Washington Giving the Laws to America *(circa 1800) captures the almost mythical qualities Americans attached to the Constitution and its creators. The Framers themselves took a modest view. Washington wrote: "Experience is the surest standard by which to test" a nation's constitution.*

The Constitution

This spring, the nation will begin its major celebrations of the Constitution's bicentennial. A Smithsonian Institution symposium on "Constitutional Roots, Rights, and Responsibilities" in May is but one of many scholarly events that will accompany the fireworks, parades, and speeches across the land. Here, in advance of those events, our contributors variously recall the troubles of the young Republic that spurred the Founding Fathers to frame a new charter, describe the debates in Philadelphia, and trace the Constitution's evolution through amendment and judicial interpretation over the next 200 years. For easy reference, we also publish the text of the original Constitution and its amendments.

'IT IS NOT A UNION'

by Peter Onuf

When news of the Peace of Paris reached the United States in the spring of 1783, war-weary Americans marked the event with jubilant parades. In Philadelphia, a writer in the *Pennsylvania Gazette* pleaded with his fellow citizens to restrain their revels during the celebratory "illumination of the city." It was the end of seven long years of deprivation and sacrifice, and an occasion for much pride: The United States (with crucial help from France) had just bested the mightiest power on earth.

Patriots looked forward to a new epoch of prosperity and growth. In a Fourth of July oration in 1785, a prominent Boston minister named John Gardiner declared that "if we make a right use of our natural advantages, we soon must be a truly great and happy people." The hinterland would become "a world within ourselves, sufficient to produce whatever can contribute to the necessities and even the superfluities of life."

Many Americans shared Gardiner's optimism. Their land was inherently rich in natural resources, still barely exploited. Virtually all of its three million inhabitants (including some 600,000 black slaves)

still lived within 100 miles of the Atlantic Ocean, in a band of settlement stretching some 1,200 miles from Maine to Georgia. In 1790, the first U.S. census would establish the nation's demographic center at a point 25 miles *east* of Baltimore. At the time of the Revolution, that Maryland city, with a population of some 6,000, was the nation's fifth largest, behind Philadelphia (30,000), New York (22,000), Boston (16,000), and Charleston (14,000).

Directly or indirectly, city folk depended upon trade for their livelihood. Merchant ships set sail for Europe bearing wheat, corn, fur pelts, dried fish—or headed down the coast to pick up cargoes of tobacco, indigo, and rice from Southern plantations before crossing the Atlantic. They returned carrying calico, velvet, furniture, brandy, machinery, and often with new immigrants. Labor shortages in the cities pushed wages for servants, stevedores, and carpenters far higher than those prevailing in the cities of Europe. Many foreign visitors remarked on the new nation's general good fortune. "Nor have the rich the power of oppressing the less rich," said Thomas Cooper, a British scientist, "for poverty such as in Great Britain is almost unknown." (Such reports were not always reliable. One traveler wrote home about the amazing American Wakwak tree, with fruit that grew in the shape of a young woman.)

A Christian Sparta?

But the overwhelming majority of Americans—more than 90 percent—lived on farms. On a tract of 90 to 160 acres, the typical American farmer grew corn and other staples for home consumption, and raised chickens, pigs, and a dairy cow or two for his family, with perhaps a few extra animals to be bartered in the village market. Visits to town were weekly events at best; anyone who journeyed more than 50 miles from home was probably heading west, leaving for good. People and news traveled slowly. It took about a month for a Philadelphia newspaper to reach Pittsburgh, then a crude frontier outpost 250 miles inland.

Despite the general sparsity of population, local crowding and worn-out cropland in New England produced growing numbers of migrants. They crossed the Appalachians over rough wagon trails to the frontier in western Pennsylvania and Virginia, or to the future states of Kentucky, Tennessee, and Ohio. Other settlers moved South, to Georgia and the Carolinas. And all during the 1780s modest

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Shaysites fall under the fire of Massachusetts militiamen in 1786. Though quickly suppressed, Shays's Rebellion shocked the nation's leadership.

numbers of new immigrants from Europe continued to arrive at East Coast ports, chiefly from Ireland, Scotland, and Germany.

And yet, despite the outward signs of economic vitality during the mid-1780s, there was a growing alarm among many of the new nation's leaders—men such as George Washington, John Jay, and Alexander Hamilton. The states, only loosely bound together under the Articles of Confederation of 1781, were constantly bickering over conflicting territorial claims beyond the Appalachians, and Congress was powerless to mediate. Near Wilkes-Barre, Pennsylvania militiamen had even opened fire on Connecticut settlers.

Spain and Great Britain were poised to take advantage of the frontier's "anarchy." To the north, British troops still garrisoned forts along the Great Lakes, a violation of the Treaty of Paris. To the south, the Spaniards, who held New Orleans and claimed all the lands west of the Mississippi, had closed the great river to American shipping below Natchez. King Charles III's officers were actively encouraging American settlers in Kentucky to break away from the Union and establish political and commercial relations with Spain.

Washington and his allies worried less about America's outright conquest by a foreign power than the nation's fragmentation and decline into a state of degrading neocolonial dependency. A postwar

consumer spree deepened that concern. Samuel Adams, the austere Bostonian, fretted that his countrymen's hunger for "luxury" goods imported from England—glassware, clocks, rugs—was "prostituting all our glory, as a people." Few of his peers shared Adams's vision of a future America reigning as a virtuous "Christian Sparta," but they worried that the expensive imports would drain the nation of scarce hard currency and hinder the growth of domestic industry.

The states themselves were badly divided over these and other issues. The merchants, farmers, and fishermen of the North regarded the slave-owning plantation proprietors of the South with deep suspicion. Geographically and culturally, great distances separated them. Thomas Jefferson once drew up a list comparing the people of the two regions, describing Northerners as "chicaning," "jealous of their liberties and those of others," and "hypocritical in their religion." Southerners, he said, were "candid," "zealous for their own liberties but trampling on those of others," and devoted only to the religion "of the heart."

Economic issues were also divisive. Many Northern traders and politicians were angered by British laws that banned American merchantmen from the lucrative trade with the British West Indies, involving the exchange of Southern tobacco and rice for Caribbean sugar, molasses, and rum. But the Southerners feared a Northern monopoly on that traffic more than they did the relatively benign British one. Pierce Butler, later a South Carolina delegate to the Federal Convention, declared that the interests of North and South were "as different as the interests of Russia and Turkey."

Do-Nothing Congress

None of these challenges would have proved insurmountable for a strong national government. But the Continental Congress, operating under the Articles of Confederation, was ineffective. The Confederation was but "a firm league of friendship," as the 1781 document put it, that left the states their "sovereignty, freedom and independence, and every Power, Jurisdiction and right" not expressly delegated to the Continental Congress.

Among the many powers left to the states was that of taxing the citizenry. Congress received its revenues by levies on the state governments—"a timid kind of recommendation from Congress to the States," as George Washington described it. If a state chose not to pay, as often happened, Congress could do nothing.

Not only did the Articles grant Congress few powers, but they made it difficult for the legislature to exercise those that it did possess. There was no real executive, only a largely ceremonial president of Congress. The congressmen voted by states (there was thus no fixed number of legislators), and most important measures re-

quired the assent of nine of the 13 states to become law. Substantive amendments of the Articles could be adopted only by a unanimous vote in Congress and by the state legislatures. Every effort to strengthen the Confederation failed.

The history of the Articles themselves illustrates the difficulty of organizing concerted action by the states. A year after the Declaration of Independence, the Continental Congress, assembled in Philadelphia, had finally endorsed a draft of the Articles and sent it to the new state legislatures for ratification. Each of the ex-Colonies had strong objections, but, amid the pressures of wartime, they all swallowed their misgivings—except Maryland. It held out for four years, until March 1781. Meanwhile, the Continental Congress was forced to carry on the war effort without any constitutional authority. Laboring under enormous handicaps, it gave George Washington's beleaguered forces in the field little in the way of coherent support.

The 'Dogs of War'

By the mid-1780s, Congress was hard-pressed even to muster a quorum, and it suffered numerous indignities. In June 1783, after the Treaty of Paris, a band of mutinous soldiers surrounded the Pennsylvania State House in Philadelphia, where Congress was meeting, holding the legislators captive for a day. After the Pennsylvania authorities refused to call out the militia and restore order, the legislators decamped for Princeton, New Jersey, then moved to Annapolis, Maryland, before settling in New York City in 1785. The *Boston Evening Post* mocked the politicians for "not being stars of the *first* magnitude, but rather partaking of the nature of *inferior* luminaries, or *wandering* comets."

Victory, in short, had shredded many of the old wartime bonds. Without a common enemy to fight, Americans seemed incapable of preserving their Union. "Lycurgus," a pseudonymous writer in the *New Haven Gazette*, complained that the Union under the Articles "is not a union of sentiment;—it is not a union of interest;—it is not a union to be seen—or felt—or in any manner perceived."

Many local politicians—Congressman Melancton Smith of New York, Luther Martin of Maryland, George Mason of Virginia—dismissed such worries. The Antifederalists, as they were later called, believed that the preservation of republican liberties won by the Revolution depended on maintaining the sovereignty and independence of the states. They held, with Montesquieu, the great French *philosophe*, that republican government could survive only in small countries, where citizens could be intimately involved in politics. Maryland planter John Francis Mercer spoke for the Antifederalists when he declared that he was "persuaded that the People of so large a Continent, so different in Interests, so distinct in habits," could not

be adequately represented in a single legislature.

With some justice, the Antifederalists could also claim that the states were managing quite well. Their citizens enjoyed the benefits of the most progressive constitutions the world had ever known and, by and large, they were prospering. Patrick Henry dismissed all the talk of trouble in the land: Had *Virginia* suffered, he asked?

But Washington, Virginia's James Madison, and other advocates of an "energetic" central government warned that the 13 states would not survive for long on their own, at least not as republics. These nationalists (later called Federalists) viewed the growing power of the states as a threat to peace. The state governments had begun to fill the vacuum left by Congress, adopting their own commercial policies, ignoring national treaties, and, at the behest of wealthy citizens who feared that they would never otherwise be repaid, even assuming some debts incurred by Congress. The nationalists feared that increasing conflicts among the states would unleash what the Old Dominion's Edmund Randolph called the "dogs of war."

Whispering Treason

Such warnings were not easily dismissed. In New York, Governor George Clinton was enriching the state treasury by taxing merchandise shipped through New York between New Jersey and Connecticut. Feelings ran so high that Congressman Nathaniel Gorham of Massachusetts worried that "bloodshed would very quickly be the consequence."

The weakness of the central government handicapped American diplomats. Britain had refused to abandon its outposts on U.S. soil, arguing (correctly) that Congress had failed to enforce some of *its* obligations under the Treaty of Paris, namely, guarantees that prewar debts owed to British creditors would be repaid and that American Loyalists would be reimbursed for their confiscated property.* Several states had simply ignored these provisions.

On the frontier, the threats from foreign powers were a constant worry. Rufus King, a Massachusetts congressman, observed that if the nation's disputes with Spain over the Mississippi and other matters were not settled, "we shall be obliged either wholly to give up the western settlers, or join *them* in an issue of force with the Catholic king." Both prospects, he concluded, were unthinkable.

More troubling still to the nationalists were the activities of the American frontiersman themselves. From the Maine District of Massachusetts to western North Carolina, various separatists since the time of the Revolution had been petitioning Congress for admis-

*During the Revolution, some 100,000 Loyalists fled to Britain, Canada, and the British West Indies. Many of the exiles were well-to-do farmers or merchants, and they claimed to have left behind more than $40 million worth of property, which the state governments seized.

sion to the Union as new states. But the older states refused to relinquish their claims. Vermont, legally a part of New York, was the most durable—and dangerous—of these rebellious territories. Rebuffed by Congress during the Revolution, the Vermonters, led by a group including Governor Thomas Chittenden and Ethan Allen, hero of the Green Mountain Boys, had entered into not-so-secret negotiations with London to rejoin the British empire.

The nationalists were dismayed when these talks resumed in 1786. Washington wrote that the Vermonters might "become a sore thorn in our sides," adding, "the western settlements without good and wise management . . . may be equally troublesome."*

The Westerners, in Kentucky and Tennessee, were understandably frustrated by the weakness of the central government. Chief among their complaints was the absence of congressional help in fending off constant attacks by marauding Indians, often instigated by the British and the Spaniards. Nor could the state governments, they argued, effectively govern distant territories. "Nature has separated us," wrote Judge David Campbell of the would-be state of Franklin in western North Carolina. The frontiersmen's anger grew during 1786 and 1787 as rumors circulated that Congress was negotiating with Spain, offering to relinquish American claims to free navigation of the Mississippi in exchange for trade advantages. (These suspicions were justified, but the talks collapsed.) Kentucky's General James Wilkinson and other Westerners talked openly about leaving the Union and forming alliances with the Old World.

A Rat and a Gamble

All of the nationalists' apprehensions were dramatized by a shock in the summer of 1786: the outbreak of Shays's Rebellion.

The rebels were farmers in economically depressed western Massachussetts who faced ruinous new state taxes imposed to help retire the state's wartime debt. As distress turned to anger, Captain Daniel Shays, a veteran of the Revolution, emerged as the leader of a ragtag mob that gathered to close down the Massachusetts courthouses that oversaw farm foreclosures and sent debtors to jail.

Thomas Jefferson, serving abroad as the American minister to France, was unperturbed. "I like a little rebellion now and then," he wrote to Abigail Adams. "It is like a storm in the Atmosphere." But in the United States, the uprising could not be so airily dismissed. It sparked the first general alarm about the future of the Union. "I never saw so great a change in the public mind," observed Boston merchant Stephen Higginson that autumn.

Word of the insurrection spread quickly. In Annapolis, Maryland,

*Vermont finally gained statehood in 1791.

the news came during the first week of September, just as delegates from five states were meeting to discuss the condition of the Confederation's commerce. Among them were two of the country's most ardent nationalists—James Madison and New York's Alexander Hamilton—who were desperately seeking ways to strengthen the central government.

The stage for the Annapolis Convention had been set two years earlier at Mount Vernon, at a meeting hosted by George Washington. There, in March 1785, commissioners from Virginia and Maryland had met to resolve their disputes over tolls and fishing rights on the Potomac River. The success of the meeting led the two state legislatures to call for a larger meeting of all the states, to be held at Annapolis, to consider granting Congress broader powers to regulate interstate commerce.

The Annapolis Convention was a failure. Eight of the 13 states sent no representatives. More out of desperation than careful forethought, Hamilton and Madison proposed yet another meeting to consider strengthening the Confederation, to be held in Philadelphia in May 1787.

So clear to the Annapolis delegates was the case for reform that they might well have agreed to the Philadelphia meeting even without the shocking news from Massachusetts. The six-month rebellion was effectively ended in January 1787, in a battle near the federal armory at Springfield. Four Shaysites lost their lives. But the insurrection had already persuaded many state and local leaders to put aside their doubts about the need for a stronger central government.

In February 1787, after several states had already elected delegates to the Philadelphia Convention, the Continental Congress in New York City endorsed the gathering, with the stipulation (added at the insistence of Massachusetts) that it meet "for the sole and express purpose of revising the Articles of Confederation."

Patrick Henry, the fierce opponent of a stronger Union, had already declined to be a delegate from Virginia, declaring that he "smelt a rat." Indeed, few of the American political leaders who recognized the need for reform harbored any illusions about merely patching up the Confederation. They did not know what would happen at Philadelphia, or even if, like the Annapolis meeting, it would prove to be a failure, but they were now prepared to gamble. As Madison put it one month before the Federal Convention, the hurdles confronting any reform were so great that they "would inspire despair in any case where the alternative was less formidable."

PHILADELPHIA STORY

by Jack N. Rakove

"There never was an assembly of men, charged with a great and arduous trust, who were more pure in their motives, or more exclusively or anxiously devoted to the object committed to them."

It probably was shortly before his death, in 1836, that Virginia's James Madison, the sole surviving Framer of the Constitution, dictated those closing words of the preface to his notes of the debates at the Constitutional Convention. This was how Madison wanted his countrymen to imagine the Convention. In many ways we have followed his wishes—and will be asked to do so again during the bicentennial celebrations.

Yet, for most of this century, this popular image of the Founding has coexisted with another, less heroic portrait etched by scholars since Charles A. Beard published *An Economic Interpretation of the Constitution* (1913).

Rather than treat the Constitution as the product of a highly principled debate conducted by an extraordinary group of men who resolved *all* of the great questions before them, these historians have emphasized everything that was practical and tough-minded about the task of creating a national government: the threats and bargains that dominated the politics of the Convention, and the determination of the delegates to protect the interests of their states and, for that matter, of their own propertied class.

To strike an accurate balance between these two contrasting images is the great challenge that confronts anyone who studies the making of the Constitution.

That task is more important now than it has been at any point in our recent history. Today's controversy over constitutional jurisprudence, sparked by U.S. attorney general Edwin Meese III, requires that Americans ask again how much weight the "original intent" of the Framers should carry in interpreting the Constitution.

One thing is clear: The 55 delegates to the Philadelphia Convention were not all cut from the same cloth. Six had signed the Declaration of Independence, 14 were land speculators, 21 were military veterans of the Revolution, at least 15 owned slaves, and 24 served in Congress. Thirty-four were lawyers.

Present were many of the most outstanding men that the new Republic could muster. Among them were Benjamin Franklin, the president of Pennsylvania's Supreme Executive Council and the leading American scientist of the century, so disabled by gout and other

ailments at the age of 81 that he was carried from his lodgings to the Convention in a sedan chair borne by four convicts; Virginia's George Washington, then 55, who came to Philadelphia very reluctantly after three years of retirement from public life at Mount Vernon; New York's Alexander Hamilton, 30, Washington's wartime aide; George Mason, a 60-year-old Virginia plantation owner and (said Thomas Jefferson) "the wisest man of his generation."

Also in attendance were men of somewhat less distinction. One of the more interesting examples was Luther Martin, "the rollicking, witty, audacious Attorney General of Maryland," as Henry Adams later described him, "drunken, generous, slovenly, grand... the notorious reprobate genius."

Missing from the Convention were Thomas Jefferson, 44, author of the Declaration of Independence 11 years earlier, who was overseas serving as the American minister to France, and former congressman John Adams, 51, likewise engaged in England. The great firebrands of the Revolution—Samuel Adams, Thomas Paine, Patrick Henry—were also absent.

A Humid Summer

No delegates came from Rhode Island. "Rogue Island," as a Boston newspaper called it, was in the hands of politicians bent on inflating the currency to relieve farm debtors; they would have nothing to do with a strong national government and the monetary discipline it would impose. For lack of funds, New Hampshire's delegates arrived more than two months late, bringing the number of states represented to 12. Indeed, during the Convention's debates, the cost and difficulties of travel would occasionally be cited as looming obstacles to effective national government. Nearly a year, Madison predicted, would be "consumed in preparing for and travelling to and from the seat of national business."

The delegates were supposed to gather in Philadelphia on May 14, 1787, but it was the rare public assembly in 18th-century America that met on time. Only on Friday the 25th did delegates from seven states—a quorum—assemble in the spacious east room of the Pennsylvania State House, the same chamber where the Declaration of Independence had been signed. The delegates sat two or three to a desk. George Washington was immediately elected president of the Convention. Serious discussion began on the 29th. Thereafter, the

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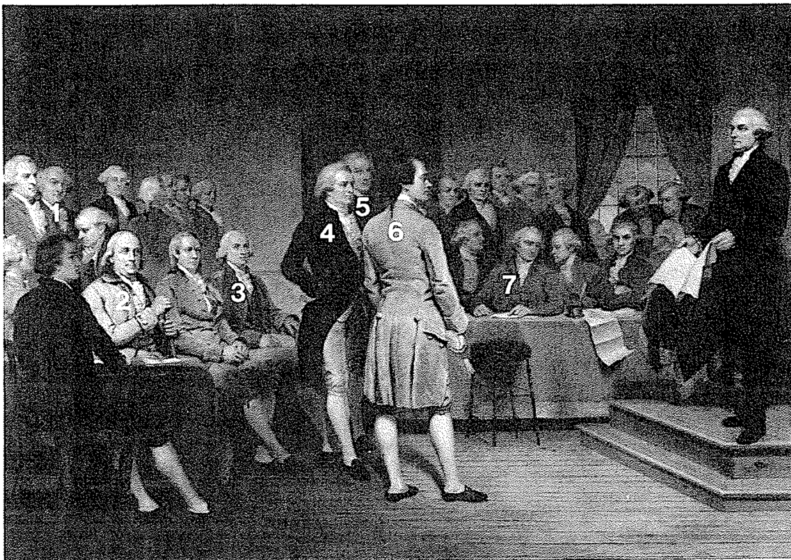


George Washington addresses the Constitutional Convention in the Pennsylvania State House. Among the delegates are (1) Gouverneur Morris, (2) Benjamin Franklin, (3) James Madison, (4) Edmund Randolph, (5) Elbridge Gerry, (6) Alexander Hamilton, and (7) John Dickinson.

delegates met six days a week until they finally adjourned on September 17, taking only one recess. It was, by contemporary standards, an arduous schedule. The delegates met for four, six, sometimes even eight hours a day.

In the afternoons, when the Convention adjourned, the delegates often repaired to local taverns—the Indian Queen, the George, the Black Horse—or turned to other amusements. These included visiting Mrs. Peale's Museum, with its fossils, stuffed animals, and portraits of the Revolution's heroes (by her husband, Charles), browsing through libraries and book and stationery shops, reading the city's eight newspapers, and watching the occasional horse race through the city streets, paved with bricks and cobblestones. Down by the busy docks and brick warehouses along the Delaware River, spectators could watch as inventor John Fitch demonstrated a novel contraption: a steam-powered boat.

Although there was a large and growing German population, the Quakers, in their broadbrim hats, still set the tone in Philadelphia, and the tone was sober but cosmopolitan. George Mason, from rural Virginia, complained after his arrival that he was growing "heartily tired of the etiquette and nonsense so fashionable in this city."

It was hot and humid that summer. "A veritable torture," moaned one French visitor. But the delegates had to keep their windows closed as they slept: Obnoxious stinging flies filled the air. The dyspeptic Elbridge Gerry of Massachusetts sent his family to the healthier clime of New York City, where the U.S. Congress was sitting. A few of his colleagues, such as Charles Pinckney, the young delegate from South Carolina, rented houses and brought their families to Philadelphia; others lived alone in rented rooms above the taverns or boarded in Mrs. Mary House's place at the corner of Fifth and Market streets near the State House. Most brought servants. George Washington was the guest of Pennsylvania delegate Robert Morris, Philadelphia's great merchant prince, who owned a large mansion a block from the State House.

A typical session of the Convention would find perhaps 35 or 40 delegates from 10 or 11 states in attendance. Some delegates came and went, others sat silently the entire time—and a few would have been better advised to say less. Washington did not so much as venture an opinion until the last day of debate. But his stern presence in the chair did much to preserve the decorum of the meeting.

Madison's Fears

The debates were held in secrecy. Otherwise, candor would have been impossible, since the delegates knew that their opinions and votes, if made public, would become live ammunition in the hands of political foes back home. Moreover, the threat of deadlock would have quickly arisen had the dissidents within the Convention been allowed to stir up a hue and cry among their constituents. "Their deliberations are kept inviolably secret, so that they set without censure or remark," observed Francis Hopkinson, a Philadelphia musician and signer of the Declaration, "but no sooner will the chicken be hatch'd but every one will be for plucking a feather."

Nevertheless, we know a great deal about what was said at the Convention, thanks chiefly to the copious daily note-taking of Virginia's James Madison, then just turned 36, who is now generally regarded as the "father of the Constitution."

Were he alive today, the slight, soft-spoken Madison would probably be happily teaching history or political theory at his alma mater, Princeton University (or the College of New Jersey, as it was then known). He took a distinctively intellectual approach to politics, reinforced by a decade of experience in the Virginia legislature and the U.S. Congress. He had read deeply in the history of ancient and modern confederacies and pondered the shortcomings of the Articles of Confederation and the state constitutions. (It was Madison's frustration with the scanty archives left by earlier confederacies that prompted him to take meticulous notes at the Convention.) He ar-

rived in Philadelphia 11 days early to begin drafting, with his fellow Virginians, the Virginia Plan. After the state's 34-year-old governor, Edmund Randolph, presented the plan on May 29, it became, in effect, the agenda of the Convention.

The starting point for all of Madison's proposals was his belief, based on the nation's unhappy experiences under the Articles and under the state constitutions, that the state legislatures could not be counted on to respect the national interest, the concerns of other states, or even the "private rights" of individuals and minorities.

Like most other Federalists, Madison thought that the legislatures were dominated by demagogues who sought office for reasons of "ambition" and "personal interest" rather than "public good." Such men—e.g., Patrick Henry, his great rival in Virginia—could always "dupe" more "honest but unenlightened representative[s]" by "veiling [their] selfish views under the professions of public good, and varnishing [their] sophistical arguments with the glowing colors of popular eloquence."

From this condemnation of state politics, Madison drew a number of conclusions that appeared in the Virginia Plan. First, unlike the existing Congress, which relied upon the good will of the states to see its resolutions carried out, the new government would have to be empowered to impose laws and levy taxes directly upon the population, and to enforce its acts through its own executive and judiciary. Second, he hoped that membership in the new Congress would result from "such a process of elections as will most certainly extract from the mass of the society the purest and noblest characters it contains."

One State, One Vote?

Yet, because Madison also doubted whether popularly chosen representatives could ever be entirely trusted, he hoped to make an indirectly elected Senate (with members nominated by the legislatures but elected by the people) the true linchpin of government. Not only would this Senate thwart the passage of ill-conceived laws by the lower house, it would manage the nation's foreign relations and appoint all major federal officials. But since even the Senate could not always be counted upon to legislate wisely, Madison sought an additional check in the form of a joint executive-judicial Council of Revision that would possess a limited veto over all acts of Congress.

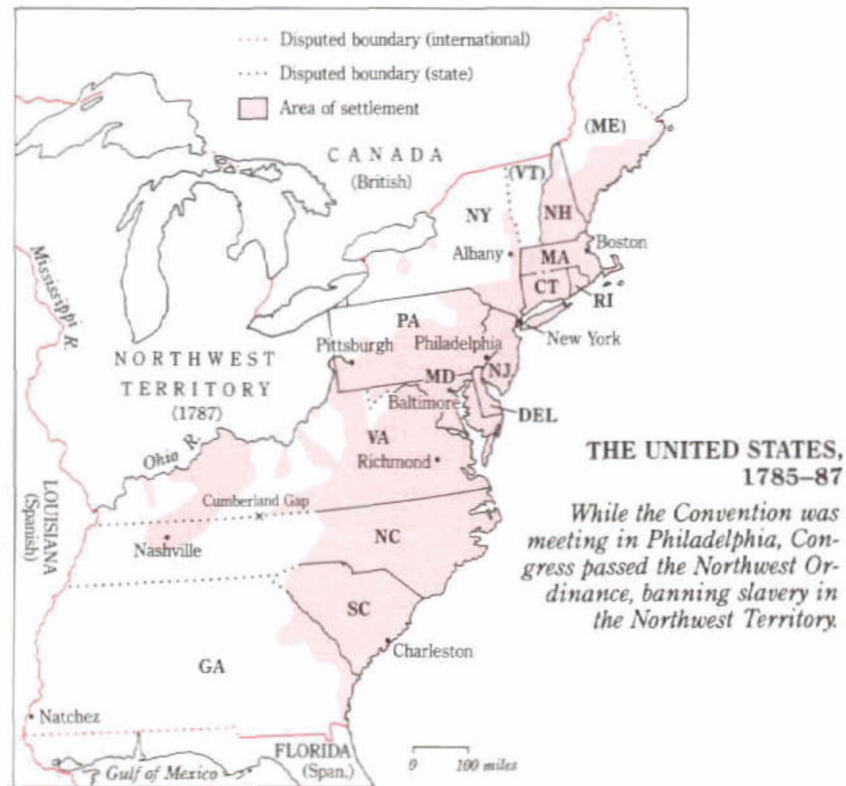
Most important of all, Madison wanted to arm the national government with a "negative in all cases whatsoever" over the acts of the states. This radical veto power would be shared jointly by Congress (or the Senate) and the Council of Revision.

In Madison's mind, the whole edifice of the Virginia Plan rested on the adoption of some form of proportional representation in Congress. If the Confederation's "one state, one vote" scheme were

retained, for example, each citizen of tiny Delaware (population in 1790: 59,000) would, in effect, carry the same weight in the powerful new government as 12 Virginians. Delegates from Massachusetts and Pennsylvania, the Confederation's other two largest states, reached the same conclusion.

The Pennsylvanians, in fact, wanted to deny the small states an equal vote even within the Convention. But in a private caucus held before the Convention, the Virginians persuaded Pennsylvania's leading delegates—James Wilson (the Convention's finest legal mind), Gouverneur Morris (its wiliest advocate and its most talkative delegate, with 173 speeches), and Robert Morris (the former superintendent of finance for the Confederation)—that they could prevail over the small states by force of reason. And sooner rather than later. For the large states' delegates also agreed that the problem of representation had to be solved first.

Two of the small states' leaders tried to avoid the clash: Roger Sherman, a 66-year-old Connecticut farmer and storekeeper turned politician, and John Dickinson of Delaware, who had gained fame as



THE UNITED STATES, 1785–87

While the Convention was meeting in Philadelphia, Congress passed the Northwest Ordinance, banning slavery in the Northwest Territory.

the "penman of the Revolution" during the late 1760s for his antitax *Letters from a Farmer in Pennsylvania*. Sherman was among the signers of the Declaration of Independence; Dickinson had refused to put his name to it, still hoping for reconciliation with Great Britain. Both men had taken leading roles in drafting the Articles of Confederation a decade before the Convention. Now, during the early days of debate in Philadelphia, they tried to head off full discussion of the dangerous issue of representation.

Let the Convention first determine what it wanted the national government to do, they suggested. Perhaps it might vest Congress with only a few additional powers; then there would be no need to propose any changes in the system of representation.

Toward the Great Compromise

Their opponents would not waver. "Whatever reason might have existed for the equality of suffrage when the union was a federal one among sovereign states," Madison flatly declared, "must cease when a national government should be put into the place."

Although interrupted by discussion of other issues, such as fixing the qualifications for legislative office, the struggle over representation would go on for seven grueling weeks. It lasted until July 16, when the Great Compromise, as scholars now call it, allowed the Convention to move forward.

The fight went through three phases. During the first (May 29–June 13), the large states exploited the initiative they had seized with the Virginia Plan to gain an early endorsement of the principle of proportional representation in both houses. The small-state men rallied after June 14, when William Paterson, 42, a diminutive country lawyer and New Jersey attorney general—"of great modesty," noted Georgia's William Pierce, "whose powers break in upon you and create wonder and astonishment"—presented the New Jersey Plan.* This second round of debate came to a dramatic end on July 2, when the Convention deadlocked (five states to five, with Georgia divided, and thus losing its vote) over a motion by Oliver Ellsworth of Connecticut to give each state an equal vote in the Senate.

Round Three began immediately, with the appointment of a committee made up of one member from each delegation and explicitly charged with finding a compromise. The Convention received its report on July 5, debated it until the 14th, and finally approved it by a narrow margin two days later.

These seven weeks were the Convention's true testing time.

*The New Jersey Plan would have amended the Articles of Confederation, leaving the unicameral Congress intact, but empowering it to elect a plural executive and granting the national government the power to impose taxes directly on the citizens of states that failed to meet the contributions quotas assigned them by Congress. The government would also have the power to compel the states to abide by its laws by force of arms. This was a crucial concession, for it acknowledged the fundamental weakness of confederation.

THE 'NEFARIOUS INSTITUTION'

James Madison was somewhat surprised by the intensity of the debates between the large and small states at Philadelphia. After all, he told the delegates on June 30, the states were really not divided so much by size as by "the effects of their having, or not having, slaves."

Yet slavery did not become a major issue at the Constitutional Convention. In August, Gouverneur Morris passionately denounced it as "a nefarious institution." But, as John Rutledge of South Carolina quickly reminded the delegates, "the true question at present is whether the Southern states shall or shall not be parties to the union."

As they would time and again during the Convention, the delegates turned away from divisive social issues to focus on what historian James MacGregor Burns has called the "mundane carpentry" of making a constitution.

Abolitionist sentiment was widespread but not deep in 1787. Traffic in imported African slaves was outlawed everywhere except in Georgia and the Carolinas, yet only Massachusetts had banned slave ownership. Many delegates, Northerners and Southerners alike, disliked slavery; some also believed, as Connecticut's Oliver Ellsworth said, that the arrival of cheap labor from Europe would ultimately "render slaves useless."

Such hopes, combined with the delegates' sense of the political realities, led them to reduce the slavery issue to a series of complicated tradeoffs.

Early in June, the large states accepted the famous "three-fifths" compromise: Slaves (carefully referred to as "all other Persons") would each count as three-fifths of a free white "person" in any scheme of representation by population. In return, the Georgians and Carolinians tacitly agreed to support the large states' ideas for a strong national government.

But on August 6, a report by the Committee of Detail upset the agreement. The Committee recommended several measures that would weaken the new national government, including a ban on national taxes on exports. More important, it proposed a ban on any federal regulation of the slave trade.

The debate was heated. Rufus King of Massachusetts reminded the Southerners of the earlier bargain and added that he could not agree to let slaves be "imported without limitation and then be represented in the National Legislature." A slave influx could give undue legislative power to the South.

Another committee—the Committee of Eleven—was named to mediate the dispute. After more haggling, the ban on export taxes was retained. The government would be empowered to halt the slave trade in 1808. But the new Constitution also mandated the return to their owners of escaped slaves.

Congress did abolish the slave trade in 1808, but the "peculiar institution" did not die. Inevitably, the North-South division that Madison saw in 1787 widened, while the heated conflict between the large and small states faded almost as soon as the delegates left Philadelphia. The Framers' artful compromises, later denounced by abolitionists as "A Covenant with Death and an Agreement with Hell," could not contain the nation's passions over slavery.

The tension is apparent to anyone who reads Madison's daily notes. The character of debate covered a wide spectrum, from highly principled appeals to heavy-handed threats and pokerfaced bluffs.

In the speeches of the large states' leading advocates—Madison, Wilson, and Rufus King, the 32-year-old lawyer from Massachusetts—one finds powerful and profound briefs for the theory of majority rule. Indeed, the spokesmen for the other side rarely met the arguments on their own terms. Delaware's hot-tempered Gunning Bedford, Jr., claimed, for example, that the large states would "crush the small ones whenever they stand in the way of their ambitious or interested views." But when Madison and his allies demanded to know what common interests could ever unite societies as diverse as those of Massachusetts, Pennsylvania, and Virginia, the small-state men could not come up with an answer.

What was finally at issue was a question not so much of reason as of will. John Dickinson had made sure that Madison got the point immediately after the New Jersey Plan was introduced on June 15. "You see the consequences of pushing things too far," he warned, as the delegates filed out of the chamber at the end of the day. "Some of the members from the small states wish for two branches in the general legislature, and are friends to a good national government; but we would sooner submit to a foreign power, than submit to be deprived of an equality of suffrage in both branches of the legislature, and thereby be thrown under the domination of the large states."

Skepticism Abroad

When the large states hinted that perhaps they might confederate separately, or that the Union might dissolve if their demands were not met, Bedford retorted that the small states would "find some foreign ally of more honor and good faith, who will take them by the hand and do them justice."

In the end, it was the bluff of the large states that was called. Once the deadlock of July 2 demonstrated that the small states would not buckle, the necessity for compromise became obvious. And the committee, called the Grand Committee, that the Convention elected to that end was stacked in favor of the small states. The three members chosen for the most populous states—Elbridge Gerry of Massachusetts, Benjamin Franklin of Pennsylvania, and George Mason of Virginia—were less militant than others in their delegations.

While the Grand Committee labored, the other delegates observed the 11th anniversary of American Independence. Philadelphia marked the occasion in fine fashion. A fife-and-drum corps paraded about the city; the militia fired three cannonades. In the local taverns, revelers toasted the day.

The delegates kept their worries to themselves. "We were on

the verge of dissolution," wrote Luther Martin, "scarce held together by the strength of an hair, though the public papers were announcing our extreme unanimity." Indeed, up and down the Atlantic seaboard, editors were speculating about the proceedings in Philadelphia. "With zeal and confidence, we expect from the Federal Convention a system of government adequate to the security and preservation of those rights which were promulgated by the ever memorable Declaration of Independency," proclaimed the *Pennsylvania Herald*. "The world at large expect something from us," said Gerry. "If we do nothing, it appears to me we must have war and confusion."

In Britain, France, and Spain, royal advisers awaited news from America with detached curiosity. The Spaniards were particularly interested in the proceedings at Philadelphia, for if an effective government were not formed, American settlers in the lands west of the Appalachians might fall into their orbit. Even after the adoption of the Constitution, wrote historians Samuel Eliot Morison and Henry Steele Commager, "most European observers believed that the history of the American Union would be short and stormy."

On July 5, the committee presented its report to a glum Convention. The compromise it proposed was one in name only. In return for accepting an equal state representation in the Senate, the large states would gain the privilege of having all tax and appropriations bills originate in the House of Representatives, whose members were apportioned on the basis of population, with no changes by the upper chamber allowed. (Later, the Convention decided to allow the Senate to alter tax and spending laws.) Madison and his allies dismissed the proposed tradeoff as worthless, neither desirable in theory nor useful in practice; the Senate, they said, could simply reject a bill it disliked.

Averting a Collapse

But, by this time, argument no longer mattered.

The key vote of July 16 found five states for the compromise, four against, and Massachusetts divided by Gerry and Caleb Strong, who insisted that "an accommodation must take place." The compromise won, but not by much.

Emotions were still running high. New York's two remaining delegates, Robert Yates and John Lansing, Jr., had departed on July 10, declaring that the Convention was exceeding its authority. This point was raised several times during the proceedings, and brushed aside. As James Wilson had put it, the Convention was "authorized to *conclude nothing*, but... at liberty to *propose anything*."

Next on the Convention's agenda for the afternoon of July 16th was the difficult task of beginning to define the extent of the legislative authority of Congress.

But the large states' delegates were unprepared to go on. The

broad powers the Virginia Plan had proposed for Congress had rested on the expectation that both houses would be selected by proportional voting. "The vote of this morning had embarrassed the business extremely," Edmund Randolph declared during the afternoon of the 16th. He suggested that the Convention adjourn to give both sides a chance to rethink their positions. Mistakenly believing that Randolph was calling for an adjournment *sine die* (indefinitely), William Paterson of New Jersey immediately jumped to his feet and enthusiastically agreed that "it was high time for the Convention to adjourn, that the rule of secrecy ought to be rescinded, and that our constituents should be consulted."

But that, Randolph apologized, was not what he had meant. All he sought was an overnight adjournment. Tempers cooled, a few members hastened to remind their colleagues that even if "we could not do what was best, in itself, we ought to do something," and the Convention broke up for the day.

A Single Executive?

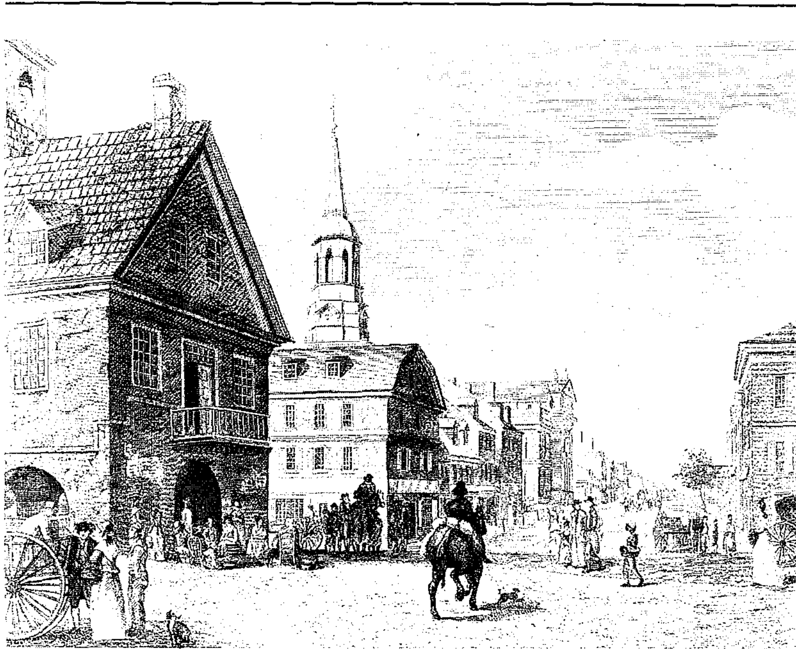
The next morning, the large states' delegates caucused to decide whether to pull out and confederate separately. "The time was wasted in vague conversation on the subject," Madison noted, "without any specific proposition or agreement." The Convention, despite the large states' unhappiness, would continue.

The critical vote of July 16, then, was not a compromise as we ordinarily use the term. One side had won its point, the other had lost. But the outcome of this struggle did cause a series of other changes and "accommodations" that profoundly affected both the structure of the future U.S. government and its powers.

In its preoccupation with representation in Congress, the Convention had barely discussed the other two branches of government. Most of the delegates agreed with Madison that the central problem was to find a way to enable the executive and the judiciary to withstand the "encroachments" of the legislature. But how was that to be accomplished?

At an early point, the Convention had rejected Madison's scheme for a joint executive-judicial Council of Revision. The judiciary could simply overturn unconstitutional laws by itself, the members felt, and it would be most effective if "free from the bias of having participated" in writing the laws.

It is remarkable how little time the Framers spent discussing the role of the judiciary. Harvard's Raoul Berger noted some years ago that "the very casualness with which the [Convention's] leadership assumed that judicial review was available ... suggests that the leaders considered they were dealing with a widely accepted doctrine." In their focus on the powers of the other branches of govern-



The view down Second Street from the corner of Market Street in Philadelphia. Besides its many churches, Philadelphia boasted 117 taverns.

ment, however, the Framers never sought to prescribe either the scope of the courts' power to declare laws unconstitutional or the basis on which this power could be exercised.

Far more of the Convention's time was devoted to the subject of executive power. But here, too, it is difficult to fathom exactly what the Framers intended.

Something of the uncertainty the Convention had to overcome was illustrated when the subject of the executive was first raised on June 1. After James Wilson moved that "the executive consist of a single person," the delegates sat speechless in their chairs, reluctant to begin discussing so great an issue. "A considerable pause ensuing," noted Madison, "and the chairman asking if he should put the question, Dr. Franklin observed that it was a point of great importance and wished that the gentlemen would deliver their sentiments on it before the question was put." A lively debate began, and it immediately revealed two things.

The delegates agreed that a republican executive could not be modeled on the British monarchy. Second, most members thought that considerations of efficiency and responsibility alike required an executive headed by a single person—though a few dissenting members joined Randolph in fearing that such an office would prove "the

foetus of monarchy." The dissenters variously favored either a plural executive, a kind of government by committee, or some form of ministerial government, akin to the British cabinet.

The great puzzle was how the executive was to be elected.

Today, Americans regard the strange device that the Framers finally invented, the electoral college, as evidence of how far they were prepared to go to prevent a popular majority from choosing a potential tyrant. What the Framers actually feared, however, was that a scattered population could never "be sufficiently informed of characters," as Roger Sherman put it, to choose wisely among what the Framers assumed would be a large field of candidates.*

Believing that popular election was impractical, then, many delegates saw no alternative to having Congress choose the executive. But this only raised other objections. An election by Congress would be "the work of intrigue, cabal, and of faction," Gouverneur Morris asserted. "Real merit" would be passed over.

Moreover, the executive could not be expected to discharge his duties conscientiously, free from improper legislative influence, unless he were made ineligible for reelection. But that, Morris noted, would "destroy the great motive to good behavior, the hope of being rewarded by a reappointment." Such an executive, he continued, would be tempted to "make hay while the sun shines."

The desire for reelection would be an incentive to good behavior. But would that not leave open the possibility that a leader's fondness for the powers and perquisites of office—or a public that had grown too used to a leader—might lead to the creation of a monarchy in everything but name?

Fishing for Trout

Just before it recessed on July 26, the Convention agreed (six states to three, with Virginia divided) to have Congress appoint a single executive, to serve for a single seven-year term. It then turned the task of recasting all the resolutions approved thus far over to a Committee of Detail composed of Randolph, Wilson, Ellsworth, John Rutledge of South Carolina, and Nathaniel Gorham of Massachusetts.

The muggy weather continued. "At each inhaling of air," wrote one visitor to Philadelphia, "one worries about the next one. The slightest movement is painful." Many of the delegates from nearby states took the opportunity to return home. Others fled to the countryside. General Washington, in his usual terse style, recorded in his

*Article II, Section 1 of the Constitution grants each state "a Number of Electors, equal to the whole Number of Senators and Representatives to the which the State may be entitled in the Congress." The small states thus enjoyed more influence than they would have under a strictly proportional system. It was hoped that the electors would be the wisest and ablest men of their states. The Constitution does not require electors to bind themselves to particular candidates: In 1968, a North Carolina elector designated as a Republican cast his vote for George Wallace.

journal: "In company with Mr. Govr. Morris and in his Phaeton with my horses, went up to one Jane Moore's (in whose house we lodged) in the vicinity of Valley Forge to get Trout."

When they reconvened on August 6, the delegates were eager to move the business toward a conclusion. During the remaining six weeks, the debates became more rushed—and more focused. They centered on specific clauses and provisions; decisions that would figure prominently in later controversies over the Constitution were reached with surprisingly little discussion, revealing far less about the Framers' intentions than modern commentators would like to know.

Far and away the most momentous changes that took place were those involving the powers of the executive.

In the report of the Committee of Detail, the major duties of the president (as the committee now named the executive) were confined to seeing that the laws were "duly and faithfully executed" and to serving as commander-in-chief of the armed forces. He would also enjoy a limited veto over acts of Congress. Two of the powers that provide the foundation for much of the political authority of the modern presidency remained in the Senate: the power to make treaties and the power to appoint ambassadors and justices of the Supreme Court (and perhaps even the heads of major executive departments, though this was left unclear).

In Britain, these powers were critical elements of the royal prerogative, and the Framers were reluctant to grant them to the president. Yet, with the report of the Committee of Detail in their hands, many began to reconsider. Madison, Wilson, Gouverneur Morris, and other delegates from the large states now opposed giving sole power over foreign affairs to the Senate, a body in which the small states would enjoy disproportionate influence, and whose members would be elected by the presumably reckless state legislatures.

Shaping the Presidency

From this unhappiness with the Great Compromise over representation in Congress, a new concept of the presidency began to emerge. Though many of the Framers worried about the potential abuse of executive power, some now described the president, in Gouverneur Morris's words, as "the general guardian of the national interests." He would not only carry out the national will as it was expressed by the legislature, but also act independently to define a national interest larger than the sum of the legislators' concerns.

The best evidence for this enlarged conception of executive power is circumstantial, resting less on anything the delegates said than on the final changes that led to the adoption of the electoral college. Unfortunately, the key discussions took place within the Committee on Postponed Parts, appointed on August 31 to consider

a potpourri of unresolved issues. Very little is known about what was said during its debates.

In the Committee's major report, read September 4, the president suddenly enjoyed significant responsibility for foreign affairs and the power to appoint ambassadors, judges, and other officials, with the "advice and consent" of the Senate. At the same time, his election by an electoral college promised to make the president politically independent of Congress. The report also specified a four-year term and eligibility for reelection.

The Committee had clearly sought to preserve the Great Compromise. The large states, it was assumed, would enjoy the advantage in promoting candidates for the presidency. (None of the Framers anticipated the formation of powerful political parties.) But if an election failed to produce a majority—as many delegates thought it usually would—the election would fall to the Senate. There, the small states would have greater influence.

Saving the Day

James Wilson rose to object. If the Senate controlled the ultimate power of election, he warned, "the President will not be the man of the people as he ought to be, but the Minion of the Senate." Many members agreed, but nobody could find a solution that would not erode the Great Compromise.

It was only after the report had been adopted that Roger Sherman and North Carolina's Hugh Williamson had the idea of sending deadlocked elections into the House of Representatives, with the members voting by states. This had the ingenious effect of preserving both the president's independence from the Senate and the Great Compromise. The amendment was adopted almost without debate.*

On September 12, George Mason broached the subject of a Bill of Rights. "It would give great quiet to the people," he argued, if trial by jury and other rights were guaranteed in the new Constitution. Roger Sherman replied that a Bill of Rights was unnecessary. The states, he said, could protect these rights: Eight of them had already incorporated such provisions into their constitutions. The discussion was brief. The Convention voted against including a Bill of Rights, 10 states to none. Only later, after several state ratifying conventions demanded it, were the guarantees that Americans now associate with the Constitution introduced in Congress and ratified by the states as the first 10 amendments.

Despite this progress, Madison was gloomy. As he informed

*The House of Representatives has been called upon to decide an election only twice: In 1800, it selected Thomas Jefferson over Aaron Burr; in 1824, John Quincy Adams over Andrew Jackson, Henry Clay, and William H. Crawford. The possibility that a candidate might prevail in the electoral college without winning a majority of the popular vote—which has occurred only once, when Benjamin Harrison defeated Grover Cleveland in 1888—has sparked many proposals for reform over the years.

Jefferson seven weeks later, he was discouraged because the Convention had rejected the Virginia Plan's scheme for an unlimited national veto of all state laws, instead vesting the courts with narrower powers of review. Madison was convinced that an independent judiciary, as framed by the Convention, would lack the political strength to override the improper acts of the legislatures, which could always claim to express the will of the people.

Madison had entered the Convention with higher hopes and more ambitious goals than any of the other delegates. What they saw as compromises and accommodations he regarded as defeats. He privately thought that the worst "vices of the political system" would go unchecked even if the new national government worked as planned. He did not cheer the end result.

So it fell to Benjamin Franklin to claim the privileges of age and reputation to urge the 41 delegates still present as the Convention drew to a close to make their final approval of the Constitution unanimous. That would speed its ratification by Congress and the states.

A Hopeful Experiment

"When you assemble a number of men to have the advantage of their joint wisdom," Franklin reminded them, "you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly," he asked, "can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel.... Thus I consent, Sir, to this Constitution, because I expect no better, and because I am not sure that it is not the best."

On September 15, 1787, the delegates, voting by states, did endorse the Constitution. But Franklin's appeal failed to sway three of the delegates. Mason, Randolph, and Gerry refused, for various reasons, to sign the Constitution. Mason worried, among other things, about the extent of the president's powers and the absence of a Bill of Rights.

For what Franklin invoked was not simply the cumulative wisdom of what the Framers had wrought, but also the character of the deliberations themselves. No one could better gauge the range of intentions, honorable and otherwise, that had entered into the making of the Constitution than Franklin, who was perhaps the most worldly and calculating of all the Framers. No one could better grasp both the limits as well as the possibilities of human reason than the leading American experimental scientist of his century.

Franklin was bold enough to observe how "near to perfection"

the completed Constitution came, yet he was just as prepared to concede that the objections against it might have merit. (Franklin himself favored a unicameral national legislature and a plural executive.) With his usual cleverness, he asked only that "every member of the Convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility."

It took Madison a while to appreciate Franklin's wisdom. But when he dictated the final paragraphs of his preface to the Philadelphia debates, he took the same philosophical view. "Of the ability and intelligence of those who composed the Convention," he wrote, "the debates and proceedings may be a test." But, he went on, "the character of the work which was the offspring of their deliberations must be tested by the experience of the future, added to that of the nearly half century which has passed."

To see the Constitution as Franklin asked its very first critics to see it, or as Madison later learned to view it, does not require later generations to invest the Framers with perfect knowledge, to conclude that they had closely considered and conclusively resolved every issue and problem that they faced.

The Framers were patriotic men of varied capacities who rose above their passions and self-interest to forge a grand document. But they left Philadelphia viewing the Constitution as a hopeful experiment whose results and meanings would be made known only through time.

Nothing would have struck the Framers as more unrealistic than the notion that their original intentions must be the sole guide by which the meaning of the Constitution would ever after be determined. They did not bar future generations from trying to improve upon their work, or from using the lessons of experience to judge the "fallibility" of their reason. They asked only that we try to understand the difficulties that they had encountered and the broad array of concerns, variously noble and self-serving, that they had labored to accommodate during nearly four months of debate in the City of Brotherly Love.

MAKING IT WORK

by A. E. Dick Howard

"We the People," read the first words of the new Constitution. As the former Colonies debated the Constitution after the Philadelphia Convention's adjournment, even these seemingly unexceptionable words came under attack. Who, demanded Virginia's Patrick Henry, had authorized the Convention to "speak the language of *We the People,* instead of *We the States*?" In the Continental Congress, Richard Henry Lee of Virginia thundered against the document's backers, a coalition, he said, "of monarchy men, military men, aristocrats and drones, whose noise, impudence and zeal exceed all belief."

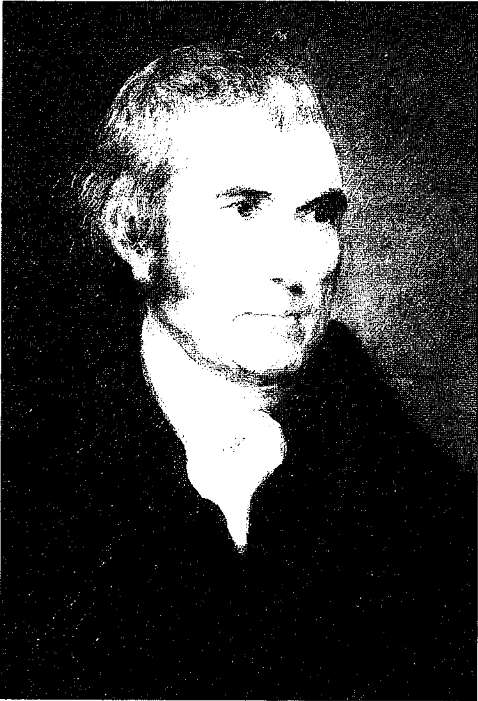
The real battle began after September 27, 1787, when the Continental Congress in New York City sent the new Constitution to special ratifying conventions to be held by the 13 states.

At first, the Federalists—the Constitution's supporters—held the initiative. During the Convention, they had managed to avoid the crippling precedent of the old wartime Articles of Confederation, which could not be altered without the unanimous consent of the states. The Constitution, by contrast, would become effective after only nine states had ratified it.

During the autumn of 1787, James Madison, the Convention's political maestro, brought his tactical skills to bear on ratification. He kept up a steady correspondence with allies around the country, gathering intelligence, coordinating campaigns, and offering advice on such crucial matters as the precise timing of the state conventions. To explain the Constitution to his countrymen, Madison contributed to a series of 85 essays that ran under the pseudonym "Publius," which he shared with Alexander Hamilton and John Jay, in several New York City newspapers. Published in book form as *The Federalist* (1788), they were hailed by Thomas Jefferson as "the best commentary on the principles of government which ever was written."

The Antifederalists, on the other hand, were in disarray. They advanced no positive alternatives. They disagreed even among themselves about the vices and virtues of the new Constitution. At first, they fell back on obstructionism. In September, Antifederalist legislators boycotted the Pennsylvania Assembly, denying it the quorum needed to authorize a convention. The tactic worked until a Federalist mob descended on the homes of two Antifederalist legislators and hustled them off to the State House. A quorum thus secured, the Assembly voted to call a convention.

Nationwide, early returns were favorable to the Federalists.



By dint of his strong personality and powerful intellect, John Marshall, fourth chief justice of the U.S. Supreme Court (1801–35), laid the foundation of American constitutional law.

Delaware moved swiftly, becoming the first state to ratify, on December 7, 1787. Pennsylvania quickly followed, joined soon thereafter by New Jersey, Georgia, and Connecticut. By January 1788, five of the nine needed states had ratified.

The contest was closer in Massachusetts. However, on February 5, after the Federalists agreed to support a measure calling upon Congress to consider nine amendments (later partially incorporated into the Bill of Rights) limiting the new government's powers, the Constitution was approved by a vote of 187 to 168.

Meanwhile, the Antifederalists, led by Virginia's Patrick Henry and Governor George Clinton of New York, among others, had begun their counterattack. In newspapers around the country, they warned that a "consolidated" national government would impose onerous taxes and wipe out the liberties won by the Revolution.

Nevertheless, in April 1788, Maryland joined the fold, followed late in May by South Carolina. Only one more state was needed to ratify. The Rhode Islanders, who chose to hold a statewide referendum on the Constitution, rejected it by a vote of 2,708 to 237.

Attention turned to Virginia, the largest and wealthiest state. "That overwhelming torrent, Patrick Henry," as General Henry

Knox called him, was the leading orator of his day, and in Richmond he summoned all of his powers. For three weeks, day after day, he flung invective at the Constitution and its "chains of consolidation." The authority conferred upon the president, Henry declared, "squints towards monarchy." Madison's checks and balances he dismissed as "your specious, imaginary balances, your rope-dancing, chain-rattling, ridiculous ideal checks and contrivances."

It took all of Madison's cool reason and tactical acumen, reinforced by the support of such prominent Virginians as Governor Edmund Randolph and John Marshall, to prevail. On June 27, 1789, Virginia ratified, 89 to 79. Again, the delegates petitioned Congress for amendments.

Unbeknownst to the Virginians, the ninth state, New Hampshire, had approved the Constitution four days earlier. Success in Virginia, however, was a special cause for celebration. John Quincy Adams noted in his diary that when Boston heard the news from Richmond, enthusiastic Federalists took to the streets, firing muskets into the air for hours on end.

Accepting the New Order

On July 4, towns and cities around the country celebrated the ratification with elaborate "federal processions." Philadelphia's was the grandest of all. A mile and a half long, it was crowned by the "Grand Foederal Edifice," an imposing structure supported by 13 Corinthian columns, three left unfinished, borne through the streets on a carriage pulled by 10 white horses.

Still, without New York, the Union would suffer a fatal geographic split. And the Antifederalists there enjoyed a two to one edge in the state convention, held in Poughkeepsie. On July 26, the Constitution was put to a vote. It squeaked by, 30 to 27. The prospect of later amendments and the last-minute support of Governor Clinton, who feared secession by New York City and the southern counties if his state failed to ratify, provided the margin of victory.

North Carolina and Rhode Island, the last holdouts, finally ratified in 1789 and 1790.

Almost everywhere, acceptance of the Constitution was at-

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tended by a spirit of reconciliation. At a raucous meeting of "Henryites" in Richmond, the great orator told his followers that he had done his best to defeat the document "in the proper place." He added: "As true and faithful republicans you had all better go home." Some Antifederalists would remain bitter foes of the new order, but they kept their dissent within bounds—an important political success for the young Republic.

When the first Congress under the new Constitution met in New York City in March 1789, Representative James Madison redeemed the Federalists' pledge, drawing up nine amendments based on proposals by the states and on existing provisions of various state constitutions. Ultimately, Congress submitted 12 amendments to the states. Ten were ratified by December 1791; two were rejected.*

Midnight Appointments

The Constitution created a distinctively American array of legal and political arrangements to combat what Madison called (in his famous Federalist No. 10) the "mischief of factions." The formulas that the Framers designed—federalism, the separation of powers, and checks and balances—work to ensure that no social class or interest group can entirely control the government. Each of these devices plays a part in dispersing or containing power while permitting effective government; for almost two centuries, the system has proved to be, as Madison predicted, "a Republican remedy for the diseases most incident to Republican Government."

The Framers also recognized the need for what Madison called "useful alterations [to the Constitution] suggested by experience."

One vehicle for such change is the formal amendment. Article V provides that amendments may be proposed by a two-thirds vote of both houses of Congress or, upon application by two-thirds of the states, by a national convention.† To take effect, an amendment must be agreed to by three-fourths of the states. This arrangement, Madison argued, "guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults."

Since the first Congress, more than 5,000 bills proposing constitutional amendments have been introduced, providing for everything from public ownership of the telegraph system to the restoration of prayer in the public schools. Only 33 proposed amendments

*One of the failed amendments would have increased the membership of the House of Representatives. The other would have required the approval of two successive Congresses before the legislators could increase their own pay.

†Congress is required to call a constitutional convention if two-thirds (34) of the states request it. Between 1975 and 1983, 32 states petitioned Congress for a convention to consider a balanced-budget amendment. It is uncertain, however, whether such a convention's agenda could be restricted to only one amendment.

EXPORTING THE CONSTITUTION

"The most wonderful work ever struck off at a given time by the brain and purpose of man." That was British prime minister William Gladstone's generous assessment of the U.S. Constitution in 1878.

Around the world, many political leaders before and after Gladstone shared his admiration, borrowing liberally from America's founding document for their own constitutions. The U.S. prototype may be, as Rutgers's Albert Blaustein says, "the nation's most important export."

Ironically, Britain is one of only six nations in the world today that have not followed the U.S. example of adopting a "written" constitution. Like Britain, New Zealand and Israel are committed to unwritten constitutions that can be altered by simple acts of parliament; Saudi Arabia, Oman, and Libya claim the Koran as their supreme law.

Historically, writing constitutions has proved far easier than preserving them. In 1791, Polish politicians authored the world's second written national constitution, echoing the Americans in their claim that "all authority in human society takes its beginning in the will of the people." But Russia's Catherine the Great saw the Polish experiment as a threat; a Russian invasion killed the plan before it could be implemented.

Constitutionalism fared little better in France. During the summer of 1791, reformers including the Marquis de Lafayette, George Washington's old comrade-in-arms, drafted a charter providing for a limited monarchy under King Louis XVI. Owing to the immense popularity of Benjamin Franklin, U.S. envoy to Paris during 1776–85, the French borrowed much more from the constitution of Pennsylvania (e.g., a unicameral legislature) than from the work of the Framers. But the 1791 plan lasted only a year before it was swept away in the nation's continuing revolutionary turmoil. Subsequent charters did not survive much longer; the French drew up more than a dozen before writing their most recent one for General Charles de Gaulle in 1958. To the French, historian C. F. Strong wrote some years ago, a constitution is "a work of art . . . the order and symmetry must be perfect."

have won enough votes in Congress to be sent to the states for their approval, and only 26 of these have been ratified.*

While few in number, the 26 amendments have dramatically transformed the constitutional landscape. The Bill of Rights has not only worked to limit federal power, but, through judicial interpretation, has come (with limited exceptions) to apply to the states as well. Following the Civil War, the Reconstruction Amendments—the Thirteenth, Fourteenth, and Fifteenth—were added to protect the newly

*Of the seven rejected amendments, two—described earlier—were proposed as part of the Bill of Rights. The other amendments would have stripped Americans who accepted foreign titles of nobility of their citizenship (1811); banned future amendments empowering Congress to interfere with "states' rights" (1861); authorized Congress to regulate child labor (1924); guaranteed absolute legal equality for women (1972); and granted the District of Columbia elected representation in Congress (1978).

The U.S. example had a more direct impact in Latin America. The early constitutions of Venezuela (1811), Mexico (1824), and Argentina (1853) leaned heavily on the U.S. model. Results were mixed. The Mexicans, unfamiliar with self-government, failed at their first try at a federal system. Their unhappy experience led Tocqueville to compare the U.S. Constitution to "those exquisite productions of human industry which ensure wealth and renown to their inventors, but which are profitless in any other hands."

More successful was Brazil's homegrown constitution of 1824. It combined a monarchy with limited popular rule, surviving until 1889.

Ever since Thomas Jefferson and Thomas Paine advised the French in 1791, American consultants have spread the gospel abroad. By and large, they have recognized that American-style institutions often do not work in other lands. For example, when lawyers on the staff of General Douglas MacArthur drafted (in only one week) a new plan of government for occupied Japan in 1946, they outlined a *parliamentary* democracy.

The world's longest (300 pages) and possibly most complicated constitution is the product of its largest democracy. India's 1949 constitution, prepared with the help of U.S. advisers, includes not only fundamental rights, which correspond almost exactly to the provisions of the U.S. Bill of Rights (revised to reflect U.S. Supreme Court interpretations), but also several "positive" rights. Long-oppressed castes, for example, are guaranteed fixed percentages of the parliamentary seats in New Delhi.

India's is one of only 29 national constitutions (out of 162) that are more than 26 years old. But neither the longevity of a charter nor the mere fact of its existence is always cause for celebration. Argentina's 1853 constitution, for example, has simply been ignored during some harsher periods of the nation's history. And many constitutions, notably those in the Soviet bloc and some in the Third World, make no provision for democratic government, or proclaim rights, such as free speech, that citizens have no real prospect of exercising.

Still, 200 years after the Framing, the democratic constitutions of Nigeria (1979), El Salvador (1983), and the Philippines (1987)—all prepared with U.S. help—testify to the continuing appeal of the American experiment.

freed slaves. No constitutional amendment has been the vehicle for more judicial interpretation than has the Fourteenth, with its guarantees of "due process of law" and "equal protection of the laws."

The courts have taken on a central role in interpreting and enforcing the Constitution. Indeed, in many ways, the history of the Constitution since 1789 is that of the Supreme Court. In creating the federal courts, the Framers did not explicitly confer upon them the power of judicial review—the authority to declare a law unconstitutional. Article VI of the Constitution, however, states that the Constitution and laws "which shall be made in Pursuance thereof" shall be the "supreme Law of the Land."

In 1803, in *Marbury* v. *Madison*, the Supreme Court, under

Chief Justice John Marshall, used the logic of Article VI formally to lay claim to the power of judicial review.

The case arose under unusual conditions. After Jefferson's Democratic-Republican Party swept to victory in the election of 1800, despairing Federalists looked to the judiciary as the country's last bastion against "mob" rule. In a series of midnight appointments just before leaving office, President John Adams named several new judges to the federal bench. But one of them, William Marbury, was never presented with his commission, and Jefferson's secretary of state, James Madison, refused to deliver it.

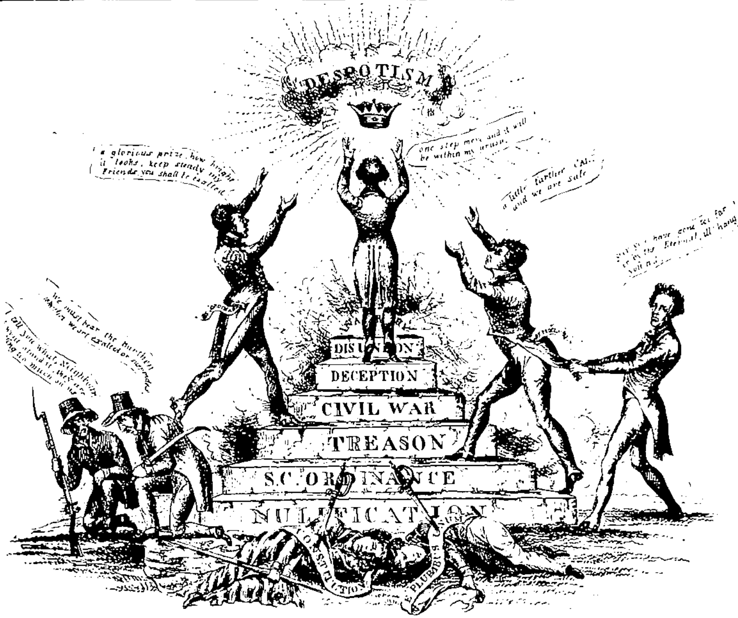
The immediate issue in *Marbury*—whether the writ that William Marbury sought could properly issue from the Supreme Court—was a narrow one. But Marshall seized the opportunity to criticize Jefferson's administration for actions "not warranted by law." Then, he wheeled around and ruled that the act of Congress under which Marbury was seeking a writ was unconstitutional. "It is," Marshall declared, "emphatically the province and duty of the judicial department to say what the law is."

'A Drag upon Democracy'

Marshall's deft handling of the case disarmed his critics. He asserted the Court's right to judicial review, but voided the congressional statute on the grounds that it had granted the Court *too much* power, thus averting a confrontation with Jefferson that the Court would have been sure to lose.

But, after *Marbury*, the Court often found that exercising its powers aroused wrathful opposition. In 1821, in *Cohens* v. *Virginia*, Marshall rejected the state of Virginia's claim that the Supreme Court lacked the authority to review the Cohens brothers' conviction, under Virginia state law, for illegally selling lottery tickets. In a twist reminiscent of *Marbury*, Marshall then upheld the Virginia conviction, sending the Cohenses to jail. This did not quiet Marshall's critics. Judge Spencer Roane of Virginia denounced *Cohens* as "a most monstrous and unexampled decision," which could only be explained by "that love of power which all history informs us infects and corrupts all who possess it, and from which even the upright and ermined judges are not exempt."

Although it is most often attacked for arrogating power to itself, the Supreme Court has also greatly expanded the authority of the other branches of the national government, especially that of Congress. In Article I of the Constitution, the Framers enumerated 17 legislative powers, from levying taxes to establishing post offices. To that list they added the seemingly innocuous authorization for Congress to make such laws as were "necessary and proper" for executing the stated powers.



One of many early controversies: Do states have the right to nullify parts of the Constitution? This 1833 cartoon attacks South Carolina's John C. Calhoun for his advocacy of the nullification doctrine.

Thomas Jefferson compared the potential mischief of this clause to children playing at "This is the House that Jack Built." "Under such a process of filiation of necessities," he wrote, "the sweeping clause makes clean work." As the subsequent expansion of government interests and activities indicates, his fears were not groundless. In *McCulloch* v. *Maryland* (1819), Chief Justice Marshall rejected a challenge by the state of Maryland to Congress's authority to create a Bank of the United States. The "necessary and proper" clause, he wrote for the unanimous Court, does not limit Congress to "absolutely indispensable" legislation. "We must never forget," he wrote with a flourish, "that it is a *constitution* we are expounding."

During the first 70 years after *Marbury*, the Supreme Court availed itself of judicial review on relatively few occasions, overturning, for example, only 10 acts of Congress. By the late 19th century, however, during the heyday of laissez-faire capitalism in America, conservative lawyers and judges were regularly using the commerce clause and the due process clause of the Fourteenth Amendment to defeat the work of reformist federal and state legislators.*

*The commerce clause (Article I, Section 8) grants Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The due process clause of the Fourteenth Amendment states: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

In *Lochner* v. *New York* (1905), for example, the Court struck down a protective state labor law that forbade bakers to work more than 60 hours per week, declaring it an abridgment of what it called the "liberty of contract." Justice Rufus W. Peckham, for the majority, dismissed New York's statute as "mere meddlesome interference with the rights of the individual" to work whatever hours he chooses.

In one of the most famous dissents in the Court's history, an exasperated Justice Oliver Wendell Holmes, alluding to the leading conservative thinker of the day, reminded his brethren that the Fourteenth Amendment "does not enact Mr. Herbert Spencer's *Social Statics*." Outside the Court, frustrated liberals assailed the Court's "judicial activism." In 1922, Senator Robert LaFollette, the Wisconsin Progressive, argued that the Court had secured the power of judicial review by "usurpation"; as late as 1943, historian Henry Steele Commager called judicial review "a drag upon democracy."

New Protections

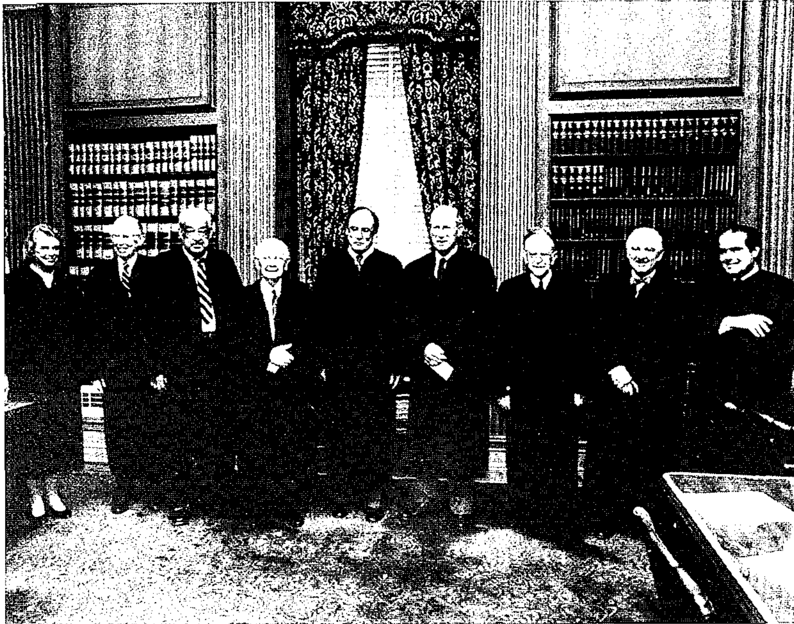
The inevitable showdown came in 1937, the sesquicentennial year of the Constitution's drafting. Chief Justice Charles Evans Hughes and his colleagues had invalidated several major elements of President Franklin D. Roosevelt's New Deal, including the National Industrial Recovery Act. In February, Roosevelt presented Congress with his famous "Court-packing" plan, asking, in the name of helping the Court to clear its crowded docket, for the authority to appoint an additional justice for each member of the Court over 70 years of age.* To FDR's surprise, even many of his allies in Congress opposed the measure. "Too clever—too damned clever," said one pro–New Deal newspaper. Roosevelt never got his wish.

In the meantime, however, the Supreme Court appeared to experience a sea change in attitude—what one wag called "the switch in time that saved nine." On April 12, 1937, the Court upheld, against a commerce clause challenge, the National Labor Relations Act. It signaled the beginning of a new era.

During the half-century since those New Deal cases, the Court has left state and federal legislators free to experiment very much as they chose with solutions to economic problems. Justice Hugo L. Black's opinion in *Ferguson* v. *Skrupa* (1963) sums up the modern Court's attitude: "We refuse to sit as a super-legislature to weigh the wisdom of legislation. Whether the legislature takes for its textbook Adam Smith, Herbert Spencer, or Lord Keynes or some other is no concern of ours."

Although the Court has abandoned "judicial activism" in the

*The Constitution does not fix the size of the Supreme Court. In 1789, Congress established a six-member Court, and it subsequently moved the number up and down six times before finally arriving, in 1869, at nine, the present composition. FDR's plan would have added six justices to the Court.



The Rehnquist Court. Despites its conservative majority, it has yet to make major departures from the judgments of the liberal Warren Court.

economic sphere, it has made vigorous use of the Constitution to police governmental acts in other areas. In a sense, it has turned its attention from "property rights" to "human rights."

The first hint of this new approach came in 1938. In a famous footnote in *United States* v. *Carolene Products,* Justice Harlan F. Stone suggested that there might be "more exacting judicial scrutiny" of legislation that restricted the political process or that reflected prejudice against "discrete and insular minorities."

The paradigm of judicial intervention to protect a racial minority is the Court's 1954 decision in *Brown* v. *Board of Education.* The Court held that "separate but equal" public schools for blacks and whites violated the Fourteenth Amendment's equal protection clause. *Brown* encouraged the emerging civil rights movement, as blacks sought equal treatment beyond the schoolroom. The Court consistently supported them. In 1955–56, Martin Luther King, Jr., emerged as a national leader when he led a boycott of the segregated city bus system in Montgomery, Alabama. In November 1956, the Court ruled that segregation of public transportation was unconstitutional. Congress's major civil rights initiatives—the Civil Rights Act of 1964 and the Voting Rights Act of 1965—were a decade away.

The example of *Brown* was not lost on other groups. By the late 1960s, feminists, the handicapped, prisoners, environmentalists, and other groups that had failed to achieve all of their goals through the political process began to take their grievances to the federal courts. The women's movement, for example, pursued its agenda on several fronts: constitutional amendment (the Equal Rights Amendment), legislation ("equal pay for equal work"), and litigation.

The Fourteenth Amendment was designed to protect the interests of the slaves freed by the Civil War. But it does not speak in terms of race. No state, it says, shall "deny to any person within its jurisdiction the equal protection of the laws." Thus, beginning in the early 1970s, the Supreme Court used the equal protection clause to strike down both state and federal measures found to discriminate against women. In 1971, it overturned an Idaho law that gave preference to men in naming administrators of estates; in 1973, it ruled unconstitutional a federal statute that automatically provided married men in the U.S. armed forces with allowances for dependents but required service*women* to prove that their families were dependent.

Searching for Meaning

In 1973, Justice William J. Brennan, Jr., argued that gender discrimination ought to be tested by the same standard of "strict scrutiny" that the Court applied in race cases. A majority of the justices would not go that far, choosing instead an "intermediate" level of scrutiny.

These decisions were handed down by a Supreme Court presided over by Chief Justice Warren Burger, one of four justices appointed by President Richard M. Nixon to halt the Court's much-criticized "activism." But the Burger Court proved to be as willing as its famous predecessor, the Warren Court (1953–69), to find creative uses for the Constitution. To be sure, the Court during the Burger years did modify some of the Warren Court's more liberal judgments, notably those broadly construing the Fourth Amendment's ban on unreasonable searches and seizures. But the Burger Court rediscovered, and found new uses for, the Fourteenth Amendment's due process clause.

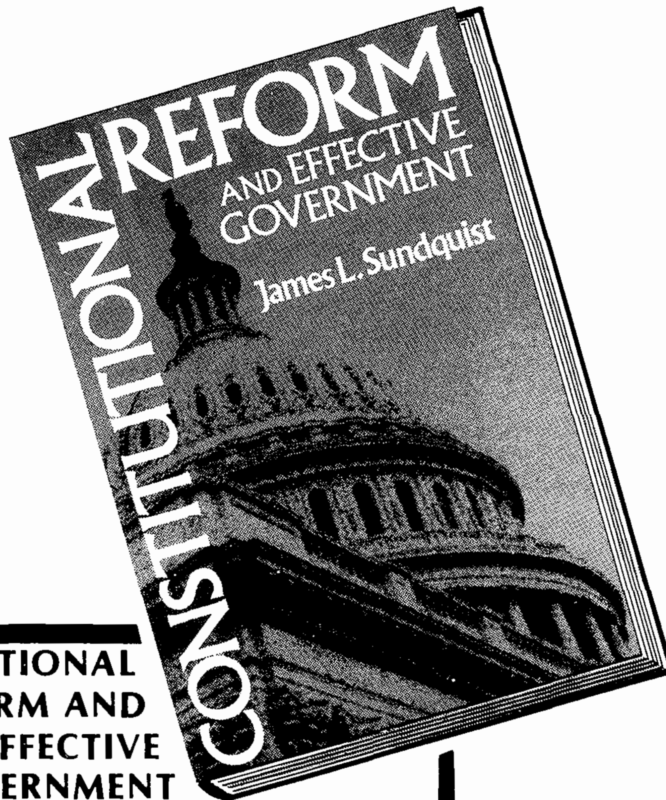
Indeed, the Burger Court's far-reaching decision in *Roe* v. *Wade* (1973) sparked more public outrage than any other Supreme Court ruling in recent memory. Dissenting justices Byron R. White and William H. Rehnquist (now chief justice) branded *Roe* an "extravagant exercise" of "raw judicial power." In *Roe,* the Court said that the due process clause implies a constitutional "right to privacy" that protects a woman's right to have an abortion during the first two trimesters of pregnancy without interference by the state. In other decisions, the Court has taken steps that enlarge the "right to pri-

vacy," striking down state laws that restrict access to contraceptives, or that overregulate marriage and divorce.

These decisions, too, sparked controversy. In a dissent against another "privacy" case in 1965, Justice Black wrote that the Court's talk of a "right to privacy" reminded him of the "natural law–due process" philosophy that the Court had used 60 years earlier in *Lochner*. Black's statement underscored the perpetual dilemma of the Supreme Court. Must it judge solely on the basis of what is written in the Constitution and what is recorded of the original debates over it and its amendments? Or can it refer to overarching natural law, enforcing "principles of liberty and justice," as Stanford's Thomas Grey writes, even when they are "not to be found within the four corners of our founding document"?

The Court has often split the difference. It grounds some of its decisions, such as those interpreting the First Amendment's establishment of religion clause, in the thinking of the Framers. Other judgments seem to reflect contemporary attitudes. Thus, the modern Court has extended the First Amendment's protection of free speech to "symbolic" speech (e.g., burning draft cards) and to commercial speech (advertising).

It is hard to know what the Framers would have made of all this. When the delegates met at Philadelphia in 1787, they knew that they were embarking upon a great experiment. Obviously, they did not intend the Constitution to be infinitely elastic; the rule of law could not survive such malleability. The barriers they erected against facile amendments testify to that. But they also knew, as Chief Justice Marshall later put it, that the Constitution was "intended to endure for ages to come, and, consequently, to be adapted to the various crises of human nature." And so it has been.



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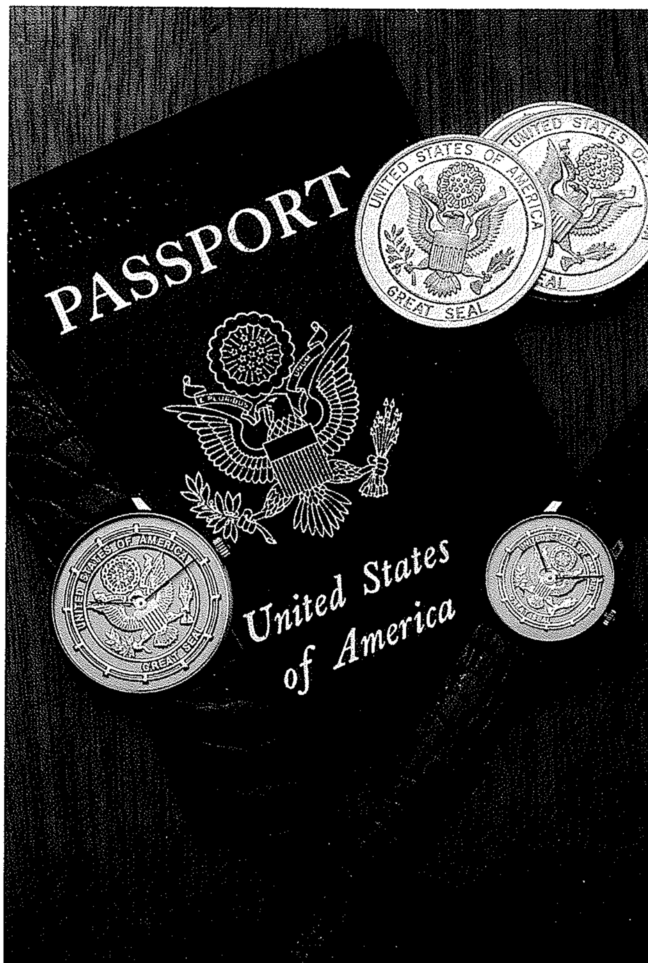

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The Constitution of the United States of America

James Madison

George Washington

Benjamin Franklin

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

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

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

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

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

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

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

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

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

No Person shall be a Senator who shall not have attained to the Age of thirty

*Changed by Section 2 of the Fourteenth Amendment (1868).

†Changed by Section 1 of the Seventeenth Amendment (1913).

‡Changed by Clause 2 of the Seventeenth Amendment (1913).

Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

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

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

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

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

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

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

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

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

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

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

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

No Senator of Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States,

*Changed by Section 2 of the Twentieth Amendment.

which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

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

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

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

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

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

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

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

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

To establish Post Offices and post Roads;

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

To constitute Tribunals inferior to the Supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and

*A presidential "pocket veto" occurs when a bill is not returned before Congress adjourns.

Offenses against the Law of Nations;

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

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

To provide and maintain a Navy;

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

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

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

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

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

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

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

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

No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.*

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

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

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

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

*But see the Sixteenth Amendment (1913).

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

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

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

Robert Morris

Roger Sherman

Charles Pinckney

Gouverneur Morris

ARTICLE II.

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

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

[The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal

*The Constitution does not require direct popular election of presidential electors, but all of the states mandated it by the mid-19th century.

Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.]*

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

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

[In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law, provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.]†

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

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

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

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court,

*Superseded by the Twelfth Amendment (1804).

†This clause has been affected by the Twenty-Fifth Amendment (1967).

and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

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

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

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

ARTICLE III.

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

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

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

The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

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

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

ARTICLE IV.

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

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

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

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

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

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

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

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing

*To "work corruption of blood" means to make the family of the convicted share his guilt.

†Superseded by the Thirteenth Amendment (1865).

Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress: Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI.

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

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

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

ARTICLE VII.

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

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

James Wilson

John Rutledge

Gunning Bedford

William Paterson

In Witness whereof We have hereunto subscribed our Names.

GEORGE WASHINGTON
President and deputy from Virginia

New Hampshire.
JOHN LANGDON
NICHOLAS GILMAN

Massachusetts.
NATHANIEL GORHAM
RUFUS KING

New Jersey.
WILLIAM LIVINGSTON
DAVID BREARLEY
WILLIAM PATERSON
JONATHAN DAYTON

Pennsylvania.
BENJAMIN FRANKLIN
ROBERT MORRIS
THOMAS FITZSIMONS
JAMES WILSON
THOMAS MIFFLIN
GEORGE CLYMER
JARED INGERSOLL
GOUVERNEUR MORRIS

Delaware.
GEORGE READ
JOHN DICKINSON
JACOB BROOM
GUNNING BEDFORD JR.
RICHARD BASSETT

Georgia.
WILLIAM FEW
ABRAHAM BALDWIN

Connecticut.
WILLIAM SAMUEL JOHNSON
ROGER SHERMAN

New York.
ALEXANDER HAMILTON

Maryland.
JAMES MCHENRY
DANIEL CARROL
DANIEL OF ST. THOMAS JENIFER

Virginia.
JOHN BLAIR
JAMES MADISON JR.

North Carolina.
WILLIAM BLOUNT
HUGH WILLIAMSON
RICHARD DOBBS SPAIGHT

South Carolina.
JOHN RUTLEDGE
CHARLES PINCKNEY
CHARLES COTESWORTH PINCKNEY
PIERCE BUTLER

Attest:
WILLIAM JACKSON, *Secretary*

The Amendments to the Constitution

Ratified 1791–1971

(The first 10 Amendments were ratified December 15, 1791, and form what is known as the "Bill of Rights")

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.*

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II

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

AMENDMENT III

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

AMENDMENT IV

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

AMENDMENT V

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

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall

*The Twenty-First Amendment was not ratified by state legislatures, but by state conventions summoned by Congress.

have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII

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

AMENDMENT VIII

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

AMENDMENT IX

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

AMENDMENT X

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

AMENDMENT XI *(Ratified February 7, 1795)*

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

AMENDMENT XII *(Ratified June 15, 1804)*

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—the President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representations from each state having one

vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

AMENDMENT XIII *(Ratified December 6, 1865)*†

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

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

AMENDMENT XIV *(Ratified July 9, 1868)*

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

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

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a

*Superseded by Section 3 of the Twentieth Amendment (1933).

†The Thirteenth, Fourteenth, and Fifteenth Amendments, known as the Reconstruction Amendments, were intended to guarantee the rights of slaves emancipated during the Civil War.

‡Changed by Section 1 of the Twenty-Sixth Amendment (1971).

member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

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

AMENDMENT XV *(Ratified February 3, 1870)*

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

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

AMENDMENT XVI *(Ratified February 3, 1913)*

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

AMENDMENT XVII *(Ratified April 8, 1913)*

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

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

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

AMENDMENT XVIII *(Ratified January 16, 1919)*

[SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

[SECTION 2. The Congress and the several States shall have concurrent

power to enforce this article by appropriate legislation.

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

AMENDMENT XIX *(Ratified August 18, 1920)*

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.
Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XX *(Ratified January 23, 1933)*

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

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

SECTION 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

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

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

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

AMENDMENT XXI *(Ratified December 5, 1933)*

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

SECTION 2. The transportation or importation into any State, Territory, or

*Prohibition, ratified during wartime, was repealed by Section 1 of the Twenty-First Amendment (1933).

possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

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

AMENDMENT XXII *(Ratified February 27, 1951)**

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not prevent any person holding the office of President when this Article was proposed by the Congress, and shall not apply to any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

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

AMENDMENT XXIII *(Ratified March 29, 1961)*

SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

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

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

AMENDMENT XXIV *(Ratified January 23, 1964)*

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

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

*This amendment was added after Franklin D. Roosevelt won four consecutive presidential elections.

AMENDMENT XXV *(Ratified February 10, 1967)*

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

SECTION 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

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

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

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

AMENDMENT XXVI *(Ratified July 1, 1971)*

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

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

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BACKGROUND BOOKS

THE CONSTITUTION

"It is a novelty in the history of society to see a great people turn a calm and scrutinizing eye upon itself, when apprised by the legislature that the wheels of its government are stopped; to see it carefully examine the extent of the evil, and patiently wait for two whole years until a remedy was discovered . . . without having wrung a tear or a drop of blood from mankind."

As Alexis de Tocqueville marveled in his classic 1835 appraisal of **Democracy in America** (Arden, 1986), there was nothing in the history of nations like the American experiment.

The ancient Greek city-states and Imperial Rome had boasted "constitutions," as did Britain. Yet, as scholar-diplomat James Bryce observed in **Constitutions** (Oxford, 1901), these were not "Fundamental Laws, defining and distributing the powers of government," but a few ordinary statutes and "a mass of precedents, carried in men's memories or recorded in writing." In short, they were vague and mutable, *of* government, not above it.

Modern constitutional history begins with England's Magna Carta, the charter of rights that the unpopular King John ("Softsword," to his detractors) was forced to grant to his rebellious barons at Runnymede, a field by the Thames, on June 15, 1215. The charter became the basis of the British Constitution, which was considerably modified in practice and by acts of Parliament (e.g., the Habeas Corpus Act of 1679).

And, as A. E. Dick Howard writes, **The Road from Runnymede** (Univ. Press of Va., 1968) also led to Britain's Colonies in the New World.

Beginning with the Virginia Charter of 1606, which guaranteed the colonists all of the "liberties, franchises, and immunities" enjoyed by Englishmen, and extending through Colonial charters and covenants, and, eventually, state constitutions, Anglo-Saxon legal concepts shaped American political thought. "No taxation without representation!" is a cry straight from Magna Carta.

In 1776, however, Thomas Jefferson's Declaration of Independence appealed to a higher authority: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

For two centuries, American jurists have wrestled with the place of the Declaration (and natural rights) in the U.S. constitutional system. In the infamous *Dred Scott* case (1857), for example, Chief Justice Roger Taney was forced, in effect, to read the nation's slaves out of the Declaration of Independence in order to declare that they were not entitled to the protections of the Constitution.

Academics entered the fray in 1913, when historian Charles A. Beard published **An Economic Interpretation of the Constitution of the United States** (Free Press, 1986).

Beard argued that the Framers and their allies were a wealthy elite of merchants, manufacturers, and investors who staged an antidemocratic counterrevolution to protect their personal economic interests. The Constitution, Beard wrote, "was essentially an economic document based upon the concept that the fundamental private rights of property are . . . morally beyond the reach of popular majorities."

Scholars debated Beard's assertions for decades. **We the People** (Univ. of Chicago, 1976) by the University of Alabama's Forrest McDonald convincingly refutes most of Beard's findings. "It is abundantly evident," McDonald adds, "that the delegates, once inside the Convention, behaved as anything but a con-

INTERPRETING THE CONSTITUTION

For more than a century after the Founding, legal scholars seldom disagreed about how to interpret the Constitution. Court decisions were to be based on logical deductions from legal precedents and the opinions of the Framers.

But early in the 20th century, disenchantment with rulings by an activist conservative Supreme Court spawned the Legal Realism movement. The slogan "Law is merely a matter of what the judge ate for breakfast" reflected the Realists' view that a judge's political beliefs shape his legal decisions.

Far from rejecting judicial activism, the Realists concluded, as Felix Frankfurter put it in 1915, that the law should be "a vital agency for human betterment." In **The Rise of Modern Judicial Review** (Basic, 1986), Christopher Wolfe describes how the Supreme Court's acceptance of Legal Realism figured in such important cases as *Brown* v. *Board of Education* (1954). The Court went beyond legal precedent and the original intent of the authors of the Fourteenth Amendment in declaring "separate but equal" public schools unconstitutional. Citing evidence produced by social scientists, the Court ruled that segregated schools created "a feeling of inferiority" among blacks.

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Today, constitutional interpretation is far more contentious.

On the radical Left is the Critical Legal Studies movement. Harvard's Roberto Mangabeira Unger, for example, dismisses the idea of the rule of law as a deception perpetrated by the nation's ruling elite. Advocates of a transformation of the social and legal order, the "critters" favor acts of "creative negativity." The closest thing to a manifesto is Unger's **Critical Legal Studies Movement** (Harvard, 1986).

Many liberals still embrace Legal Realism. In **Taking Rights Seriously** (Harvard, 1977), Ronald Dworkin adds that the Supreme Court must sometimes turn to moral laws beyond the Constitution in pursuit of social goals.

Surprisingly, some of the sharpest debates occur on the conservative side of the political spectrum. The most familiar conservative idea is the Original Intent doctrine, voiced by U.S. appeals court judge Robert H. Bork in **Tradition and Morality in Constitutional Law** (American Enterprise Institute, 1984). "The intentions of the Founding Fathers," Bork maintains, "are the sole legitimate premise from which constitutional analysis may proceed."

But, harking back to the 19th-century Supreme Court, Richard A. Epstein of the University of Chicago argues in **Takings** (Harvard, 1985) that the Constitution enshrines broad "natural rights" and, in effect, laissez-faire economics. Richard A. Posner, a U.S. appeals court judge, takes a more utilitarian view. He argues for an **Economic Analysis of Law** (Little, Brown, 1973) where the Constitution is unclear. Thus, he supports the Court's 1954 decision in *Brown*, but on the grounds that segregated schools retard the prosperity of blacks, and thus of society as a whole.

Ironically, Epstein writes, as jurists and scholars of all persuasions increasingly depart from the letter of the Constitution, the old "dichotomy between left and right, conservative and liberal, is . . . breaking down."

solidated economic group."

Yet Beard's argument remains influential, not least because the Framers themselves made no bones about their fears of democracy. As Virginia's Edmund Randolph told the Philadelphia Convention, "our chief danger arises from the democratic parts of our [state] constitutions."

In **The New Nation: A History of the United States during the Confederation, 1781–1789** (Northeastern, 1981), Merrill Jensen contends that the Framers vastly exaggerated the nation's ills in order to win popular support for the Constitution. For example, in 1785, only two years before he helped write the new Constitution, Benjamin Franklin declared that the ex-Colonies' troubles "exist only in the wishes of our enemies. America never was in higher prosperity." George Washington shared Franklin's optimism, Jensen argues—at least until his overreaction to Shays's Rebellion in the summer of 1786 "frightened him out of retirement."

Of all the Framers, writes Catherine Drinker Bowen in **Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787** (Little, Brown, 2nd ed., 1986), Washington felt the shortcomings of the Confederation most deeply. During the Revolution, he had fumed over the inability of the Continental Congress to provision his troops with even the barest necessities—food, clothes, shoes, medicine, and gunpowder.

But in 1787 Washington was curiously reticent. It was unclear if he would attend the Convention. "He had little wish," Bowen says, "to risk his reputation in a movement that might fail."

Physically imposing, dignified, yet known for his strong "passions," Washington dominated the proceedings at Philadelphia while hardly saying a word. The delegates watched him closely for a look or gesture that would betray his feelings on an issue—usually in vain.

Bowen's account of the Convention is by far the liveliest of the many that have been written. But the original **Records of the Federal Convention of 1787**, 4 vols. (Yale, 1986), edited by Max Farrand, provide a good sense of the drama and grandeur in Philadelphia.

"*Experience* must be our only guide," declared Delaware's John Dickinson. "*Reason* may mislead us." In fact, his colleagues seldom referred directly to the governmental theories of the great French and English thinkers of the era—Montesquieu, Locke, Hobbes. The delegates' arguments were incisive and elegant, as they moved from the great lessons of ancient Greece's Amphictyonic Council to the rough-and-tumble realities of politics in the 13 states.

Even the smallest points of the new Constitution were fully debated. The Framers' eloquence would shame any modern legislator; the logic of their conclusions seems to reduce the theories of latter-day historians to mere cavils.

The Federalist (Arden, 1986) has long been acknowledged as the basic defense of the new Constitution. Cornell's Clinton Rossiter called this work by James Madison, Alexander Hamilton, and John Jay "the one product of the American mind that is rightly counted among the classics of political theory."

The Anti-Federalist (Univ. of Chicago, 1985), edited by Herbert J. Storing, is a recent compilation of writings by foes of the Constitution. In a companion volume, **What the Anti-Federalists Were For** (Univ. of Chicago, 1981), Storing says that it is no mystery why Patrick Henry and his allies were defeated by the Federalists: "They had the weaker argument."

The Antifederalists envisioned an America composed of small republics populated largely by yeoman farmers, free of "extremes of wealth, influence, education, or anything else."

Advocates of minimal government, the Antifederalists stressed the importance of the citizenry's self-regulating "civic virtue." They feared that every feature of the new Constitution would disrupt the nation's religion and morals. The creation of a national capital city ("ten Miles square," as the Constitution put it) would breed "courtly habits"; the expansion of commerce would encourage "vanities, levities, and fopperies."

Their fears may have been exaggerated, Storing says, but the Antifederalists were far-sighted in their worries over the problem of preserving civic virtue in a large, heterogeneous republic. Their foresight, he contends, and the fact that they forced the addition of a Bill of Rights to the Constitution, entitles them to be counted among the Founding Fathers of the United States.

Almost as soon as it was ratified, the Constitution was tested by conflict and change. During the Whiskey Rebellion of 1794, Pennsylvania farmers took up arms against the new U.S. tax on liquor. President Washington summoned the militias of nearby states, then held his breath to see if they would respond. They did; the insurrection was crushed.

In **The Bill of Rights: Its Origin and Meaning** (Bobbs-Merrill, 1965), Irving Brant recalls that Representative James Madison's efforts to introduce the Constitution's first amendments in Congress in 1789 met with indifference and outright hostility. Must the Constitution, asked Theodore Sedgwick, Madison's Massachusetts colleague, also specify "that a man should have a right to wear his hat if he pleased?"

Edward S. Corwin's **The Constitution and What It Means Today** (Princeton, 14th rev. ed., 1979), updated by occasional supplements, is a spirited article-by-article guide to the Constitution and its evolution through amendment, judicial interpretation, and legislation. Many political developments, e.g., the emergence of parties, had no specific constitutional sanction.

Yet, as historian Michael Kammen suggests in **A Machine that Would Go of Itself: The Constitution in American Culture** (Knopf, 1986), in the United States, more than in most nations, political conflict revolves around the Constitution. At the outbreak of the Civil War in 1861, President Abraham Lincoln and the South's leaders both claimed to be the true upholders of the U.S. Constitution. (The Confederate Constitution of 1861 resembled the Framers' creation, with a few exceptions. Among them: a guarantee of the right to own slaves, and a single, six-year presidential term.)

The observances of this year's bicentennial of the Framing will include much celebration of the Constitution's flexibility. But, as political scientist Walter Berns writes in **Taking the Constitution Seriously** (Simon & Schuster, forthcoming), it is the enduring achievement of the 55 men at Philadelphia, not the frequently erratic path of constitutional law, that deserves the honor and awe of their 20th-century countrymen.

EDITOR'S NOTE: *Some of the titles in this essay were suggested by Art Kaufman, former assistant director of Constitutional Studies at the American Enterprise Institute and coeditor of* Separation of Powers: Does It Still Work? *(1986). For related titles, see* WQ *Background Books essays on The American Revolution (Autumn '76) and The Supreme Court (Spring '77).*