



7

From Confederation to Federal Union, 1781-1788

Chapter 7 at a Glance

The Sovereign States

Revising the State Constitutions
Revising State Expectations

The Union and Its Limits

Articles of Confederation
Western Lands and the Northwest Ordinance
State Government, Shays's Rebellion, and the Crisis of Confederation

Religion after the Revolution

Disestablishment and "Decline"
New and Vital Religious Forces

A Constitutional Convention

Delegates and Principles
The Critical Compromises
The Final Result

The Rocky Road toward Ratification

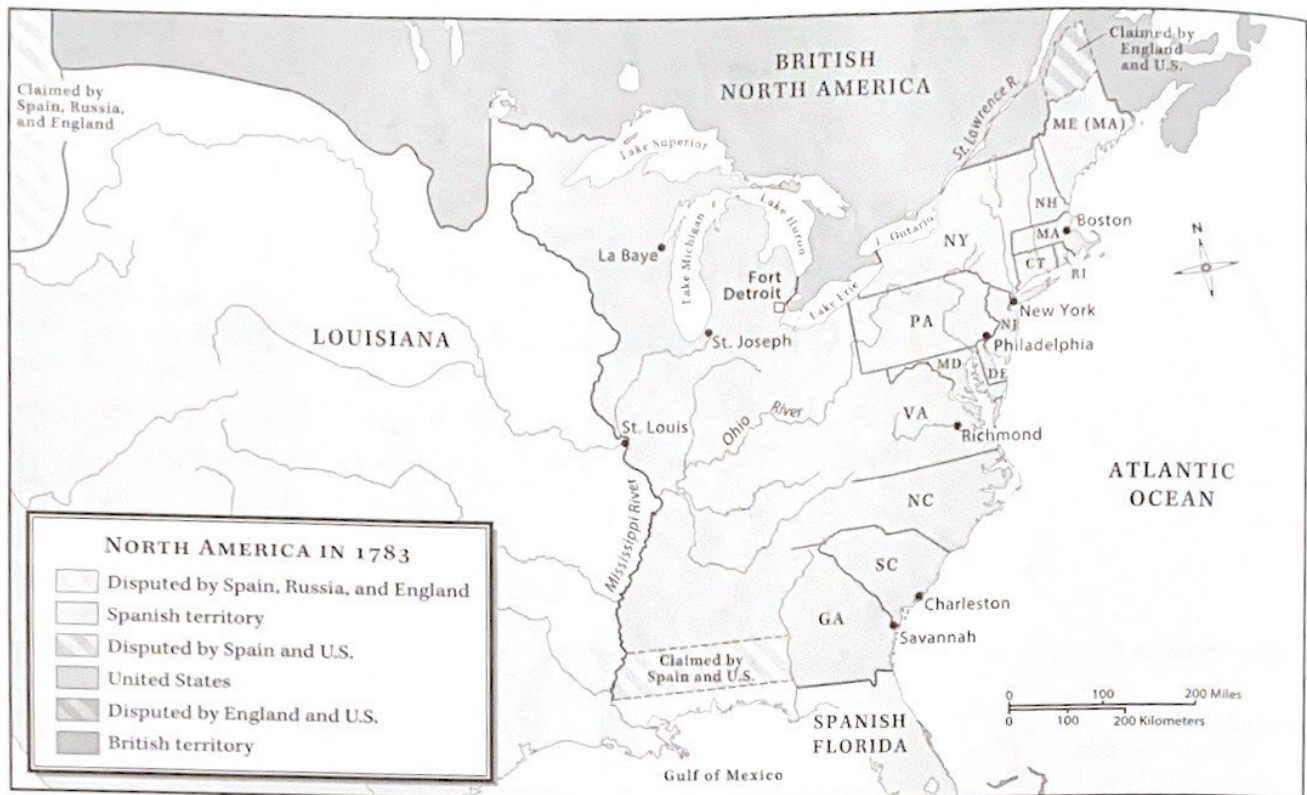
The Federalists
The Anti-Federalists
The State Conventions and the People
The Bill of Rights

Conclusion: A New Republic

DURING THE AMERICAN Revolution, liberty had been the paramount issue. With independence assured, attention gradually shifted to the question of sovereignty. Just where did the center of authority lie? If in "the people," then how did the people make their will known? Did they voice their concerns directly, as in the New England town meeting? Or, did they, as in the various colonial assemblies, speak only through elected representatives? At every level of government — courts, councils, legislatures, executive officers — how should sovereignty be divided up?

A further desire haunted Americans searching for stability and order — for some center of gravity to replace king, Parliament, and established church. Liberty had been painfully won, but now steps must be taken to ensure that liberty did not turn into either anarchy or tyranny. What form of government could be adapted or invented that would preserve liberty, not eradicate it, but at the same time create a kind of order that would protect and promote the people's happiness?

In searching for that ideal form — that must somehow also become a reality — a pervasive uneasiness could be detected. That uneasiness pertained to the character or the quality of those persons chosen to represent or rule. We have already encountered the loaded word *virtue*, and in this chapter we will encounter it again and again. Public spirit and public good must prevail. For years, the revolutionaries had demanded sacrifice of private good for the welfare of the whole, for the "commonweal." That same dedication, that same selflessness, must now bring an uncertain people



through troubled and difficult waters. After the clouds of war had vanished and the sunshine of peace warmed hearts everywhere, the danger was that Americans might grow soft. "Elated with success and blinded by prosperity," one orator proclaimed in 1785, "we too soon began to relax our manners, and to adopt the luxury, the follies, the fashions of that nation which so lately we had every reason to detest."

The thirteen states that had fought and won a war considered themselves sovereign countries, and they had surrendered little of their sovereignty to Congress. The issue now was whether the thirteen could in some sense, in any sense, become one. John Adams in 1776 had fretted about getting thirteen clocks to strike at the same time. A decade later he and many others urged that the separate machines be geared together so that they ran as a single mechanical model. Hopes for such an outcome rested to a great degree on the religious assurance that (in the words of Yale's president, Ezra Stiles) "God will not forsake this people, for whom he has done such marvelous things." In this 1783 sermon celebrating the peace that ended the Revolution, President Stiles took his text from Deuteronomy 26:19. "And to make thee high above all nations which he hath made, in praise, and in name, and in honor; and that thou mayest be a holy people unto the Lord thy God."

Struggling to sustain the war effort, Congress at the end of 1777 sent to the states a plan to create a somewhat stronger central government: the Articles of Confederation. But, bowing to the principle of state sovereignty, the Articles could not take effect until every state had ratified them. This did not occur until 1781 because small states like Maryland (the last to ratify) insisted that states with huge western land claims first surrender these territories to the central government. After the Articles were finally ratified, that thorny issue required immediate attention, along with other urgent domestic and foreign problems. In trying to solve these many issues, the weakness of the central government grew increasingly evident. As a blueprint for creating a nation "high above all nations," the Articles of Confederation clearly would not work. Congress, under that "management," could not even maintain law and order at home.

In the opinion of many, some more "energetic" form of government needed to be devised. Cultural and political leaders, living for the most part in East Coast cities, generally favored a stronger central government. Inland and rural dwellers, on the other hand, jealously guarded those liberties so recently won; just as surrendering rights to a British Parliament had been wrong, so surrender to some national American legislature would be equally wrong. Indeed, the very word *nation*

stuck in the throat of many who saw in it too much centralization of power. A federated union might be acceptable; a national power was not.

Nonetheless, the cultural elites prevailed long enough to secure a call for a Constitutional Convention to gather in Philadelphia in May 1787. All were not of one mind on why they had been called together, nor on just what was expected of them. Delegates debated for months exactly what form any new government should take. When they finally finished debating, the people seized their turn to praise or denounce and ultimately to vote on what had been submitted to them. For more than a year and a half, that contest hung in the balance, with key states almost evenly divided between those favoring ratification and those opposed. When ratification at last came in 1788, Americans took a giant step in the direction of national government. That step led to another critical advance with the passage of a Bill of Rights.

THE SOVEREIGN STATES

Even though a war was raging, few Americans in the late 1770s and early 1780s worried much about that vague entity known as the United States of America — or as many preferred to say, these united States of America. Rather, states busied themselves with rewriting their own constitutions. Separation from Britain had made the language if not the substance of colonial frames of government obsolete. Few doubted that the former colonies, now independent states, had full responsibility for establishing new structures. Independent states should be no less responsible — indeed, more so — for the safety and welfare of their citizens than they had been as dependent colonies. Besides, prevailing political theory argued that a true republic must be small, close to the people, always subject to popular scrutiny and censure. If people were to be safe from tyranny, it would be through reliance upon and trust in their familiar, local governments. Only in the states, many believed, was sovereignty properly placed; only there were individual liberties most likely to be preserved. And only there could the virtue of citizen-neighbors ensure the success of republican government.

Revising the State Constitutions

During the long decades of colonial rule, elected legislators had often tried to limit their governors' power while enlarging their own. So when it came to writing

new constitutions, the prevailing tendency was to maximize the power of the legislature (and that of the lower house if it existed) and to assign far less power to the executive. Under royal rule, moreover, colonists had long resented being placed under the authority of men who had been appointed (not elected) to tax or judge or govern them. Henceforth, Americans would agree to be governed only by those who they themselves had elected; and to keep the elective process meaningful, many states provided that elections be annual, at least for the lower house.

In May 1776 the Continental Congress recommended that the states set about forming new governments to protect the interests and promote the happiness of their citizens. Connecticut and Rhode Island continued to operate under charters that provided for elected governors and annual elections. But all the other states, sooner or later, wrote new constitutions; legislatures sometimes took the lead. At other times, special conventions were called for this purpose. In most cases, efforts were made to keep the people close to the process. "The people," to be sure, did not mean the masses, but those eligible to vote: in every case free males over twenty-one, and in most cases males who owned property. These voters either elected the members of their constitutional conventions or directly gave or withheld their approval in a ratification process. Popular sovereignty needed to be honored, not just in rhetoric but in practice.

Little New Hampshire led the way, adopting a new constitution a full six months before the Declaration of Independence. (Hedging their bets, the cautious New Hampshire legislators provided that the new constitution was "to be in Force during the present dispute with Great Britain, unless otherwise advised by the Continental Congress.") Replacing the ritualized "God save the King" with "God save the People," New Hampshire citizens allowed no ambiguity concerning where sovereignty lay: power descended not from above, but rose from the people. With no charter to fall back on, New Hampshire had to place its trust in a constitution that, ultimately, was submitted to the voters for their ratification. Gradually, property holding was eliminated as a qualification for voting as well as for holding office, even as direct representation was granted to towns long denied their rightful voice in government. Throughout the Revolution and long after, New Hampshire towns functioned as "little republics," enjoying a remarkable degree of autonomy.

In Pennsylvania, power shifted from the aristocratic

elites who continued to control the Assembly to western radicals and urban artisans who demanded a constitutional convention. This convention in 1776 adopted a declaration of rights and provided for a unicameral legislature without an aristocratic upper house. Roll call votes would let the people know how every legislator voted, and all major legislative proposals were to be printed and circulated so that the public will could be made known.

Other states, less torn by internal factions or tensions, opted more for stability than change. But, since the Revolution's central issue was Britain's denial of colonial rights and liberties, most states included a bill or declaration defining those rights as insulated from any governmental encroachment. Beyond these broad similarities, states expressed individuality (if not idiosyncrasy) as they constructed new fundamental frames of government.

Virginia, early to draw up a new constitution and bill of rights, in June 1776 set an example that many other states followed. Here, too, a special convention, not the legislature, assumed the task of creating a new government. Revolutionary stalwarts led the effort: George Mason, Edmund Randolph, Patrick Henry, James Madison, and Thomas Jefferson. (Jefferson soon left for Philadelphia to represent his state in Congress, although he would greatly have preferred to stay in Virginia for its vital task of drafting a fundamental frame of government.) The Virginia constitution-makers saw their role as creating a new government that would endure for generations and symbolize what the Revolution was all about. In drawing up their constitution, Virginia's leaders relied heavily on the advice of John Adams, currently in Philadelphia with the Continen-

tal Congress. Adams responded to the Virginians' and others' appeals for guidance, first in letters and later by publishing his *Thoughts on Government*, a small book that reveals much of the thinking behind the intense activity of the states in drafting their constitutions.

Adams believed that no activity could have greater consequences for the future than this composing, state by state, of new frames of government. "There can be no employment more agreeable to a benevolent mind," he wrote, "than a research after the best." And Adams, a voracious reader, had done his research well. He had pondered the political theory of such leading Englishmen as John Locke, Algernon Sidney, John Milton, and James Harrington; he familiarized himself with experiments in republicanism on the Continent (notably Holland); and, like many educated colonials, he knew intimately the successes and failures of the ancient republics of Greece and Rome. These days in America, Adams exclaimed, offered once-in-a-lifetime opportunities, days "when the greatest lawmakers of antiquity would have wished to live." Rarely have members of the human race been presented with the chance to choose a government "for themselves and their children." That chance is now given, Adams wrote, to some "three millions of people . . . to form and establish the wisest and happiest government that human wisdom can contrive."

Laying down some of the basic principles by which the new states might be guided, Adams understood that all wanted to create republics, not monarchies; all wanted to entrust power to the people, the surest protection against tyranny. But republics came in varying shapes and sizes, though all were (or should be) designed to ensure that reason, not passion, prevailed,

✱ IN THEIR OWN WORDS

John Locke on the True End of Government, 1690

The constitutions of the newly independent states owed much to the thought of Enlightenment political philosopher John Locke.

And hence it is evident that absolute monarchy, which by some men is counted for the only government in the world, is indeed inconsistent with civil society, and so can be no form of civil government at all. For

the end of civil society being to avoid and remedy those inconveniences of the state of Nature which necessarily follow from every man's being judge in his own case, by setting up a known authority to which every one of that society may appeal upon any injury received, or controversy that may arise, and which every one of the society ought to obey. Wherever any persons are who have not such an authority to appeal to, and decide any difference between them there, those persons

are still in a state of Nature. And so is every absolute prince in respect to those who are under his dominion.

For he being supposed to have all, both legislative and executive power in himself alone, there is no judge to be found, no appeal lies open to any one, who may fairly and indifferently, and with authority decide, and from whence relief and redress may be expected. . . .

and that power was carefully controlled, checked, and hedged to prevent corruption and abuse. Pomp, privilege, and royal patronage had no place in a republic; the time had come, Adams declared, for Americans to rid themselves forever of “the dons, the bashaws, the grandees, the patricians, the sachems, the nabobs — call them by what name you please.” Citizens should be ruled by persons of integrity, property, virtue, and independence, to be elected annually, for “where annual elections end, there slavery begins.” Standing for election every year had the further merit, Adams added, of teaching politicians humility and moderation, “without which every man in power becomes a ravenous beast of prey.” Although it was desirable that legislators hold property, it was equally desirable that property be widely distributed, even in small amounts, so that power resided in the multitude, not in the few.

All colonists recognized that the central issue in creating a government pointed directly to questions of power. No government could exist without power, of course, but no government that abused its power deserved to exist. In constitution-making, therefore, the prime task was to exercise the greatest care in granting and controlling and — if need be — recalling power. For Adams and most others, the best security lay in a two-house legislature entrusted with such fundamental powers as levying taxes and declaring war. A single house was too much like a single individual, Adams reasoned, “subject to fits of humor, starts of passion, flights of enthusiasm, partialities, or prejudice, and consequently productive of hasty results and absurd judgments.” A single house, moreover, even though initially elected, was prone to perpetuate itself year after year, even for life, as the histories of Rome, England (during the Long Parliament), and Holland demonstrated. The governor and the judges should be held accountable by the legislature, which in turn should be held accountable by the people.

In Virginia, the draft of a new constitution that George Mason submitted to the delegates followed much of Adams’s thinking. The convention itself, more leery of executive power than either Adams or Mason, created a governorship notable for its weakness. (Jefferson even wished to call the executive merely an “administrator” to emphasize his subservience to the legislature.) As a consequence, Virginia’s governor had no right either to veto bills or to suspend or adjourn a legislative session. Voting, as it had been for a generation or more, was restricted to free white males over twenty-one who owned at least one hundred acres

of undeveloped property or twenty-five acres with a dwelling. In Virginia, as elsewhere, universal suffrage still lay many decades away.

Other states found room for many variations on Adams’s recommendations. Some redistributed representation more evenly, so that seaboard towns did not dominate legislatures. Pennsylvania, as we have seen, even ignored Adams’s stern warning against the evils of a single legislative house. By the end of 1776 all states but three — New York, Georgia, and Massachusetts — had drawn up new constitutions or amended old charters. New York, distracted by the intensity of war within its borders or nearby, nonetheless proclaimed its first constitution in April 1777 and elected a governor and legislature in the summer and early fall. Georgia also established a new constitution in 1777, although the occupation of Savannah in 1778 and the reimposition of royal government in 1779 caused its suspension until the end of the Revolution.

Despite John Adams’s vigorous promotion of new governments, Massachusetts did not adopt its constitution until 1780. (An earlier version, submitted to the voters in 1778, had been rejected.) Serving as the chief architect of the 1780 document, Adams provided for those divisions of power that would keep power tightly reined in. Like many Whigs (let alone traditional Calvinists), Adams entertained no romanticized notion of a pure and unsullied humanity. All people sinned; all people with power sinned gravely; all people with unlimited power sinned tragically. The best that a lawmaker could do was build strong safeguards around all users of power, making it terrible for any officeholder who violated the trust placed in him.

After a few stumbles, Massachusetts took significant strides toward popular sovereignty. On the question of holding a constitutional convention, all adult males, not just property holders, were declared eligible to vote. Also, the convention agreed to submit a draft of their deliberations to all the towns for an article-by-article review and response. And finally, to keep the voice of the people engaged, the convention provided for a further review of the final document in 1795, if two-thirds of the towns voted for it. Not only did Massachusetts honor popular sovereignty, but it also went beyond the other states in expanding the franchise where constitutional matters were concerned.

Obviously, not all the states understood the implications of the Revolution in the same way. Some, like New York, retained high property qualifications for voting, kept a strong governor, and put no confidence in

frequent elections. Others, like Pennsylvania, saw the Revolution as requiring a purge of any lingering aristocratic tendencies. But virtually all interpreted the Revolution to demand a broadening of citizens' rights.

One mighty bulwark against absolute power was found in those declarations of rights that state after state proclaimed: rights that were inalienable and inviolable. The right to trial by jury (compromised before the Revolution by England's admiralty courts) was repeatedly asserted, with Virginia even calling for this right in civil as well as criminal cases. The right of all persons to life, liberty, and property — the essence of so many Revolutionary protests and resolves — was not granted by government and could not, therefore, be removed by any legitimate government. And if a government usurped these and other rights, then another fundamental liberty was claimed: that of a majority to change their constitutional structure, peaceably if possible, forcibly if necessary.

Because the states had sharply separate religious traditions and histories, no uniform assertion of religious views could be expected. But again, with fresh memories of England's ecclesiastical imperialism or insensitivity, the states pledged themselves to a wide toleration if not a full liberty in religion. Typically in 1776 New Jersey declared that "No person shall ever . . . be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience"; at the same time, however, none should be compelled to attend or support any worship through "tithes, taxes, or any other rates."

So suspicious were several states of mixing religious and political power that they barred ministers from serving in the legislature or (in the words of New York's constitution) declared them ineligible for "holding any civil or military office or place within the State." On the other hand, many states granted specific constitutional exemption to those who, for reasons of conscience, could not bear arms or swear an oath in court; Maryland in this matter took specific note of the concerns of Quakers, Mennonites, and Brethren. Yet religious liberty was far from complete. Connecticut and Massachusetts continued to give official support to the Congregational church. Some states limited office holding to Protestants (Georgia), to Christians (Maryland), to believers in God (Pennsylvania), or to those who accepted "the divine authority" of the Bible (North Carolina). Tentative steps were being taken toward a full religious freedom in 1776, but years would pass before most states wholeheartedly embraced such liberty.

Revising State Expectations

In the enthusiasm of creating new constitutions, the states saw clearly what they were rejecting: royal governors and their cronies, Privy Council patronage, hobbled and often impotent legislatures, imperial interests at the expense of local needs. In that same enthusiasm, they also saw clearly — or at least thought they did — the only solid substitute for Britain's tyranny: the people. "God save the People," citizens of New Hampshire intoned, and though other colonies may not have adopted the slogan, they surely adopted the sentiment. If God saved the people, the people would save the states.

And that was the way it was supposed to work, until — especially after the War of Independence was over — you took a closer look at "the people." In the turbulence and upheaval of war, the cream did not always rise to the top. Indeed, as James Otis of Massachusetts noted, "When the pot boils, the scum will rise." In one state legislature after another, it appeared that "men of no genius or abilities" (to quote John Dickinson of Pennsylvania) had assumed control of government — with disastrous results. Regardless of how carefully constitutions had been drawn up, it could not be expected, Dickinson observed, "that things will go well when persons of vicious principles and loose morals are in authority." Governments can never be better than the people elected to run them. Or, as a South Carolinian observed, Americans after the War began "to fear that they had built a visionary fabric of government on the fallacious idea of public virtue."

In drawing up Virginia's Declaration of Rights, George Mason included one "right" that may strike the modern reader as somewhat odd: namely, the necessity for citizens to pursue "Justice, Moderation, Temperance, Frugality, and Virtue" in order to keep society free. But in making such a declaration in 1776, Mason was neither eccentric nor unique. In that same year, John Adams wrote to his cousin, Zabdiel Adams, that while statesmen "may plan and speculate for liberty . . . it is religion and morality alone which can establish the principles upon which freedom can securely stand." Constitutions were important, John Adams perhaps above all others would affirm; nevertheless, "The only foundation of a free constitution is pure virtue." Given such widely prevailing assumptions, therefore, it might readily be expected that frugal and virtuous citizens would elect legislators who, like themselves, would prove to be frugal and virtuous.

By the mid-1780s, such rosy assumptions withered.

Keeping the legislature close to the people by requiring annual elections seemed, at first, an excellent idea. The result, however, was a constant turnover, bringing new and untried persons into office, or often, in Madison's alarmist words, "men without reading, experience, or principle." Instead of persons of demonstrated "industry, economy, and good conduct," legislative halls swarmed with those wholly unskilled in running the machinery of state; many, moreover, seemed equally unskilled in the proper management of their own lives. A kind of "natural aristocracy" — persons of character, talent, and influence — was being ignored in a fanciful chase after an artificial equality of merit. Dumping all notions of British titles and nobility was good, but rejecting all sense of a natural nobleness of character was bad — and horribly costly to the cause of good government.

Society naturally divided itself into the "lower sort" and the "better sort," many acknowledged, though some in derision and some with approval. One champion of democracy, New York's Melancton Smith, disapprovingly recognized that American society had its differences as surely as Britain did. Here, said Smith, "birth, education, talents, and wealth create distinctions as visible . . . as [aristocratic] titles, stars, and garters." For a new nation dedicated to the idea of equality, these differences, Smith thought, were not healthy. For others, however, ignoring such natural, inevitable differences was even more unhealthy: it would allow the least qualified to become the most powerful. If state governments fell into the hands of "a set of unprincipled men who sacrifice everything to their popularity and private views," then the public good was forsaken and all that had been fought for was lost.

Competing theories concerning how "democratic" or how "aristocratic" the political and the social order should be began to divide each state, though this question rarely appeared in purest form. Every legislative debate was complicated by regional differences, occupational interests, personal loyalties (or antipathies), tax policies, intercolonial jealousies, and a host of other issues. But the central fact remained that state governments did not work as well as most had hoped. "Little republics" turned out to present large opportunities for graft and self-seeking, as the common good took second place to private gain. At the top of the social ladder, rich "nabobs" still exerted great influence for their own benefit, while at the bottom of that ladder the unworthy and the licentious looked after their own interests too. If government at the local level proved

less than moderate, just, frugal, and virtuous, how was government doing at the national level?

THE UNION AND ITS LIMITS

Getting thirteen clocks to strike at precisely the same moment had indeed proved difficult in 1776, but seeing that those clocks kept time together in the years following presented even more obstacles. The Articles of Confederation represented the first tentative step toward an authoritative Timekeeper, but the voice of central authority was often muffled if not wholly silent. Yet between 1781 and 1789 some significant achievements for the union could be noted, especially with respect to the West. Such achievements, however, could not obscure the unsettling fact of the central government's virtual powerlessness in the face of any serious domestic rebellion or foreign intrusion. To some, such weakness was welcome. And to even more, the notion of a united nation came with difficulty, if at all.

Articles of Confederation

The colonies, accustomed to defending themselves or promoting themselves alone, did on occasion recognize the need for unity. Although Benjamin Franklin's 1754 Plan of Union had gone nowhere, its favorable hearing in Albany indicated that momentous events might produce unified action. The Stamp Act Congress in 1765 and the Declaration of Independence in 1776 gave further support to the notion that Americans ought to unite. But *e pluribus unum* — "out of many, one" — remained a tantalizing and elusive goal. Americans had no interest in throwing off a foreign tyranny only to see it replaced by a domestic one. The states held all the power, and the "united States" (as the phrase appeared in the Declaration of Independence) held only as much power as the states chose collectively — and always reluctantly — to relinquish. An observer in 1776 could reasonably conclude that the phrase "united States" was just a phrase, not a viable political organism.

In that year, however, the Second Continental Congress appointed not only a committee to draft a declaration of independence, but also a committee to draft a constitution for these "united States." John Dickinson chaired the latter (as Jefferson had chaired the former), but the product of Dickinson's labors ran into even more difficulty than had Jefferson's Declaration. Congress argued for over a year before approving the

Articles of Confederation, a much-amended version of Dickinson's plan. And then the states argued for four more years.

The weak union created by the Articles would not go into effect until every state had ratified it. By July 1778, nine states accepted the Articles, and three more did so in 1779. Maryland, however, continued to hold out, concerned that the large states would become even larger unless they relinquished their claims to western lands that extended across at least half the continent. A gargantuan Virginia or New York would wholly smother states like New Jersey, Delaware, and Maryland, all of which lacked such claims. When in January 1781 Virginia agreed in principle to cede its western lands to the new union, Maryland finally joined the other twelve states in approving the Articles. Only in March 1781 could Congress ratify the Articles and declare itself formally to be "The United States in Congress Assembled."

That jealous regard for the sovereign independence of each state characterized — and shackled — the Articles of Confederation. Each state, regardless of population or wealth, would have the same single vote as every other state. Major decisions such as declaring war, coining money, or entering into treaties or alliances could be taken only if at least nine states agreed. States that had so scrupulously kept the power to tax in their own legislatures insisted that it stay right there. Congress could assess the states for a given amount based on property values, but if the states chose not to comply, Congress had no power to enforce its requests. So also with troops: after the war ended and the Continental Army disbanded, Congress had to turn to the states for its supply of soldiers — should the states in their wisdom, or at least in their sovereignty, see fit to provide any. "Each state," as Article 2 made perfectly clear, "retains its sovereignty, freedom, and independence."

Under the Articles, Congress was the central government's sole institution. The United States had no separate executive or judicial bodies. Congress did set up various departments to administer major areas of concern such as war, finance, and foreign affairs. First Benjamin Lincoln and then Henry Knox served as Secretary of War, Robert Morris as superintendent of finance, and Robert Livingston (later succeeded by John Jay) as secretary for foreign affairs. Congressional delegates themselves (at least two from every state) were elected annually, and no delegate could serve more than three years out of six. This guaranteed that power would not become entrenched, but it also guaranteed that valuable experience and expertise would regularly

be cast aside. Delegates were slow to be elected and even slower to arrive at wherever Congress happened that year to meet (New York, Philadelphia, Princeton, Annapolis), so that the nation's business was rarely executed with dispatch. Sometimes indeed, the nation's business could not be done at all because a quorum of seven states was absent. No center of government existed geographically, and no center of power manifested itself politically. American diplomats abroad discovered that the country they represented commanded little respect and provoked even less fear. Under such circumstances, the wonder is that the Articles of Confederation achieved anything at all.

In fact, however, major achievements can be credited to the central government between 1781 and 1789. One such accomplishment was, of course, the successful prosecution of the war and the achievement of independence. The Confederation Congress also helped guide the country through a severe postwar depression, even watching over a rise in population and national income. But perhaps its most impressive success pertained to that vexing problem of western lands: who owned them, who derived income from them, and under what terms should they be governed and eventually admitted to the Union.

✧ *Western Lands and the Northwest Ordinance*

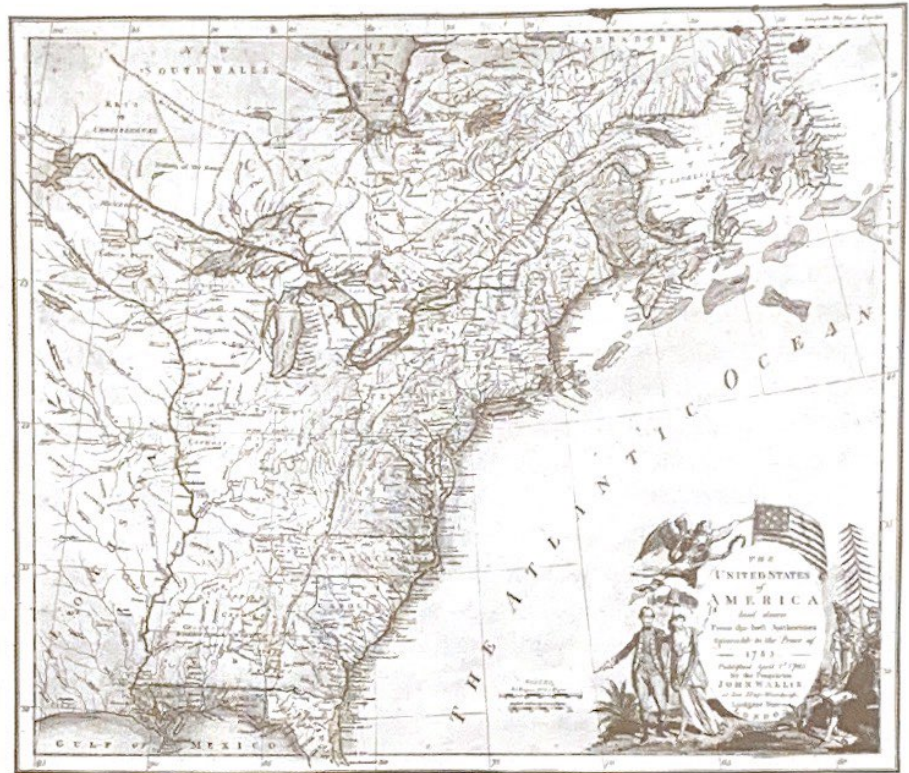
The earliest colonial charters could not specify western boundaries in a "west" still unexplored and unknown. Virginia's original boundaries stretched westward all the way to the Pacific Ocean and north to the Great Lakes. All this meant little in the seventeenth century, of course, when settlers crept only a few miles inland. It still meant relatively little during much of the eighteenth century, when England, France, and Spain threw their ponderous weight around all of North America or when powerful Indian tribes dominated the unmapped West. This dramatically changed when the nation won independence and a western boundary on the Mississippi River. Here was enough land to arouse the interest of many a speculator (land companies had been busy even before the Revolution), to say nothing of the states themselves and of Congress.

From the speculators' point of view, lands purchased or seized from the Indians could be used to encourage settlement from the east and pay a handsome profit to the original investors. From the point of view of the large states, these lands were their char-

ter rights; any settlement should be by their own citizens, and any profit should go into their own treasuries. From the point of view of a Congress charged with many responsibilities and possessing no income of its own, the acquisition of all those western lands seemed the solution to the Union's poverty and perhaps to its impotence. Amazingly, the point of view of Congress ultimately prevailed.

It prevailed in part because the small states kept up a steady barrage of argument against large states becoming ever larger. If that happened, the Union could no longer pose as a confederation of equals: there would only be burly giants and bullied midgets, the former growing ever richer, the latter steadily poorer. Moreover, the common effort of all the states had wrested these lands from Great Britain; land won by the blood of all belonged to all. Bounties in the form of land had been promised to many war veterans: should only veterans from states with large western claims benefit? Even many in those states having western claims argued that too great a size limited the effectiveness and the truly representational character of local government. So, one by one, the states turned over their vast claims to the central government: Virginia in 1781 (though not fully effected until 1784), New York in 1782, Massachusetts in 1785, Connecticut in 1786. In subsequent years additional grants came from North Carolina, South Carolina, and Georgia. Congress now owned land and — potentially — income as well.

If both the states and Congress were reasonably satisfied with the deal, neither the Indians nor the speculators were pleased. The Indians knew that the land had been theirs long before states or congresses had appeared on the scene; the speculators could see their hopes of profits dwindling away. The Shawnees raided settlements in the Ohio Valley in an effort to discourage westward migrations; the Miamis besieged Vincennes, Indiana; the Iroquois renounced an earlier treaty and threatened to go to war. Many years would pass and much blood would flow before whites settled in the West. Speculators had more success in regrouping their scattered forces, taking care to add many con-



United States Map, 1783 This was the first specially engraved map of the United States, created after the declaration of peace with Great Britain.

gressmen to their ranks. In 1787 the Ohio Company, led by two Revolutionary War generals from New England, bought from Congress 1.5 million acres at the give-away price of less than ten cents an acre. But Congress did not have many buyers, nor did individual settlers necessarily feel obliged to pay anything at all. Although the Ohio Company was no model of fiscal or political integrity, it did recognize that sales of its land rested upon the creation of some regular and stable government north of the Ohio River and east of the Mississippi. Thus the company added its pressure upon Congress in 1787 to exercise a clear jurisdiction over western territories.

Well before then, in 1784 Thomas Jefferson had proposed an ordinance for the Northwest Territory, a vital principle of which asserted that new states formed out of this region should be admitted on the basis of full equality with the original thirteen. (The Union should have neither second-class citizens nor second-class states.) Jefferson also provided for self-government in the region and for the exclusion of slavery. This ordinance, though much amended, never passed; nevertheless, it formed the basis three years later for the more famous Northwest Ordinance. In this critical document Congress set policies and confirmed Jeffersonian principles that would shape not only the "Old Northwest"

but most of the rest of the country as well. Indeed, in terms of far-reaching consequences, the ordinance of 1787 deserves to be ranked behind only the Declaration of Independence and the Constitution.

The Northwest Ordinance specified that no more than five nor fewer than three states could be formed out of this region, the point being to keep the new states roughly equivalent in size to the original ones. (Ultimately five were created: Ohio, Indiana, Illinois, Wisconsin, and Michigan.) Prior to statehood, the region would be governed by a General Assembly consisting of a governor, a Legislative Council, and a House of Representatives. Experience in republican forms of governance would begin as soon as five thousand free male adults had settled in the area. When the population of a future state reached sixty thousand, they could begin drawing up a state constitution and apply for admission to the United States.

The ordinance included a guarantee of fundamental liberties to all citizens — this before a Constitution or a Bill of Rights had been adopted for easterners. Religious freedom was guaranteed to all: this provoked no argument. Congress did argue at some length about whether the federal government should provide for the support of religion. Beginning in 1785, votes on this issue revealed deep divisions in the Congress. And in the final version of Article 3, something of that difference of opinion still survived. That article begins, “Religion, Morality and knowledge being necessary to good government and the happiness of mankind, Schools and . . .” Here, traditionally, the next words would have been “...and Churches shall forever be encouraged.” But it does not read that way.

Some thought that government should not be in the business of promoting religion, even if religion was necessary to good government and human happiness. Others thought that, particularly in the uncivilized and disorderly Northwest, government simply *had* to be in the business of supporting churches no less than schools. The argument was real, and the vote was close. But what finally emerged was: “Religion, Morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”

The ordinance also guaranteed the right of trial by jury, stinging memories of Britain’s violation of this fundamental liberty still lingering. Citizens in the Old Northwest, moreover, would have full access to the waters of the St. Lawrence and the Mississippi rivers, which “shall be common highways and forever free.”

Finally, Article 6 declared that “There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted.” But this forthright declaration contained a fatal proviso that slaves escaping from any of the original states to this region “may be lawfully reclaimed and conveyed” to the original owner — an addendum that would cloud much of the country’s history down to the 1860s.

A Land Ordinance of 1785 promoted law and order by ensuring that settlers knew exactly where the land they had purchased actually lay. Thus, it was hoped, true community and true nationhood might be preserved. This 1785 law also made effective the support for schools (but not churches) by setting aside a portion of land in each township for education. A township, six miles square, was divided into thirty-six lots of one square mile (640 acres) each, a “section” of land. The income from one of those sections was reserved for the support of schools. The aim of many of those in the East, especially in New England, was to see that the West did not become altogether another world or establish a sharply different way of life. Meanwhile, however, the East itself had its own difficulties with the notion of nationhood.

✧ *State Government, Shays’s Rebellion, and the Crisis of Confederation*

While the Articles of Confederation proved deficient in many areas, they were most glaringly defective in the field of commerce and trade. States had their own rules on imports and duties, their own currencies, and their own regulations for navigation and the collection of debts. Through all this Congress sat idly, or at least helplessly, by. Aggravating these difficulties was the inability of Congress to provide troops when emergencies arose in any one of the states. If the states had to defend themselves and to bear all the responsibility for trade and commerce, then of what purpose was the Union? The year 1786 only made that question more insistent, even as it made positive answers less plausible.

As states presented hard questions related to the central government, they were facing even harder questions within their borders. In most states, rival factions differed on virtually every issue before the legislatures: the salaries for judges, governors, or legislators; the confiscation of loyalist property and readmission of loyalists to citizenship; the printing of paper money; the interests of urban dwellers versus those

of rural farmers; and, above all, the complex matter of taxation. Under the Articles of Confederation, most of the routine business of government rested upon the states. But as factionalism often brought the states to a kind of paralysis, the search for other remedies grew ever more urgent.

Having resigned his commission in a dramatic ceremony at the end of 1783, George Washington returned to private life at Mount Vernon, giving attention to his farm from which he had been absent so many years. He also did some land speculation and made daring plans to open up the Potomac River by a series of locks for navigation all the way to the Ohio Valley — any such venture would be in the national interest as well as in the even more direct interest of both Virginia and Maryland. Since it was unlikely that Congress could find the authority to undertake any such venture, Washington and others proposed that Maryland and Virginia send representatives to Alexandria to discuss the matter, as well as larger questions of boundary lines in the Chesapeake and the Potomac, the placement of buoys, the erection of lighthouses, and other practical matters. Meeting in March 1786, delegates from the two states soon accepted Washington's invitation to enjoy the hospitality of Mount Vernon, where in three days of deliberations they reached mutually acceptable conclusions. They also decided to invite Delaware and Pennsylvania to become involved, for navigation into the West crossed their territory. Indeed, they reasoned, were not these questions really *national* ones?

The growing conviction that such urgent matters required the broadest attention led Virginians James Madison and John Tyler (father of the future president) to urge all the states to meet in Annapolis, Maryland, the following September to deal with issues such as those raised at Mount Vernon. Eleven states responded to the invitation, indicating a widespread recognition of the critical problems. But only five states' commissioners actually showed up. Truly unified action remained extremely difficult.

For lack of a quorum, no official business could be conducted. Some thought the best course of action was simply to adjourn. But others saw too much at stake. Besides, the five states — New York, New Jersey, Pennsylvania, Delaware, and Virginia — had sent able men who were not prepared weakly to abdicate responsibility. Alexander Hamilton from New York, Madison from Virginia, Tench Coxe from Pennsylvania, and John Dickinson now from Delaware were among those who thought that questions of commerce demanded an-

swers, but beyond that, the question of union itself had to be addressed. "The power of regulating commerce is of such comprehensive extent," the commissioners declared, "and will enter so far into the general System of the federal government, that to give it efficacy . . . may require a correspondent adjustment of other parts of the Federal System."

In other words, far more was amiss than just who had the right to navigate what river. "Important defects" in the Articles of Confederation were acknowledged by all, the commissioners observed. As a result, in both domestic and foreign affairs, the only appropriate word to describe the United States of America in 1786 was *embarrassment*: embarrassment from British treatment of American ships in the West Indies, embarrassment from Spanish control of the lower Mississippi and the port of New Orleans, embarrassment from North African pirates capturing American ships and enslaving their crews. Ezra Stiles in 1783 had spoken of a nation "high above all nations." What had happened? Any sense that America could serve as a model to other nations seemed doomed. Spain tempted the westerners living in what would become Kentucky and Tennessee to cast their lot with a real empire and use the Mississippi freely; Britain tempted those living in what would become Vermont to join Canada and enjoy, once more, the protection of England's flag; discord and continental weakness tempted all thirteen states to consider regional confederacies and forget national union.

But even the states offered no sanctuary. In the midst of rampant inflation and deteriorating currencies, creditors turned in fury upon improvident debtors. Subject to intense lobbying and heckling, state legislatures did not resemble deliberative bodies so much as shouting contests. If democracy could ever work, it should do so at the local levels. Even there, however, "the people" did not appear the saving repository of sovereignty; they resembled more a mob swayed by interest and greed, by passion and demagoguery. This did not match the sacrifice of Revolutionary soldiers, nor the visions of Jefferson or Paine.

Under such unrelentingly dreary circumstances, the leading spirits among those gathered in Annapolis in September 1786 could not simply pack their saddlebags and wearily ride home. Everyone recognized the problems, the men in Annapolis wrote — problems "so serious" as "in the view of your Commissioners to render the situation of the United States delicate and critical." They therefore unanimously proposed that



Shays's Rebellion Here is a contemporary woodcut of Daniel Shays and his lieutenant, Job Shattuck, taken from the cover of a pamphlet supporting the rebellion in western Massachusetts that they led. Both are shown wearing their Revolutionary War officers' uniforms.

another convention be called "to meet at Philadelphia on the second Monday in May next." That gathering should consider not only commerce but any further provisions "necessary to render the constitution of the Federal Government adequate to the exigencies of the Union." Recognizing that they could — at most — speak only for their five states, the commissioners nonetheless voted to transmit their conclusions to all thirteen states, as well as "to the United States in Congress Assembled."

Meanwhile, in western Massachusetts, restless farmers and dissatisfied Revolutionary War veterans began to mobilize against what they regarded as the greedy and manipulative easterners of their state. Legislative action reflecting the interests of conservative merchants and worried creditors increased taxes upon western farmers at the same time that it reduced their ability to pay. The result was that soon the jails in such towns as Worcester and Springfield began to fill with debtors — honest and able men who simply could not cope with the severe economic difficulties of the day. Some even volunteered to do roadwork for the state to pay off debts that they could not otherwise meet. Hard cash was virtually nonexistent and paper money virtually worthless. County courts charged high fees for their services, as did the "mercenary lawyers." Perhaps people would have willingly paid if only they perceived more justice in the system. But injustices

only multiplied. Farms were foreclosed, wages fell, debts mounted, and still the authorities demanded their pound of flesh.

Out of this seething cauldron of discontent, Daniel Shays emerged to rally debtors and harassed taxpayers ready to follow his lead — or that of almost any other likely candidate. A wounded veteran of Bunker Hill and Saratoga, and later a captain in the Revolutionary War, Shays had barely escaped a debtor's jail. By October 1786, he had moved into a position of authority. He drilled his troops carefully, paid them three shillings a day in cash, and quickly amassed as many as

two thousand men. Where he got the money to pay his men no one has ever found out. But suspicions spread that the British in the interior, or perhaps Massachusetts Tories, funded the operation in the hope that the experiment in self-government would fail, beginning in Massachusetts. The peace treaty was, after all, only three years old: it was much too soon for Britain to give up on her "colonies" forever. With a little financial assistance, with a little internal dissension, with a little well-timed nudge — who knows?

In November a group of two hundred rebels stopped the proceedings of the court in Worcester, and in December another regiment interrupted the proceedings of the Hampshire County court. At the end of January 1787, Shays led an attack (not as coordinated as he had hoped) against the armory in Springfield, where he was swiftly routed by a special force of state troops. Within a few days, Shays's Rebellion was over; its leaders were tried for treason in the spring.

But Shays's Rebellion frightened respectable people everywhere. Signs of similar unrest or actual outbreaks of violence cropped up in New Jersey, Pennsylvania, Virginia, and South Carolina. A great many of the economic elite were prepared to agree with the Annapolis commissioners that the condition of the United States was both "delicate and critical."

The Confederation Congress demonstrated, once again, its inability to act decisively and swiftly. Massachusetts had appealed to Congress and to Secretary of War Henry Knox for troops to save the state's government from collapse and to put down a threatening insurrection. Congress, looking around for troops, dis-

covered that it had none. Knox, desperate for help from any source, greatly exaggerated the size of the rebel army, adding for good measure (but with no evidence) that the Indians were flocking to the aid of the rebels. Moreover, Knox argued to any who would listen that, once the rebels conquered Boston, the rest of New England would soon fall to their radical, socially leveling demands. Despite such scary rhetoric, Congress still dallied, so that Massachusetts merchants and eastern landholders were required to raise money, pay troops, and hire General Benjamin Lincoln to defend the state against the threat of civil war.

Those favoring a stronger central government could not have asked for better timing. Those fearing a revolution that did not know when to stop could not have hoped for a more persuasive example. Abigail Adams, writing to Jefferson in Paris in response to his inquiry about the unrest, exploded that "Ignorant, restless desperadoes, without conscience or principles, have led a deluded multitude to follow their standard under pretence of grievances which have no existence but in their imaginations." Similarly, many other easterners viewed Shays's rebellion with darkest foreboding, as they did every other challenge to constituted authority. In his reply, the faraway Jefferson thought to calm anxieties, though he only inflamed them. Expressing his hope that the malcontents might be pardoned because "the spirit of resistance to government is so valuable . . . that I wish it to be always kept alive," Jefferson added: "I like a little rebellion now and then. It is like a storm in the atmosphere." Abigail Adams was not calmed.

Another Virginian stood closer to Abigail Adams than to Jefferson in his reflection on Shays's Rebellion. George Washington concluded that "we are fast verging to anarchy and confusion." Had anyone predicted

in 1783 that such would have been the result of the War of Independence, "I should have thought him a fit subject for a madhouse." In the winter of 1786-87 the infant Union, trapped in the arms of death, was still fighting to stay alive.

RELIGION AFTER THE REVOLUTION

The Revolution left some elements of American religion devastated and desolate. Anglicanism felt the heaviest blows, but some other denominations similarly saw all religious order or control slipping away from them. On the other hand, new and rapidly growing religious bodies viewed the situation of the 1780s and beyond as challenging opportunities to expand their labors, to blend their mission in with the mission of America.

Disestablishment and "Decline"

Hardly had the ink dried on the Declaration of Independence parchment before political leaders in Virginia began to abolish all special privileges enjoyed by the Church of England there. Although it took several years to accomplish the complete disestablishment, by the Revolution's end Anglicanism in Virginia and elsewhere was struggling just to survive. One minister glumly reported that the Revolution "has been fatal to the Clergy of Virginia. From a fixed salary they are reduced to depend upon a precarious subscription for bread." In 1785 a friend of Jefferson's complained to him that clergymen were starving as the state was caught between utter immorality on the one hand and "Enthusiastic Bigotry" on the other.

In 1784 Virginia's Anglicans reorganized themselves

IN THEIR OWN WORDS

Power to the People, 1787

Shays's Rebellion induced fear in many of the new nation's leaders; Thomas Jefferson was not among them, as this letter attests.

The tumults in America [Shays' Rebellion] I expected would have produced in Europe an unfavorable opinion of our political state. But it has not. On the contrary, the small effect of those tumults seems to have given more con-

fidence in the firmness of our governments. The interposition of the people themselves on the side of government has had a great effect on the opinion here. I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will correct themselves. . . . The way to prevent these irregular interpositions of the people is to give them full information of their affairs

through the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first objects should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.



Baptism in the Hudson River This image, from the early nineteenth century, shows a Baptist community administering baptism by total immersion in New York. The public baptism of adult believers who could attest to a conversion experience was a distinctive, controversial practice of the Baptist movement. Other Christian denominations baptized infants soon after their birth.

As Annapolis had proved, selecting delegates did not automatically ensure that delegates would show up. Of the seventy-four chosen by the twelve states, only fifty-five ever made it to Philadelphia, and some of those chose not to stay throughout the five months of deliberations. In the end, fewer than forty men were prepared to put their signatures to the final draft, slightly more than half the total number selected. The quality of the men attending and the quality of their thought, nonetheless, kept them busy with their heavy task.

Virginia sent a particularly strong delegation of seven, with a reluctant Washington agreeing to head the group and then to preside over the convention itself. The highly visible presence of George Washington gave the gathering a legitimacy that it otherwise would have lacked. Washington was at first reluctant to attend because he had many projects under way at Mount Vernon that required his attention. On the other hand, he was so widely respected, even revered, that his presence alone would increase the odds for success immeasurably — as all his friends and neighbors insisted. Political theory was not Washington's strongest point, however, so that task fell to another Virginian, James Madison, an experienced legislator both in Congress and in his own state's House of Delegates. Other important Virginians included George Mason, architect of Virginia's constitu-

tion and Declaration of Rights; Edmund Randolph, sometime member of the Continental Congress and in 1787 governor of the state; and George Wythe, professor at the College of William and Mary and Jefferson's tutor in the law.

Pennsylvania sent an even larger delegation of eight, including the venerable Benjamin Franklin, now over eighty years old. Gouverneur Morris, formerly of New York where he had helped draft that state's new frame of government, had been influential during the Revolution, transferring his residence from New York City to Philadelphia. Robert Morris (no relation to Gouverneur) had been the financier extraordinaire of the Revolution, in which capacity he (like

Washington) learned firsthand of the costly weakness of the Confederation Congress. James Wilson, an expert lawyer who had studied with John Dickinson, was James Madison's closest competitor as a political theorist and as a strong supporter of a national government with enough authority to do its proper job.

Although the delegations from the other states were not as large, they too included such able men as John Dickinson (Delaware), Roger Sherman (Connecticut), Rufus King (Massachusetts), Alexander Hamilton (New York), William Paterson (New Jersey), and John Rutledge and Charles Cotesworth Pinckney (South Carolina). Some of the more vocal members of the convention who ended up opposing its final product included two Virginians, Edmund Randolph and George Mason, Luther Martin of Maryland, and Elbridge Gerry of Massachusetts.

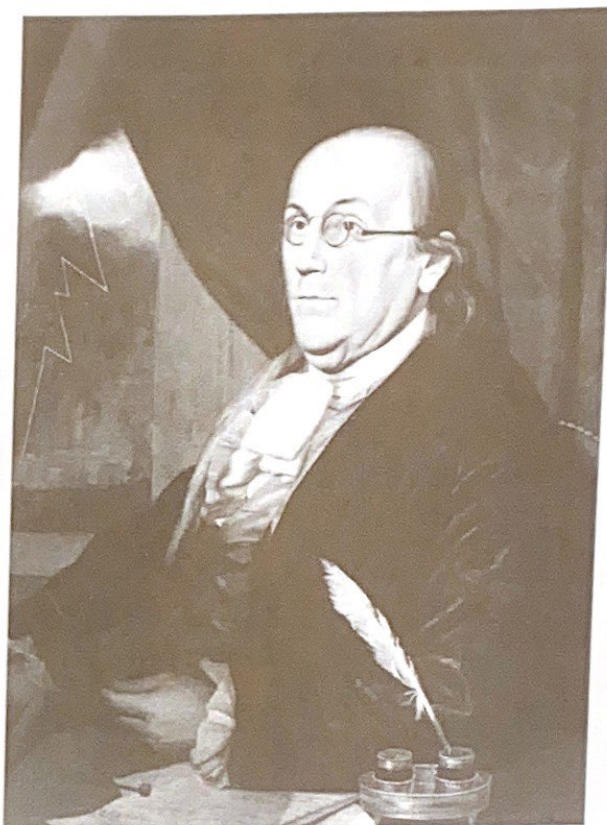
Two great figures of the Revolution were absent. John Adams, representing the interests of the United States as minister to England, would have gladly given his voice to the cause of stronger central government had he been present. And Thomas Jefferson, whose thoughts on the legitimacy of strong central government were more ambiguous, remained in Paris as the official envoy to the French court. Others were absent by choice. Patrick Henry, though named as a delegate, declined to attend because he "smelt a rat." Sam Adams had not been chosen, which was just as well since he acknowledged suspicions "of a general revision of the Confederation." And John Hancock, heavily involved in the local politics of Massachusetts and suffering from

gout, likewise did not attend. "For God's sake," Rufus King wrote to Elbridge Gerry, "be careful who are the men" chosen to go to Philadelphia; "let the men have a good knowledge of the several states, and of the good and bad qualities of the confederation." On the whole, King's advice stood.

All the delegates brought to Philadelphia years of experience in either writing their own state constitutions or wrestling with the issues they raised. Many were lawyers and even more had studied law, and had grown learned in the tradition of English Common Law and familiar with Sir William Blackstone's bulky commentary on it. Eight had signed the Declaration of Independence, seven had served in the First Continental Congress, and far more than that in successive Congresses. At least thirty were veterans of the Revolutionary War, and nearly all had served their states in some civil capacity. Some were educated abroad (Edinburgh and Oxford); others had gone to colonial colleges. The delegates, in short, were not novices, not innocents, and certainly not dreamers. Certain that they knew what would *not* work, they hoped they knew what *would* work.

They knew they wished to preserve both liberty and property. Liberty in Revolutionary America was universally acclaimed even though not precisely defined; property was understood to mean at least (in the classic phrase) that a man's home was his castle. The delegates also wanted nothing to do with a hereditary monarchy or a hereditary nobility: "republicanism" (though variously defined) was their common goal. And for many, this meant that sovereignty rested ultimately not upon the states but upon the people. As a tactic to circumvent the intransigence or conservatism of the states, an appeal to the people was a useful strategem, although the "sovereignty of the people," taken too far, could itself lead to tyranny or anarchy. The delegates did not propose a democracy, for that was taking the people's sovereignty too literally and too directly. Furthermore, to the extent that some of the states had promoted democracy, the results had not been encouraging. Better a republic, like Holland or ancient Rome, that filtered the voices and wishes of the people through men carefully chosen — as Rufus King advised.

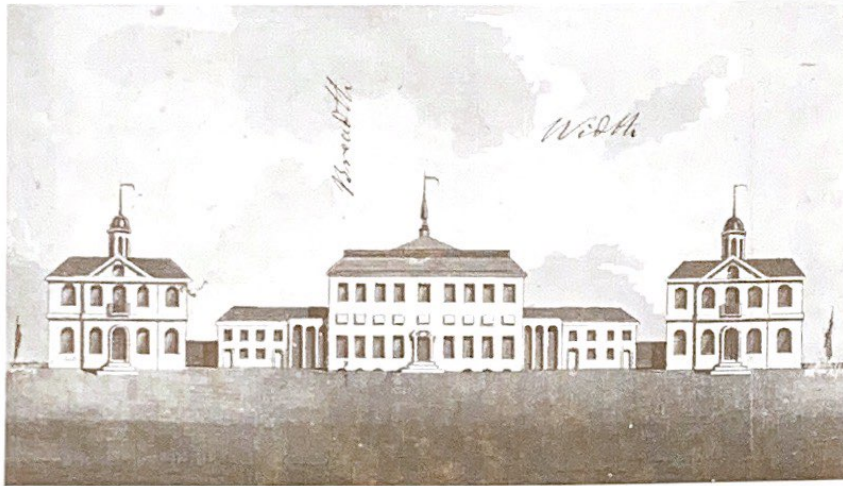
James Madison moved quickly, first to goad the Virginia delegation into action, then to arrange for Virginia to set the agenda for discussion. Deeply engaged in every aspect of the convention, Madison managed to keep the fullest notes on its secret proceedings. (By his own instructions, those notes were not published dur-



Benjamin Franklin Though he was over eighty years old at the time, Benjamin Franklin agreed to serve as one of Pennsylvania's delegates to the Constitutional Convention. He is the only one of America's Founders who is a signatory of all three of the major documents of the founding of the United States: The Declaration of Independence, the Treaty of Paris, and the United States Constitution.

ing his lifetime.) In his *Notes*, Madison explained that he seated himself so as to hear every speech, that he was absent not a single day "nor more than a casual fraction of an hour in any day." He concluded his preface in these words: "I feel it a duty to express my profound & solemn conviction . . . that there never was an assembly of men, charged with a great & arduous trust, who were more pure in their motives, or more exclusively or anxiously devoted to the object committed to them, than were the members of the Federal Convention of 1787." Nevertheless subsequent historians have long debated the purity of motives: were the delegates more concerned with protecting their own property and privilege, or with disinterestedly advancing the cause of popular sovereignty?

No English political thinker was more widely admired in Philadelphia than John Locke. The late-seventeenth-century philosopher was revered not just for his justification of the Glorious Revolution, but also for his



Independence Hall In Philadelphia's Pennsylvania State House (now known as Independence Hall, depicted here in a 1796 engraving), delegates representing twelve states — all except Rhode Island — negotiated the Constitution of the United States. To ensure secrecy, the windows were nailed shut despite the stifling summer heat and humidity.

reflection on the nature and purposes of government itself. By divine design, Locke wrote, men and women have been created as social creatures, God having put man "under strong Obligations of Necessity, Convenience, and Inclination to drive him into *Society*, as well as fitted him with Understanding and Language to continue and enjoy it." In this social state of nature, persons enjoyed equality in that no one individual had authority over another. One also enjoyed a natural right to property, but only as much as "a Man Tills, Plants, Improves, Cultivates, and can use the Product of." From this natural state, individuals can by mutual agreement or compact enter into a form of government whose only purpose is to guard and protect the "Lives, Liberties, and Estates" of those participating in the creation of a political order.

Another major source of ideas about government for those gathered in Philadelphia was the opposition or "country party" in eighteenth-century England, radical Whigs who denounced the excesses they found in British government and advocated various restraints on power (see Chapter 5). Such critics, ever fearful of conspiracies against liberty, had tried to develop structures that would make it difficult if not impossible to subvert the public good. They found especially attractive the notion of "mixed government," blending elements from all three classic forms: monarchy, aristocracy, and democracy. Separating the power to make laws from the power to execute the laws or to adjudicate them, also had great appeal to these Whigs. As a further check upon power,

they urged frequent rotation in office and demanded a ban on holding more than one office.

Some of the men in Philadelphia worried more about what a strong government *might* do; others feared what a weak government *could never* do. Power remained the central issue in the minds of the delegates: How was it to be divided between the central authority and the states, and how it was to be executed — or checked — at every level of government? A very few wanted to abolish the states

altogether, entrusting all power to a new national government. Others — also a very few — would leave the status quo virtually untouched, with Congress obliged to beg from the states for every dollar, every soldier, every compliance with any federal law. Between those two poles ranged a great number of earnest orators and sometimes perplexed thinkers who may well have agreed with Madison that their plan, whatever it turned out to be, "in its operation would decide forever the fate of Republican Government."

✧ The Critical Compromises

Almost from the beginning the convention found itself pulled by competing interests: those of large states and of small, those of merchants and of farmers, those whose economies were tied to slavery and those who were not, those who lived along the coast and those residing in the interior, those concerned chiefly with the interests of the nation and those preoccupied by local concerns. From the end of May until mid-September, the delegates listened or spoke, protested or agreed, departed in anger or remained with rising or falling hopes. No one could predict the outcome, but many wondered whether a document built on concession and compromise could possibly have enough integrity to be worthy of all their labor and sweat. And sweat they did. Philadelphia that summer was extraordinarily hot, black flies kept swarming, and the windows of the State House were nailed shut. The last step was taken to preserve secrecy, for the deliberations could not be placed at the mercy of a Philadelphia mob or bullying lobbyists. Although some disliked the secrecy rule, the Continental Congresses had established a clear precedent, and necessity dictated its adoption here.

By the scheduled opening day of the convention, May 14, 1787, delegations from only two states — Virginia and Pennsylvania — had arrived. It was not a promising beginning. While waiting in the fervent hope that others would soon arrive, the Virginia delegation got to work, preparing a proposal and an agenda for the rest of the delegates when (and if) they arrived. In fact, they did arrive, but slowly over rain-soaked, muddy roads. By May 25, men from seven states (a bare quorum) had shown up, permitting those gathered in Pennsylvania's State House to begin organizing the deliberative body. George Washington was quickly chosen as presiding officer. Each state had a single vote, but a simple majority of states would decide all questions. The secrecy rule could be enforced in the State House, but what about the dinners in the taverns and the informal conversations at the lodging houses? Most of the delegates honored the rule, but a few soon gained a reputation for speaking too freely. Others quickly learned who could be trusted with their confidences.

THE VIRGINIA PLAN

On the first day of business, the Virginia delegation rose to present its plan for a new frame of government. It chiefly represented the thought of young Madison. The Virginians envisioned a national legislature of two houses, with representation in both reflecting the population of each state or the amount of taxes each paid. The lower house would be elected by the people; the upper house would be chosen by the lower one, upon nomination by the state legislatures. The chief executive officer (or officers) would be elected by the legislature for a fixed number of years and would be ineligible for reelection. The legislature would also appoint the federal judges, serving during "good behavior" — in other words for life, barring serious charges proved against them.

Clearly the Virginia Plan represented a new beginning for governing the United States. Now all state officers would be bound by oath to support the central government, and the national legislature would even have the power to void any state laws that went against federal ones. The new Congress could make laws in all cases where "the separate States are incompetent" or where "the harmony of the United States" required unified action.

The nearly two weeks of ensuing debate on the Virginia Plan questioned many details and offered many modifications, but the essential features remained: a truly national government with real executive, legisla-

tive, and judicial authority. Since the legislature held the balance of power, and since the legislature was the branch of government closest to the people, much of the debate centered on how close to the people that branch should be. Should the people directly elect their representatives, or should the state legislatures, filtering public passions or fickleness, choose representatives to serve nationally? Connecticut's Roger Sherman, for example, argued that the people directly "should have as little to do as may be possible about the Government." James Wilson of Pennsylvania, on the other hand, believed that the federal government should rest on the broadest possible base: not on thirteen state legislatures, but on three million people. Such a broad base, said Wilson, would permit raising "the federal pyramid to a Considerable altitude."

As a large state, Virginia had naturally thought in terms of proportional representation. The small states, however, accustomed to the Articles' one-state-one-vote equality, strongly resisted any erosion of that sovereign equality. On June 15, New Jersey's William Paterson rose to present a plan that would preserve what the small states regarded as an essential principle. Under Paterson's New Jersey Plan, there would be only a single house of Congress where representation would be by states, not by population. Paterson did move beyond the Articles by providing for executive and judicial branches, but on the critical issue of representation he defended the status quo.

THE NEW JERSEY PLAN AND ALEXANDER HAMILTON'S ALTERNATIVE

Debate now grew heated. Paterson made it clear that New Jersey would never accept the Virginia Plan, for "she would be swallowed up." Paterson "would rather submit to a monarch, to a despot, than to such a fate." Wilson made it clear that the large states, including his own Pennsylvania, would never accept the New Jersey Plan. When former Pennsylvanian John Dickinson, now representing Delaware, suggested that the delegates really should limit themselves to revising the Articles, not jettisoning them, an impatient Alexander Hamilton rose on June 18 to present still another sweeping plan. Hamilton was prepared to reject state sovereignty altogether, even allowing the national government to appoint the governor of every state. Moreover, members of the Senate should be elected for life, as should be the "supreme Executive authority of the United States." When Hamilton finished his six-hour address, he probably left the delegates as breathless

as himself. And though the Hamilton Plan found little support, it *did* make the Virginia Plan seem downright conservative by comparison. In any case, the Paterson Plan was the next day decisively defeated. The Philadelphia convention would do more than merely tinker with the Articles.

One vital aspect of the New Jersey Plan dealt with the knotty problem of competing loyalties to state governments and to the central government. In the event of conflict, who prevailed? Debate about that hard question raised other hard questions: the use of coercion against the states, the right of the federal government to review and if necessary void state laws, the role of the judiciary (federal or state) in examining legislation. The New Jersey Plan had declared that all acts of Congress and national treaties "shall be the supreme law of the respective States . . . and that the Judiciary of the several States shall be bound thereby in their decisions." But Madison and Wilson thought reliance on state courts too risky. On that most sensitive of all subjects, the sovereignty of the states, delicate balancing was required. What finally emerged in Article VI was more than many proponents of a stronger central government had dared hope for: a clear statement that the Constitution, together with treaties and national laws made under its authority, "shall be the supreme Law of the Land."

THE "GREAT COMPROMISE"

While the New Jersey Plan was defeated, the delegates did not wish to drive the smaller states away from the convention. On June 30, therefore, a committee was named to see whether some way could be worked out to honor, at least in part, the principle of state equality. When the convention re-convened on July 5, the committee (led by Roger Sherman) reported its famous compromise. In the lower house representation would be based on population; in the upper house, it would be equal for all states. All tax bills, however, would have to originate in the lower house, ensuring the people more power over the purse.

More than two hundred years after the "great compromise" was proposed, its acceptance seems a foregone conclusion. Such, however, was far from the case as the convention vigorously debated both details and substance. Large states thought too much had been given away; small states feared that not enough had been gained. Rancor erupted as some delegates suggested that the small states throw in their lot with some foreign country or be swallowed up by larger neighbors. For ten days, the convention vigorously wrestled with

the merits of the proposal until on July 16 the compromise narrowly carried. Connecticut, New Jersey, Delaware, Maryland, and North Carolina (predominantly small states) all voted for it; Pennsylvania, Virginia, South Carolina, and Georgia all opposed. Massachusetts was divided, New York did not vote since its delegates had left Philadelphia, and New Hampshire's delegates had not yet arrived. So the most critical hurdle had been cleared by the slimmest margin, a five-to-four vote.

Representation in the upper house would honor the principle of property, as well as of states' rights. In the lower house, people counted for more than property since representation was based on population. The districts were kept large in order to increase the probability that men of merit and virtue, not just local demagogues, would be elected. And by counting slaves both as property and as persons, the slave-holding states increased their political strength. Despite the rather benign language about slavery in the Northwest Ordinance, the Constitutional Convention in 1787 found slavery an explosive issue, requiring more compromises.

Clearly, the convention as a whole could not debate every power of Congress, every aspect of the Judiciary, and so on; thus, the delegates on July 23 appointed a five-man Committee of Detail that would draft a document that could then be either quickly approved, clause by clause, or revised as necessary. On July 26, the convention adjourned for ten days while the committee did its work, to report back on August 6. The "detail" now fell largely in the hands of practical men, as visionaries such as Madison played a less direct role.

COMMERCE AND SLAVERY

A sore point continued to be the issue that had prompted calling the Annapolis convention: trade. The Philadelphia body recognized that issues here demanded their close attention. But the states jealously guarded their right to export what they chose. The central government, on the other hand, needed some control over trade in order to make treaties, and the elimination of interstate trade barriers was essential to solidify the union.

Madison saw the difficulties in commerce as second only to the issue of western lands, with which the Confederation Congress had recently dealt. Those states without ports were especially aggrieved since they had to pay tariffs on goods imported through a neighboring state. Thus New Jersey, lying between the major ports of Philadelphia and New York, "was likened," Madison noted, "to a cask tapped at both ends;

and North Carolina, between Virginia and South Carolina, to a patient bleeding at both arms." If the states felt mistreated, the federal government felt ignored, dependent upon the voluntary compliance of thirteen separate states, each looking after its own interests. In the end, both sides made concessions, though many more came from the defenders of states' rights. States were now specifically prohibited from coining money or entering into agreements with foreign powers or even with other states. No state could levy import duties except with the approval of Congress. The federal government, however, would refrain from taxing exports and from prohibiting the migration or immigration of such persons "as the several states shall think proper to admit."

That last innocent-sounding phrase was a euphemism for the infamous slave trade. It pointed to another deep division in the convention, between North and South or, more accurately, between some parts of the North and some parts of the South. Only South Carolina and Georgia were determined that slavery — vital to their plantation economies — should be left alone. Indeed, Virginia's George Mason made the most passionate speech of the convention against slavery, seeing it as an unnatural cruelty certain to call forth divine retribution. Providence, said Mason, punishes "national sins by national calamities"; that being the case, "I hold it essential to every point of view that the General Government have power to prevent the increase of slavery." But South Carolina's John Rutledge countered that his state and Georgia would never agree to any plan of union that interfered with their right to import slaves. The compromise ultimately adopted was to abolish the slave trade, but not immediately, conceding to the two most interested states a twenty-year period during which slaves could still be imported. Allowing such trade ("this cruel war against human nature itself," as Jefferson had called it) until the year 1808 was "dishonorable to the American character," Madison protested — but in vain.

Neither Madison nor Mason contested another anomalous compromise: that of counting the slave population on a different basis from that of free whites. The so-called "federal ratio" meant that in any census count for purposes of representation, blacks would count for only three-fifths as much as whites. One hundred blacks, in other words, would be tallied as sixty when determining how many representatives a state was entitled to in Congress. All this caused little discussion in 1787 since the Confederation Congress four years earlier had arrived at this compro-

mise in recognizing that the slave was both property and person. By such compromises, however ignoble, the Philadelphia convention was saved from complete disintegration.

THE BRANCHES OF THE FEDERAL GOVERNMENT

Some compromises were simple — almost automatic. Several state constitutions provided for the annual election of their legislators, while some delegates in Philadelphia thought the term should be of three years. The obvious solution was to provide two-year terms for the House of Representatives. In the Senate the term was set for six years, though suggestions varied from four years to service for life. One-third of the body was to be elected every two years — but elected by whom? By the people directly? By the lower house of Congress? Or by the state legislatures themselves, these bodies especially interested in that equal representation? The convention opted for the last method of election, and it remained in force until the adoption of the Seventeenth Amendment in 1913.

Many questions remained about the presidency. Should executive power be entrusted to a single individual or to a small council? Should the executive be elected by the people or by the national legislature? Should the office be severely limited in term, or for life, or for a specific number of terms? What veto powers should be granted to the executive branch? What war-making powers? These complex questions resulted in some complex (and ultimately unworkable) solutions. Thus the cumbersome provisions for separately electing the president and vice president lasted only until an amendment could be ratified in 1804 that made the whole process more viable (see Chapter 8). The small states feared that the Electoral College gave too much power to the lower house and, therefore, to the larger states. Ultimately, the decision to have votes for president and vice president counted by states represented another of those compromises between those who placed their confidence in the people and those who preferred to keep power in the states.

The judiciary occupied the convention's attention for less time in debate, and the final document offered relatively sparse definitions. It was quickly agreed that the legislature should not be its own court of last resort. Instead, this power should be granted (in Hamilton's words) "to distinct and independent bodies of men." Most states had set up their own supreme courts in this fashion, so the precedent was widely accepted. The U.S.

Supreme Court, moreover, would not displace the state courts but would have jurisdiction where the states themselves were litigating parties or where the interests of the nation were directly involved. Finally, the highest court had by implication the right to determine the constitutionality of all laws passed by Congress, thus giving it the final voice regarding “the supreme Law of the Land.” But at least fifteen years would pass before that right was clearly enunciated, and not until then did the “third branch” of government acquire major importance.

By the end of August the delegates agreed to the procedures for the admission of new states, with the nation guaranteeing to every newly admitted state “a Republican Form of Government” and security against invasion. On September 10, the convention — proud as it was of its work — agreed to the procedures for amendments to a ratified Constitution, and two days later the delegates received the report from its Committee of Style. The time for one last vote was swiftly approaching.

✧ *The Final Result*

By the time the convention approved the basic draft of the Constitution on September 10 and handed it over to its Committee of Style for final phrasing, whispers and rumors were filling the streets of Philadelphia. But no one outside the State House knew the precise directions specified or the exact structure laid out. Even the delegates themselves did not know until the very last day, for changes continued to be made down to the end.

In naming the Committee of Style, the convention paid attention — as always — to geographical representativeness but it gave even more attention to the quality of its members. Here were men sensitive to the nuances of language and conscious of the power of proper, if restrained, rhetoric. Gouverneur Morris apparently took the lead in putting the Constitution into its final form, in condensing some twenty-three articles into seven. An awkward preamble became simply “We the people. . . .” And the long-range purpose of the convention’s arduous labors included a securing of the “Blessings of Liberty,” still so recently won, “to ourselves and our Posterity.”

When the report came back on September 12, the delegates were not yet through with matters of either substance or style. They debated whether the override of a presidential veto should be by a two-thirds or three-fourths vote of both houses of Congress; whether the right to trial by jury in civil cases should be explicitly declared; and whether a Bill of Rights should be

included. On September 13, the delegates focused on verbal niceties or ambiguities, and the next day worried about impeachment proceedings and standing armies. On Saturday, September 15, the convention struggled again with the question of representation, and how many congressmen should be allowed to each state in the first Congress. And now that the deliberations were coming to a close, some delegates said that — with regret — they could not put their signatures to that smoothly polished prose.

George Mason of Virginia believed that the national government was being made so strong that the country would “end either in monarchy, or a tyrannical aristocracy.” That the convention’s discussions had all been carried on in secret also bothered Mason. The people, he believed, needed to be consulted regularly, and since this convention had failed to do so, a second convention should be called. Governor Randolph thought that the draft should not be sent out to the people on a “take it or leave it” basis, but that state conventions might offer amendments for due consideration. Elbridge Gerry raised many objections, some peculiar to Massachusetts alone, but others concerned with arrogation of great powers to a national Congress, powers seemingly without limit or check. But these voices were minority ones, and by the day’s end it was clear that most delegates intended to sign the final draft.

On Monday, September 17, the delegates for the last time gathered in the East Room of the Pennsylvania State House. Benjamin Franklin said that he, like most others present, could find this or that detail to object to, but no one should expect perfection. “Thus I consent, Sir, to this Constitution,” Franklin declared, “because I expect no better, and because I am not sure that it is not the best.” Franklin also urged each member to “doubt a little of his own infallibility, and to make manifest our unanimity.”

Unanimity proved elusive, but thirty-nine delegates did sign their names. Of those present, all but three (Mason, Randolph, and Gerry) signed, although New York’s delegation — except for Alexander Hamilton — had left in sharp disagreement. All states except absent Rhode Island had signatures on the document. Franklin, who during long days of debate and disagreement had looked at a carving of the sun in the back of Washington’s chair, observed that artists did not find it easy to portray the difference between a rising and a setting sun. And so he had never been sure just which it was. “But now at length,” on September 17, 1787, “I have the happiness to know that it is a rising and not a setting sun.”

Yet many months would pass before the evidence trickled in, at an agonizingly slow pace, that would justify Franklin's confidence. The delegates had approved this new instrument of government, but what about the people? Having learned their lesson from the Articles of Confederation, which required unanimous approval before becoming effective, the delegates provided that the Constitution would automatically come into force when nine states had ratified it. But knowing the independence and stubbornness of the states, even approval by that number might be a long time coming.

THE ROCKY ROAD TOWARD RATIFICATION

One day after the Philadelphia convention adjourned, George Washington wrote to the Marquis de Lafayette that the Constitution was "now a Child of fortune, to be fostered by some and buffeted by others." A month later, after returning to Mount Vernon, Washington informed Henry Knox that the Philadelphia draft "is now before the Judgment Seat. It has, as was expected, its adversaries and supporters" — adding, less confidently than Franklin: "Which will preponderate is yet to be decided." And in a long letter to Thomas Jefferson on October 24 (which included a copy of the Constitution), James Madison noted that "The final reception which will be given by the people at large to the proposed System cannot yet be decided." All these expressions of anxious uncertainty were wholly appropriate. The question of whether the Constitution would win approval hung in the balance.

☞ *The Federalists*

In the battle for public opinion, labels can be as important as logic — perhaps more so. And those who favored ratification of the Constitution got the jump on their opponents by seizing the name "Federalist" to represent their position. "Nationalist" would have been a more accurate label, but a less winning one, for it suggested a degree of unity so high that it might fatally weaken the power of the states and threaten the indi-



Elbridge Gerry and Gerrymandering Massachusetts delegate to the Constitutional Convention Elbridge Gerry opposed ratifying the constitution as it emerged from the convention, but he went on to serve in the first two Congresses and was eventually elected James Madison's second vice-president. His name is most associated today with the practice of drawing legislative districts so as to favor one party, known as "gerrymandering" after he drew up a district that resembled a salamander, as shown in the cartoon above.

vidual liberties. "Federalist" sounded like something not radically different from what the states had known under the Articles of Confederation, although — as Madison wrote Jefferson — everyone in the Philadelphia convention agreed that "the principle of confederation" was unworkable. Perhaps better terminology would have been that of the "ratifiers" versus those opposed to ratification — or, as Elbridge Gerry preferred to say, the "rats" against the "anti-rats."

The divisions into these two "parties," well before national parties truly emerged, did not follow predictable lines in every state. Often local issues (Shays's Rebellion in Massachusetts, paper money in Rhode Island, the Bank of North America in Pennsylvania) proved more

persuasive. In Virginia, aristocratic Richard Henry Lee denounced the proposed Constitution as the work of “a coalition of monarchy men, military men, aristocrats and drones, whose noise, impudence and zeal exceed all belief.” Federalists, on the other hand, tended to identify their opponents as demagogues, local politicians with narrow career concerns, and rural farmers who could not see beyond their immediate economic interest. But factions did not fall neatly into rigid categories; many variables, such as age, occupation, economic status, family background, political or military experience, and religion, made for shifting rather than stable alliances.

A little over a month after the convention adjourned, Madison, Hamilton, and John Jay adopted the Federalist tag as they wrote a series of letters between October 27, 1787, and May 28, 1788, to the New York newspapers. These eighty-five essays, collectively known as *The Federalist Papers*, were composed to persuade New York, a very doubtful state, to support the Constitution. But in making the case to New Yorkers, the three authors were making the Federalist case to the country at large. They made that case so well that, two centuries later, scholars and Supreme Court justices still turn to these *Papers* to determine the thinking of the supporters of the Constitution in that critical year of decision.

The best argument of the “rats” was the evident political debacles all around the country. The national government had no power, the state governments no honor. Madison exclaimed that “republican liberty” itself was endangered “under the abuses of it practiced in some of the states.” The first experiments in self-government, at both the federal and the local levels, were just that: experiments, which now should be pronounced failures. After years of trial and error, the country could now benefit by its mistakes and swiftly repair its collapsing house. The second general argument favoring the Federalists was the quality of the men who had gathered in Philadelphia. The wide popularity of figures such as George Washington and Benjamin Franklin created an initially favorable disposition toward the Constitution. But neither of these arguments could stand up under heavy testing. True, the current situation was bad, but what proof was there that the Constitution would amend all the follies? True, good men favored the document, but other good men opposed it. Besides, the time had come to speak not in generalities but in specifics.

So in the *Federalist Papers* Hamilton, Madison, and Jay spoke of trade and taxes, of military weakness and diplomatic disarray, of the limits carefully placed upon

power, of the need for “energetic” government, and of the ultimate responsiveness of the Constitution to the people. But they also wrote of the necessity for virtue, of the essence of a republic, of the appropriateness of a conciliatory and moderate spirit. Though Jay called for a “sedate and candid consideration,” the debate often grew vitriolic and the tactics devious. Letter writers tried to enlist sympathizers or to change minds. Newspapers quickly filled with diatribes on both sides. Cried a pamphleteer in Pennsylvania: “Citizens! You have the peculiar felicity of living under the most perfect system of local government in the world. Suffer it not to be wrested from you — the inevitable consequence of the new Constitution.” On the other side, George Washington urged the citizens of Georgia to consider their true interest. “If a weak State, with the Indians on its back and the Spaniards on its flank does not see the necessity of a General Government, there must I think be wickedness or insanity in the way.”

The received wisdom of the day held that republics, to be safe and effective, had to be small, but here were thirteen states intending to join in one single republic. If such a notion were not preposterous, it was at the very least dangerous. This was the argument that the Federalists had to address and, with luck, overcome. In the most famous of the *Federalist Papers* (Number 10), Madison turned the argument about by declaring that the larger the republic the greater the possibility of its being represented by persons of wisdom, virtue, and ability. It was true that a pure democracy could not exist over a large territory, but a republic — that is, a representative government — could exist and even indeed flourish over a great expanse. Such a system, moreover, could better control the factions that arise in every society. Apart from a republic, the only way to eliminate factions or “interests” was to suppress liberty or rigidly control its expressions. But in a large republic, possessed of many factions, no one faction or clique could control the government or impose its will upon the majority. The many factions would contest against — and check — each other. In the proposed Constitution, therefore, “we behold,” Madison concluded, “a Republican remedy for the diseases most incident to Republican Government.”

Government needed to be so constructed that it checked not only its citizens but even its own exercises of power. “In framing a government,” Madison pointed out in another famous *Paper* (Number 51), “the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” This was the rea-

son for separating the executive, legislative, and judicial powers, even though the separation was not total. Moreover, since in a republican form of government "the legislative authority necessarily predominates," it was vital to separate that authority into different houses, "and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions . . . will admit." A bicameral legislature, joined with the protection of three branches of government, therefore provided a "double security" for the rights of the people.

Men were not angels, Madison acknowledged in Number 51, for if they were, "no government would be necessary." On the other hand, neither were they so benighted or vicious as to make it impossible for them to filter out those persons who could best represent them. Pure democracy allowed for no such filtering, and that was its fatal weakness. As Madison explained, "In all very numerous assemblies, of whatever characters composed, passion never fails to wrest the sceptre from reason." This had been true throughout history, Madison added, even in ancient Greece itself. "Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob." A system of representation, on the other hand, built a shield against the tyranny of the majority or against "mobocracy."

Under the proposed Constitution (Jay argued), men would be called to their best, not their worst, just as were the delegates to the Philadelphia convention. These men, said Jay, pursued their arduous task "without having been awed by power, or influenced by any passions except love for their Country." Was it too much to believe that in all America one could not find similar men, similarly motivated, to fill the Senate and

the House of Representatives? Madison refused to concede that the "present genius of the people of America" would choose and "every second year repeat the choice of sixty-five or an hundred men, who would be disposed to form and pursue a scheme of tyranny or treachery." Those who opposed the Constitution often did so, said Madison, on the assumption "that there is not sufficient virtue among men for self-government." If that be true, then the only option that remained was to accept "the chains of despotism," for they alone could prevent the people "from destroying and devouring one another." The argument about the nature of government became, in the end, an argument about the nature of humanity.

✎ The Anti-Federalists

Those who opposed ratification did so on many grounds, not least of which was their conviction that in the new government virtue would not prevail. The opportunities for indulgence of self-interest would be neither "checked" nor "balanced" but expanded to the detriment of the people. Every objection to a more energetic government was answered with the mere assertion that people would be "good," but there "is no security that they will be so, or continue to be so," said a North Carolina Anti-Federalist. And Robert Lansing of New York, who had stalked out of the Philadelphia convention, asserted that all the checks and balances were not needed if individuals were virtuous, but since they were not, the checks and balances were woefully insufficient. All free constitutions, he asserted, "are formed with two views — to deter the governed from crime, and the governors from tyranny." The proposed Constitution, he believed, did neither.

The executive power, moreover (the Anti-Federal-

✧ IN THEIR OWN WORDS

A Federalist Argument, 1787

Yes, my countrymen, I own to you that having given it attentive consideration, I am clearly of opinion it is your interest to adopt it [the Constitution]. I am convinced that this is the safest course for your liberty, your dignity, your happiness. I affect not reserves which I do not feel. I will not amuse you with an appearance of deliberation when I have

decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. . . . It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION, a point, no doubt, deeply engraved on the hearts of the great body of the people in every State, and one which, it may be imagined, has no adversaries. But the fact is that we already hear it whispered in the

private circles of those who oppose the new Constitution, that the thirteen States are of too great extent for any general system, and we must of necessity resort to separate confederacies of distinct portions of the whole. This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance an open avowal of it.

The Federalist Papers, Number 1 [Alexander Hamilton]

ists argued), was invested in a single ruler who could be elected and reelected without limit. And considering the power this ruler had — appointive, pardoning, veto, commander-in-chief, and so forth — how did he differ from King George III? Even Thomas Jefferson, receiving a copy of the Constitution sent by James Madison, wrote back in late December 1787, objecting to the abandonment of “the necessity of rotation in office, and most particularly in the case of the President.” The president would in effect be elected for life, said Jefferson, and soon the office would become hereditary. When that happened, the republic would be no more. Jefferson was no Anti-Federalist, although he admitted he also was “not a friend to a very energetic government.” His anxiety suggested, however, that here the Anti-Federalists had an argument that they could successfully exploit.

Other weaknesses, real or perceived, troubled those who wished to see the Constitution rejected. Since the days of Magna Carta, English liberty rested on the solid base of trial by one’s peers. Yet, under the Constitution, the highest court in the land heard and decided cases without a jury present, which might well arbitrarily deny liberties to citizens and states alike. The Constitution contained no guarantees to a trial by jury, no protection against excessive fines or against cruel and unusual punishments, no certain security against the taking of life, liberty, or property without due process of law. What free people would vote for a “supreme Law of the Land” like that?

More highly praised was the representative character of the new government, but this — said the Anti-Federalists — deserved a closer look. In the first Senate, there would be 26 men; in the first House of Representatives, a mere 64. In the Senate, 14 men would constitute a quorum, and of that number 8 would be a majority. In the House, 33 would make a quorum, and only 17 a majority. Thus, if the 8 from the Senate were added to the 17 from the House, Richard Henry Lee of Virginia said, “the liberties, happiness, interests, and great concerns of the whole United States” would be “dependent upon the integrity, virtue, wisdom, and knowledge of 25 or 26 men.” Further, considering the class from which these wealthy and powerful men would probably come, the country would have not a democratic republic but an aristocratic tyranny.

The Constitution said practically nothing about religion nor did it invoke God, and that bothered some people (especially in New England). But what little it did say bothered even more: namely, that “no religious test shall ever be required as a qualification to any office or

public trust under the United States.” No religious test even for the president of the country! This meant one trembling New Hampshire Anti-Federalist pointed out, that “we may have a Papist, a Mohomatan, a Jew, yea an Atheist at the helm of government.” Public servants who had no regard for the laws of God, he pointed out, “will have less regard to the laws of man or to the most solemn oaths or affirmations.” A Pennsylvania critic noted that no government survived unless built upon the foundation of religion: all the world knew that. But “what the world could not accomplish from the commencement of time till now,” the framers of the Constitution, this critic sarcastically observed, “easily performed in a few moments.” And Marylander Luther Martin thought that “in a Christian country, it would be at least decent to hold out some distinction between the professors of Christianity and downright infidelity or paganism.” If one were looking for reasons to vote against the Constitution, the “no religious test” provision joined with the silence on religious liberty generally would be quite enough.

Finally, though the Constitution was being submitted to “the people” for a vote, who were these people? And how were they to exercise their sovereignty in so vast a republic? Was all the talk about the “people” just a device for getting around the states? That tireless talker, Luther Martin, regarded the whole maneuver as suspect. In a federal government, he said, “the parties to the compact are not the *people*, as individuals, but the states, as states.” It was the states that sent delegates to Philadelphia; once there, it was the states that voted, up or down, on every article or section of the Constitution. Now, with all that accomplished, the Federalists would dismiss the states altogether, replacing them with some fiction called “the people.” Martin’s argument had some merit, for the process of ratification did in fact pass over the heads of state legislatures to special conventions of the people called for the sole purpose of saying “yes” or “no” to this new instrument of government.

✧ *The State Conventions and the People*

When the Constitutional Convention adjourned on September 17, 1787, the text was transmitted to the Confederation Congress then meeting in New York. Congress was asked formally to submit the document to the states where the process of arranging for ratification conventions had to begin. Even that transmission was not accomplished readily, however, for some in Congress argued that the Philadelphia body had