

vastly exceeded its limited instructions to revise the Articles of Confederation. After several days of debate, Congress ultimately agreed on September 28 that the Constitution “be transmitted to the several legislatures in Order to be submitted to a convention of Delegates in each state by the people thereof.” Since state legislators would be more likely to protect their own powers and interests, the convention had proposed that approval or rejection be placed directly in the hands of popularly elected delegates, chosen to special conventions called for the sole purpose of ratifying or rejecting the Constitution. Federalists hoped for a swift approval, so that the “energetic” government could begin its effective operation with minimum delay.

It would take time, of course, for the states to set a date for an election of delegates, for that election to take place, and then for the winners to assemble, deliberate, and vote. It took time even for the congressional resolution of September 28 to reach all thirteen states. And when at last the voting did take place, the outcome often rested more on local interests than lofty principles. Political maneuvering became colorful and convoluted.

Before the year was over, three state conventions managed to meet and vote. Delaware and New Jersey voted unanimously for ratification on December 7 and 18, respectively. These small states felt that the Constitution protected them against incursions by the large states, and they took particular reassurance from their equal representation in the Senate. But in the third state to ratify that December, Pennsylvania, the vote was by no means unanimous — and the Federalist winners were by no means unsullied.

Although the Pennsylvania delegation had been consistently one of the strongest in the Philadelphia convention, the people of that state were not nearly so

unified in their embrace of the Constitution. A powerful Anti-Federalist coalition, especially active in the western regions, regarded the Constitution as seriously defective. It should be defeated outright or, failing that, extensively amended. One Anti-Federalist arrived at the convention with a list of fifteen such amendments. But the Federalists who were in the majority managed to control the agenda and the procedures. When the final vote was taken on December 12, the tally showed 46 in favor of ratification and 23 opposed, exactly two to one. So while the vote was decisive, it was far from unanimous, hinting at still rougher waters ahead.

Two more small states ratified the Constitution at the beginning of 1788: Georgia and Connecticut. Georgia’s vote on January 2, 1788, was unanimous in favor of ratification (the last such vote that the Constitution was to receive). Georgians favored a stronger central government (as Washington had urged) to protect them against the nearby Spanish and their Indian allies, and this vulnerability as well as a small population made it a “small” state. Next, on January 9, Connecticut ratified by a comfortable margin of 128 to 40.

In Massachusetts, however, the outcome was far more problematic. The men who had supported Daniel Shays in the western counties saw the Constitution as the creation of an eastern elite and mercantile interests. “These lawyers and men of learning and money men,” complained one western delegate, “that talk so finely, and gloss over matters more smoothly, to make us poor illiterate people swallow down the pill, expect to get into Congress themselves.” The vain John Hancock was won over to the Federalist side by vague talk that he might be considered for the presidency, especially if Washington’s Virginia did not ratify. In addition to restless westerners, the counties in Maine (still a

✱ IN THEIR OWN WORDS

An Anti-Federalist Argument, 1788

All writers on government agree . . . that the origin of all power is in the people, and that they have an incontestible right to check the creatures of their own creation, vested with certain powers to guard the life, liberty and property of the community. And if certain selected bodies of men, deputed on these principles, determine contrary to the wishes

and expectations of their constituents, the people have an undoubted right to reject their decisions. . . .

Some gentlemen, with laboured zeal, have spent much time in urging the necessity of government: from the embarrassments of trade, the want of respectability abroad, and confidence of the public engagements at home. These are obvious truths which no one denies. . . . But the most sagacious advocates

for the [Federalist] party have not by fair discussion and rational argumentation evinced the necessity of adopting this many-headed monster, of such motley mixture, that its enemies cannot trace a feature of Democratic or Republican extract. . . .

Observations by a Columbian Patriot (Mercy Otis Warren)

part of Massachusetts) saw the Constitution as reducing or at least postponing their chances of statehood. So when the vote was taken on February 6, it was unnervingly close: 187 aye, 168 no.

A lull of more than two months followed before other state conventions could convene, but Federalists continued to organize. Then on April 28 Maryland ratified by 63 to 11, the carping voice of Luther Martin not counting for as much as he had hoped. Less than a month later (May 23), South Carolina ratified — but with a significant minority unhappy over the restriction on slave trade; the vote was 149 in favor, and 73 opposed. Eight states had now joined the Union.

The new plan of government would, according to the Constitution, become the law of the land when nine states had ratified it. The ninth state to do so, on June 21, was small New Hampshire — though reluctantly and narrowly, with a vote of 57 for and 47 against. Anti-Federalists were strong in this state of fiercely independent-minded local communities; Federalists, with their ties to Portsmouth's overseas trade, had to work hard and sometimes unfairly to prevail.

Technically the Constitution had now come into force, but Federalist joy at winning New Hampshire had to be muted. Who could imagine a successful union without Virginia and New York? The debate in Virginia had been especially intense, with such respected leaders as George Mason, Richard Henry Lee, and Patrick Henry notably effective in their opposition. Though Madison could not match Henry's oratory, he did outmatch Henry's mind, as he spoke with a knowledge so impressive and a logic so compelling that friend and foe alike acknowledged his sheer mental prowess. On June 22 James Madison revealed his concern in a letter to Alexander Hamilton. It would probably be necessary, he wrote, to agree to some future amendments to be passed just as soon as the new government got organized. Even with that concession, however, Madison calculated that the margin of victory would be as small as 3 or 4 votes. Almost in despair, Madison admitted that "the smallness of the majority suggests the danger from ordinary casualties which may vary the result." On June 26, the vote was taken: Virginia joined the Union with a slightly more generous vote than Madison had predicted — 89 for, 79 against. A crucial factor in the vote was western Virginians' hope that a stronger national government would subdue the Indians beyond the Ohio River. This, combined with solid support for union among tobacco-exporting tidewater planters, carried the day.

One month later it was New York's turn, where Ham-

ilton had even less ground than Madison for optimism. Despite the fact that the *Federalist Papers* were directed explicitly to New York and that two of the three authors were New Yorkers, many suspicious citizens remained unconvinced. Some wanted to amend before ratifying; others wanted to join the United States tentatively, with a right to withdraw if certain conditions were not met or amendments not passed; still others took to the streets of Albany in bloody protest against ratification. When upstate Anti-Federalists, who dominated the convention, seemed about to prevail, Federalist New York City threatened to secede from the rest of the state. This threat persuaded some Anti-Federalists to switch their votes. Hamilton informed Madison on July 8 that "We have good reason to believe that our opponents are not agreed, and this affords some grounds for hope." But not much hope for either Hamilton or Madison, the latter replying on July 20 that "The Constitution requires an adoption *in toto*, and *for ever*." Any condition attached to New York's vote, warned Madison, "must vitiate the ratification." One week later (July 27), New York voted by the closest margin of any of the states: 30 in favor, and 27 against.

Federalists could breathe much easier, with eleven states — more than a bare majority — now in the Union. Congress could be safely organized and a new government could begin, without waiting for the last two states to make up their minds. North Carolina initially voted against ratification, chiefly on the grounds of the absence of any Bill of Rights, a complaint voiced by the Anti-Federalists again and again. Much later, on November 21, 1789, when North Carolinians had been reassured on that score, they voted (194 to 77) in favor of the Constitution. Rhode Island, the first state to vote for a Declaration of Independence, was the last one to ratify the Constitution (by a vote of 34 to 22). By the time of that vote, May 29, 1790, President George Washington had already been in office for more than a year.

✎ The Bill of Rights

Nothing about the Constitution raised more anxiety or caused more critical comment than its failure to provide clear guarantees of basic liberties. The matter had not been entirely overlooked in Philadelphia, but for a variety of reasons it had seemed best to set that assignment aside. The barrage of criticism during the ratification struggle, however, made it clear that the Constitution had to include a Bill of Rights. In adding

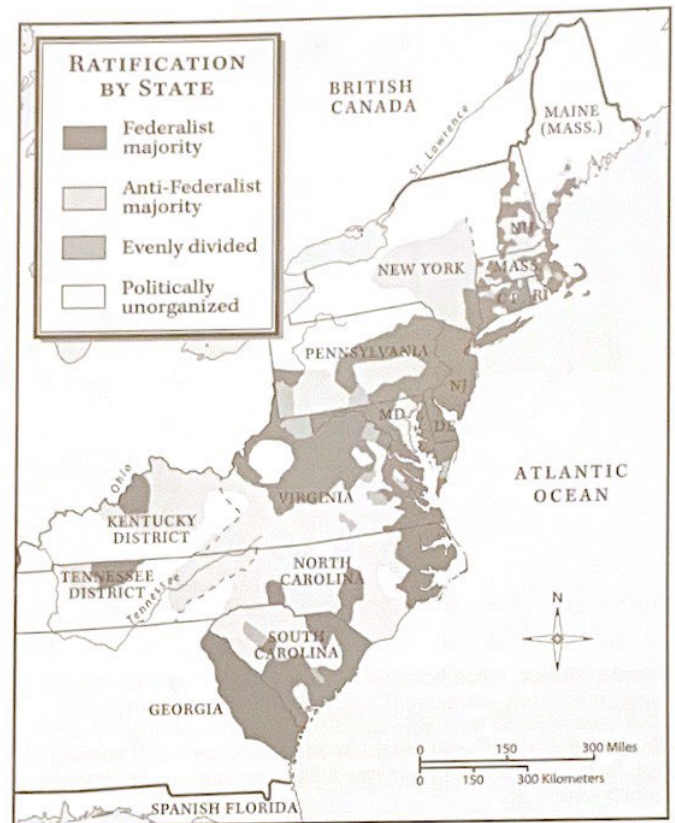
these amendments to the Constitution, as in so much else, James Madison played a critical role.

Many arguments could be offered against including a Bill of Rights in the original Constitution. For instance, eight states already had their own declarations or bills, and if that many had arrived at such guarantees on their own, nothing should prevent the remaining five from following suit. Besides, fundamental civil liberties, like religion, were best dealt with at the state rather than the federal level. Hamilton argued that the preamble took care of the matter nicely: "We the people of the United States, to secure the Blessings of Liberty to ourselves and our Posterity. . . ." The whole point of the Constitution was liberty; it itself, said Hamilton, is a Bill of Rights, and did not require "a volume of those aphorisms" that many of the states had already enacted. In any case, such lists were more appropriate "in a treatise on ethics than in a constitution of government." Besides, he noted, the Constitution had no right to deny basic freedoms, so "why declare that things should not be done which there is no power to do?"

Many delegates at the Philadelphia convention, moreover, saw the Constitution as deliberately "incomplete." Blanks or deficiencies, they thought, should be remedied by the state legislatures or by special state conventions. By choice, most of the action in American government remained in the hands of the states. Those who complained about what the federal Constitution failed to do might be the very ones who would complain about its usurpations from local government and local control.

Others claimed that it would be difficult to get all the states to agree on just what rights ought to be specified — or to know when to stop a list of all the rights that should be protected. Noah Webster (of dictionary fame) ridiculed the whole idea of trying to enumerate all human rights. Should Americans go so far as to demand "that Congress shall never restrain any inhabitant of America from eating and drinking, at seasonable times, or prevent his lying on his left side, on a long winter's night, or even on his back?" But neither laughter nor logic quelled the demand for a Bill of Rights. It also became evident during those anxious months of ratification that unless private assurances were given that such a bill would be swiftly forthcoming, the new nation would never get off the ground.

In fulfilling these promises, Madison once again took the lead, urged on by the voters in Virginia as well as by his close friend in Paris. Jefferson's very first objection to the Constitution was "the omission of a bill of rights



providing clearly . . . for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by jury." A Bill of Rights, Jefferson added, "is what the people are entitled to against every government on earth." For Jefferson, as for many other Americans, the preeminent purpose of a basic frame of government was not to make the government work, but to make it *safe*. Fundamental laws and constitutions were written, first of all, to protect the people from arbitrary exercises of power. All else was irrelevant, if not perilous.

When Madison was elected to the first House of Representatives early in 1789 (his election to the Senate was blocked by Patrick Henry and other Virginia Anti-Federalists), he saw as his first obligation the passage of a Bill of Rights. He had to work diligently, since the first Congress had many other important matters on its agenda. Soon after the House organized itself, Madison rose on June 8 to speak at length on behalf of such a bill. Noting the significant opposition to the Constitution encountered in several states, he urged the House to take action that would make that document acceptable "to the whole people of the United States" and not just to the (sometimes slim) majority. "It will also be a desirable thing," he added, "to extinguish from the



Eleven Pillars Ratification of the Constitution by nine states made it "the law of the land," and the addition of Virginia and New York seemed to ensure that the Union would succeed. At that point, North Carolina and Rhode Island were still holding out. But — as the accompanying verse proclaims — Federalists' hopes were high.

bosom of every member of the community, any apprehensions that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled." He concluded his appeal with a motion that a committee be appointed to draw up appropriate amendments that would then be submitted to the states for ratification.

For over three months, committees of both House and Senate labored and argued, sometimes over major substance and at other times over precise wordings. Many states sent in suggested amendments, and Madison offered his own thoughts, drawing heavily on Virginia's Declaration of Rights of 1776. While Madison can be credited as a prime motivator in the House, the amendments that finally emerged reflected the efforts of many Senators and Representatives. On September 25, 1789, the Senate approved the twelve amendments that the House had agreed to the day before. By December 15, 1791, three-fourths of the states (now including Vermont) had ratified the ten amendments that, collectively, are known as the American Bill of Rights.¹

This same Congress passed the Judiciary Act of 1789. By

1. The two that failed dealt with re-enumeration of the House of Representatives and changing compensation for all congressmen, neither of these vital enough to make Jefferson's list of liberties to be preserved. The compensation amendment, which had no time limit for ratification, was finally adopted by three-fourths of the states in 1992, becoming the Twenty-Seventh Amendment.

its terms the courts had the responsibility of testing legislation against the Constitution, a power that Madison thought wisely invested in the third branch of the federal government. For the freedoms and guarantees spelled out in the Bill of Rights should not be vulnerable to legislative whim. Such freedoms as the First Amendment specified — freedom of speech, of the press, of assembly, and the right of petition — merely recognized rights that were natural and inalienable. So also freedom of religion, given a kind of double guarantee in that amendment: "Congress shall make no law respecting an establishment of religion, or prohibit-

ing the free exercise thereof." This launched the uniquely American experiment: no national church, no interference with religious practices so long as public health and safety were not endangered. Government should do nothing to help religion, nothing to hinder.

The Second Amendment addressed the necessity of "a well regulated militia," assuring the states that their control and support of such militia would not be threatened. The Third Amendment, pertaining to the quartering of troops in private homes, has seldom required any litigation in subsequent centuries. On the other hand, the proscription "against unreasonable searches and seizures" (Fourth Amendment) has been repeatedly invoked, as has the Fifth Amendment's broad rules against double jeopardy, self-incrimination, and any denial of "life, liberty, or property, without due process of law." The "right to a speedy and public trial" is assured in the Sixth Amendment, and that trial shall be before "an impartial jury"; moreover, the accused has the right to confront his or her accusers, and the right of legal counsel. The right of trial by jury is also spelled out in civil cases, and all factual determinations in such a trial must be accepted by any other court (Seventh Amendment). The Eighth Amendment prohibits "excessive bail" as well as "cruel and unusual punishments." Finally, the Ninth and Tenth Amendments provided the most assurance to nervous states by limiting the rights of the central government, and reserving all other rights "to the States respectively, or to the people."

Madison did not win everything that he pressed for, but he — and the country — won much. Some of the guarantees went back to Magna Carta days of the early

* IN THEIR OWN WORDS

Arguments for a Bill of Rights, 1789

Beginning with this speech to the House of Representatives on June 8, 1789, James Madison took the lead in adding a Bill of Rights to the new Constitution.

[I am] compelled to beg a patient hearing to what I have to lay before you. And I do most sincerely believe, that if Congress will devote but one day to this subject, so far as to satisfy the public that we do not disregard their

wishes, it will have a salutary influence on the public councils, and prepare the way for a favorable reception of our future measures. It appears to me that this House is bound by every motive of prudence not to let the first session pass over without proposing to the State Legislatures some things to be incorporated into the Constitution, that will render it acceptable to the whole people of the United States, as it has been found acceptable to a majority of them. I wish, among other

reasons why something should be done, that those who had been friendly to the adoption of this Constitution may have the opportunity of proving to those who were opposed to it that they were as sincerely devoted to liberty and a Republican Government as those who charged them with wishing the adoption of this Constitution in order to lay the foundation of an aristocracy or despotism.

thirteenth century, others back to England's own Bill of Rights of the late seventeenth century, while many more rested upon declarations drawn up in the several states. Together, these ten amendments (especially as they have been applied to the states through the Fourteenth Amendment)² are widely regarded as the bulwark of American liberty, the surest guarantee that government shall be an instrument for the preservation rather than the destruction of freedom.

CONCLUSION: A NEW REPUBLIC

In assessing the Constitution as a whole, Madison took the long view of its contribution to human history. Of course, this fundamental document addressed itself to current needs, dangers, and opportunities with respect to the thirteen states in 1787. But it also reflected a vision of the nature of man, of society, of human happiness. Best of all, perhaps, it reflected an optimism that refused to be beaten down by the naysayers and gloom-peddlers. The people should not hearken, Madison advised in *Federalist* Number 14, "to the unnatural voice which tells you that the people of America . . . can no longer live together as members of the same family; can no longer continue the mutual guardians of their mutual happiness; can no longer be fellow citizens of one great, respectable, and flourishing empire." As Lincoln would later urge, Americans should heed the "better angels" of their nature.

The Constitution did not create a democracy; *republic* was very much the preferred word. But the Constitu-

tion was flexible enough, "incomplete" enough, to allow for democratic developments in the decades that followed. Those developments harked back to the phrase with which the Constitution began: "We the people." If final sovereignty was vested not in any layer or level of government but only in the people, then this grand repository of power comprised the ultimate check and balance. In the inevitable jockeying that would occur among the executive, legislative, and judicial branches, all three were constrained by an awareness that behind and above them stood the people. As citizenship and voting rights expanded in the two centuries that followed, the people acquired ever larger opportunities, ever more awesome responsibilities.

For a dozen years, the American people had celebrated the adoption of the Declaration of Independence. Now in 1788, they had occasion for additional celebration: the birth or rebirth of a nation. Early in 1788 Boston set a pattern by organizing a major parade, with banners, floats, and marchers drawn from many occupational groups and levels of society. In city after city, once ratification in the particular state had been achieved, "Grand Federal Processions" commemorated the event, even as they sought to cement public sentiment. As one observer noted in 1788, the strength of any government depended on "the good opinion people in general have of it." Therefore, it was good "policy, and a sure mark of patriotism and public virtue, to endeavor that all ranks and orders of people should be pleased with, and should support it." To this end, he added, "nothing has a greater tendency to this than for the people of all conditions to assemble together, at certain times, to join in the celebration of the government under which they live." Under the new Constitution, the people had sober respon-

2. This "incorporation" or "nationalization" of the Bill of Rights has been one of the most notable developments in twentieth-century Supreme Court jurisprudence.

sibilities, but they could also have joyful festivities.

So in the final year of the 1780s, a nation had been reborn, a new form of government established, and a host of complex problems confronted, though not necessarily solved. Like Charles Willson Peale, raising the drape on his new museum in Philadelphia, Americans could look toward the remaining years of the eighteenth century with a sense that the curtain was going up on an altogether different drama in the history of the United States.

SUGGESTED READING

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