendment.*

United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

*Section 10.* No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## **Article II**

*Section 1.* The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all

the Persons voted for, and of the Number of Votes for each; which list they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.] <sup>6</sup>

*<sup>6</sup> Superseded by the  
Twelfth Amendment.*

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office <sup>7</sup>, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer

*<sup>7</sup> Modified by the  
Twenty- fifth Amendment.*

shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

*Section 2.* The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

*Section 3.* He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on

extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all Officers of the United States.

*Section 4.* The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

### **Article III**

*Section 1.* The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

*Section 2.* The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;<sup>s</sup>—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Im-

<sup>s</sup> *Modified by the  
Eleventh Amendment.*

peachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by law have directed.

*Section 3.* Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

#### **Article IV**

*Section 1.* Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

*Section 2.* The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.]<sup>9</sup>

*<sup>9</sup>Superseded by the  
Thirteenth Amendment.*

*Section 3.* New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and

make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

*Section 4.* The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## **Article V**

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

## **Article VI**

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legis-

latures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## Article VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth.

In witness whereof We have hereunto subscribed our Names.

G. Washington, *President and deputy from Virginia*; Attest William Jackson, *Secretary*; *Delaware*: Geo. Read, Gunning Bedford, jr., John Dickinson, Richard Bassett, Jaco. Broom; *Maryland*: James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll; *Virginia*: John Blair, James Madison, Jr.; *North Carolina*: Wm. Blount, Richd. Dobbs Spaight, Hu Williamson; *South Carolina*: J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler; *Georgia*: William Few, Abr. Baldwin; *New Hampshire*: John Langdon, Nicholas Gilman; *Massachusetts*: Nathaniel Gorham, Rufus King; *Connecticut*: Wm. Saml. Johnson, Roger Sherman; *New York*: Alexander Hamilton; *New Jersey*: Wil. Livingston, David Brearley, Wm. Paterson, Jona. Dayton; *Pennsylvania*: B. Franklin, Thomas Mifflin, Robt. Morris, Geo. Clymer, Thos. FitzSimons, Jared Ingersoll, James Wilson, Gouv. Morris.

## The Bill of Rights, December 15, 1791

### Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of

the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## **Article II**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

## **Article III**

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

## **Article IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## **Article V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a *Grand Jury*, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## **Article VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against

him; to have compulsory process for obtaining witnesses in his favour, and to have the Assistance of Counsel for his defense.

#### **Article VII**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

#### **Article VIII**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

#### **Article IX**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

#### **Article X**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

### **Later Amendments**

#### **Article XI [January 8, 1798]**

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

#### **Article XII [September 25, 1804]**

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-

President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.]<sup>10</sup> The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

<sup>10</sup> *Superseded by the Twentieth Amendment.*

### **Article XIII [December 18, 1865]**

*Section 1.* Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

*Section 2.* Congress shall have power to enforce this article by appropriate legislation.

**Article XIV [July 28, 1868]**

*Section 1.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Section 2.* Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

*Section 3.* No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

*Section 4.* The validity of the public debt of the United States, authorized by law, including debts in-

curred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation, incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

*Section 5.* The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

#### **Article XV [March 30, 1870]**

*Section 1.* The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

*Section 2.* The Congress shall have power to enforce this article by appropriate legislation.

#### **Article XVI [February 25, 1913]**

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

#### **Article XVII [May 31, 1913]**

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

#### **Article XVIII [January 29, 1919]**

[*Section 1.* After one year from the ratification of

this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

*Section 2.* The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

*Section 3.* This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.] <sup>11</sup>

*<sup>11</sup> Superseded by the  
Twenty-first Amendment.*

### **Article XIX [August 26, 1920]**

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

### **Article XX [February 6, 1933]**

*Section 1.* The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

*Section 2.* The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

*Section 3.* If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as

President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

*Section 4.* The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

*Section 5.* Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

*Section 6.* This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

#### **Article XXI [December 5, 1933]**

*Section 1.* The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

*Section 2.* The transportation or importation into any State, Territory, or possession of the United States for delivery to use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

*Section 3.* This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

#### **Article XXII [February 26, 1951]**

*Section 1.* No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was

proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

*Section 2.* This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

### **Article XXIII [March 29, 1961]**

*Section 1.* The district constituting the seat of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

*Section 2.* The Congress shall have power to enforce this article by appropriate legislation.

### **Article XXIV [January 23, 1964]**

*Section 1.* The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

*Section 2.* The Congress shall have power to enforce this article by appropriate legislation.

### **Article XXV [February 10, 1967]**

*Section 1.* In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

*Section 2.* Whenever there is a vacancy in the

office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

*Section 3.* Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

*Section 4.* Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

**Article XXVI [July 1, 1971]**

*Section 1.* The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

*Section 2.* The Congress shall have power to enforce this article by appropriate legislation.

## For Further Reading

Two issues have divided historians of this period. The first is whether social and political conditions on the eve of the Federal Convention had seriously deteriorated. That position was argued by John Fiske in his famous work, *The Critical Period of American History, 1783–1789* (1883). It has been challenged by writers of the Populist–Progressive school, notably by Merrill Jensen in *The New Nation: A History of the United States During the Confederation, 1781–1789* (1940). A reconsideration of the controversy, with an emphasis on the weaknesses of the Confederation as contemporaries understood them, will be found in Richard B. Morris, *The American Revolution Reconsidered* (1967).

A second issue concerns the motives of the Founding Fathers in drafting and ratifying the Constitution. Charles A. Beard's *An Economic Interpretation of the Constitution* (1913) charged that the drafters and ratifiers were governed by personal property interests which had been adversely affected by conditions in the Confederation, that they were holders of specie or public securities, and that they were connected with manufacturing, commerce, or shipping. Recent investigators have questioned Beard's evidence and have charged him with arguing an oversimplistic thesis. Among his critics are Robert E. Brown, *Charles Beard and the Constitution* (1956) and Forrest McDonald, *We the People: The Economic Origins of the Constitution* (1958).

The debates of the convention, as recorded by Madison and others, will be found in Max Farrand, ed., *Records of the Federal Convention of 1787* (4 vols., 1911–1937). Balanced single-volume treatments are offered by Robert L. Schuyler, *The Constitution of the United States: An Historical Survey of Its Formation* (1923), Carl Van Doren, *The Great Rehearsal: The Story of the Making and Ratifying of the Constitution of the United States* (1948), and Clinton Rossiter, *1787: The Grand Convention* (1966).

R.B.M.

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## *Credits*

Leonard Baskin: 29, 34, 37, 41, 45, 50-51, 54, 56, 57, 60-61, 62, 63, 68, 74, 75, 79.

Colonial Williamsburg, The Abby Rockefeller Collection: 22-23 (Hicks).

Historical Society of Pennsylvania: 4-5, 26-27, 80-81.

Robert Lautman: 7, 8-9, 10-11, 12-13, 14, 15, 16, 17, 82-83, 86-87 (Constitution Gardens and White House).

Library Company of Philadelphia: 22-23 (map), 31 ("A Defence of the Constitutions of Government").

Library of Congress: 30 (Hume).

Museum of Fine Arts, Boston: 23.

Munson-Williams-Proctor Institute, Museum of Art, Utica, N.Y.: 58. Portrait of George Clinton by Thomas Bluget de Valdenuit.

National Archives: 18-19, 67, 85 (Hugh Talman).

Naitonal Portrait Gallery, Smithsonian Institution: 30 (Locke and Montesquieu).

New-York Historical Society: 72-73.

Peabody Museum of Salem: 22

Princeton University Press: 58-59. Map adapted with permission from *Atlas of Early American History: The Revolutionary Era, 1760-1790*, Lester J.

Cappon *et al.*, editors. (c) 1976, Princeton University Press. Published for the Newberry Library and the Institute of Early American History and Culture by Princeton University Press.

Mae Scanlan: 87 (U.S. Capitol).

M. Woodbridge Williams: 87 (Supreme Court).

# National Park Service U.S. Department of the Interior

As the Nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering the wisest use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historical places, and providing for the enjoyment of life through outdoor recreation. The Department assesses our energy and mineral resources and works to assure that their development is in the best interest of all our people. The Department also has a major responsibility for American Indian reservation communities and for people who live in Island Territories under U.S. administration.

# The Framing of the Federal Constitution

*The year was 1787. The place, the State House in Philadelphia. Delegates from 12 of the 13 States, sitting in long, often heated sessions, drafted a new constitutional basis for the American nation. This book is a fresh retelling of a story vital to free men everywhere.*



We the People