

Creating the Constitution

What compromises emerged from the Constitutional Convention?

Introduction

When the American war for independence ended, no one was happier, or more worried, about the future of the United States than a serious Virginia Patriot named James Madison. While serving in Congress during the war, Madison had tried and failed to get the states to work easily together, and he doubted that things would improve now that the war was over.

After declaring independence in 1776, Congress tried to unite the states under one national government. However, most members were nervous about creating a strong central government and feared that it would trample the very rights they were fighting to preserve.

Their solution was a plan of government known as the Articles of Confederation. The Articles created “a firm league of friendship” in which “each state retains its sovereignty, freedom, and independence.” This “league of friendship” was a loose union in which the 13 states cooperated for common purposes. It was run by Congress, in which each state had one vote.

On paper, the Articles of Confederation gave Congress several important powers. It could declare war, raise an army and a navy, print money, and set up a postal system.

In reality, however, these powers were limited by the inability of Congress to impose taxes. Congress had to ask the states for funds to do anything, and all too often, the states ignored Congress's “humble requests.” The result, said Madison, was that the Articles were no more effective at binding the states into a nation than “a rope of sand.”

In this lesson, you will read about the new nation's shaky start under the Articles of Confederation. You will also learn how Madison and other leaders met in 1787 to revise the Articles and ended up compromising to form “a more perfect Union.”

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**Social Studies
Vocabulary**

Articles of Confederation

constitution

Constitutional Convention

Electoral College

Enlightenment

The Federalist Papers

Great Compromise

Northwest Ordinance

Northwest Territory

ratify

republic

Three-Fifths Compromise

1. Early Quarrels and Accomplishments

Even before the American Revolution was over, the states began quarreling among themselves. These issues ranged from **disputes** over boundaries to taxes on goods that crossed state borders. New York, for example, taxed firewood from Connecticut and cabbages from New Jersey. The inability of Congress to end such disagreements was one of the key weaknesses of the **Articles of Confederation**.

Developing Western Lands Congress did get the states to agree on one important issue: how to develop the lands acquired in the Treaty of Paris. At that time, there was no orderly way to divide up and sell these lands, so many settlers walked in and simply claimed the land they

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liked. Disputes over who owned what clogged the courts.

To end this confusion, Congress passed the Land Ordinance of 1785, under which western lands were divided into six-mile squares called townships. Each township was then divided into 36 sections of 640 acres each. One section of each township was set aside to support the township's public schools and the others sold to settlers.

Surveyors proceeded to lay out townships in the Ohio Valley, then known as the **Northwest Territory**. By 1787, the government was ready to sell sections to settlers, but this raised the question of how these areas should be governed. Were they to be U.S. colonies or new states?

The Northwest Ordinance Congress answered this question in the **Northwest Ordinance** of 1787. This law divided the Northwest Territory into smaller territories, each governed by a territorial governor. As soon as a territory had 5,000 free adult males, it could elect its own legislature, or lawmaking body. When the population reached 60,000, a territory could apply to Congress to become a state.

The Northwest Ordinance included a list of rights that gave settlers the same privileges as other citizens, except for one. Slavery was banned in the Northwest Territory.

This system of settlement served the nation well. Over time, the United States would continue to establish territories as it spread to the shores of the Pacific Ocean and beyond.



2. Shavs' Rebellion and the Need for Change

Under the Articles of Confederation, the new nation had serious money problems. The paper money printed by Congress during the war was worthless, and although Congress had the power to make coins that would not lose their value, it lacked gold or silver to mint into coins.

The states reacted to the money shortage by printing their own paper currency, and before long, bills of different sizes and colors were distributed from state to state. No one knew what any of these currencies was worth, but most agreed they were not worth much.

Massachusetts Farmers Rebel The money shortage was particularly hard on farmers who could not earn enough to pay their debts and taxes. In Massachusetts, judges ordered farmers to sell their land and livestock to pay off their debts. Led by Daniel Shays, a hero of the Battle of Bunker Hill, Massachusetts farmers rebelled.

In 1786, Shays and his followers closed down courthouses to keep judges from taking their farms. Then they marched on the national arsenal at Springfield to seize the weapons stored there. Having disbanded the Continental army, Congress was unable to stop them.

The Massachusetts government ended Shays' Rebellion in early 1787 by sending militia troops to Springfield to restore order. To many Americans, however, the uprising was a disturbing sign that the nation they had fought so hard to create was falling apart. "No respect is paid to the federal [national] authority," James Madison wrote to a friend. "It is not possible that a government can last long under these circumstances."

A Call for a Convention Shays' Rebellion shocked Congress into calling for a convention to consider "the situation of the United States." Each state was invited to send delegates to Philadelphia in May 1787 "for the sole and express purpose of revising the Articles of Confederation."

Madison, who had devoted the past year to the study of both ancient and modern governments, was ready. The lesson of the past was always the same. A nation that was made up of many groups needed a strong central government, or it would soon be torn apart by quarrels. The question was, would Americans heed this lesson?



3. Opening the Constitutional Convention

Philadelphia was already hot and humid when delegates began drifting into the city. On May 25, 1787, the **Constitutional Convention** met for the first time in the east room of the Pennsylvania State House (now known as Independence Hall). The Declaration of Independence had been debated in this very room just 11 years earlier. The delegates would meet in the east room all summer. On some days, temperatures rose well into the nineties.

The delegates' first action was to elect George Washington president of the convention because no man was more admired and respected than the former commander in chief of the Continental army. When the war ended, Washington could have used his power and popularity to make himself a king. Instead, he went home to Virginia to resume his life as an ordinary citizen. Despite his reluctance to return to public life, however, Washington would play a key role by presiding over the convention and lending it his prestige.

The Delegates Fifty-five delegates from 12 states attended the

Constitutional Convention. Rhode Island, which prided itself as “the home of the otherwise minded” and feared a strong national government, boycotted the meeting.

Some leaders of the revolution were also missing. John Adams and Thomas Jefferson were representing the United States in Great Britain and France, respectively. Others who did not attend included Sam Adams, John Hancock, and Patrick Henry. They feared that a strong national government would endanger the rights of states.



As a group, the delegates were, in the words of a modern historian, “the well-bred, the well-fed, the well-read, and the well-wed.” Their average age was 42. At 81, Benjamin Franklin of Pennsylvania was the oldest, arriving at the convention each day in a sedan chair carried by four good-natured prisoners from a nearby jail.

Most of the delegates brought extensive political experience to the meeting. More than two-thirds were lawyers, and most had served in their state legislatures or held a state office. Thomas Jefferson was so impressed by the ability and experience of these men that he called the convention “an assembly of demi-gods.”

The Father of the Constitution The best prepared of the delegates was James Madison of Virginia. One delegate wrote of Madison, “In the

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management of every great question he evidently took the lead in the Convention.” Indeed, Madison's influence was so great that later he would be called the “Father of the Constitution.”

Madison addressed the convention numerous times, and when he was not speaking, he was taking notes. Sitting near the front of the room so that he could hear everything that was said, Madison wrote down nearly every word. Altogether, his notes covered more than 600 printed pages, and this remarkable record helps us understand what went on inside the convention day by day.

The Rule of Secrecy At the time, however, no one outside the convention knew what was happening. After choosing a president, the delegates voted on rules for the convention, the most important of these being the rule of secrecy. The delegates wanted to feel free to speak their minds without causing alarm or opposition among the general public, so they agreed to keep secret whatever was said in the meeting room until their work was done.

One day, Washington was handed some notes that had been dropped in the hall outside the east room. Washington pocketed the paper until the end of debate the next day, when, in his sternest voice, he lectured the delegates on the importance of secrecy. “I know not whose paper it is,” Washington said as he flung the notes on his desk. “But there it is, let him who owns it take it.” The notes were never claimed. Instead, they lay on Washington's desk for days.

Like Washington, the delegates took the rule of secrecy seriously. During that long summer, not a single word about the convention debates appeared in any newspaper.

Shared Beliefs and Clashing Views Once the convention was organized, the delegates got down to business. As a group, the delegates had much in common, but they also had very different views on many issues facing the new nation.

To be sure, all the delegates were **committed** to the ideals of the Declaration of Independence. The basic purpose of government, they believed, was to protect the rights to “life, liberty, and the pursuit of happiness.” And they agreed, in the words of the Declaration, that the “just powers” of governments came from “the consent of the governed.”

In part, these beliefs reflected the ideas of **Enlightenment** thinkers like England's John Locke. Human institutions, these **liberal** thinkers

had argued, should be based on “laws of nature,” among which were the rights to liberty and equality. The best way to protect these rights, the delegates agreed, was through some form of **republic**.

From New England's town meetings to lawmaking bodies like the Virginia House of Burgesses, Americans had a long tradition of participating in their own government. After the American Revolution, all the states had adopted **constitutions** that embraced republican ideals. Despite many differences in details, every state had some form of representative government and had expanded the rights to vote and to hold office. The state constitutions helped to shape the delegates' thinking.

Despite the delegates' broad agreement on a government “of the people,” many questions were left unanswered. For example, who exactly should have a say in a truly “representative” government? Even in liberal Pennsylvania, only free, white males could vote, while other states allowed only wealthier citizens to vote or hold office. Women could not vote in any state except New Jersey. (New Jersey women would lose the right to vote in 1807.)

Perhaps the most troubling question of all was how powerful the national government should be. Many delegates wanted to keep government close to the people by preserving the rights of the states. They feared that a strong national government would threaten individual liberty, but others, including Madison, argued just the opposite. Look at what has happened under the Articles of Confederation, they said, referring to events like Shays' Rebellion. If the central government is too weak, it cannot do its job of protecting liberty and property.

Tempers often flared as the delegates wrestled with these and other issues behind closed doors. Several times it seemed the convention might collapse in failure. But the delegates ultimately found ways to save the convention—and the nation.



4. Issue: How Should States Be Represented in the New Government?

When the convention began, most delegates believed that their task was to revise the Articles of Confederation, but to their surprise, the Virginia delegation presented them with a completely new plan of government. After a lengthy debate, the delegates made a bold move. They agreed to throw out the Articles of Confederation and write a new constitution.

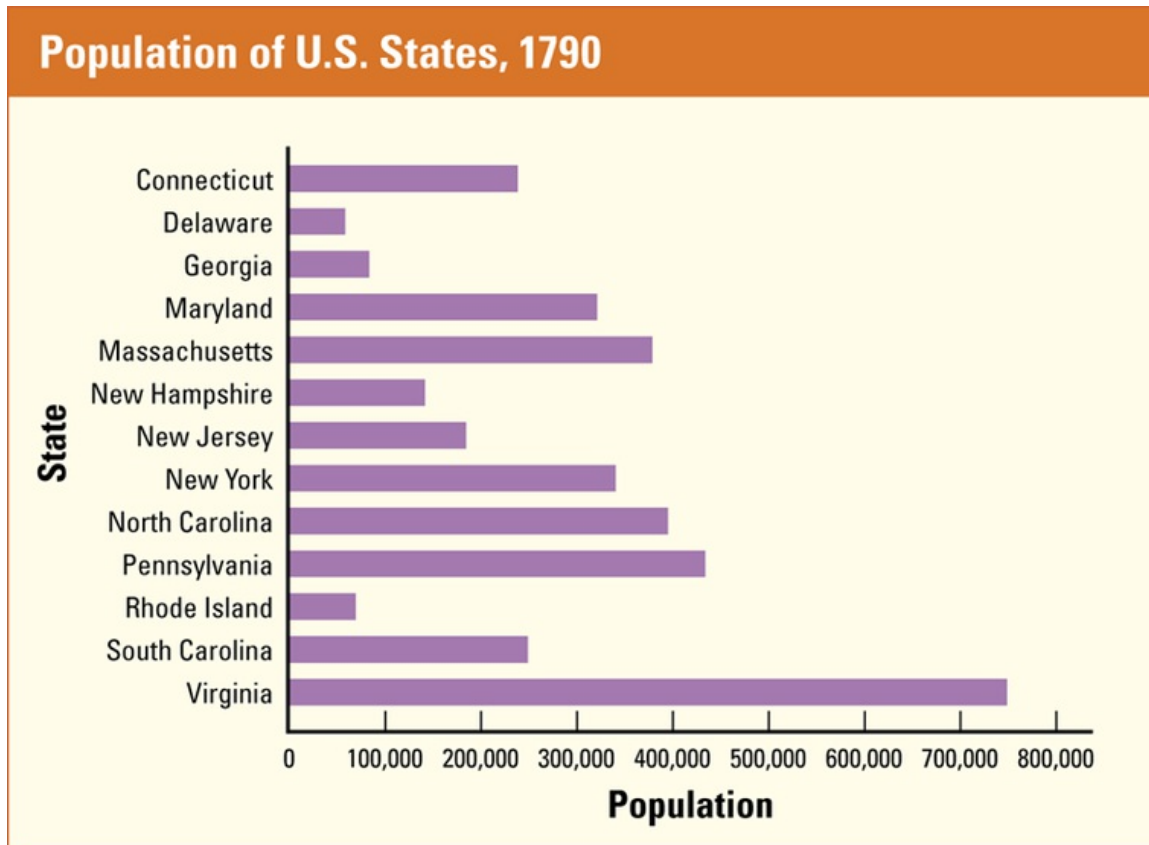
While the delegates—later known as the framers—agreed to design a new **framework** of government, they were divided on a key issue. Should the government's power to rule come from the states or the people? Under the Articles of Confederation, the answer was the states. James Madison's answer was that the government's power should come directly from the people.

The Virginia Plan Drafted by James Madison and proposed by Edmund Randolph, the Virginia Plan called for a strong national government with three branches, or parts. A legislative branch would make laws. An executive branch would carry out, or execute, the laws. A judicial branch, or system of courts, would apply and interpret the laws. Under the Virginia Plan, Congress was to be made up of two houses, the House of Representatives and the Senate, and the number of lawmakers that a state could send to Congress depended on the state's population. States with large populations would have more representatives than smaller states would have.

Delegates from Virginia, Pennsylvania, and other large states liked the Virginia Plan. Having the new government represent people, not states, would give them more representatives and more power in both houses of Congress.

The New Jersey Plan Not surprisingly, delegates from the small states disliked the Virginia Plan. Just as the convention was about to vote on it, William Paterson of New Jersey introduced a rival proposal.

Like the Virginia Plan, the New Jersey Plan called for a government with three branches. However, the legislative branch would have just one house, not two, and each state would have an equal vote in Congress, no matter how big or small. This plan, Paterson argued, would keep the small states from being “swallowed up” by their more populous neighbors.



5. Resolution: The Great Compromise

The New Jersey Plan was warmly received by delegates from small states. The majority of delegates, however, saw William Paterson's plan as offering little improvement over the Articles of Confederation and rejected it. But they could not agree on what should replace it.

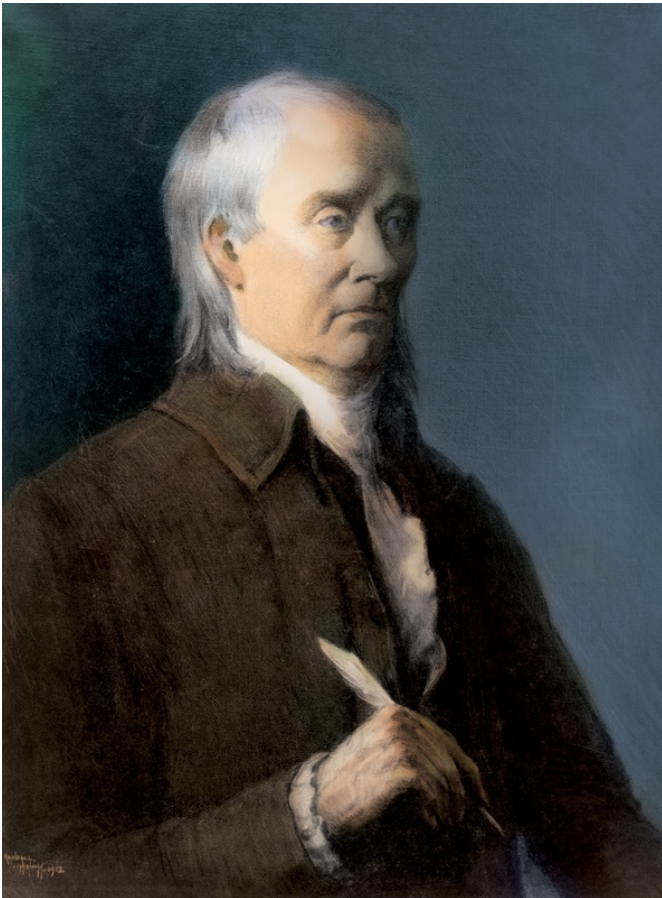
Tempers Rise The debate over representation in Congress continued into July, with tempers rising day by day. To most delegates from large states, representation based on population seemed both logical and fair. "Can we forget for whom we are forming a Government?" asked James Wilson of Pennsylvania. "Is it for *men*, or for the imaginary beings called *States*?"

Wilson thought the answer was obvious, but his logic could not overcome the fears of small-state delegates. One hot Saturday afternoon, Gunning Bedford of Delaware tore into the delegates from large states. "They insist," he said, "they will never hurt or injure the lesser states." His reply to his own concern was straightforward. "*I do not, gentlemen, trust you!*" If the large states continued in their efforts to "crush the smaller states," Bedford warned, "the small ones will find

some foreign ally of more honor and good faith who will take them by the hand and do them justice.”

Rufus King of Massachusetts was shocked at this reference to foreign powers, and he said that he was “grieved, that such a thought had entered his heart.” Still, every delegate knew that Great Britain, France, and Spain were just waiting for the United States to fall apart so they could pick up the pieces.

A Compromise Is Reached Finally, a compromise was proposed based on a plan put forward earlier by the delegate from Connecticut, Roger Sherman. The compromise plan kept a two-house Congress. The first house, the House of Representatives, would represent the people and would include a number of representatives from each state based on the state's population. The second house, the Senate, would represent the states, and each state would have two senators elected by their state legislatures. When it came time to decide, the vote was very close, but the plan, which would become known as the **Great Compromise**, was approved and saved the convention.



6 Issue: How Should Slaves Be Counted?

THE ISSUE: HOW SHOULD SLAVES BE COUNTED?

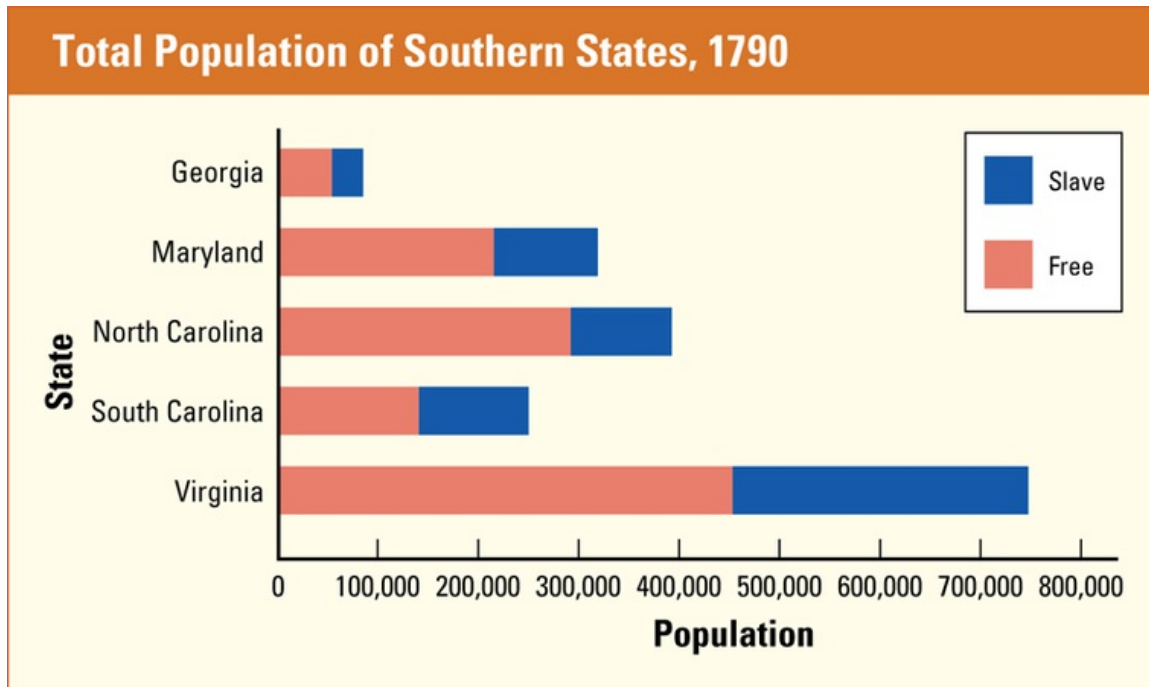
The Great Compromise kept the framers working together. But having agreed to base representation in one house of Congress on state population, they faced a new and difficult question. As Gouverneur Morris of Pennsylvania put it, “Upon what principle shall slaves be computed in the representation?”

People or Property By the time of the convention, nine-tenths of the slaves in the United States lived in the South. Like everyone else, southerners wanted as many representatives in the House as possible, so they argued that slaves should be counted the same as any other people in determining representation.

Delegates from the North challenged this idea. Were slaves to be considered people with a right to be represented in Congress or were they property? “Blacks are property and are used to the southward as horses and cattle to the northward,” argued Elbridge Gerry of Massachusetts. Most northern delegates agreed that slaves should be counted only as property that could be taxed like any other property. If slaves were to be counted as people in determining representation in Congress, said Morris, “then make them citizens and let them vote.”

New Thinking on Slavery This argument signaled a growing division among white Americans. The Declaration of Independence and the American Revolution forced many whites to reexamine their views on slavery, and some became active in trying to end what they now saw as a great evil. Benjamin Franklin, for example, became president of an antislavery society in 1787. In the North, this new thinking led one state after another to pass laws ending slavery.

Although many southerners were uneasy about slavery, they were not yet ready to abolish it. The South's economy was still very dependent on the labor of enslaved African Americans. But some southern states did pass laws making it easier for owners to free their slaves.



7. Resolution: The Three-Fifths Compromise

After a bitter debate, Madison proposed a compromise. Count each slave as three-fifths of a person, he suggested, when determining a state's population for representation in the House of Representatives. The delegates approved this idea, which became known as the **Three-Fifths Compromise**, because it seemed the only way to keep the convention moving forward.

Another Slavery Issue A dispute over trade raised another issue about slavery. To help business in the North, northern delegates favored giving Congress broad power to control trade between the states and other countries, but this proposal made southern delegates nervous. They worried that Congress might try to tax southern export crops such as rice and tobacco. Southerners also worried that Congress would use its power over trade to outlaw the slave trade—the importing of slaves from Africa.

Southerners had reason to be fearful. By 1787, several states had outlawed the slave trade within their boundaries. A majority of the convention's delegates favored ending the slave trade completely.

South Carolina and Georgia, however, objected that their economies would collapse without a constant supply of new slaves. Neither state would agree to any constitution that threatened to end the slave trade.

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More Compromises on Slavery Again, the delegates settled on a compromise. Congress would have the power to control trade, but with two limitations. First, Congress could not place any tax on exports to other countries. Second, Congress could not interfere with the slave trade for 20 years, or until 1808 when the slave importation clause took effect.

To satisfy southerners, the delegates also agreed to a provision known as the fugitive slave clause. This clause said that escaped slaves had to be returned to their owners, even if they were caught in a free state.

The compromises only postponed the day when Americans would have to resolve the terrible **contradiction** between slavery and the ideals of liberty and equality. However, without the compromises, the states might never have come together in a single union. Still, generations of African Americans would spend their lives in bondage.



8. Issue: How Should the Chief Executive Be Elected?

Another major question facing the delegates concerned who would head the new government's executive branch. Early in the convention, Charles Pinckney urged the creation of a "vigorous executive." James Wilson followed with a proposal that a single person serve as the chief

executive.

A sudden silence fell over the convention. The very idea of a single executive brought to mind unhappy memories of King George III. Wilson broke the silence by explaining that good government depends on clear, timely, and responsible leadership. Such leadership, he said, is most likely to be found in a single person.

One Executive or Three? Edmund Randolph of Virginia disliked this proposal, preferring a three-member executive drawn from different parts of the country. Three people, he argued, could lead the country better than one.

Benjamin Franklin opposed a single executive for different reasons. “The first man put at the helm will be a good one,” said Franklin, thinking of George Washington. “Nobody knows what sort may come afterwards.” The next chief executive, he cautioned, might be overly ambitious or too “fond of war.”

In spite of these objections, the framers agreed to a single executive, to be called the president. To keep this leader from becoming too king-like, they limited the president's term to four years, with a vice president who was also to be elected to fill that term if the president died in office.

Choosing the Chief Executive Equally troubling was the issue of how to choose the chief executive since some delegates wanted Congress to appoint the president. Gouverneur Morris, however, objected, arguing that the president “must not be made the flunky of the Congress. It must not be able to say to him: ‘You owe your appointment to us.’”

Several delegates thought that the people should elect the president, but Madison argued that voters would naturally vote for someone from their own state. As a result, this method would not be fair to candidates from small states.

Still others suggested that the president be elected by a specially chosen group of “electors” from each state. Such a group, they felt, would be able to look beyond state interests to make a wise choice for the entire country.



9. Resolution: The Electoral College

After some 60 votes on the issue of how to elect the president, the framers reached another compromise. Neither Congress nor the people, they decided, should choose the president and vice president. Instead, a special body called the **Electoral College** would elect the government's leaders.

The Electoral College System The Electoral College is made up of electors who cast votes to elect the president and vice president every four years. Each state has as many electors in the Electoral College as the number of senators and representatives it sends to Congress. The votes cast by electors are called electoral votes.

The delegates left the method of choosing electors up to each state. Before 1820, state legislatures chose electors in most states. Today, the people choose their state's electors when they vote in presidential elections. The electors then cast their ballots for president and vice president on a date chosen by Congress.

Originally, the electors voted for two candidates without saying which one they preferred for president or vice president. The candidate

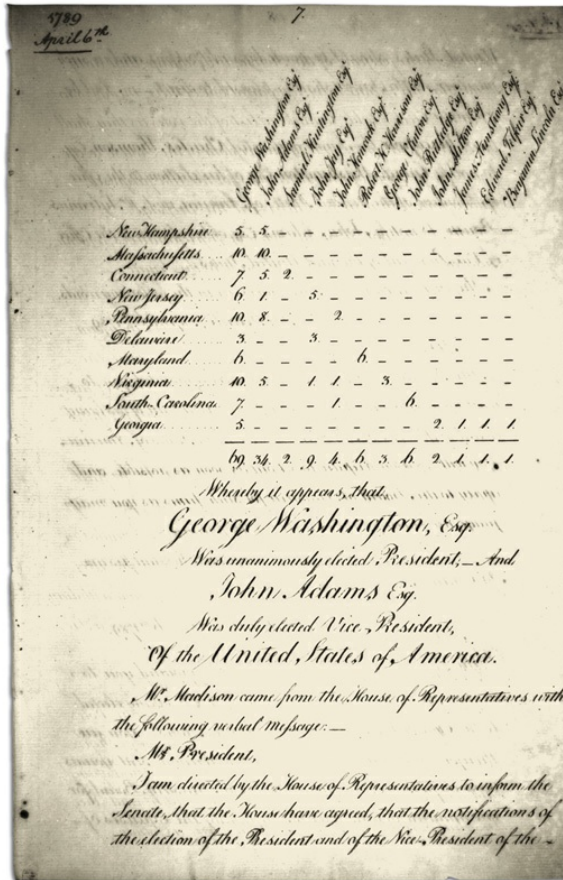
receiving the most votes became president, while the runner-up became vice president. This system caused great confusion in the election of 1800 and was later changed.

Political Parties and Elections The Electoral College system seems very odd to most Americans today. In our age of instant communication, it is hard to appreciate the framers' concern that voters would not know enough about candidates outside their own state to choose a president wisely.

The delegates could not have predicted how quickly communications would improve in the United States. Nor could they foresee the rise of national political parties. Within a few years of the convention, political parties were nominating candidates for president and educating voters in every state about those candidates.

The Electoral College system still affects presidential elections today. In most states, the candidate who gets the most votes—even if less than a majority—wins all of that state's electoral votes. As a result, a candidate can win a majority in the Electoral College without necessarily winning a majority of the votes cast across the country. In the presidential election of 2016, Donald Trump won the presidency over Hillary Clinton by getting the most Electoral College votes, even though Clinton received more votes than Trump in the popular election.

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10. The Convention Ends

By the end of summer, the hard work of designing the Constitution was completed. However, the new proposal still had to be approved by the states.

Approving the Constitution The first question before the framers was how many states would have to **ratify**, or approve, the Constitution before it could go into effect. Should ratification require approval by all 13 states or by a majority of 7 states? Ultimately, the framers compromised on 9 states.

The second question was who should ratify the Constitution—the people or the state legislatures? Ratification by state legislatures would be faster and easier. James Madison, however, argued strongly that the people were “the fountain of all power” and should decide. The majority of delegates agreed, and after the delegates signed the Constitution, the document was later ratified at special conventions by delegates elected by the people in each state. However, ratification did not come without difficulty.

Signing the Constitution On September 17, 1787, the delegates declared the Constitution complete. As this last meeting began, Franklin shared his final thoughts, which would be printed in more than 50 newspapers.

“I confess that I do not entirely approve of this Constitution,” Franklin began before pointing out that no convention could produce a perfect plan. “It therefore astonishes me,” Franklin continued, “to find this system approaching so near to perfection . . . and I think it will astonish our enemies.” Franklin added that he approved the final plan “because I expect no better, and because I am not sure that it is not the best.” He urged every member of the convention to “put his name to this instrument.”

Not everyone was won over by Franklin's words. Thirteen delegates left the convention before it ended and did not sign the Constitution.

Three other delegates—Edmund Randolph and George Mason, both of Virginia, and Elbridge Gerry of Massachusetts—also did not sign. Mason believed it gave too much power to the national government, and Gerry refused to sign because he believed the new plan did not protect the rights of the people.

When the signing was over, Franklin confessed that he had often looked at the sun carved on the back of George Washington's chair and wondered whether it was about to rise or set. “But now,” he said, “I have the happiness to know that it is a rising and not a setting sun.” A new day was dawning for the United States.



11. The Constitution Goes to the States

Newspapers in every state printed the Constitution as soon as they could get it. What readers found was a plan that would create a “federal” system of government, in which a strong national government shared power with the states. Before long, the entire country was debating the same issues that had kept the convention in session for four long months.

The Federalists Supporters of the Constitution called themselves Federalists. The Federalists argued that the Constitution would create a national government that was strong enough to unite the quarreling states into a single republic.

James Madison, Alexander Hamilton, and John Jay led the Federalist campaign for ratification. In a series of newspaper essays, they recalled the weaknesses of the government under the Articles of Confederation. They showed how the Constitution would remedy those weaknesses by creating a stronger, more effective union of the states.

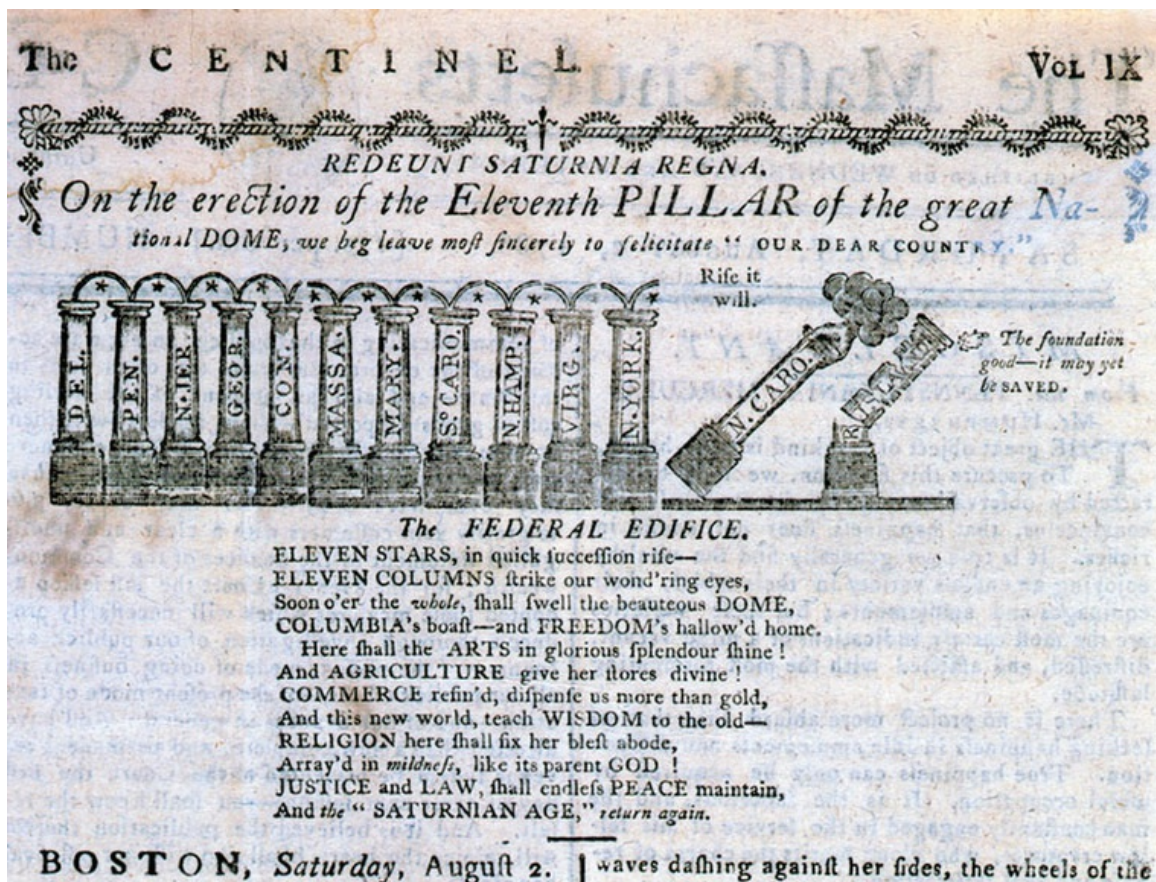
The Federalist leaders also addressed the fears of many Americans that a strong government would threaten their freedom or take away their rights. The powers given to the government, they pointed out, were strictly limited. In addition, those powers were divided among three

branches so that no one branch could become too powerful. The influential articles written by Madison, Hamilton, and Jay were later collected and published as *The Federalist Papers*.

The Anti-Federalists Anti-Federalists, opponents of the Constitution, found much to dislike about the new plan. Congress, they feared, would burden the country with taxes. They also claimed that the president had power enough to rule like a king, and the judicial branch would overpower state courts.

The Anti-Federalists also complained about what was missing from the plan, primarily that the plan listed the powers of the government but not the rights of the people. Most of all, the Anti-Federalists feared change, and the idea of giving up any state power to form a stronger Union made them uneasy.

After listening to the arguments, Madison wrote that the question facing the nation was “whether the Union shall or shall not be continued. There is, in my opinion, no middle ground to be taken.”



Lesson Summary

In this lesson, you read about the Constitutional Convention, the historic meeting that replaced the Articles of Confederation with a new plan of government.

Early Quarrels and Accomplishments Under the Articles of Confederation, Congress did not have the power to solve disagreements among states over such issues as taxes. Congress passed laws on how to settle the Northwest Territory.

Shays' Rebellion Shays' Rebellion showed that under the Articles of Confederation, the government was too weak to keep order.

The Great Compromise In 1787, delegates met at the Constitutional Convention and agreed to replace the Articles. The Great Compromise established how states were to be represented in the legislative branch of government.

The Three-Fifths Compromise The Three-Fifths Compromise settled the question of how slaves were to be counted in determining a state's population.

The Electoral College and the Chief Executive Another compromise created a single chief executive, to be chosen by the Electoral College.

The Constitution Delegates signed the Constitution in September 1787. They agreed that 9 of the 13 states had to ratify the Constitution before it could go into effect.



Reading Further

James Madison and the
Long, Hot Summer of 1787

James Madison is often called the “Father of the Constitution.” Although many people had a hand in shaping the Constitution, most scholars agree that Madison was the main driving force behind the document's creation. It was a process that took more than 100 days of complex negotiation and compromise. Even so, it did not turn out quite as Madison had wanted.

In the first week of May 1787, James Madison stood alone in the East Room of the Pennsylvania State House. In order to prepare for the convention, Madison had arrived early in Philadelphia and checked in to one of the city's finest boarding houses, run by Mrs. Mary House. Within a few weeks, many of the nation's political leaders would gather in the city. Although few of them knew it at the time, their task would be to create a new plan of government for the United States.

Madison had carefully considered the great challenges facing the nation. The United States was floundering under the Articles of Confederation, and Madison believed that a stronger national government was needed to keep the country on course. While other leaders also agreed on the need for reform, many of them distrusted the power of a strong central government. Madison would have to persuade them to let go of their fears.

Unfortunately, it was not a fine time to be in Philadelphia. After a wet and rainy spring, the summer weather was becoming increasingly hot and humid. To make matters worse, the city was plagued with dense clouds of black flies, forcing residents to sleep with their windows closed or be tormented by swarms of buzzing, biting insects. Shutting their windows, however, meant they had to spend their nights sweltering in the heat.

Madison had bigger concerns, though. As he looked around the East Room of the State House, he imagined the events that would soon unfold there. The large room, with a 20-foot-high ceiling and tall windows, would be crowded once all the delegates were seated. Madison decided to sit up front, where he could get a clear view of the proceedings, take notes, and see and hear everything that took place at the convention.

Madison Leads the Way

At age 36, Madison was a small man, just five and a half feet tall, with

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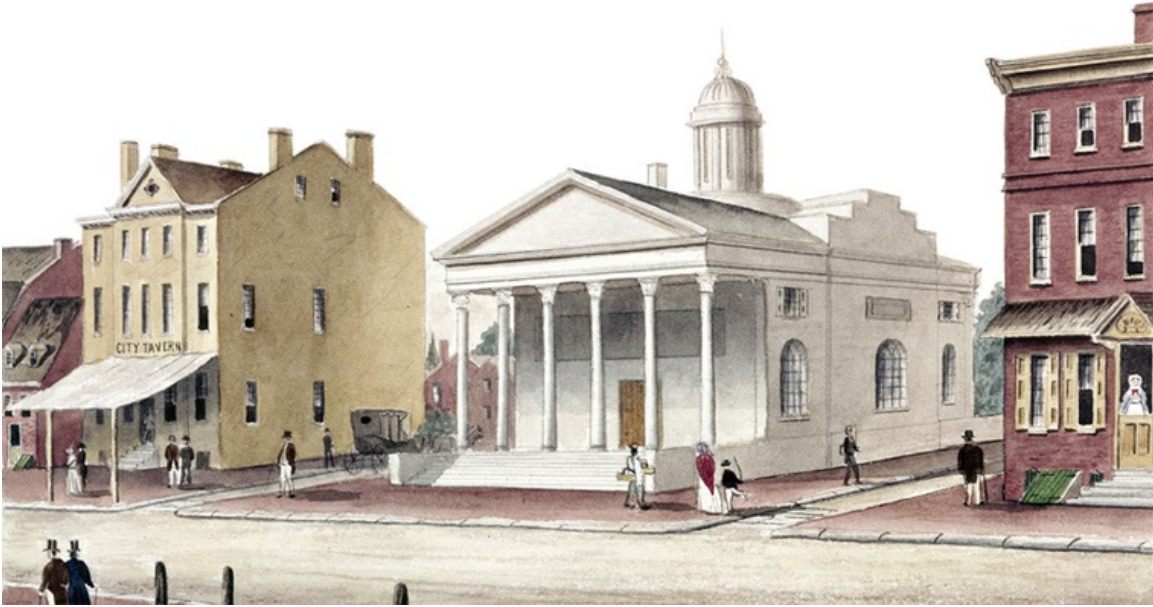
pale skin and thinning hair. He typically dressed in black. Madison was shy and spoke in a soft voice that was often hard to hear, but he had great energy and was known to walk with a bounce in his step and get by on just a few hours of sleep. Although he rarely displayed personal warmth or charm, he was a brilliant conversationalist who knew how to win others to his side.

Madison was well prepared to play a leading role at the convention. He had spent several years as a member of Congress, studied the writings of great political thinkers, and understood how political systems worked. He had also helped write the Virginia Constitution of 1776, which was an important model of democratic government that established a state government with separation of powers and a two-house legislature.

Over the next two weeks, the other delegates began to arrive. They were all wealthy, educated white men who were mostly lawyers or large landowners. There were no workers or tradesmen. There were also no women, African Americans, or American Indians.

The delegates rented rooms at various boarding houses and inns. The Indian Queen, the largest inn in the city, was a center of social activity during the convention, where leaders from around the nation would gather to eat, drink, and exchange stories.

By mid-May, most of the Virginia delegation had arrived. This group included three major political figures: George Washington, George Mason, and Edmund Randolph. These men met with Madison late into the night, and together they came up with a set of 15 proposals, which made up a plan for a new government. Now known as the Virginia Plan, these proposals embodied Madison's ideas on the kind of government the nation needed.



The Convention Begins

The convention was due to begin on May 14, but many delegates had still not arrived. Travel was difficult in those days because the roads were poorly kept and coaches often got stuck in the mud or broke an axle. A trip that normally took a week might take much longer because of problems on the road.

Finally, on May 25, the convention got underway, and for the next four months the delegates would gather in the East Room to debate issues of government. To maintain secrecy, they agreed to bolt the doors and shut the windows, but the temperature in the room increased as the summer wore on. Many of the men wore wigs and heavy wool suits in this stifling atmosphere, and with the doors and windows closed, arguments were often fueled by the heat.

Through all these challenges, Madison sat at his table near the front, scribbling away at his notes. In the evening, he took these notes back to his room and laboriously copied them out, word for word. Although it was an ordeal that “almost killed” him, he was determined to keep a complete and accurate record of the convention.

Debating the Virginia Plan

From the start, the convention focused much of its attention on the

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Virginia Plan. On May 29, Edmund Randolph presented the various points of the plan, summing up its main idea the following day in a bold proposal: “that a national Government ought to be established consisting of a supreme Legislative, Executive & Judiciary.” Amazingly, Randolph's proposal was approved with little debate, and Madison had achieved his first major goal without a struggle. The convention had agreed to form a new government, but winning support for the plan's details would prove much more difficult.

The toughest issues involved the national legislature. While the delegates all agreed that Congress was a key part of government, they disagreed on how the people and the states should be represented in Congress. Leading delegates like Madison knew this dispute could derail the convention and instead focused on what they thought would be a simpler issue—the executive branch. But this became a difficult issue to negotiate, too. Should there be one executive or three? How long should the executive serve? Should the executive be elected or appointed? For a week, the discussion continuously circled around these questions as delegates would vote on a question, discuss it some more, and vote again.

Crafting a Final Document

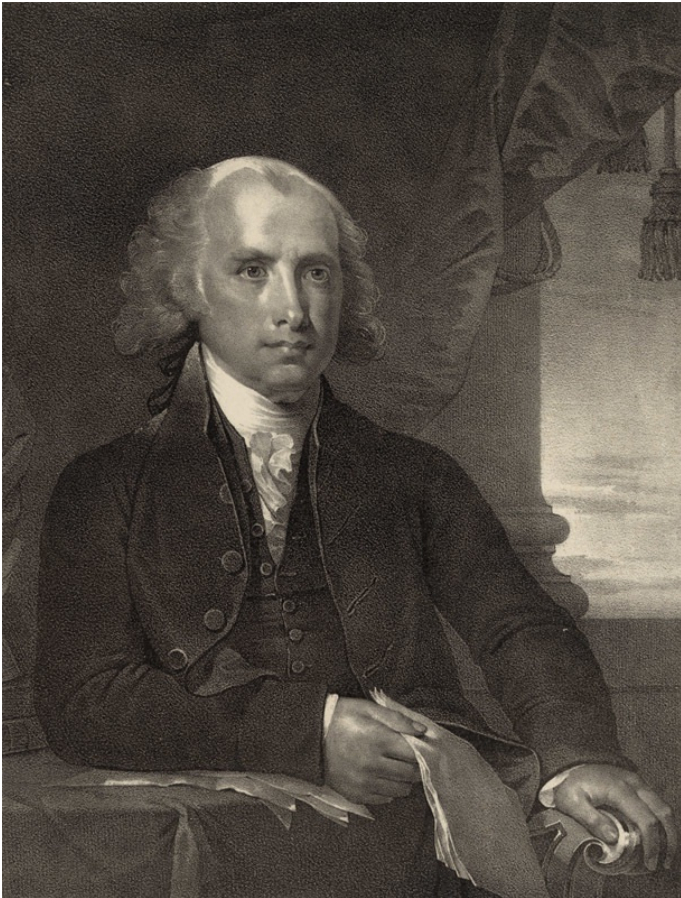
Frustrated by this seemingly endless debate, on June 9 the delegates decided to tackle the thorny problem of representation in the legislature. The month-long debate was so fierce that it sometimes appeared the convention would fall apart, but the delegates always pulled back from the brink. Finally, on July 16, they approved the Great Compromise, which set different forms of representation for the two houses of Congress. Depressed, Madison realized that he had lost his battle for a legislature based solely on representing the people rather than the states. But with the greatest conflict behind them, the framers could work toward a final plan for the new government.

By late August, the delegates formed the Committee on Postponed Matters to take up the few issues that remained to be resolved. A few days later, the committee reported back with its findings and more debate followed. By early September, a Committee on Style—consisting of Madison and four others—was formed to prepare a final draft to present to the full convention.

Ever mindful of the importance of this plan for the nation, the delegates made a few more changes. Finally, Gouverneur Morris of New Jersey handwrote the final document—4,300 words in all. “On the question to agree to the Constitution, as amended,” Madison recorded in his notes,

“All the states, ay [yes].” And so at last, on September 17, 1787, most of the delegates signed the Constitution and sent it off to the states for ratification.

The exhausted delegates had finally completed their monumental task. However, the Constitution was still not everything James Madison had hoped for because, in his view, it left too much power in the hands of the states. But he had done what he could and was prepared to live with the outcome, as he now turned to the fight for ratification and the task of creating a new government.



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Roots of American Democracy

Stop for a moment and notice the thoughts you have as you read the title of this section. What ideas come to mind when you read the word *roots*? How about *American*? *Democracy*?

Whatever your thoughts are, they are uniquely your own. But most likely they grew out of something you've heard or read, or maybe seen on TV or in the movies. This is how most ideas grow. They start from something outside ourselves. Then we make them our own and sometimes improve on them.

The Americans who led the Revolution and created the Constitution were no different from you. Starting with other people's ideas, they created the government we live under today. The ideas they drew upon are the roots of American democratic thinking and institutions. Let's look at some of these roots.

Religious Tradition

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One important influence on early Americans was the Judeo-Christian religious tradition. Nearly all the leaders of the Revolution believed in God. Most were Christians whose ideas about human dignity and freedom owed much to the teachings of the Bible. (The Bible includes sacred writings of both Judaism and Christianity.) Many Americans saw human liberty not just in political terms, but as a right bestowed by God.

Leaders like Thomas Jefferson were also influenced by the European Enlightenment. The Enlightenment prized reason and observation as sources of truth. Many Enlightenment thinkers sought a “natural religion” that was based on observing the order and lawfulness of the universe. They thought of God as the architect of this orderly universe. In discovering universal laws such as gravity, they believed, scientists were revealing God's laws for the natural world. In a similar way, people could find the “natural law” that should govern society. For thinkers like England's John Locke, this natural law included basic rights that no human law or ruler should violate.

That is why the Declaration of Independence speaks of “the Laws of Nature and Nature's God.” These words express Jefferson's belief that liberty and equality came from natural law—the law established by the God who created the world.

The English Parliamentary Tradition

In their thinking about government, early Americans drew on the English parliamentary tradition. They knew it well because they had been English subjects.

As far back as Magna Carta (1215), the English had put limits on the king's ability to rule as he pleased. For important matters like taxation, the king needed approval from the leading citizens of his realm.

Over time, the English established Parliament as the body that represented the king's subjects. Parliament was divided into two houses. The House of Lords was made up of aristocrats who held their position for life. The House of Commons was made up of representatives elected by the people.

The framers of the Constitution adapted this tradition and made it more democratic. In place of a king who ruled for life, they put a president who had to run for reelection every four years. In place of Parliament, they created a Congress with two houses. The Senate was designed to be a small, thoughtful body, much like the House of Lords. Unlike

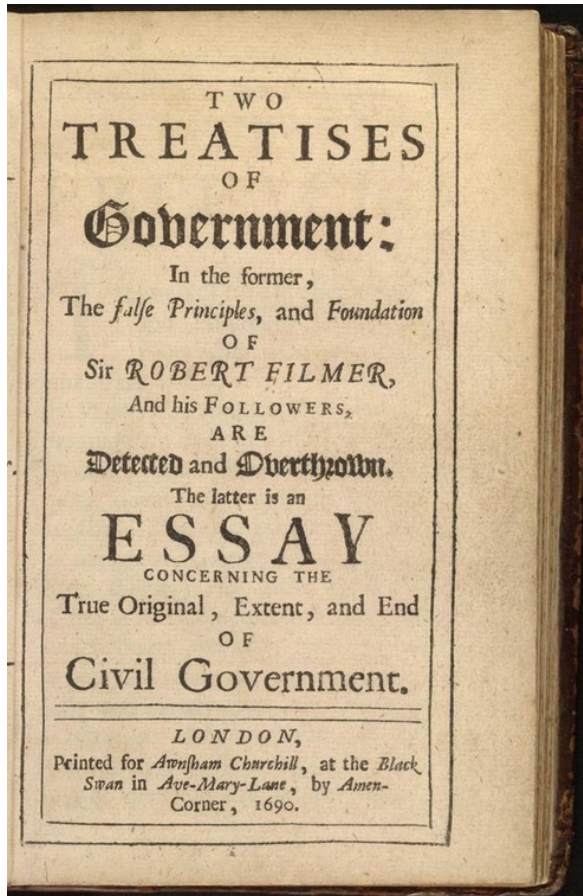
English lords, however, senators had to run for reelection every six years. Even the House of Representatives was more democratic. In England, the House of Commons could go seven years without elections. In the United States, every member of the House of Representatives faced election every two years.

Ideas from the English Bill of Rights can also be found mirrored in early American documents. The English Bill of Rights spoke of individual rights where people were allowed to petition the king and be tried by a jury when accused. The same ideals can be found in the U.S. Constitution's Fifth Amendment which discusses the rights of the criminally accused by requiring a jury and forbidding denial of "life, liberty, or property, without due process of law."

Similarly, the Declaration speaks about individual rights in its famous line here: "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."

The idea of the "rights of Englishmen," found in the Magna Carta and the English Bill of Rights would be a foundation for self-rule throughout the colonies and beyond. The Mayflower Compact is a result of the English documents and provides an even deeper look at early sources of American democracy. Pilgrims aboard the Mayflower ship created the short 200-word document to unite the new colony. By signing the agreement, the settlers decided on a form of representative government. They also agreed to obey "just and equall laws" created "for the generall good of the Colonie." Although power was in the hands of the Pilgrim leaders, the Mayflower Compact has been seen as a major step towards democratic government in America because of its principles of common consent and self-government.

Classical Liberal Principles



Another aspect of the Enlightenment was a school of thought called *classical liberalism*. The most basic principle of classical liberalism was that human beings could be trusted to decide what was best for themselves. The more freedom people enjoyed, the better off society would be. Government should therefore serve the people's needs instead of the other way around.

These ideas had been argued forcefully by John Locke. His *Second Treatise on Government* was published in 1690, just as English parliamentary tradition was taking its modern form. Locke's book spoke of each man's right to "life, liberty, and estate [property]." Do these words sound familiar? Thomas Jefferson changed them to "life, liberty, and the pursuit of happiness" for the Declaration of Independence.

Locke describes the purpose of government as a "social contract" that requires the consent of the governed. He says that a government may legitimately be dissolved when the government fails to fulfill its proper functions with respect to the people who empowered it.

For Locke, property ownership was central to classical liberalism. (And

no wonder. He was a wealthy man, with investments in the silk and slave trades.) This aspect of classical liberalism got a big boost from another English thinker, Adam Smith. His book *The Wealth of Nations* came out the same year as the Declaration of Independence. Smith argued that the best way for a nation to become wealthy was to let people conduct their business as they pleased, free from government interference. This was another argument for the liberty urged by classical liberalism.

Civic Republicanism

Classical liberalism's optimistic belief in liberty had a weakness. Sometimes people exercise their rights in ways that harm others. What if your next-door neighbor plays loud music at three o'clock in the morning, waking up everyone in your home? Should your neighbor be free to do as he pleases? To keep people from using their freedom in selfish ways, early American leaders relied on the idea of civic republicanism.

Civic republicanism went all the way back to the ancient Greeks, nearly 2,500 years ago. It called for citizens to do what was best for the republic (the whole society), not just for themselves. Civic republicans would actively participate in government. They would put unselfishness before greed, resist political corruption, and play referee when two or more elements of society competed for power. (Notice that this meaning of *republican* applies to everyone, not just members of today's Republican Party.)

Many of the nation's early leaders believed that civic republicanism depended on citizens receiving a good education. "Establish the law for educating the common people," urged Thomas Jefferson. Today these words are inscribed in the Jefferson Memorial in Washington, D.C. Part of the reason you are asked to study American history is the hope that you, too, will be a civic republican.

The First State Constitutions

Americans faced the task of creating new forms of government long before the U.S. Constitution was written. Almost as soon as the Revolution broke out, legislative assemblies in the former colonies began writing new constitutions. By the end of 1776, 10 states had completed the process. By 1780, every state had a written constitution.

These first state constitutions reflected Americans' revolutionary thinking. They helped create the context in which the U.S. Constitution

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was written.

What were the new ideas in these documents? Here are some of the most important ones:

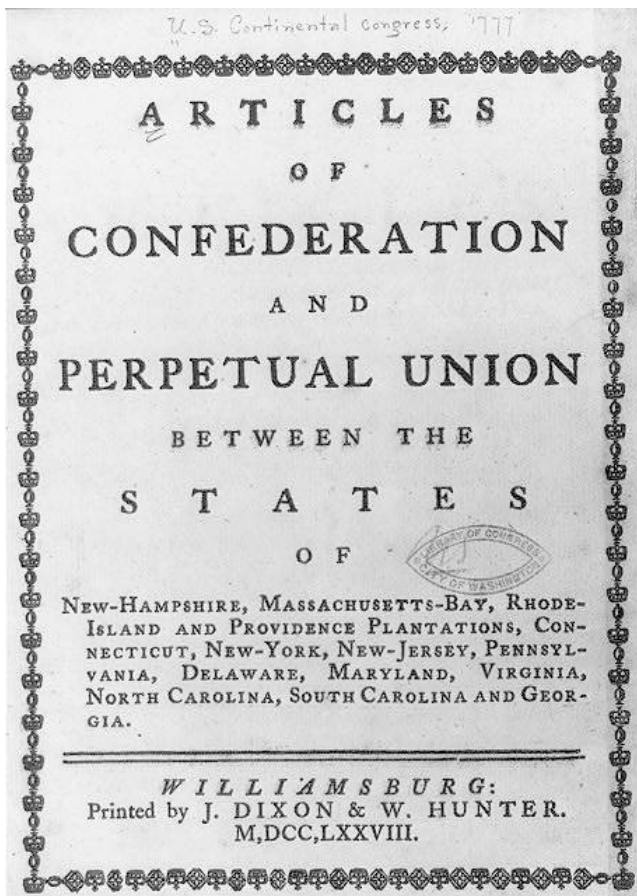
- *A constitution needs to be written down.* Unlike the British constitution, early state constitutions were written documents. Americans believed that putting constitutions in writing would make it harder for state governments to violate basic principles.
- *Power comes from the people.* The first state constitutions reflected republican ideals. A key ideal was that power comes from the people, not from the king or any other authority. For this reason, early state constitutions gave the most power to elected legislatures. In fact, they generally created very weak executives (such as a governor). This reflected Americans' fear and resentment of the strong executives they had known under British rule.
- *Separation of powers.* State constitutions separated executive, legislative, and judicial powers. They forbade the governor, or any other executive officer, from serving in the legislature. They also tried to protect the courts from executive control.
- *"All men are created equal."* This republican ideal was, of course, enshrined in the Declaration of Independence. State constitutions echoed this idea. For example, Pennsylvania declared, "All men are born equally free and independent." In reality, however, the new states did not favor absolute equality. All states established property requirements for voting. Most state legislatures had an upper house that was made up mostly of the well-to-do. In some states, governors had to be quite wealthy. And only New Jersey allowed women to vote. (Women in this state lost the right to vote in 1807.) Still, the ideal of equality would be a powerful influence in the years to come.
- *Basic rights should be constitutionally protected.* Americans agreed early on that basic rights needed protection in the written constitution. Vermont and Massachusetts, for example, devoted part of their constitutions to "A Declaration of the Rights of the Inhabitants" of their states. Such efforts planted the seed

of the Bill of Rights in the U.S. Constitution.

A few states even applied the ideas of equality and rights to slavery. The Vermont and New Hampshire constitutions abolished slavery. In Massachusetts, a court declared in 1783 that slavery could not be permitted under the state's bill of rights. Delaware's constitution forbade any new importation of slaves. Over time, other northern states passed antislavery laws.

These early constitutions were only a first attempt at self-government. In response to various events, states revised their fundamental laws. In the 1780s, for instance, Americans decided that they had gone too far in weakening the power of the executive branch. States changed their constitutions to make the executive stronger. They also moved toward having constitutional conventions instead of letting the legislatures write their constitutions. Still, the first state constitutions did establish principles that would continue to guide the American experiment in self-government.

The Articles of Confederation



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You have already learned the basics of the Articles of Confederation and the details of the Constitution. Now you will dig deeper into the Articles and analyze excerpts from it.

When the Treaty of Paris ended the American Revolution in 1783, the United States already had a government. The nation's first government was set up under the Articles of Confederation, which the states adopted in 1781. Although the government under the Articles was able to provide just enough leadership to win the American Revolution, there were many drawbacks to the way this system was set up.

The Articles of Confederation acted as more of a treaty than a constitution, and they allowed individual states to retain their sovereignty. As Article II states:

Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Under the Articles of Confederation, states retained most of the power, and the national government was headed by Congress.

The national government had no president and no court system. The lack of a national judiciary meant that state courts were each supreme in their own states; there was no overarching entity to resolve dispute between states. The Articles gave Congress the power to pass laws. Every law had to be approved by at least 9 of the 13 states, and “[in] determining questions in the United States in Congress assembled, each State shall have one vote” (Article V). This meant that large states, such as Virginia, had the same voting weight as small states, such as Delaware.

Among the powers granted to Congress under the Articles were the powers to declare war, create a postal system, and print money. The power to print money was given to the states as well. Congress did have the power to regulate the value of money. However, no single currency was established. Article IX states:

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States . . .

Without a single currency, trade between the states and with other nations became difficult.

The Articles of Confederation also gave Congress the power to raise an

army. Congress would decide the number of troops it needed and then demand them from the states. The number of troops requisitioned was in proportion to the white population of each state.

The United States in Congress assembled shall have authority . . . to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State . . . (Article IX).

Without its own standing army, the United States was unable to quickly respond to potential threats.

The Articles of Confederation did not give Congress the power to collect taxes. Nor could Congress force the states to give it funds. Instead, Congress had to ask the states for money.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled (Article VIII).

However, the states often ignored Congress's requests. As a result, Congress had a hard time running the country.

The government under the Articles was unable to manage or pay back revolutionary war debts, which adversely impacted the economy.

There were many other problems for the new government to solve. For example, states started arguing among themselves. Many of the quarrels were about taxes on goods that crossed state borders, as the Articles did not give Congress the power to regulate trade. New York, for example, taxed firewood from Connecticut and cabbages from New Jersey. The states also disagreed over boundaries. However, there was no national court system to handle these disagreements, and Congress was unable to settle them.

Additionally, it was difficult for Congress to make changes to the Articles to overcome the limitations on its power. According to Article XIII, once Congress had agreed to any amendment to the Articles, all states needed to approve it:

. . . nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

The Articles' limitations on Congress's power prevented it from

addressing the weaknesses in the Articles. Ultimately, the Articles of Confederation were replaced with the Constitution.

To review the full text of the Articles of Confederation, visit the Articles of Confederation page on the Library of Congress Web site:

<http://www.loc.gov/rr/program/bib/ourdocs/articles.html>.

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- Articles of Confederation and Perpetual Union, November, 1777.

Entire Selection: <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=127>

Accessed March, 2017

Land Ordinances and the Settlement of the Northwest Territory

Under the terms of the Treaty of Paris, the United States gained all the territory east of the Mississippi River that was south of Canada and north of Florida. At that time, there was no orderly way to divide and sell this land. Settlers walked into the wilderness and claimed the land they liked. Disagreements over who owned what clogged the state courts.

The Land Ordinances of 1784 and 1785

To end the confusion, Congress—under the Articles of Confederation—passed two land ordinances in 1784 and 1785. The Land Ordinance of 1794 divided the territory into districts that would govern themselves. This law also determined the population levels that would make each district eligible to send a representative to Congress. (This part of the Land Ordinance of 1784 would later be changed by another law that you will read about in a minute.)

With the Land Ordinance of 1785, Congress specifically decided the public and private ways in which the land could be used. Available land was divided into six-mile squares called townships. Each township was then divided into 36 sections of 640 acres each. One section of each township was to be set aside for the support of public schools. This section would be rented to a settler, and the money from that rent would be used to pay to educate the children in the township. (The

actual land was not always the place where a school was built.) The remaining sections in a township were considered private land that would be sold to settlers.

Americans began to lay out townships in the Ohio Valley, then known as the Northwest Territory. By 1787, the government was ready to sell sections to settlers. This raised the question of how these areas should be governed. Were they to be U.S. colonies? Or were they to be new states?

The Northwest Ordinance

Congress answered this question in the Northwest Ordinance of 1787. This law divided the Northwest Territory into smaller territories. Under the Northwest Ordinance, each territory had to follow a three-step plan before it could become a state.

The first step was for the territory to set up a government. Congress would choose a governor and four other leaders. These five officers would set up the laws for the territory. They would choose them from the laws already set up by other states. Congress had the power to approve the laws selected by the territory.

The second step was for the territory to reach a population of 5,000 free adult males. Then the territory could elect its own legislature, or lawmaking body.

The third and final step was for the territory to reach a population of 60,000. Then the territory could apply to Congress to become a state.

Five states formed from the Northwest Territory. Ohio was the first state to join the Union under the plan set out by the Northwest Ordinance. Ohio became a state in 1803. Indiana was next. It became a state in 1816. Illinois joined the Union in 1818. Michigan won statehood in 1837. The last state to organize from the Northwest Territory was Wisconsin. It became a state in 1848.



The decision that Congress made about public and private land played a critical role in the development of our nation. The Land Ordinance of 1785 and the Northwest Ordinance of 1787 would determine how land would be divided into states. These laws also allowed private citizens to become landowners. One historian believes that the United States might not have become a successful country if Congress had made a different choice. He thinks that making some of the land private kept the territories from becoming permanent colonies of the U.S. government. The expert also views Congress's action as a way to ensure that the land would be controlled by those who could get the best use out of it, which would then increase the land's value.

Democracy, Slavery, and Education in the States of the Northwest Territory

The Northwest Ordinance of 1787 set up a process for how new states could join the Union. The law also established important democratic ideals, or beliefs. The Northwest Ordinance guaranteed, or protected, the rights of settlers living in the Northwest Territory. These rights included freedom of speech, freedom of religion, and the right to a trial with a jury. These same rights became part of the U.S. Constitution in 1791 when the Bill of Rights was added to the Constitution. The Bill of Rights is the group of the first ten amendments, or changes, to the Constitution. They protect the rights and liberties of American citizens.

Slavery was banned in the Northwest Territory and in any state created from land in the Northwest Territory. Therefore, Ohio and the four other states created from the territory—Indiana, Illinois, Michigan, and

Wisconsin—all joined the Union as free states. Southerners who supported slavery went along with the Northwest Ordinance because they hoped that white settlers from the South would choose to come live in the new states. These people would not be able to own any slaves, but Southern slavery supporters thought they would not be against slavery like many states were in the North.

Another reason that historians and experts consider the Northwest Ordinance to be significant is because it is often regarded as one of the founding documents for public education in this part of the nation. The law established a purpose for education and why it was needed at that time. It stated that schools and education would be encouraged because a base of religion, morality, and knowledge were considered “necessary to good government and the happiness of mankind.” Many people from New England settled in the Northwest Territory, and they brought their views about education with them. These ideas shaped the attitudes that the area’s residents had about education for years to come.

The Northwest Ordinance Affects American Indians

The system of applying for statehood set out by the Northwest Ordinance served the nation well. Over time, the United States would continue to add states from territories as it spread to the shores of the Pacific Ocean. But the large number of new settlers was not good for the American Indians who lived in those lands. The Northwest Ordinance sounded as if it would protect the land for the American Indians who lived there. It said:

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Art. 3: The utmost good faith shall always be observed toward the Indians, their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with

them.

Despite the words of the law, settlers were eager to take over American Indian land. In 1789, the U.S. Constitution gave the federal government the right to make treaties with American Indian tribes. Many of these treaties resulted in the tribes losing their land. The federal government did not actually try to negotiate with the American Indians. Instead, the United States wanted to pay for the land. From the government's point of view, this was the way to treat the American Indians fairly. Then white settlers could continue to settle in the new lands.

The American Indians did not agree with this. For them, the issue had nothing to do with money. They believed that the U.S. government did not have any right to sell the land at all. Arthur St. Clair, governor of the Northwest Territory, met with representatives from the Six Nations in 1788. These were representatives from six different American Indian tribes. The Six Nations wanted the Ohio River to be the border of the lands where whites were allowed to settle. St. Clair refused this request and threatened war. Wanting to avoid conflict and feeling like they had no other choice, the Six Nations signed a peace treaty with Governor St. Clair.

Not all American Indian tribes felt that avoiding war was the solution. Blue Jacket of the Shawnee tribe and Little Turtle of the Miami tribe formed a confederacy, or group, of American Indian peoples who were willing to use force to stop white settlement in the area. One of the names for this conflict that was fought between 1785 and 1795 is the Northwest Indian War. The confederacy launched two devastating battles that killed more than 800 soldiers. These were the worst defeats that American Indians ever inflicted on U.S. troops. President George Washington then gave General Anthony Wayne command of a new army. General Wayne's forces were able to defeat the American Indian confederacy, and the white settlement of the Northwest Territory continued.

American Indians Lose More Land

Within a few decades, several Supreme Court cases and a federal law pushed American Indians further away. One such court case was *Johnson v. M'Intosh* in 1823. The Illinois and Piankeshaw tribes had sold their land to an individual, but the government tried to stop it. The dispute traveled through the court system all the way to the Supreme Court. There, the justices said that the tribes did not own their homeland and had no rights to sell it. The government, though, could sell it from under the American Indians and force them to leave.

The government found even more reasons to take over American Indian land when, in 1828, gold was discovered on Cherokee land in Georgia. In 1830, Congress passed the Indian Removal Act which allowed President Andrew Jackson to set aside land west of the Mississippi River as Indian Territories and move the American Indians to this land.

Throughout this time period, many tribes fought to stay on their land. The Sauk and Fox, led by their leader Black Hawk, fought the U.S. military in Illinois. The Seminoles, led by their chief Osceola fought in Florida in what became the most expensive military action for the U.S. government up to that time.

In spite of their long fight to keep their homes, the American Indians were unable to hold onto their land.

Federalist and Anti-Federalist Writings

The Federalist Papers were a series of essays written by Alexander Hamilton, James Madison, and John Jay. These articles and essays were written in order to promote the ratification of the United States constitution. The Anti-Federalist Papers were written in opposition to the ratification of the Constitution. These essays were written by numerous Founding Fathers, including George Mason and Samuel Adams. Below are excerpts from Federalist No. 10 written by James Madison and “Federal Taxing Power must be Restrained” by George Mason.

Federalist No. 10

The inference to which we are brought is, that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which this form of government can be rescued from the

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opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

“Federal Taxing Power must be Restrained”

Mr. Chairman, whether the Constitution be good or bad, the present clause [Article 1, Section 2] clearly discovers that it is a national government, and no longer a Confederation. I mean that clause which gives the first hint of the general government laying direct taxes. The assumption of this power of laying direct taxes does, of itself, entirely change the confederation of the states into one consolidated government. This power, being at discretion, unconfined, and without any kind of control, must carry every thing before it. The very idea of converting what was formerly a confederation to a consolidated government is totally subversive of every principle which has hitherto governed us. This power is calculated to annihilate totally the state governments. Will the people of this great community [Virginia] submit to be individually taxed by two different and distinct powers? Will they suffer themselves to be doubly harassed? These two concurrent powers cannot exist long together; the one will destroy the other. The general government being paramount to, and in every respect more powerful than the state governments, the latter must give way to the former....

Requisitions [under the Articles of Confederation] have been often refused, sometimes from an impossibility of complying with them; often from that great variety of circumstances which retards the collection of moneys; and perhaps sometimes from a wilful design of procrastinating. But why shall we give up to the national government this power, so dangerous in its nature, and for which its members will not have sufficient information? Is it not well known that what would be a proper tax in one state would be grievous in another? The gentleman who has favored us with a eulogium in favor of this system [Wilson C. Nicholas], must, after all the encomiums he has been pleased to bestow upon it, acknowledge that our federal representatives must be unacquainted with the situation of their constituents. Sixty-five members cannot possibly know the situation and circumstances of all the inhabitants of this immense continent. When a certain sum comes to be taxed, and the mode of levying to be fixed, they will lay the tax on that article which will be most productive and easiest in the collection, without consulting the real circumstances or convenience of a country, with which, in fact, they cannot be sufficiently acquainted.

The mode of levying taxes is of the utmost consequence; and yet here it is to be determined by those who have neither knowledge of our situation, nor a common interest with us, nor a fellow-feeling for us. The subject of taxation differs in three fourths, nay, I might say with truth, in four fifths of the states. If we trust the national government with an effectual way of raising the necessary sums, it is sufficient: everything we do further is trusting the happiness and rights of the people. Why,

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then, should we give up this dangerous power of individual taxation? Why leave the manner of laying taxes to those who, in the nature of things, cannot be acquainted with the situation of those on whom they are to impose them, when it can be done by those who are well acquainted with it? If, instead of giving this oppressive power, we give them such an effectual alternative as will answer the purpose, without encountering the evil and danger that might arise from it, then I would cheerfully acquiesce; and would it not be far more eligible? I candidly acknowledge the inefficacy of the Confederation; but requisitions have been made which were impossible to be complied with — requisitions for more gold and silver than were in the United States. If we give the general government the power of demanding their quotas of the states, with an alternative of laying direct taxes in case of non-compliance, then the mischief would be avoided. And the certainty of this conditional power would, in all human probability, prevent the application, and the sums necessary for the Union would be then laid by the states, by those who know how it can best be raised, by those who have a fellow-feeling for us. Give me leave to say, that the sum raised one way with convenience and ease, would be very oppressive another way. Why, then, not leave this power to be exercised by those who know the mode most convenient for the inhabitants, and not by those who must necessarily apportion it in such manner as shall be oppressive? . . . An indispensable amendment . . . is, that Congress shall not exercise the power of raising direct taxes till the states shall have refused to comply with the requisitions of Congress. On this condition it may be granted; but I see no reason to grant it unconditionally, as the states can raise the taxes with more ease, and lay them on the inhabitants with more propriety, than it is possible for the general government to do. If Congress hath this power without control, the taxes will be laid by those who have no fellow-feeling or acquaintance with the people. This is my objection to the article now under consideration. It is a very great and important one. I therefore beg gentlemen to consider it. Should this power be restrained, I shall withdraw my objections to this part of the Constitution; but as it stands, it is an objection so strong in my mind, that its amendment is with me a sine qua non of its adoption. I wish for such amendments, and such only, as are necessary to secure the dearest rights of the people....

“Federal Taxing Power must Be Restrained” excerpt from “The Anti-Federalist Papers” edited by Morton Borden, 1965.

Entire Selection: <https://billofrights institute.org/founding-documents/primary-source-documents/the-federalist-papers/federalist-papers-no-10/>

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“The Federalist Papers: No.10” excerpt from the Bill of Rights Institute

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