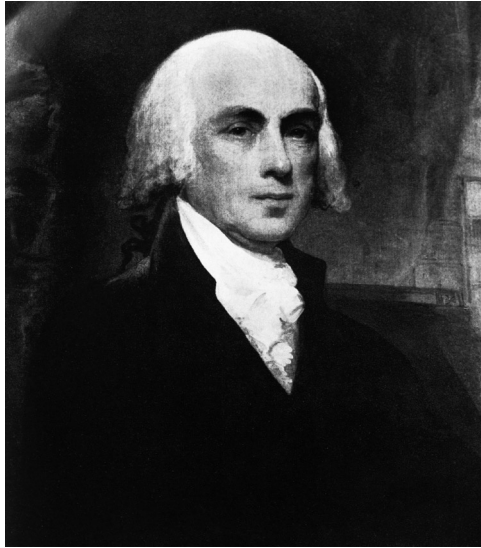
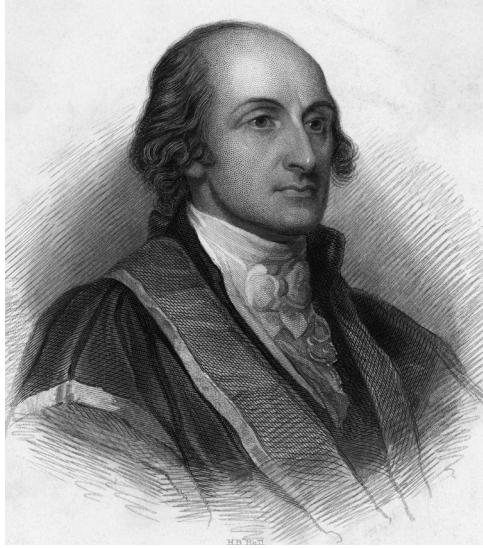


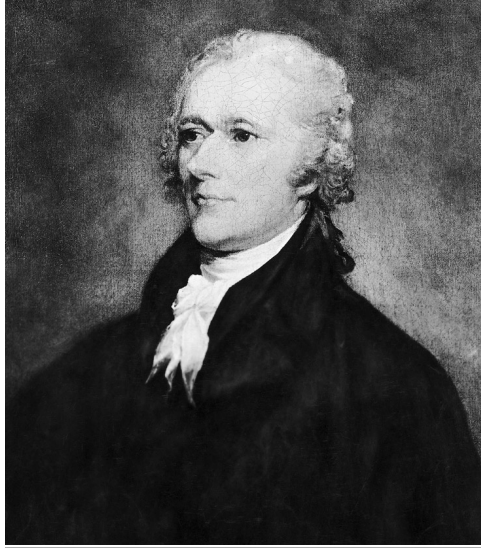
THE FEDERALIST



James Madison



John Jay



Alexander Hamilton

THE FEDERALIST

BY

Alexander Hamilton,
John Jay,

AND

James Madison

The Gideon Edition

Edited

with an Introduction, Reader's Guide,
Constitutional Cross-reference, Index, and Glossary

by

George W. Carey
and
James McClellan



LIBERTY FUND

Indianapolis

This book is published by Liberty Fund, Inc., a foundation established to encourage study of the ideal of a society of free and responsible individuals.



The cuneiform inscription that serves as our logo and as the design motif for our endpapers is the earliest-known written appearance of the word “freedom” (*amagi*), or “liberty.” It is taken from a clay document written about 2300 B.C. in the Sumerian city-state of Lagash.

© 2001 Liberty Fund, Inc.
Foreword © 2001 Liberty Fund, Inc.
Frontispiece photographs © Corbis-Bettmann

05	04	03	02	01	C	5	4	3	2	1
05	04	03	02	01	P	5	4	3	2	1

Library of Congress Cataloging-in-Publication Data

The Federalist: a collection /by Alexander Hamilton, John Jay & James Madison; edited with an introduction, reader's guide, constitutional cross reference & glossary by George W. Carey, James McClellan.

p. cm.

“The Gideon edition.”

Includes bibliographical references and index.

ISBN 0-86597-288-5 (alk. paper)

ISBN 0-86597-289-3 (pbk.: alk. paper)

1. United States. Constitution. 2. Constitutional law—United States.

I. Hamilton, Alexander, 1757–1804. II. Jay, John, 1745–1829.

III. Madison, James, 1751–1836.

IV. Carey, George Wescott, 1933– V. McClellan, James, 1937–

KF4515 .F4 2001

342.73'02—dc21 00-051998

LIBERTY FUND, INC.
8335 Allison Pointe Trail, Suite 300
Indianapolis, Indiana 46250-1684

“The true distribution of the numbers of the *Federalist* among the three writers is . . . the Edition . . . of Gideon. It was furnished to him by me, with a perfect knowledge of its accuracy, as it related to myself, and a full confidence in its equal accuracy as it relates to the two others.”

James Madison

Undated Memorandum

Library of Congress

Contents

Editors' Introduction	xvii
Reader's Guide to <i>The Federalist</i>	lvii
Preface to the Gideon Edition	lxxxv

THE FEDERALIST

No. 1	Introduction	1
No. 2	Concerning Dangers from Foreign Force & Influence	5
No. 3	The same Subject continued	9
No. 4	The same Subject continued	13
No. 5	The same Subject continued	17
No. 6	Concerning Dangers from War between the States	20
No. 7	The subject continued, and Particular Causes Enumerated	26
No. 8	The effects of Internal War in producing Standing Armies, and other institutions unfriendly to liberty	32
No. 9	The Utility of the Union as a Safeguard against Domestic Faction and Insurrection	37
No. 10	The same Subject continued	42
No. 11	The Utility of the Union in respect to Commerce and a Navy	49

Contents

<i>No. 12</i>	The Utility of the Union in respect to Revenue	55
<i>No. 13</i>	The same Subject continued, with a view to Economy	60
<i>No. 14</i>	An Objection drawn from the Extent of Country, Answered	62
<i>No. 15</i>	Concerning the Defects of the Present Confederation, in Relation to the Principle of Legislation for the States in their Collective Capacities	68
<i>No. 16</i>	The same Subject continued, in relation to the same Principles	75
<i>No. 17</i>	The Subject continued, and Illustrated by Examples, to show the tendency of Federal Governments, rather to Anarchy among the Members, than Tyranny in the Head	80
<i>No. 18</i>	The Subject continued, with further Examples	84
<i>No. 19</i>	The Subject continued, with further Examples	90
<i>No. 20</i>	The Subject continued, with further Examples	95
<i>No. 21</i>	Further defects of the present Constitution	99
<i>No. 22</i>	The same subject continued, and concluded	104
<i>No. 23</i>	The necessity of a government, at least equally energetic with the one proposed	112
<i>No. 24</i>	The subject continued, with an answer to an objection concerning standing armies	117
<i>No. 25</i>	The subject continued, with the same view	122
<i>No. 26</i>	The subject continued, with the same view	126
<i>No. 27</i>	The subject continued, with the same view	132
<i>No. 28</i>	The same subject continued	136
<i>No. 29</i>	Concerning the militia	140
<i>No. 30</i>	Concerning taxation	145

Contents

<i>No. 31</i>	The same subject continued	150
<i>No. 32</i>	The same subject continued	154
<i>No. 33</i>	The same subject continued	158
<i>No. 34</i>	The same subject continued	162
<i>No. 35</i>	The same subject continued	167
<i>No. 36</i>	The same subject continued	172
<i>No. 37</i>	Concerning the difficulties which the convention must have experienced in the formation of a proper plan	179
<i>No. 38</i>	The subject continued, and the incoherence of the objections to the plan, exposed	186
<i>No. 39</i>	The conformity of the plan to republican principles: an objection in respect to the powers of the convention, examined	193
<i>No. 40</i>	The same objection further examined	199
<i>No. 41</i>	General view of the powers proposed to be vested in the union	207
<i>No. 42</i>	The same view continued	215
<i>No. 43</i>	The same view continued	222
<i>No. 44</i>	The same view continued and concluded	230
<i>No. 45</i>	A further discussion of the supposed danger from the powers of the union, to the state governments	237
<i>No. 46</i>	The subject of the last paper resumed; with an examination of the comparative means of influence of the federal and state governments	242
<i>No. 47</i>	The meaning of the maxim, which requires a separation of the departments of power, examined and ascertained	249
<i>No. 48</i>	The same subject continued, with a view to the means of giving efficacy in practice to that maxim	256

Contents

<i>No. 49</i>	The same subject continued, with the same view	260
<i>No. 50</i>	The same subject continued, with the same view	264
<i>No. 51</i>	The same subject continued, with the same view, and concluded	267
<i>No. 52</i>	Concerning the house of representatives, with a view to the qualifications of the electors and elected, and the time of service of the members	272
<i>No. 53</i>	The same subject continued, with a view of the term of service of the members	276
<i>No. 54</i>	The same subject continued, with a view to the ratio of representation	282
<i>No. 55</i>	The same subject continued, in relation to the total number of the body	286
<i>No. 56</i>	The subject continued, in relation to the same point	291
<i>No. 57</i>	The same subject continued, in relation to the supposed tendency of the plan of the convention to elevate the few above the many	295
<i>No. 58</i>	The same subject continued, in relation to the future augmentation of the members	300
<i>No. 59</i>	Concerning the regulation of elections	305
<i>No. 60</i>	The same subject continued	310
<i>No. 61</i>	The same subject continued, and concluded	315
<i>No. 62</i>	Concerning the constitution of the senate, with regard to the qualifications of the members; the manner of appointing them; the equality of representation; the number of the senators, and the duration of their appointments	319
<i>No. 63</i>	A further view of the constitution of the senate, in regard to the duration of the appointment of its members	325

Contents

<i>No. 64</i>	A further view of the constitution of the senate, in regard to the power of making treaties	332
<i>No. 65</i>	A further view of the constitution of the senate, in relation to its capacity, as a court for the trial of impeachments	337
<i>No. 66</i>	The same subject continued	342
<i>No. 67</i>	Concerning the constitution of the president: a gross attempt to misrepresent this part of the plan detected	347
<i>No. 68</i>	The view of the constitution of the president continued, in relation to the mode of appointment	351
<i>No. 69</i>	The same view continued, with a comparison between the president and the king of Great Britain, on the one hand, and the governor of New York, on the other	355
<i>No. 70</i>	The same view continued, in relation to the unity of the executive, and with an examination of the project of an executive council	362
<i>No. 71</i>	The same view continued, in regard to the duration of the office	369
<i>No. 72</i>	The same view continued, in regard to the re-eligibility of the president	374
<i>No. 73</i>	The same view continued, in relation to the provision concerning support, and the power of the negative	379
<i>No. 74</i>	The same view continued, in relation to the command of the national forces, and the power of pardoning	384
<i>No. 75</i>	The same view continued, in relation to the power of making treaties	387
<i>No. 76</i>	The same view continued, in relation to the appointment of the officers of the government	391
<i>No. 77</i>	The view of the constitution of the president concluded, with a further consideration of the power of appointment, and a concise examination of his remaining powers	396

Contents

<i>No. 78</i>	A view of the constitution of the judicial department in relation to the tenure of good behaviour	401
<i>No. 79</i>	A further view of the judicial department, in relation to the provisions for the support and responsibility of the judges	408
<i>No. 80</i>	A further view of the judicial department, in relation to the extent of its powers	411
<i>No. 81</i>	A further view of the judicial department, in relation to the distribution of its authority	417
<i>No. 82</i>	A further view of the judicial department, in reference to some miscellaneous questions	426
<i>No. 83</i>	A further view of the judicial department, in relation to the trial by jury	430
<i>No. 84</i>	Concerning several miscellaneous objections	442
<i>No. 85</i>	Conclusion	452
	Glossary	459
	Appendixes	
1.	The Declaration of Independence	495
2.	Articles of Confederation	500
3.	Virginia Resolution Proposing the Annapolis Convention	510
4.	Proceedings of the Annapolis Convention	511
5.	Virginia Resolution Providing Delegates to the Federal Convention of 1787	516
6.	Call by the Continental Congress for the Federal Convention of 1787	518

Contents

7. Resolution of the Federal Convention Submitting the Constitution to the Continental Congress	520
8. Washington's Letter of Transmittal to the President of the Continental Congress	522
9. Resolution of the Continental Congress Submitting the Constitution to the Several States	524
10. Letter of the Secretary of the Continental Congress Transmitting Copy of the Constitution to the Several Governors	525
 The Constitution of the United States (cross-referenced with <i>The Federalist</i>) and Amendments	 526
 Index	 553

Editors' Introduction

The American Constitution is the oldest written national constitution in the world.¹ Its durability and veneration over the years would seem to affirm Thomas Jefferson's estimate that the fundamental law of the American people "is unquestionably the wisest ever yet presented to men."²

1. But the oldest written constitution still in force is the Massachusetts Constitution of 1780. The first written constitutions were the State constitutions adopted in 1776. See note 13, *infra*. The first national constitution to appear in a single document was the Articles of Confederation (1777). The American Constitution came a decade later. The third national constitution was promulgated in Poland on May 3, 1791; the fourth was the French Constitution of September 3, 1791. The two European constitutions sought to establish a constitutional monarchy, but neither lasted even two years. The British Constitution is the oldest among nations, dating back at least as far as the Magna Charta (1215); but it is "unwritten" in the sense that it is not limited to a single document. It consists, rather, of fundamental principles of free government drawn from a complex maze of parliamentary statutes, common law judicial precedents, and ancient political customs or conventions. See A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (Indianapolis: Liberty Fund, 1982).

2. Thomas Jefferson to David Humphreys, March 18, 1789, in *Papers of Thomas Jefferson*, ed. Julian Boyd (Princeton: Princeton University Press, 1958), 14: 678. "[T]his is the best Government that has ever yet been offered to the world," said Charles Pinckney of South Carolina in 1788, "and instead of being alarmed at its consequences we should be astonishingly pleased that one so perfect could have been formed from discordant and unpromising materials." (Jonathan Elliot, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* [Philadelphia: J. B. Lippincott, 1836], IV: 261). Pinckney served as a delegate to both the Federal Convention and the South Carolina ratifying convention. For contemporaneous views on the Constitution among leaders of the founding generation, see Charles Warren, *The Making of the Constitution* (Cambridge: Harvard University Press, 1928), 733–782. "Let us look to America," advised Alexis de Tocqueville, "let us borrow from her the principles . . . of order, of the balance of powers, of true liberty, of deep and sincere respect for right [which] are indispensable to all republics." (author's preface to the 12th ed., 1848, *Democracy in America* [New York: Alfred Knopf, 1948], cvi–cvii). The British statesman William Gladstone described the American Constitution as "the most remarkable work known to me in modern times to have been produced by the human intellect." (quoted in Albert P. Blaustein, *The Influence of the*

At the time of its adoption, however, Americans were deeply divided over its merits. When the delegates to the Federal Convention of 1787 completed their work in Philadelphia and voted on September 17 to approve the new Constitution and submit it to the people in the several States for ratification, three leading members of the convention—Edmund Randolph and George Mason of Virginia, and Elbridge Gerry of Massachusetts—refused to sign. Others simply left the convention before the proceedings ended. Of the fifty-five delegates who actually attended the convention, only thirty-nine affixed their signatures to the final draft.

No less disconcerting was the fact that a number of influential political leaders, including Patrick Henry, Richard Henry Lee, and James Monroe of Virginia, Samuel Adams and John Hancock of Massachusetts, and John Jay and Governor George Clinton of New York, had either boycotted the convention or were excluded from it. At least some of them could now be expected to oppose or lead the fight against ratification.

Moreover, the nation's two most experienced constitutional architects, John Adams of Massachusetts and Thomas Jefferson of Virginia, both of them leaders of pivotal states in the ratification struggle and warm supporters of the new Constitution, were on diplomatic assignment in Europe. Thus, they could not participate in the convention's deliberations or in the public debates over ratification. They nevertheless corresponded with friends back home and with each other, readily exchanging views on the Constitution's strengths and weaknesses. "We agree perfectly," Adams wrote Jefferson, "that the many should have a full, fair, and perfect representation. You are apprehensive of Monarchy, I of Aristocracy. I would therefore have given more Power to the President and less to the Senate."³ A few of the Framers also

United States Constitution Abroad [Washington, D.C.: Washington Institute for Values in Public Policy, 1986], 32). With few exceptions, contends Blaustein, "every nation that has a one-document constitution (or is committed in principle to having one) is inevitably following the United States precedent-model" (Ibid., 7). We are reminded, however, that "Of the many systems of free and popular government in operation in the world today, there are few, if any, which do not bear, in a variety of features, the unmistakable marks of derivation from the Constitution of England in some stage of its development from 1688 to the present day." (Maurice Amos, *The English Constitution* [London: Longmans, Green, 1930], 14).

3. John Adams to Thomas Jefferson, December 6, 1787, in *The Works of John Adams*, ed. Charles Francis Adams (Boston: Little Brown, 1853), VII: 464. Adams was responding to Jefferson's letter of November 13, in which Jefferson had indicated that he would have

solicited the opinions of Adams and Jefferson. James Madison of Virginia, for example, corresponded regularly with Jefferson, and Roger Sherman of Connecticut exchanged views with Adams on a number of constitutional points. Adams told Jay at the outset of the ratification struggle that “the public mind cannot be occupied about a nobler object than the proposed plan of government. It appears to be admirably calculated to cement all America in an affection and interest, as one great nation.” Like so many friends of the Constitution, Adams acknowledged its imperfections but accepted the new Constitution as probably the best compromise possible under the circumstances. “A result of accommodation and compromise cannot be supposed perfectly to coincide with everyone’s idea of perfection,” he reminded Jay. “But, as all the great principles necessary to order, liberty, and safety are respected in it, and provision is made for corrections and amendments as they may be found necessary, I confess I hope to hear of its adoption by all the states.”⁴

THE MOVEMENT TOWARD CONSTITUTIONAL REFORM

The Framers of the American Constitution confronted three major tasks. The first was to improve the relationship among the States, or to create “a more perfect union.” The second was to design a federal government with limited, delegated, and enumerated powers sufficient to govern effectively, reserving to the States and the people thereof those powers not delegated, in order to protect their rights and liberties and prevent the central government from usurping them. The third task was to implement the principle of “government by consent” and to confer legitimacy upon the new government by building it upon a solid foundation of popular sovereignty, with-

been content to add “three or four new articles . . . to the good, old and venerable fabric [i.e., the Articles of Confederation], which should have been preserved even as a religious relic.” In particular, he favored giving the Senate a stronger voice in both foreign and domestic affairs, and limiting the President to a single term. “How do you like our new Constitution?” queried Jefferson. “Their President seems a bad edition of a Polish king. He may be reelected from 4 years to 4 years for life. Reason and experience prove to us that a chief magistrate, so continuable, is an officer for life.” (Jefferson, *Papers*, 12: 350–351). Jefferson’s concern was addressed more than a century later when in 1951 the States ratified the 22nd Amendment to the Constitution, thereby constitutionalizing the custom established by George Washington for limiting the President to two terms.

4. John Adams to John Jay, December 16, 1787, in *Works of John Adams*, VIII: 467.

out sacrificing the sovereignty of the States that agree to join the Union. How the Framers accomplished these objectives is the story of the American founding.

The Federal, or Philadelphia, Convention, as it is sometimes called, was the culmination of a struggle dating back to the American Revolution to provide central direction to American affairs and promote closer cooperation among the then-thirteen colonies. Even before the outbreak of armed hostilities, colonial leaders had recognized the importance of coordinated opposition to British domination, as witnessed by the convening of the Stamp Act Congress in 1765 to challenge the constitutionality of the Act, and the formation between 1772 and 1774 of intercolonial Committees of Correspondence to exchange information and unite the colonies against George III and the British Parliament.

These efforts laid the groundwork for concerted action that led directly to the creation of the first Continental Congress in 1774. This remarkable body sat for fifteen years, first in Carpenters' Hall in Philadelphia and later in a number of other cities, completing its final session in New York City in 1788. Though regarded at first as only a temporary assembly, the Continental Congress met for seven years (1774–1781) before its powers were ever clearly defined. During this period, it exercised many of the powers of a sovereign state, such as declaring the independence of the United States, issuing currency, borrowing large sums of money, entering into an alliance with France, building a navy, and raising an army. It also drafted America's first instrument of government, styled "The Articles of Confederation and Perpetual Union." Described as a "league of friendship" among the thirteen States, each retaining "its sovereignty, freedom and independence," the Articles of Confederation were more like a treaty than a genuine constitution delineating the powers and functions of a central government. The document made no provision for an executive or a judiciary branch, and the member States retained most of their original powers. Not the least disconcerting was the failure of the Articles to confer supremacy on the Confederation's laws and treaties, thereby rendering them equal to State constitutions and statutes and making them unenforceable when a State refused to comply.

As early as July 1775 the need for Articles of Confederation was discussed in Congress, and a plan for them was presented by Benjamin Franklin. But no action was taken until June 7, 1776, when Richard Henry Lee offered a

resolution providing that: (1) "these United Colonies are, and of right ought to be, free and independent States"; (2) that alliances should be made for their protection; and (3) that "a plan of confederation be prepared and transmitted to the respective colonies."⁵ On June 11, a committee consisting of Thomas Jefferson, Benjamin Franklin, John Adams, Robert Livingston, and Roger Sherman was appointed to prepare a Declaration of Independence. A second committee, headed by John Dickinson of Delaware, was appointed a day later to draft the Articles of Confederation. After extended debate and considerable delay, the Articles were formally adopted on November 15, 1777, and sent to each State legislature for ratification. Because the Articles required the unanimous consent of all the States before they could go into effect, there were further delays. Some of the small States, especially Maryland, refused to sign until the larger States surrendered their claims to territory in the Northwest. Consequently, the Articles did not go into effect until Virginia offered to cede her claims to the Union in 1781. What is more, by defining the powers of the Continental Congress the Articles necessarily limited them; actions previously thought appropriate were now denied.

Throughout its relatively brief existence, which ended in 1789 when the system created by the Philadelphia Convention was put into operation, there was widespread dissatisfaction with the Articles, principally because they conferred so little power on the Continental Congress. Indeed, in 1780, even before ratification was complete, Alexander Hamilton anticipated the difficulties that would arise and urged political leaders to call a convention of the States to draft plans for a far stronger confederation. A short time later, in 1781, writing under a pen name, "The Continentalist," he again argued that "we ought without delay to enlarge the powers of Congress."⁶ In 1780, a

5. Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Alfred Knopf, 1997), 41. Lee was instructed by the Virginia Convention of 1776 to offer the resolution, and it was seconded by John Adams.

6. Alexander Hamilton, "The Continentalist No. 3," August 9, 1781, in *The Papers of Alexander Hamilton* (New York: Columbia University Press, 1961), II: 665. Hamilton wrote six essays under the pseudonym of The Continentalist, dated July 12, August 9 and 30, 1781; and April 18 and July 4, 1782. "As too much power leads to despotism," declared Hamilton, "too little leads to anarchy, and both eventually to the ruin of the people." ("The Continentalist No. 1," *Ibid.*, 651). The inherent weakness of earlier confederations, especially those of ancient Greece, served as a warning to the American people: decrees of the Amphictyonic Council became ineffectual, and "when the cities were not engaged in

convention of New England States meeting in Boston proposed that the American States immediately form a "more solid union" than that provided by the Articles. In 1781 and 1782, the New York Assembly recommended "a general convention of the States specially authorized to revise and amend the Confederation."⁷

Responding to these appeals, the Continental Congress tried, without success, to amend the Articles and enlarge its powers. In February 1781, for example, Congress proposed an amendment authorizing the Confederation government to levy a five percent *ad valorem* duty to raise revenue. Twelve states agreed, but Rhode Island opposed the change, and because of the unanimity requirement the amendment failed. A month later James Madison recommended that Congress be given authority to employ the force of the United States to "compel [the] States to fulfill their federal engagements," but no action was taken.⁸ Again, that same year a committee of the Congress reported twenty-one deficiencies in the Articles and recommended a general enlargement of Congress's powers, but without success. As late as 1786, Charles Pinckney of South Carolina was leading an effort in the Congress to call a constitutional convention, but to no avail.

The Continental Congress, it became clear, had reached an impasse. In practice, the unanimity requirement rendered it virtually impossible to

foreign wars, they were at perpetual variance among themselves. Sparta and Athens contended twenty-seven years for . . . dominion of Greece," and as a result the Macedonians and eventually the Romans "became their masters." ("The Continentalist No. 2," *Ibid.*, 656). Hamilton would later invoke this and other historical examples of failed confederacies in *The Federalist*. Madison shared his aversion to confederacies, noting in *Federalist* No. 18 "the tendency of federal bodies, rather to anarchy among its members, than to tyranny in the head." The solution for saving the Articles, Hamilton explained in the last three "Continentalist" essays, was to give Congress more power, including that of regulating trade, levying land and capitation taxes, and appointing its own officers of the customs, collectors of taxes, and military officers.

7. George Bancroft, *History of the Formation of the Constitution* (New York: Appleton, 1883), I: 39. Bancroft and others have speculated that Alexander Hamilton was probably the author of these resolutions.

8. Madison's proposed amendment of March 12, 1781, is reprinted in *The Papers of James Madison*, ed. by William T. Hutchinson and William M. E. Rachel (Chicago: University of Chicago Press, 1963), III: 17–19. Public-spirited individuals outside the government expressed similar concerns about the defects of the Articles. See, for example, Pelatiah Webster, *A Dissertation on the Political Union and Constitution of the Thirteen United States* (1783), and Noah Webster, *Sketches of American Policy* (1785).

amend the document even if an overwhelming majority of the States favored change. The inability to act on these provisions necessarily doomed the Articles of Confederation to extinction, because the Continental Congress was helpless to correct flaws in the system or to adapt it to changing circumstances.⁹ During the final eight years of its existence, the Congress thus grew weaker and weaker until at last many political leaders reached the conclusion that a new, more efficient and more powerful government was needed. It became clear, however, that if a workable constitutional system responsive to the needs of the American people were to be established, the impetus would have to come from outside the Congress.¹⁰

CONSTITUTIONAL REFORM IN THE STATES

In the meantime, the colonies had already transformed themselves into thirteen constitutional republics, each claiming independence, sovereignty, and statehood. They had progressed to this stage of political development over a two-year period beginning with the creation of the Committees of Correspondence in 1772. These bodies were subsequently replaced by revolutionary or provincial legislatures in each colony, such as the Provincial Congress in Massachusetts and the Provincial Conventions in Maryland and the Carolinas. Many members of these transitional legislative bodies had served

9. Because the Articles of Confederation proved inadequate in some respects and had to be replaced by a new frame of government, it has been fashionable, as one historian notes, to criticize it harshly, and even heap scorn upon it. But "whatever the defects of the Articles of Confederation, they constitute nevertheless an important, a necessary stage in the development of an efficient constitution . . . [just] as the Confederation under them was an important, a necessary step in the program toward a more perfect union." (Edmund Cody Burnett, *The Continental Congress* [New York: Norton, 1964], 257). To be sure, under the Articles the Treaty of Peace acknowledging American independence was negotiated, the war of the Revolution was concluded, and a Union of States was established. For many Americans, a decentralized confederation in which public affairs were entrusted largely to State and local officials was preferable to a consolidated Union run by a distant government. To a very great extent, whether the Articles were a success or a failure is a question that depends on one's philosophy of government and view of the public interest.

10. "There was a good deal of truth in what John Adams once said of it," noted the historian John Fiske, that the Continental Congress "was more a diplomatic than a legislative body. It was, indeed, because of this consciously felt diplomatic character that it was called a Congress and not a Parliament." (*The Critical Period of American History, 1783–1789* [Boston: Houghton Mifflin, 1888], 237).

in the colonial assemblies, thereby providing continuity of leadership, political experience, and on occasion legality with the old regime. Upon taking charge, these provincial legislatures elected delegates to the Continental Congress and assumed the powers of government.

During the spring and summer of 1775, the interim governments in the various colonies, many of them built upon county committees, began to prepare for independence, statehood, and to write new constitutions. "When Americans thought of independence in 1775–1776," notes one historian, "they usually thought of it in terms of their own commonwealth, of Massachusetts, New Jersey or Georgia, rather than in terms of the nation. The future form and character of the nation, even if one survived, were heavy and inchoate."¹¹ The bilateral movement toward a national declaration of independence and American nationhood, it may thus be seen, sprang from a grassroots effort at the state and local level, that is, from the bottom up, not from any grand design originating in the Continental Congress.

Between April and July 1776, some ninety "declarations of independence" were formulated by townships in Massachusetts and counties in New York, Maryland, Virginia, and South Carolina.¹² On April 13, 1776, North Carolina became the first State to instruct its delegates to join other delegates in the Continental Congress in declaring independence. Rhode Island, Virginia, Connecticut, New Hampshire, Delaware, New Jersey, Pennsylvania, and Maryland followed in rapid succession. While only a small portion of the people participated in the formation and ratification of these various State and local declarations, the record indicates that they enjoyed widespread public support, notwithstanding pockets of Loyalist opposition in some areas. This is no less true of the Declaration of Independence that was ultimately adopted by the Continental Congress and readily approved by the State legislatures.

Moreover, few citizens played a direct role in the creation of the first State constitutions. Four States wrote new constitutions even before the Declaration of Independence came into existence. The first, adopted by New Hampshire in January 1776, and the second, approved by South Carolina that February, were hastily written, virtually in the heat of battle. They

11. Allan Nevins, *The American States During and After the Revolution, 1775–1789* (New York: Macmillan, 1924), 115.

12. See Maier, *American Scripture*, 47–96.

were viewed as temporary expedients and both were soon replaced, but the new constitutions of New Jersey and Virginia, adopted in June, were intended as permanent instruments of government. Each in fact lasted more than half a century. Four more States ratified new constitutions in the fall of 1776: Delaware and Pennsylvania in September, Maryland in November, and North Carolina in December. Georgia and New York finally agreed on their new constitutions early in 1777. Three States—Massachusetts, Rhode Island, and Connecticut—elected to retain their colonial charters as fundamental law by stripping them of their monarchical provisions and reinterpreting them as republican constitutions.¹³

Significantly, these first State constitutions, like all the early State declarations of independence, were written by legislative assemblies. The decision in Massachusetts, Rhode Island, and Connecticut to keep the old charters was also made by legislative fiat. In no State was the new constitution drafted by a specially elected constitutional convention, nor did any of the States submit their new constitutions to the people for ratification. Three of the ten States that adopted a new constitution (New Jersey, Virginia, and South Carolina) did not even call a special election to draft the document, leaving the matter entirely to the discretion of their incumbent legislators. Thus it may be seen that, in spite of the American revolutionary doctrine of popular sovereignty embodied in the Declaration of Independence proclaiming the right of the people to self-government, the American people did not participate directly in the formation and ratification of either the Articles of Confederation or the first State constitutions. Indeed, they did not even have a voice in the writing

13. The era of revolutionary State constitutions extended from 1776 to 1784. Eight State constitutions were written in 1776. Georgia and New York adopted theirs in 1777, as did Vermont, which was in revolt against both New York and Great Britain. The following year, South Carolina revised her constitution of 1776, and in 1780 Massachusetts cast aside her colonial charter of 1691 in favor of a new constitution. New Hampshire, greatly influenced by the Massachusetts design, finally adopted a constitution in 1784. The overall record of success of these first attempts at constitution making was rather impressive, particularly when it is recalled that the documents were written while the colonies were at war. Four of the first constitutions lasted more than a half century: North Carolina (75 years); New Jersey (68 years); Maryland (65 years); and Virginia (54 years). The Connecticut Charter of 1662 served as that state's constitution until 1818, and Rhode Island's Charter of 1663 lasted until 1842. New York's Constitution of 1777, though amended by an 1801 convention, remained substantially intact until it was replaced in 1821. By 1800, the sixteen States comprising the Federal Union had adopted twenty-six constitutions.

or adoption of the Declaration of Independence that heralded their new coming. Having created numerous republics—that is, governments modeled and directed by their chosen representatives—they had yet to establish *democratic* republics based on “the consent of the governed”—republics in which the people exercised both political and legal sovereignty through fundamental laws that they had helped directly to create.

In spite of these apparent inconsistencies, the American Revolution and the various political regimes that sprang from it were all part of an evolving democratic movement. “The Articles of Confederation,” as Merrill Jensen has observed, “were the constitutional expression of this movement, and the embodiment in governmental form of the Declaration of Independence.”¹⁴ That our first efforts in 1776 to establish constitutional government failed to include popular participation in constitution making should not obscure the fact that significant progress had already been made toward the attainment of self-government and the principle of majority rule in the lawmaking process.

Even before the States completed ratification of the Articles and joined the Union, there was growing dissatisfaction with the first constitutions in most States. Much of this discontent may be attributed to defects discovered in the constitutions after they went into effect, caused mostly by inexperience in the art of constitution making and a general lack of familiarity with new constitutional concepts that had not yet been tested, especially the idea of separating the powers of government among three branches. Many of these early attempts at self-government, for example, called for a pure separation of powers and failed, in one way or another, to establish effective, limited government because they lacked a check-and-balance system and allowed the legislatures to usurp the powers of the other branches. What they invariably produced was legislative supremacy rather than constitutional supremacy. In Massachusetts and New Hampshire, however, there was an additional concern almost from the outset: a claim that self-government had been subverted because the people had not played a direct role in designing their constitutional systems. Not content with their new constitutions, disgruntled voters in these states conceived the idea that a constitution should be drafted by a special, independent constitutional convention rather than a legislative

14. Merrill Jensen, *The Articles of Confederation* (Madison: University of Wisconsin Press, 1959), 15.

assembly and that any fundamental law proposed by this convention should be submitted to the people for ratification. A number of early attempts to democratize the process regarding both the drafting and the ratification of the Constitution met with resistance. One of the first proposals for a special convention to write a new constitution was made by the town of Concord, Massachusetts, on October 21, 1776, but State leaders were opposed to the idea. Even earlier, the town of Norton had unsuccessfully urged the State to consider the special convention as an alternative to legislative action. Berkshire County, in western Massachusetts, became the first local government to call for the popular *ratification* of a new constitution. Led by “the fighting parson” (the Rev. Benjamin Balch, who later fired the first shot at the Battle of Bennington), Berkshire citizens held a mass meeting in Pittsfield and sent a memorial to the State legislature demanding that new constitutions be submitted to the people. Offering a rationale that would soon be repeated in most of the other States, they contended that the people were the true fount of all power, that a revolutionary legislature had no right to impose a constitution upon them, and that the only valid constitution was one based on the consent of the majority.¹⁵

Before the Massachusetts authorities could make a final determination on how to proceed toward devising and establishing a new constitution, the New Hampshire legislature stepped forward in the spring of 1778 to summon a constitutional convention of its own. The convention met in Concord, New Hampshire, in June to draft a new instrument of government that would replace the State’s first attempt at constitution making, but the second document proved no more satisfactory than the first and the townships promptly rejected it. This assembly was nevertheless the first constitutional convention in the United States—and in the world. It was not until the fall of 1783, however, in a fourth and final effort, that the citizens of New Hampshire adopted a permanent constitution.

Meanwhile, the people of Massachusetts were progressing steadily toward a constitutional system that would have a permanent impact on all future constitutions, including the Federal Constitution of 1787. On May 5, 1777, the legislature called upon the electorate to choose representatives who would not only serve as legislators but would also work with the twenty-eight mem-

15. Nevins, *The American States During and After the Revolution*, 172–184.

bers of the Council, or upper house, to draft a new constitution for submission to the voters. Despite widespread opposition to using the State assembly as a constitutional convention, the assembly approved the constitution on February 28, 1778, only to see it flatly rejected less than a week later by a vote of 9,972 to 2,083. This became the first time in American history in which all the free adult male citizens were allowed to participate in the ratification of a proposed constitution.¹⁶

During the course of this referendum, some 180 returns from towns in Massachusetts were drafted to explain local objections to the proposed constitution. The most important of these was the celebrated *Essex Result* of Essex County, written mainly by Theophilus Parsons, a young lawyer who later became the Chief Justice of the Massachusetts supreme court. The *Essex Result*, an essay in political and constitutional theory, has often been compared favorably to *The Federalist* because of its learned and insightful treatment of political subjects, particularly the separation of powers principle. Rejecting legislative supremacy and a pure separation of powers, the *Essex Result* advocated a complex, carefully balanced form of government that provided a check-and-balance system to prevent one branch of the government, particularly the legislative, from encroaching upon the powers of the other branches.¹⁷ In 1781, Thomas Jefferson published his *Notes on the State of Virginia*, which made a similar case against legislative supremacy. Concentrating all the powers of government in the same hands, said Jefferson, "is precisely the definition of despotic government. . . . An *elective despotism* was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and

16. Ibid. See also Jackson Turner Main, "Government by the People: The American Revolution and the Democratization of the Legislatures," in *The New American Nation, 1775 to 1820: The Revolution in the States*, ed. by Peter Onuf (New York: Garland Publishing, 1991), 1–17.

17. The *Essex Result*, the Constitution of 1780, and related documents are reproduced in Oscar and Mary F. Handlin, eds., *The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780* (Cambridge: Harvard University Press, 1966). The *Essex Result* is also reprinted, with related documents, in Charles S. Hyneman and Donald S. Lutz, eds., *American Political Writing during the Founding Era, 1760–1805* (Indianapolis: Liberty Fund, 1983), I: 480–523. According to M. J. C. Vile, the *Essex Result* was "the precursor of the Massachusetts Constitution of 1780, and the first clear formulation of the [separation of powers] theory which was to become the basis of the Federal Constitution." (*Constitutionalism and the Separation of Powers* [Indianapolis: Liberty Fund, 1998], 165).

balanced among several bodies . . . that no one could transcend their legal limits, without being effectually checked and restrained by the others.”¹⁸

With the defeat of the 1778 constitution, the Massachusetts House of Representatives called for another referendum. In town meetings across the State a majority of the electorate now voted in favor of calling a State convention to draft a new constitution. The legislature thereupon announced new elections on June 21, 1779, for a constitutional convention, which met in Cambridge on September 1. In sharp contrast to the Federal Convention of 1787 that met in Philadelphia, in which there was widespread participation among the delegates in the framing of the document, the Massachusetts convention appointed a committee of thirty delegates to perform the task. This committee then appointed a subcommittee consisting of James Bowdoin, Samuel Adams, and John Adams to do the work. This group then proceeded to turn the whole matter over to John Adams, who singlehandedly wrote both a new constitution and a declaration of rights. These documents were accepted with only minor revisions after four months of deliberation, and a proposed text was presented to the towns in March 1780. They approved the document and on October 25, 1780, the new constitution went into effect.

The Massachusetts Constitution of 1780 stands today as a tribute to the political genius of John Adams.¹⁹ Although it has been substantially amended

18. Thomas Jefferson, *Notes on the State of Virginia*, ed. by William Peden (Chapel Hill: University of North Carolina Press, 1955), 120.

19. Although Adams was not a member of the Federal Convention, he was in many respects the father of American constitutionalism. His pamphlet “Thoughts on Government” (1776) served as a guide in some States, including Virginia, in the drafting of the first constitutions. The constitution he wrote for Massachusetts set the standard for future State constitutions and the Federal Constitution. “Of all the prominent statesmen of the Revolution,” asserts one writer, “John Adams seemed best and earliest to forecast the form our institutions must assume, as well as their foundation and peculiar spirit. He saw that a republic alone would satisfy the wishes or harmonize with the genius of our people, and he was wise enough and fortunate enough to point out seasonably and with great precision the method in which the edifice of government, in the several states, must be erected. He was convinced it must be founded upon the people, by the people, and for the people.” (John Alexander Jameson, *A Treatise on Constitutional Conventions* [Chicago: Callaghan and Co., 1887], 498). Another guidebook for constitutional architects was Adams’s multi-volume *Defence of the Constitutions of Government of the United States of America*, written “to lay before the people a specimen of that kind of reading and reasoning which produced the American [state] constitutions,” repudiate the constitutional ideas of French (and American) reformers and defend bicameralism and the new American check-and-balance system of separated powers. Published in 1787, Adams’s *Defence* is “thought to

over the years, it continues to serve as the fundamental law of Massachusetts after more than two centuries. It is thus the oldest written constitution in the world that is still in force. The influence of the Massachusetts experience on American constitutional development, at both the State and national levels, has been substantial. The convention of 1779–1780 was the first successful constitutional convention in which the people participated not only in the selection of delegates to a special convention but also in the ratification of the finished document. It thereby established democratic principles of procedure for the formation and acceptance of constitutions based on the sovereignty of the people. With few exceptions, the Massachusetts precedent became the accepted template throughout the Union after 1780 and also provided the procedure that the Framers of the American Constitution would follow in 1787.²⁰

Likewise, the Massachusetts Constitution had an enormous impact on American constitutional theory, for it was in this constitution that the new theory of separation of powers, a theory based on the realization that separated powers must be checked and balanced if they were to remain separate, was first implemented. This is the uniquely American system that the several States adopted when they began rewriting their constitutions after 1780 and the one that the Framers incorporated into the new Constitution drafted in Philadelphia.²¹

On the eve of the Federal Convention, it may thus be seen, the American

have had a positive influence on the Constitutional Convention.” (C. Bradley Thompson, *John Adams and the Spirit of Liberty* [Lawrence: University Press of Kansas, 1998], 252).

20. Writing in 1775, John Adams recalled that he “had looked into the ancient and modern confederacies for examples” of popular conventions, but could not find any. “But we had a people of more intelligence, curiosity, and enterprise,” he continued, “who must be consulted; and we must realize the theories of the wisest writers, and invite the people to erect the whole building upon the broadest foundations. . . . This could only be done by Conventions of representatives chosen by the people in the several colonies. . . . Congress ought now to recommend to the people of every colony to call such Conventions immediately; and set up governments of their own, under their own authority; for the people were the source of all authority, and original of all power.” (John Adams, “Autobiography,” in *The Works of John Adams*, III: 16).

21. Vile, *Constitutionalism and the Separation of Powers*, 162–166. “It was in the Massachusetts Constitution of 1780,” observes Vile, “that the new philosophy of a system of separated powers which *depends upon* checks and balances for its effective operation was first implemented. This constitution embodied the results of the ideas of John Adams and, more important perhaps, of the Essex Result.” (Ibid., 162–163).

people had clearly outgrown the constitutional immaturity of their revolutionary youth. Through trial and error, they had advanced to a whole new understanding of constitutionalism, republicanism, and popular sovereignty in just ten years. Prior to the American Revolution, the term “constitution” was commonly understood to refer to the fundamental principles upon which government is based. Now it was seen as something more—as a written document originating with the people that authorized the establishment of a government with limited powers. For the first time, constitutions were readily seen as distinct from, and superior to, statutes enacted by legislative assemblies. The spell of legislative supremacy cast by Parliament and the English constitutional system had been broken, at least in theory if not always in practice. Constitutions were now entitled to the elevated status of a higher or supreme law because they sprang not from the legislature but from the people, through constitutional conventions creating them and ratifying conventions approving them.²² The new separation of powers doctrine, favoring some functional overlap among the three branches of government through a check-and-balance arrangement that would ensure their independence, went hand in hand with this new view of constitutionalism, because it held the legislature in check and promised to prevent the return of legislative supremacy.

THE ANNAPOLIS CONVENTION

The catalyst for the Federal Convention of 1787 that wrote the Constitution of the United States was not the Continental Congress sitting in New York but the several States, led by the State of Virginia. What sparked the proceedings that led to the drafting of the Constitution was a commercial dispute between

22. The evolution of political and constitutional theory from the Declaration of Independence to the ratification of the Constitution is illuminated in Gordon S. Wood's *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina Press, 1969). The establishment of popular-based conventions to frame and ratify a constitution, observes Wood, “was an extraordinary invention, the most distinctive institutional contribution . . . the American revolutionaries made to western politics. It not only enabled the Constitution to rest on an authority different from the legislature's, but it actually seemed to have legitimized revolution. Without a constitution based on convention authority, as Jefferson had complained, the people must ‘rise in rebellion’ every time they wished to prevent legislative encroachment on their liberties or to revise their constitution.” (Ibid., 342–343. See also Jameson, *A Treatise on Constitutional Conventions*, 490–545).

Virginia and Maryland over the taxing of shipping on the Potomac River and Chesapeake Bay. Led by James Madison, representatives from the two States met in 1784 at Mount Vernon, the home of General Washington. There they were able to settle their differences, but left unresolved questions regarding the interests of other States bordering Virginia and Maryland. Madison then persuaded the Virginia legislature to call a meeting of all the States to discuss trade problems, hoping that the participants might consider the larger issue of giving the Continental Congress the power to regulate commerce.

Virginia's call for a convention was heeded, and in the summer and early fall of 1786 twelve delegates from five States (Virginia, Pennsylvania, New York, New Jersey, and Delaware) convened in Annapolis, Maryland. Although the other states (including Maryland, curiously enough) did not send a representative, and little was actually decided, the Annapolis Convention proved to be important in that it set the stage for the Federal Convention the next year. Conspicuous for their leadership at the Annapolis Convention were James Madison and Alexander Hamilton, who would later figure prominently in the drafting and adoption of the Constitution. At the urging of Hamilton, the Annapolis delegates voted on September 14, 1786, to recommend to all thirteen States that they hold another convention "to meet in Philadelphia on the second Monday in May next, to take into consideration the situation in the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union."²³

At this juncture, the Continental Congress could have assumed a leadership role by officially sponsoring the convention, or at least endorsing it. Instead, it remained a passive observer and took no action. Seizing the initiative, the Virginia legislature stepped forward with a resolution in November 1786 urging the other States to send delegates to Philadelphia. "The Crisis is arrived," declared the Virginia General Assembly, when the American people must decide "whether they will by wise and magnanimous efforts, reap the just fruits of . . . independence" or whether by surrendering to "unmanly jealousies and prejudices, or to partial and transitory interests, they will renounce the auspicious blessings prepared for them by the Revolution. . . ."²⁴ Such was the spirited language of the resolution's preamble, written by

23. Elliot, *Debates*, I: 132.

24. *Ibid.*

James Madison. The Virginia General Assembly passed the resolution unanimously, acceded to the proposal from Annapolis, and appointed seven delegates to the convention. But the resolution contained a crucial stipulation inspired by the Assembly's newfound commitment to popular sovereignty, namely that the new constitution should be established not by the legislatures of the several States meeting in Congress but by a convention gathering in Philadelphia, followed by ratification of the several States. Thus did Virginia prepare the way not only for the Federal Convention but for the State ratifying conventions as well. New Jersey, Pennsylvania, North Carolina, and Delaware promptly followed suit, and by February 1787 five States had already appointed their delegates.

Faced with this development, the Continental Congress on February 21, 1787, reluctantly endorsed the Philadelphia Convention. This removed all doubt as to the legality of the Convention, and seven more States promptly appointed delegates. Rhode Island, by its own choice, was the only member of the Confederation not represented at the Convention.

The inability of the Continental Congress to play a role in the drafting of the new Constitution was probably a blessing. As Madison diplomatically put it in his preamble to the Virginia resolution, a Philadelphia Convention would be “preferable to a discussion of the subject in Congress, where it might be too much interrupted by ordinary business, and when it would, besides, be deprived of the counsels of individuals who are restrained from a seat in that assembly.”²⁵ One of the real reasons, of course, was that the Continental Congress was a rather lackluster body, possessing neither the political acumen nor the prestige to lead the nation in the formation of a new government. As one noted constitutional historian, George Ticknor Curtis, put it, Congress was bypassed because “the highest civil talent of the country was not there. The men to whom the American people had been accustomed to look in great emergencies—the men who were called into the convention, and whose power and wisdom were signally displayed in its deliberations—were then engaged in other spheres of public life, or had retired to the repose which they had earned in the great struggle with England.”²⁶ James Madi-

25. *Ibid.*

26. George Ticknor Curtis, *Constitutional History of the United States* (New York: Harper & Bros., 1897), I: 247. Cf. Francis Newton Thorpe: “Even before Maryland ratified the Articles, the attendance in Congress began to waver and fall off, and it soon became

son, one of the few delegates to the Federal Convention who held a seat in the Continental Congress, did more than anyone else to keep the Congress in the shadows and out of the way.

THE FEDERAL CONVENTION

The delegates to the Federal Convention, all of them appointed by their State legislatures, began assembling in early May 1787. Lacking a quorum—that is, a sufficient number of delegates from at least seven States—on the appointed day (May 14), the Convention did not convene for business until May 25. Its task was completed nearly four months later, on September 17. Although the Continental Congress had authorized these proceedings, the delegates confronted a number of political and legal difficulties in seeking to change the Articles of Confederation. In the first place, the authorizing resolution adopted by the Congress, even though it did not purport to define the powers or specify the procedures of the convention (which thus gave the delegates the freedom they needed to apply their own knowledge and wisdom), nevertheless limited the scope of their proceedings to a *revision* of the Articles. Specifically, it declared that the delegates were to meet in Philadelphia for “the sole and express purpose of revising the Articles of Confederation.”²⁷ Moreover, the instructions given to the delegates by their State legislatures varied from State to State, with some expressly or implicitly limiting their authority to “revising the Articles of Confederation.”²⁸ In the second place,

increasingly difficult to secure a quorum. After the first of March, 1781, so irregular were the States in attendance, and so swiftly grew the spirit of apathy towards the Confederation, it was practically impossible to obtain the consent of nine States to any proposition. Often there were not more than ten delegates present, representing only five or six States. Frequently a few members assembled and adjourned for lack of a quorum. The most eminent men of the country were serving it outside of Congress.” *The Constitutional History of the United States, 1765–1895* (Chicago: Callaghan & Co., 1902), I: 246.

27. Elliot, *Debates*, I: 120.

28. See the credentials of the delegates to the Federal Convention in Elliot, *Debates*, at 126–139. The New Jersey delegation, enjoying broad authority, was empowered to “render the Constitution of the Federal Government adequate to the exigencies” of a viable union; the Delaware, Pennsylvania, and Virginia delegates were instructed to “join with them [other delegates] in devising, deliberating on, and discussing, all such alterations and further provisions as may be necessary to render the Federal Constitution fully adequate to the exigencies of the union”; the New Hampshire and North Carolina delegates were commissioned “to discuss and decide upon the most effective means to remedy the defects of our Federal union, and to procure and secure the enlarged purpose which it was intended

Article XIII of the Articles provided another barrier by requiring that all proposed amendments were to be approved by a unanimous vote of the States in Congress and ratified "by the legislatures of every State."

From the outset, then, the architects of the Constitution confronted seemingly insurmountable obstacles in their efforts to establish a new government. Even the prospect of limiting their task to modest amendments of the Articles seemed doomed to failure, given the unanimity requirement and Rhode Island's intransigence. But the solution to these difficulties was already provided by the Virginia resolution of November 1786 that had forced the hand of Congress and encouraged the States to act independently. It derived from a powerful and enduring, if not dominant, strain in the American political tradition that found expression in the Declaration of Independence, namely the principle of consent that embraced the fundamental right of the people "to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." Clearly, if the American people had a right to revolt against the British government, secede from the British empire, and live independently under a government of their own choosing, they also possessed a right to alter or even abolish the Articles of Confederation. This right of self-government, as the reasoning of the Declaration makes clear, is anterior to, and more fundamental than, any act of the Continental Congress or even the Articles. Accordingly, it provided "legitimate" grounds for the delegates to disregard the obstacles posed by Congress or the Articles to the creation of an entirely new national government. James Wilson of Pennsylvania, one of the most influential members of the Federal Convention, put the matter succinctly when he later addressed the Pennsylvania ratifying convention. Critics of the new Constitution, he observed, have argued that "the very manner of introducing this constitution, by the recognition of the authority of the people, is said to change the principle of the present Confederation, and to introduce a consolidating and absorbing government." But such is not the case, he argued; sovereignty resides in the people. "The people therefore have a right . . . to form either a general government or state governments. . . . This, I say, is the inherent and unalienable right of the people." The Declaration of Independence, he concluded, strengthened and

to effect." The delegates from Massachusetts, New York, and Maryland, on the other hand, were flatly restricted to "revising the Articles of Confederation."

affirmed this principle. Quoting from the Preamble, Wilson emphasized that, to secure the rights of life, liberty, and the pursuit of happiness, “governments are instituted among men, *deriving their just powers from the consent of the governed*. . . . This is the broad base on which our independence was placed. On the same certain and solid foundation this [new] system is erected.”²⁹

The fact that the delegates were not meeting in the Continental Congress, as required by the Articles, but in a constitutional convention—for the sole purpose of “revising the Articles of Confederation”—gave a clear indication even before the Convention got under way that the old way of writing a constitution, much as a legislative assembly would draft a statute, was no longer acceptable. In the first days of the convention, Governor Edmund Randolph presented the Virginia Plan to the delegates, a proposed constitution, much of it apparently written by Madison, that served as the principal focus of debate during the early stages of the Convention. The 15th Resolution of the Virginia Plan, embodying the principles of the Virginia resolution of 1786, provided “that the amendments which shall be offered to the Confederation by the Convention, ought . . . to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be *expressly chosen by the people*, to consider and decide thereon.”³⁰ In effect, the Virginia Plan rejected the very procedure required by the Articles of Confederation and proposed instead that the American people approve any changes of a constitutional nature in State ratifying conventions.

Notwithstanding the progress that had been made in Massachusetts and New Hampshire, a few New England delegates at the Philadelphia Convention expressed opposition on June 5 to this “new set of ideas [which] seemed to have crept in since the Articles of Confederation were established.”³¹ But

29. Elliot, *Debates*, III: 455–457.

30. Farrand, *Records of the Federal Convention*, I: 22.

31. *Ibid.*, II, 91 (Oliver Ellsworth of Connecticut). “Conventions of the people, or with power derived expressly from the people,” he continued, “were not then thought of. The Legislatures were considered as competent. Their ratification has been acquiesced in without complaint. To whom have Congress applied on subsequent occasions for further powers? To the Legislatures; not to the people. The fact is that we exist at present . . . as a federal society.” Roger Sherman of Connecticut expressed similar misgivings, and “thought such a popular ratification unnecessary, the Articles of Confederation providing for changes and alterations with the assent of Congress and ratification of State legislatures.” (*Ibid.*, I: 122). Elbridge Gerry of Massachusetts “seemed afraid of referring the

the Virginians held their ground. A radical departure from the procedure prescribed by the Articles was justified, said Madison, "because the new constitution should be ratified in the most unexceptionable form, and by the supreme authority of the people themselves." To be sure, "the Articles of Confederation were defective in this respect, resting . . . on the legislative sanction only."³² George Mason agreed. When the issue came up again on July 23, Mason declared that he "considered a reference of the plan to the authority of the people as one of the most important and essential of the Resolutions. The legislatures have no power to ratify it. They are the mere creatures of the State constitutions and cannot be greater than their creators." Constitutions, he insisted, "are derived from the people. This doctrine should be cherished as the basis of free government." Pointing to recent developments in the States, he reminded the delegates that "In some States, the governments were not derived from the clear and undisputed authority of the people. This was the case in Virginia. Some of the best and wisest citizens considered the constitution as established by an assumed authority. A National Constitution derived from such a source would be exposed to the severest criticisms."³³ These arguments carried the day, and the issue was not again debated in the Federal Convention.

Hearing no objections, the Framers abandoned the unanimity requirement and in Article VI of the new Constitution provided that "The Ratification of the *conventions* of *nine* States shall be sufficient for the establishment of this Constitution between the States so ratifying the same." Randolph and Mason were the chief supporters of nine, as nine States were required for important legislation under the Articles, and it was best, they argued, to preserve ideas already familiar to the people. As a concession to the States, the Framers provided under Article V that two-thirds of both houses of Congress or the States could in the future propose amendments to the

new system to them [the people]. The people . . . have (at this time) the wildest ideas of government in the world." (Ibid., 123). Rufus King of Massachusetts also believed "the legislature competent to the ratification." (Ibid.).

32. Ibid., 122–123. Speaking again to this issue on July 23, Madison "considered the difference between a system founded on the Legislatures only, and one founded on the people, to be the true difference between a *league* or *treaty*, and a *constitution*. . . . A law violating a treaty ratified by a preexisting law, might be respected by the Judges as a law, though an unwise and perfidious one. A law violating a constitution established by the people themselves, would be considered by the Judges as null & void." (Ibid., II: 93).

33. Ibid., II: 88–89.

Constitution, but that ratification would require the approval of the States—either three-fourths of the State legislatures or three-fourths of the States meeting in convention. The inclusion of these provisions gave the new Constitution an important democratic element it lacked under the Articles while at the same time preserving the principle of State representation in the amendment process. By giving the States the last word at the ratification stage, the Framers also made the States the final arbiters of any major constitutional conflict that might trigger the amendment device. These principles were further extended to the new bicameral Congress under the Constitution, with the House of Representatives serving to represent the people and the Senate the States. Ironically, the creation of the Constitution in 1787 is the only instance in which the State legislatures have initiated a change of the fundamental law since the Constitution was adopted. All the amendments since then have been proposed by Congress, and only one of these—the Twenty-first, repealing the Prohibition Amendment—has been ratified by State conventions. All the rest have been approved by State legislatures.

The document that ultimately emerged from the Federal Convention resembled the State constitutions more than it did the Articles of Confederation, although a few provisions involving such matters as interstate relations were carried over to the new system.³⁴ State precedents also influenced the constitution-making process. Like the newer State constitutions, the American Constitution was created by a special convention, not a legislative assembly. It would be proposed for ratification not by the State legislatures but by the people of each State sitting in convention. If adopted, it would be a constitution resting on the consent of the governed and on popular sovereignty—not “the people” abstractly considered in an inchoate mass, how-

34. Article IV of the Articles of Confederation, designed “to secure and perpetuate mutual friendship and intercourse among the people of the different States in this union,” guaranteed the “free inhabitants” of each State the privileges and immunities of free citizens in each State, and “free ingress and regress to and from any other State,” including the enjoyment therein “of all the privileges of trade and commerce.” In addition, Article IV provided for the interstate rendition of fugitives from justice and required each State to give “full faith and credit” to the records, acts, and judicial proceedings of the courts of each State. A number of these provisions were reaffirmed, sometimes word for word, in Article IV of the new Constitution. Though known as the federalism article, Article IV of the Constitution is actually rooted in the law of nations. Many of its provisions are based on principles of “comity” or international law developed over the centuries through treaty practices and the writings of jurists.

ever, but the people organized in the various States. In this respect, the Constitution rested on a unique form of divided sovereignties, with ultimate political sovereignty residing in the people and legal sovereignty shared by the States and the national government.³⁵ The American people, in other words, would be the source of all political power under the proposed plan of government, as contrasted with a monarchical system, wherein all power originates in the crown.³⁶ According to the English theory, the government is also the source of individual rights, as contrasted with the American perspective, which holds that rights originate with the people and are, according to the Declaration of Independence, "endowed by their Creator." These principles respecting the origin of power and rights under the American system are affirmed in the Ninth and Tenth Amendments of the Federal Constitution. Under the Constitution the people retain certain undefined rights and powers. The enumeration of certain rights in the Constitution shall not be construed to deny others retained by the people, and those powers which the people did not retain for themselves they delegated to the States or to the national government. Critics of the Constitution were quick to argue that sovereignty cannot be divided and that the proposed system would therefore fail. To be sure, as a constitutional, democratic, and federal republic of delegated powers, the new American system of government was an experiment in politics without historical parallel.

THE RATIFICATION STRUGGLE

Given the unavoidable controversy surrounding the legality of writing a new constitution and the opposition of many important political leaders, there

35. A. V. Dicey makes a useful distinction between political and legal sovereignty in his commentary on the English Constitution. From a legal standpoint, the sovereign power in Great Britain is Parliament, or what is sometimes referred to as "the king in parliament." But the word *sovereignty* may also be applied in a political sense: "That body is 'politically' sovereign or supreme in a state the will of which is ultimately obeyed by the citizens of the state. In this sense of the word the electors of Great Britain may be said to be . . . the body in which sovereign power is vested." (*Introduction to the Study of the Law of the Constitution*, 27).

36. The traditional English doctrine that the king is the "fountain" of all law and justice has become a legal fiction under the English Constitution, particularly since the rise of parliamentary supremacy in the late seventeenth century. The English monarch is now said to be "a sovereign who reigns but does not rule." (Vernon Bogdanor, *The Monarchy and the Constitution* [Oxford: Oxford University Press, 1995], 1).

was considerable doubt when the delegates left Philadelphia whether nine States could be persuaded to ratify the proposed Constitution. The first hurdle was the Continental Congress. Could it be counted on to vote itself out of power? Fortunately, Congress made no issue of the Convention's authority to draft a new document when, on September 20, 1787, it received the Convention report on the Philadelphia proceedings and a copy of the proposed Constitution. On September 28, the Congress voted unanimously to transmit "the said report, with the resolutions and letter accompanying the same . . . to the several legislature, in order to be submitted to a Convention of delegates chosen in each State, by the people thereof."³⁷

Thus began the ratification struggle. All thirteen States ultimately ratified the Constitution, and by June 1788 it had become the law of the land. The first State to ratify was Delaware, which voted unanimously in favor of the new Constitution on December 7, 1787. Five days later, Pennsylvania accepted the document by a vote of 46 to 23. New Jersey and Georgia soon joined these States, both by unanimous votes, followed by Connecticut, which accepted the Constitution on January 9, 1788, by a vote of 128 to 40. From this time forward, however, the struggle over ratification intensified and the possibilities for failure increased. In some State ratifying conventions the Constitution was approved by narrow pluralities, particularly in the larger States of Massachusetts, Virginia, and New York. Massachusetts became the sixth State to ratify, on February 6, 1788, but by the slim margin of 187 to 168. Maryland ratified, 63 to 11, on April 28, and South Carolina voted in favor of the Constitution on May 23 by 149 to 73. New Hampshire became the ninth State to ratify, on June 21, 1788, thereby putting the Constitution into effect. The vote there was perilously close, however: 57 to 46.

Thus, when Virginia ratified the Constitution on June 25 and New York

37. Elliot, *Debates*, I: 319. George Washington, who presided over the Federal Convention, informed the members of the Continental Congress, in his transmittal letter of September 17, 1787, that they should not expect a flawless document in regard to the rights of the States. "It is obviously impracticable in the federal government of these States," he wrote, "to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. . . . It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved," particularly when there is such "a difference among the several States as to their situation, extent, habits, and particular interests. . . . That it will meet the full and entire approbation of every State is not perhaps to be expected." (Farrand, *Records*, II: 666–67).

followed suit on July 26, 1788, the Constitution was already in place. The margin of victory in both states was nevertheless a narrow 89 to 79 in Virginia and a breathtaking 30 to 27 in New York. North Carolina, the only State to reject the Constitution, voted a second time and on November 21, 1789, finally agreed to join the Union, by a vote of 195 to 77.³⁸ On May 29, 1790, Rhode Island grudgingly became the last of the thirteen original States to ratify—by a plurality of only two votes, 34 to 32.

The great debate over the Constitution extended beyond the walls of the ratifying conventions, of course, and throughout the nation there was an outpouring of pamphlets, sermons, and newspaper essays on the new plan of government. A wide variety of views was expressed, ranging from complete to conditional acceptance with amendments to flat rejection.³⁹ Those who favored ratification were called Federalists, and those opposed, for lack of a better term, came to be known as the Anti-Federalists. The Federalists tended to favor a stronger national government, which the new Constitution promised to bring, whereas the Anti-Federalists inclined toward a weaker national government that better protected States' rights.

Alexander Hamilton, who had been a delegate to the Philadelphia Convention, was the leader of the ratification forces in New York. Though only thirty years old, he had already acquired a national reputation. After distin-

38. The North Carolina Convention voted on August 2, 1788, "neither to ratify nor reject the Constitution," by a lopsided majority of 184 to 84 (Elliot, *Debates*, IV: 251). Support for the Constitution was limited to a small group of counties in the northeastern section of the State and one county in the Cumberland region. The rest of the State was almost entirely Anti-Federalist. In twenty-five counties, every delegate opposed the Constitution (Louise Irby Trenholme, *The Ratification of the Federal Constitution in North Carolina* [New York: AMS Press, 1967], 163–164).

39. Essays written in support of the Constitution, aside from those in *The Federalist*, are collected in Colleen A. Sheehan and Gary L. McDowell, eds., *Friends of the Constitution: Writings of the "Other" Federalists, 1787–1788* (Indianapolis: Liberty Fund, 1998). Most of the Anti-Federalist writings appear in *The Complete Anti-Federalist*, ed. by Herbert J. Storing (Chicago: University of Chicago Press, 1981), 7 vols. See also Paul Leicester Ford, ed., *Essays on the Constitution Published during Its Discussion by the People, 1787–1788* (New York: Burt Franklin, 1970); Paul Leicester Ford, ed., *Pamphlets on the Constitution of the United States* (New York: Da Capo Press, 1968). The Federal Farmer was perhaps the most frequently read Anti-Federalist writer, and his letters "became a sort of textbook for the opposition to the Constitution as *The Federalist* became for the supporters of the document." (Walter Hartwell Bennett, ed., *Letters from the Federal Farmer to the Republican* [Tuscaloosa: University of Alabama Press, 1978], xxxvi).

guishing himself as a leader in battle during the early stages of the Revolution, he was selected by General Washington to be an aide-de-camp. He served in this capacity for four years. Later, upon resuming command in the field, he once again demonstrated his bravery and leadership in 1781 in the Battle of Yorktown. After this decisive event, he served briefly (1782–1783) in the Continental Congress as a delegate from New York. Hamilton was an ardent nationalist who believed in a strong national government, far stronger than that provided for by the Articles of Confederation. As a member of the State legislature, he was primarily responsible for New York's participation in the Annapolis Convention of 1786.

Hamilton was also instrumental in persuading the New York legislature to participate in the Constitutional Convention. New York sent only three delegates: Alexander Hamilton, Robert Yates, and John Lansing. Hamilton did not speak frequently in the Convention and was absent much of the time because of personal business and political differences with the other members of the New York delegation. Both Yates and Lansing were defenders of States' Rights who opposed the Constitution from the start. The proposed Constitution, they later told Governor George Clinton, would create "a system of consolidated Government that could not in the remotest degree have been in [the] contemplation of the Legislature of this State." Indeed, "a general Government" such as the one proposed by the Convention in Philadelphia "must unavoidably, in a short time, be productive of the destruction of civil liberty . . . by reason of the extensive territory of the United States, the dispersed situation of its inhabitants, and the insuperable difficulty of controlling the views of a set of men possessed of all the powers of government."⁴⁰ Because each State enjoyed only one vote in the Convention and delegates were therefore required to vote as a unit rather than individually, Hamilton found himself a minority of one on most critical issues, with Yates and Lansing controlling the State's vote on every question. On July 10,

40. Robert Yates and John Lansing, Jr., to the Governor of New York, December 21, 1787, in Elliot, *Debates*, I: 480–481. Governor Clinton presented the "Letter of Dissent" to the New York legislature without comment. It was promptly printed in eight New York newspapers, a nationally circulated magazine called *The American Museum*, a Philadelphia newspaper, and in eleven other newspapers from New Hampshire to Georgia (John R. Kaminski, "New York: The Reluctant Pillar," in *The Reluctant Pillar: New York and the Adoption of the Federal Constitution*, ed. by Stephen L. Schecter [Troy, N.Y.: Russell Sage College, 1985], 64–65).

Yates and Lansing withdrew from the Convention in disgust, thereby canceling Hamilton's vote altogether. Hamilton first left the Convention on June 29, returned briefly in mid August, and then resumed his seat in early September until the work of the Convention was completed. Despite these absences and the futility of his vote, Hamilton was present long enough to get his views before the Convention and occasionally join in the debate.

It was during the ratification struggle that Hamilton exerted the greatest influence, however, and not in the Philadelphia Convention. This he accomplished in two ways: as the moving force behind *The Federalist* and as the leader of the Federalists in the New York ratifying convention. *The Federalist*, or the "Federalist Papers" as this collection of essays is frequently called, was a collaborative effort, but it was Hamilton who organized, directed, and managed the project.

Only weeks after the Philadelphia Convention had finished its work, Hamilton perceived the need to answer Anti-Federalist attacks on the proposed Constitution that had already appeared in various New York newspapers. The letters of "Cato," thought by some scholars to be Governor George Clinton, first appeared in the *New York Journal* on September 27, 1787, the same edition that carried the text of the proposed Constitution. Particularly troublesome were the essays of "Brutus," which have been attributed by some to Hamilton's antagonist Robert Yates. They first appeared in early October 1787 in the *New York Journal* and are among the best of the Anti-Federalist essays, particularly on the structure and powers of the Federal judiciary.⁴¹ Hamilton quickly sensed the importance of these essays and the need to explain the features of the new plan of government to the people of New York.

41. The letters of "Cato" and "Brutus" are reprinted in *The Complete Anti-Federalist*, II: 101–129, 358–452. Hamilton and Clinton were archrivals. According to Hamilton, it was Clinton who recalled Yates and Lansing from Philadelphia in early July. While the Convention was still sitting, Hamilton published a letter in *The Daily Advertiser* on July 21, 1787, accusing Clinton of having expressed the view "in public company" that the Convention was unnecessary and mischievous. This gave rise to an exchange of letters between Clinton's defenders and Hamilton. It was thought for many years that Hamilton was also the author of the letters of "Caesar," which were published in *The Daily Advertiser* in October 1787 in response to the letters of "Cato," but recent research has now cast considerable doubt on Hamilton's authorship (see Storing, *The Complete Anti-Federalist*, II: 101–104). In any event, it is clear that Hamilton had already launched a public debate on the Constitution in New York before taking up *The Federalist*.

To this end he enlisted the help of James Madison and John Jay, two avid and very prominent supporters of the new Constitution.⁴² Hamilton could scarcely have done better than to secure the assistance of Madison in this enterprise. Despite the fact that Madison had suffered many disappointments and defeats in the Federal Convention, he was in many ways the “Father of the Constitution,”⁴³ for it was Madison who had worked tirelessly to establish the new Constitution, and his guiding spirit could be seen behind every important development that led up to the Convention, including the Mount Vernon conference in 1784, the Annapolis Convention of 1786, and Virginia’s call for a Philadelphia convention in 1787. No less conspicuous was his leadership in the Continental Congress and in the Federal Convention itself, to say nothing of his role in the ratification struggle in 1787–1788 and in the creation of the Bill of Rights in 1789. And to this day we still rely substantially on Madison’s exhaustive *Notes of the Debates in the Federal Convention* in order to follow the deliberations of the Convention, determine the original intent of the Framers, and perceive the meaning of most provisions of the Constitution.⁴⁴ At the age of thirty-six, Madison had already acquired a repu-

42. William Duer, a wealthy New York banker who had been a member of the Continental Congress, was also part of the original collaborative effort. He wrote a few essays, but Hamilton apparently decided not to use them. Three of his essays, signed “Philopublius,” were finally printed in an appendix to the J. C. Hamilton edition of *The Federalist* in 1810. They have been described as “undistinguished in style and thought, despite Madison’s praise” (Douglas Adair, “The Authorship of the Disputed Federalist Papers,” in *Fame and the Founding Fathers*, ed. by Trevor Colbourn [Indianapolis: Liberty Fund, 1998]). Gouverneur Morris of Pennsylvania later claimed that he, too, “was warmly pressed by Hamilton to assist in writing *The Federalist*” but declined the offer (*Ibid.*).

43. As M. E. Bradford has pointed out, however, Madison’s extreme nationalism was a divisive force that almost wrecked the Convention. See his essay “The Great Convention as Comic Action,” in *Original Intentions on the Making and Ratification of the United States Constitution* (Athens: University of Georgia Press, 1993), 6. According to Forrest McDonald, “Of seventy-one specific proposals that Madison moved, seconded, or spoke unequivocally in regard to, he was on the losing side forty times.” (*Novus Ordo Seclorum: Intellectual Origins of the Constitution* [Lawrence: University Press of Kansas, 1985], 208–209). The claim that Madison is “the father of the Constitution,” concludes McDonald, is a “myth.” (*Ibid.*, 205).

44. Madison took a seat in the front of the Convention assembly, near George Washington, the presiding officer, in order to gain the best view of the proceedings. From this vantage point he diligently recorded the debates and proceedings of the entire Convention. His notes were first published posthumously in 1840. The most recent edition, with a daily chronology of activities in the Convention, extensive annotations, and a constitutional index, is the *Debates in the Federal Convention of 1787 as Reported by James Madison*,

tation of brilliance for his mastery of political and constitutional theory and extensive knowledge of great political treatises applicable to the American situation. Hamilton could also rely on Madison to bring a nationalist point of view to the project, for Madison shared Hamilton's conviction that the young republic needed a much stronger national government if the nation were to remain free and independent.

Though only forty-two years of age, John Jay was the senior member of the triumvirate that produced *The Federalist*. He brought a wealth of experience to the task. During the American Revolution, Jay had served on the Committee of Correspondence and in both the first and second Continental Congresses. A prominent New York lawyer, he played a leading role in drafting New York's first constitution in 1777, and that same year he was appointed Chief Justice of the New York Supreme Court. Upon his return to the Continental Congress in 1778, Jay was appointed to a number of diplomatic posts. In 1783, with Benjamin Franklin and John Adams, he negotiated the Treaty of Paris (1783) that officially ended the American Revolution and granted the States independence from Great Britain.

Between late October 1787 and the end of May 1788, Hamilton, Madison, and Jay wrote eighty-five essays favoring adoption of the proposed Constitution. These essays were published in four New York newspapers at irregular intervals well into the summer of 1788, and some were reprinted in Virginia and New England. While controversy over the authorship of certain essays has persisted for decades, recent scholarship confirms that Hamilton wrote fifty-one (Nos. 1, 6–9, 11–13, 15–17, 21–36, 59–61, and 65–85), Madison twenty-nine (Nos. 10, 14, 18–20, 37–58, and 62–63), and Jay, ill during much of this period, only five (Nos. 2–5 and 64). It was common in the eighteenth century, in England as in the American colonies, to publish political essays under a classical pseudonym in order to identify with a Roman statesman—particularly a republican—and conceal one's identity. *The Federalist* essays were all signed "Publius," a reference to Publius Valerius Publicola, the leg-

ed. by James McClellan and M. E. Bradford (Richmond: James River Press, 1989). Other members of the Philadelphia Convention took fragmentary notes, including Robert Yates of New York, Rufus King of Massachusetts, and James McHenry of Maryland. These, the notes of Madison, and those of other delegates are published in Farrand, *Records of the Federal Convention*. John Lansing's extensive notes, not available to Farrand, were first published separately in 1939. See *The Delegate from New York*, ed. by Joseph Reese Strayer (Princeton: Princeton University Press).

endary Roman statesman and general of the sixth century B.C. who was renowned for his eloquence, generosity, and dedication to republican principles of government. In *Plutarch's Lives*, Publius is said to have been so adored by the people of Rome that they called him "Publicola," or "people lover."

THE SIGNIFICANCE OF *THE FEDERALIST*

What is the significance of *The Federalist*, and why have generations of Americans relied so extensively on the essays of Publius in order to understand and appreciate the genius of the American political regime? To answer this question we must look beyond the ratification struggle to the historical development and interpretation of the Constitution. It is impossible to know with certainty, of course, what impact *The Federalist* had in securing New York's acceptance of the proposed Constitution, but we do know that it had virtually no effect on the ratification and final adoption of the Constitution. This is so because the Constitution had already been ratified by nine States and was in effect when New York and Virginia finally got around to joining the Union in the summer of 1788. *The Federalist*, then, is important not because of its immediate impact on the ratification struggle but because of its contributions to our understanding of the constitutional system.

Within the pages of *The Federalist* is the whole theory of American constitutional government. Here Publius explains the structure upon which the Constitution is built and the rationale of the Framers in constructing a republican form of government based on a separation and division of powers. Why did the Framers favor two legislative chambers (a bicameral system) over a single one (a unicameral system)? What interests were to be represented in these assemblies? Why did they provide for a single instead of a plural executive? Why did they give Federal judges life tenure, during "good behavior," rather than a limited term of office? Why did they grant certain powers to the central government and reserve others to the States? More fundamentally, why did they fear a concentration of power and prefer limited government?

The answers to these and other important questions about the nature and purpose of the constitutional design, and the meaning of virtually every political principle and clause in the Constitution, will be found in these essays. *The Federalist* is thus a window through which we may view the proceedings

of the Philadelphia Convention and see how the system is supposed to work. It sheds light on the deliberations of the Framers, helping us know and understand and appreciate their reasoning and political theories and the original intentions behind the Constitution they created. It is not too much to say that a reading of *The Federalist* is indispensable to an understanding of the American Constitution.⁴⁵

At the same time, we should be mindful that *The Federalist* does not tell the complete story or provide all the answers. It is not a treatise on political philosophy concerned with natural law, the origin and nature of the state, or the best form of government in the abstract. Although it is timeless in the sense that it rests on fixed principles and enduring truths concerning such matters as the threat to liberty that is created by a consolidated government, *The Federalist* is a commentary on the American Constitution, a collection of essays on the theory of American government that is in many respects inapplicable to other political systems. A reading of *The Federalist* is not likely to improve one's understanding of foreign governments or explain why the American constitutional system is any better than another form of government.

Moreover, the essays of Publius are only one of many original sources on the thinking of those who participated in the formation and adoption of the

45. The essays of Publius have been considered essential reading among political thinkers and jurists almost from their inception. Justice Joseph Story used *The Federalist* as the foundation for the development of his famous three-volume *Commentaries on the Constitution* (1833). He described *The Federalist* as "an incomparable commentary of three of the greatest statesmen of their age." William Alexander Duer, a noted educator and jurist and the son of William Duer, who assisted Hamilton in the *Federalist* project, based his popular *Course of Lectures on the Constitutional Jurisprudence of the United States* (1845) on *The Federalist* and the writings of prominent State and Federal jurists. Members of the Supreme Court have drawn from *The Federalist* in their interpretations of the Constitution for two centuries. "The opinion of *The Federalist*," wrote Chief Justice John Marshall, "has always been considered as of great authority. It is a complete commentary on our Constitution, and is appealed to by all parties." (*Cohens v. Virginia*, 16 Wheaton 264, 418 [1821]). For an analysis of *The Federalist* and an estimate of its importance, see George W. Carey, *The Federalist: Design for a Constitutional Republic* (Urbana: University of Illinois Press, 1989); Martin Diamond, *As Far as Republican Principles Will Admit* (Washington, D.C.: AEI Press, 1992); Gottfried Dietz, *The Federalist: A Classic of Federalism and Free Government* (Baltimore: Johns Hopkins Press, 1960); and David Epstein, *The Political Theory of The Federalist* (Chicago: University of Chicago Press). See also notes 60–61, *infra*.

Constitution. There are the debates in the Philadelphia Convention, dutifully recorded by James Madison and other delegates;⁴⁶ the voluminous debates in the State ratifying conventions;⁴⁷ and the various essays, newspaper accounts, and correspondence of other participants who took a stand on the new Constitution.⁴⁸ And if we include the first ten amendments, or the Bill of Rights, as they came to be known, as part of the original constitutional edifice, then to get the full picture we must consult yet another source—the debates of the First Congress, which drafted and proposed the Bill of Rights in 1789.⁴⁹ And to these sources should be added those not so directly related to the drafting and ratification of the Constitution. Among these would be the State constitutions previously discussed;⁵⁰ the practices, institutions, and ordering documents of Anglo-Americans during the colonial period;⁵¹ many political

46. See note 44, *supra*.

47. Although the proceedings of some State ratifying conventions were published earlier, Jonathan Elliot was the first to publish a comprehensive edition of the debates in the several State ratifying conventions. Elliot's *Debates in the Several State Conventions on the Adoption of the Federal Constitution* (4 vols.) was first published in Philadelphia in 1830. A revised edition appeared in 1836, and in 1845 Elliot added a fifth volume to include James Madison's *Notes of the Debates in the Federal Convention*. Not all of the State ratification proceedings available to Elliot were entirely accurate or complete, and three States—Delaware, New Jersey, and Georgia—kept no record of their debates. Elliot also excluded the debates of the second ratifying convention of North Carolina and those of Rhode Island, which finally ratified the Constitution in 1790. See also Patrick T. Conley and John R. Kaminski, eds., *The Constitution and the States: The Role of the Original Thirteen in the Framing and Adoption of the Federal Constitution* (Madison, Wisc.: Madison House, 1988); Michael Allen Gillespie and Michael Lienesch, eds., *Ratifying the Constitution* (Lawrence: University Press of Kansas, 1989).

48. See *The Documentary History of the Ratification of the Constitution*, ed. by Merrill Jensen, John R. Kaminski, Gaspare J. Saledino, et al., 14 vols. to date (Madison: State Historical Society of Wisconsin, 1976–).

49. See *Creating the Bill of Rights: The Documentary Record from the First Federal Congress*, ed. by Helen E. Veit, Kenneth R. Bowling, and Charlene Bangs Bickford (Baltimore: Johns Hopkins University Press, 1991); *The Complete Bill of Rights*, ed. by Neil H. Cogan (New York: Oxford University Press, 1997); *The Bill of Rights: Original Meaning and Current Interpretation*, ed. by Eugene W. Hickok, Jr. (Charlottesville: University of Virginia Press, 1991).

50. See *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws . . . of the United States of America*, ed. by Frances Newton Thorpe, 7 vols. (Washington, D.C.: Government Printing Office, 1909).

51. See Donald S. Lutz, ed., *Colonial Origins of the American Constitution: A Documentary History* (Indianapolis: Liberty Fund, 1998), and, by the same author, *The Origins of American Constitutionalism* (Baton Rouge: Louisiana State University Press, 1988); Jack P.

writings and sermons of earlier periods, particularly those dealing with the legitimate functions and ends of government; the character, rights and duties of the English people, and their relation as British citizens to the sovereign; as well as the dangers to be avoided in constructing governments.⁵² This is only to say that the thoughts and actions of the Founders cannot be fully appreciated without a knowledge of the political tradition of prerevolutionary America. The essays of Publius, in other words, should be read in conjunction with other founding documents and are by no means the only source of knowledge available to us for an understanding of the Framers' thoughts and intentions.

During the first half-century of the American republic, however, *The Federalist* was clearly the most significant, if not the only meaningful, resource for understanding the intent of the Framers other than the words of the Constitution itself. The Journal of the Convention, which contains no speeches or debates and records only the Secretary's minutes and tables giving the votes by State on the questions presented, was not published until 1819.⁵³ Not until

Greene, ed., *The Nature of Colony Constitutions* (Columbia: University of South Carolina Press, 1970).

52. See, for example, Charles S. Hyneman and Donald S. Lutz, eds., *American Political Writing during the Founding Era, 1760–1805*, 2 vols. (Indianapolis: Liberty Fund, 1983); Ellis Sandoz, ed., *Political Sermons of the American Founding Era*, 2 vols. (Indianapolis: Liberty Fund, 1998); C. Ellis Stevens, *Sources of the Constitution of the United States* (New York: Macmillan, 1927); Trevor Colbourn, *The Lamp of Experience* (Indianapolis: Liberty Fund, 1998); Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985).

53. The sessions of the Philadelphia Convention were conducted in secrecy, and it was agreed that the delegates would maintain and protect the confidentiality of the proceedings after they returned home. When the Convention adjourned, the Secretary, William Jackson, delivered the Journal and other miscellaneous papers to George Washington, who in turn deposited them with the Department of State. In 1818, however, Congress broke the seal of secrecy and ordered the Journal to be printed. This was accomplished the following year under the personal direction of John Quincy Adams, then Secretary of State. Despite the urgings of friends and colleagues, Madison declined to publish his Notes of the Debates in his lifetime. Not all of the other delegates shared this commitment. In 1821, Yates's *Secret Proceedings and Debates of the Convention Assembled at Philadelphia* were printed, together with Luther Martin's extended letter of January 27, 1788, to the Speaker of the Maryland House of Delegates entitled "The Genuine Information." The notes of William Pierce of Georgia, accompanied by character sketches of his fellow delegates, were also printed in the *Savannah Georgian* in 1828. Notes taken by other delegates did not surface until after the publication of Madison's Notes (see Farrand, *The Records of the Federal Convention*, I: xi–xxv).

1830, when Jonathan Elliot collected and published the debates in several of the State ratifying conventions, did Americans have easy access to the deliberations of the “other” founders who participated at the ratification stage in the making of the Constitution. No less important, it was 1840 before James Madison’s extensive *Notes of the Debates in the Federal Convention* were finally published.⁵⁴

It is noteworthy that the availability of these and other original sources after the 1840s failed to dislodge *The Federalist* as the favorite and most frequently cited guide to the theory of the Constitution and the substantive meaning of its provisions, or to discredit in any way the reliability or accuracy of Publius’s representations. It is true, of course, that *The Federalist* is polemical. It is forthrightly a campaign tract intended to persuade the electorate to support the Constitution. As such it occasionally exaggerates the perceived strengths of the Constitution and downplays or ignores its weaknesses. But this bias hardly detracts from its great merit as a faithful expositor of the meaning of the Constitution from the perspective of those who made it.

Immediately recognized as authoritative, *The Federalist* became a classic even before it was completed. The first thirty-six essays were published in New York by J. McLean & Company in a bound volume on March 22, 1788. The remainder appeared in a second volume on May 28. In 1792 a French edition, which appeared in Paris, became the first to reveal the true identity of the authors. Since then *The Federalist* has been translated into more than twenty foreign languages, and nearly a hundred editions and reprintings of it in English have appeared over the past two hundred years.

Between 1788 and 1818 the McLean edition was reprinted on four occasions, the first being a 1799 edition published by John Tiebout in New York. The popularity of *The Federalist* encouraged a New York printer named George F. Hopkins to undertake a new edition in 1802. Hamilton reluctantly agreed to this on condition that he be permitted to make modest revisions

54. Madison was the last surviving member of the Philadelphia Convention. When he died in 1836, his collected papers were purchased by the Library of Congress. In 1840, Henry D. Gilpin, working under the direction of a congressional committee, edited a three-volume edition of *The Papers of James Madison* that included Madison’s *Notes*. Jonathan Elliot added them to his collection of *Debates . . . on the Adoption of the Federal Constitution* in 1845, and they have subsequently been republished in many other editions. See notes 44 and 47, *supra*.