

The Politics of the Constitution: 1787 – 1789 *

The delegates who gathered in Philadelphia in late May 1787 shared a common belief that what they were about to undertake—the drafting of a new constitution for the nation—was of historic importance. Riding on their shoulders rested the future of their country and the destiny of the world. Failure meant chaos and perhaps the return of oppressive, corrupt, and authoritarian government serving the privileged and oppressing the masses. They agreed that good government needed to protect liberty, property, and individual rights, although exactly what these terms meant remained open for debate. Influenced by their deep reading of European Enlightenment philosophy, of British philosophers John Locke and David Hume, French thinkers Montesquieu and Jean- Jacques Rousseau, and classical Greek and Roman authors, the Philadelphia delegates were well versed in republican theory. They were also politicians with wide practical experience since many had served as representatives in colonial assemblies or state legislatures and in Congress following the revolution. In the end, the constitution blended republican theory and political compromise.

Most delegates were privileged—planters, merchants, lawyers, and doctors. Their sense of honor was integral to understanding their roles at the convention and their vision for the new republican government. The central actors at the convention were state leaders: Virginian George Washington, the military hero of the revolution; the brilliant James Madison, also from Virginia; the aged and well respected Benjamin Franklin from Pennsylvania; Scottish-born lawyer James Wilson, also representing Pennsylvania; West Indies-born New York politician and lawyer Alexander Hamilton; Gouverneur Morris, born to wealth and privilege in New York; and the often inebriated and long-winded Luther Martin from Maryland, who spoke vigorously in opposition to the new constitution as it took shape. He was joined in his opposition at times by two Virginians, the irascible planter Edmund Randolph and George Mason, Madison's most effective opponent. Two eminent leaders, John Adams and Thomas Jefferson, were missing because they were respectively ambassadors to Britain and France. Madison kept Jefferson well informed as to the deliberations.

The men at the Philadelphia Convention in 1787 feared the political and economic disorder that had ensued with the Articles of Confederation, which had been established during the American Revolution a decade earlier. They believed that the excesses of state government and majoritarian rule under the Confederation threatened the nation's great experiment in republican self-

rule. Disillusioned with the failure of the Articles of Confederation, distrustful of direct democracy and the passions of the mob, fearful of demagogues, and terrified by centralized government that was corrupted easily by self-interested factions, the Philadelphia delegates nonetheless expressed profound optimism that the American Revolution marked the beginnings of a new epoch in human history—the establishment of a large-scale representative republican government worthy of a continent.

Voices of artisans (with a few exceptions), women, and black slaves were excluded. They were thought to lack the independence of mind, as well as literal self-sufficiency, considered essential to republican citizenship. The delegates distrusted popular democracy, yet sought to create a representative republic based on popular sovereignty. Madison and Hamilton made a sharp distinction between popular, direct democracy and republican government. They justified their suspicions of direct democracy by their study of human nature and historical experience. As Hamilton told Washington after the Philadelphia convention, “Man, after all, is but Man.” Many debates at the convention boiled down to the meaning of representative government. Delegates struggled to construct a political order that delicately balanced democratic and republican values; centralized authority and states' rights; local and regional interests; and executive, legislative, and judicial powers. These complex concepts involving representation emerged as the prevailing issues within American politics for the next two and half-plus centuries—and remain with us today, debated within the constitutional framework set by the Founders.

For four often stifling months, delegates debated under a pledge not to report on the proceedings to the press, their states, or the public. The secretive nature of the convention led opponents to charge a political conspiracy. During the convention, tempers exploded. The final document—the Constitution of the United States—revealed politics in action. After drafting and voting to approve the Constitution, the majority of delegates agreed that nine of the thirteen states would be needed to ratify the document. They knew that without ratification by the powerful states such as Virginia, Massachusetts, and New York the document would be meaningless. The debates at Philadelphia and the Constitution's eventual ratification present a fascinating story of how the nation was born through politics. The U.S. Constitution became a sacrosanct document for Americans, but it was also an act of compromise.

During and after the Revolution, an egalitarian spirit swept the land, challenging established religious and social authority. In organizing the Revolution, elites, urban artisans, and backwoods farmers all had supported the cause. Elite political leaders encouraged, although at times with trepidation, mob actions. Thomas Paine's *Common Sense*, a revolutionary pamphlet published in 1776 declaring democracy was common sense, and Jefferson's Declaration of Independence manifested an egalitarian impulse expressed in the American Revolution. After the war, all authority—except that of the people—appeared

* Critchlow, Donald T. *American Political History: A Very Short Introduction*. (Chapter 1) New York: Oxford University Press, 2015.

to come under assault. In New York, gentlemen and women were mocked by the lower sorts for signs of elitism such as wearing powdered wigs and silk stockings. In Philadelphia, rowdy drunken youth gathered on street corners to accost passing citizens. Ministers in once-staid Boston complained about the new generation. Republican simplicity became the custom in dress and manner. King's College became Columbia College, and Boston's major thoroughfare was named Congress Street. Popular democracy itself seemed out of control.

This was most evident in the state legislatures. Many states expanded the right to vote, by loosening property ownership requirements, although most states restricted the vote. The colonial practice of dividing power among independent executive, legislative, and judicial branches continued, while severely limiting executive power. Unlike appointed colonial royal governors, the new state governors had only limited vetoes, which the legislatures could override. Legislative branches were made more powerful. The state of Pennsylvania, having one of the most radical state constitutions, limited executive power even more by providing for a plural executive council and a unicameral legislature. Many state legislatures enacted measures for debtor relief and issued paper money to alleviate state and personal debt. Such measures heightened merchants' anxieties amid runaway inflation.

Convention delegates believed generally that the Articles of Confederation had failed. Uninstructed by their legislatures, they quickly decided to draft a new national constitution. The only major accomplishment of the Confederation, other than winning the war, was the enactment of land ordinances for western territories. The Land Ordinance of 1785 provided for surveying of federal lands into townships west of the Appalachian Mountains and north of the Ohio River. The Northwest Ordinance of 1787 called for territorial governments in this area, which eventually became the states of Ohio, Indiana, Illinois, Michigan, and Wisconsin. Slavery was prohibited in the territories. The ordinance prevented the United States from establishing its own colonies by creating a pathway to statehood.

During the Revolution, the states created a weak central government through the Articles of Confederation. The national government consisted of little more than a Congress appointed by the state legislatures. The executive branch was virtually nonexistent. There was no judiciary. Each of the thirteen states had one vote in Congress, and important laws required the consent of nine states. Lacking the power to tax, the government was left to beg for money from the states. The Confederation lacked control of interstate commerce, which allowed states to impose tariffs. Articles could be amended only with the consent of all thirteen sovereign states. The result was political deadlock.

Meanwhile, the young nation confronted massive public debt, economic depression, high unemployment, and worthless paper money. State governments such as that for Rhode Island issued new paper money that was mandated as legal tender for all debts inside the state, which outraged merchants

having to accept nearly worthless paper. Foreign policy proved equally disastrous. Great Britain encouraged Indians, who had legitimate fears of American expansion, to attack white settlers on the frontier. Spain continued to threaten to close the Mississippi River to American traders by cutting them off from the major port of New Orleans. The outbreak of a rebellion of indebted farmers in western Massachusetts led by Daniel Shays in 1786 sent chills down the spines of established politicians who saw the revolt, incorrectly, as an attack on private property. Hamilton warned "seditions and insurrections are, unhappily, maladies as inseparable from the body politic, as tumors and eruptions from the natural body." If a relatively stable state such as Massachusetts was threatened with rebellion, what state was not vulnerable?

Confronting major domestic and foreign crises, a small group meeting in Annapolis, Maryland, in 1787 accepted Alexander Hamilton's call for a general convention to address these problems. In response, twelve state legislatures sent fifty-five delegates to meet at a convention in Philadelphia that year. Rhode Island, concerned that a rum tax might be imposed, refused to send representatives.

James Madison—a brilliant Virginia lawyer, slaveholder, planter, and politician—expressed particular concern that government was not working under the Articles of Confederation. Before the Philadelphia Convention, which he had played a singularly important role in organizing, Madison took it upon himself to write a draft of a new constitution that became the point of discussion at the convention. He was convinced that a new form of republican government needed to be created to mitigate what he saw as the excesses of majoritarian misrule in the Confederation and within state legislatures. His disillusionment lay in the failings of state legislators and citizens alike. In drafting the outlines of a new constitution, he sought to protect all interests against majorities. The Madisonian institutional solution fashioned a representative government distanced from direct democracy and delicately balanced among three branches—Congress, the presidency, and the judiciary—and allowed for federal regulation of interstate commerce.

While perhaps differing with Madison on particulars, the delegates accepted his view of what constituted good government. Rooted deeply in classical history and republican thought, they believed that a centralized, coercive government posed the greatest threat to individual liberty, derived from natural law and ancient English tradition. Madison proposed increasing federal power, while creating a government that served as referee to adjudicate sectional, social, and political interests. He proposed that this new federal government be empowered to have coercive powers to defend the nation, regulate interstate trade, levy taxes, and maintain order and the rule of law.

Soft-spoken, short, and genteel in manner, the widely read Madison drew his colleagues' respect at the convention for his understanding of republican principles. Distrustful of popular democracy—a lesson he had

learned in his study of past constitutions and governments—he proposed to the Philadelphia convention two legislative houses, the House and the Senate, whose memberships were both based on state population. In his so-called Virginia plan, Congress elected the chief executive, who carried the right of veto, as did the judiciary. Madison’s plan thwarted direct democracy, while favoring states like Virginia with large populations.

Delegates from states with small populations such as New Jersey proposed that each state, regardless of population, would continue to have equal representation in both houses. Madison and most of the delegates opposed the New Jersey Plan. When it appeared that delegates from the small states were going to walk out and refuse to sign the final draft of the Constitution, they reached a compromise that provided states with equal representation in the Senate and proportional representation based on population in the House. In these last hectic days of the convention, details were worked out on the nature of the executive and judicial branches.

The compromise over representation showed practical politics at work. Yet the final Constitution was not all a matter of pragmatism. Madison and the southern delegates expressed concern early on about protecting slaveholders’ rights. Regional distinctions between nonslaveholding and slaveholding states, Madison and southern delegates argued, were real. They feared that commercial and maritime states such as Pennsylvania might subordinate landed interests of the South and the West. Southern states demanded that slaves be counted for apportioning representation, based on population in the House. This was a matter of principle. Northern delegates finally accepted an accommodation with slavery as a price of union. As a plum to the South, slaves were counted as three-fifths of their total number, thereby ensuring larger slaveholder representation in the House. The three-fifths compromise was based on a 1783 amendment in the Articles of Confederation for apportioning state taxes. In another compromise, in late August the convention agreed that Congress could not prohibit the importation of slaves prior to 1808. (After 1808 Congress would ban the importation of slaves.)

The delegates decided that the Constitution needed to be ratified by nine of the thirteen states through conventions called by the legislatures. The erudite Gouverneur Morris put the final touches on the document, organizing sections and polishing language, including the striking preamble, “We the people in order to form a more perfect union...” On September 17 the convention adjourned for the last time. The fight for ratification began one of the most vigorous political campaigns in American history.

Proponents of the proposed Constitution cleverly labeled themselves Federalists, leaving opponents as the Anti-Federalists. Both sides agreed that the Constitution needed to be ratified through the popular sovereignty of the citizens. Rhetoric during the Revolution and its aftermath proclaimed the people as the source of political legitimacy, but who “the people” actually were

remained vague. Neither side placed much confidence in the people because they feared cunning leaders easily manipulated them, although Anti-Federalists often spoke the language of popular democracy. The debate came down to whether the new Constitution fulfilled the promise of the American Revolution or repudiated it.

The battle over ratification was waged through polemical pamphlets, newspapers, and rallies, all calculated to influence voters in picking delegates to the states’ ratifying conventions. Voter qualifications were determined by each state and varied considerably. A majority of white men could vote in most states, but property qualifications were high in a few. Property-owning women could vote in New Jersey. Free blacks could vote in some states. Slaves were considered property and could not vote. Urban artisans and small shopkeepers rallied behind the new Constitution. Wealthy merchants and planter aristocrats were divided, as were backcountry farmers. They wanted protection from Indian attacks but feared coercive authority. Regional icons such as Virginia’s Patrick Henry and Boston’s Samuel Adams emerged as leading opponents.

Federalists adapted strategies appropriate to the political circumstances of each state. George Washington, who enjoyed universal popularity, imparted prestige to the Federalist cause. Federalists exerted intellectual firepower when Madison, Hamilton, and John Jay, a persuasive New York lawyer, joined forces to write eighty-five brilliant newspaper articles—later known as the Federalist Papers—to defend and explain the new Constitution. Hamilton wrote the bulk of the essays, fifty-one, while Madison authored twenty-six of the essays that appeared between September 1787 and August 1788. Throughout most states, the press favored the Federalist cause, and opponents were on the defensive in most states.

Anti-Federalists rallied around a strategy of insisting upon the adoption of amendments including a Bill of Rights to protect individual rights. Although they differed on many specifics, they feared that the Constitution granted to the federal government too much coercive power. They accepted, however, that the Philadelphia convention had the authority to draft a new Constitution, but they opposed the final product. Anti-Federalists failed to offer a collective critique of the new Constitution. Many expressed general sentiment that the Philadelphia convention was a conspiratorial cabal of powerful men who distrusted popular democracy. Anti-Federalists drew support from northern and western New England, Rhode Island, New York’s Hudson Valley, western Pennsylvania, southern Virginia, North Carolina, and upcountry South Carolina. They drew from the same tradition as the Federalists: civic republicanism, Protestantism, and the traditions of English common law. The fundamental difference separating the two sides was Anti-Federalist fears of centralized government. They honed in on the omission of a bill of rights, consolidation of power, charges of aristocratic government, threats of high taxation, and fears about the creation of a standing army.

Anti-Federalist Arthur Lee expressed the common belief of opponents to the Constitution when he warned that ratification meant the destruction of “the liberties of the people.” Echoing this anxiety, another Anti-Federalist declared, “When a tyranny is established, there are always masters as well as slaves.” Classconscious rhetoric found common expression in Anti-Federalist tracts, even though the spokesmen came from the upper and middling classes.

Ratification gained easy victories in early state conventions. Even in Pennsylvania, where the Anti-Federalists were well organized, ratification carried by two to one. Although New Hampshire became the crucial ninth state to ratify, two key states remained outside. In the battleground state of Virginia, federalists achieved ratification in a contentious vote. After Virginia’s decision, New York, led by Hamilton and New York City delegates, barely achieved ratification by three votes. In Langsingburgh and Halfmoon, New York, women paraded in honor of New York’s ratification. In more destructive fashion, a pro-Federalist mob broke into the press of the Anti-Federalist *New York Journal*, destroying its type. With New York ratification in hand, North Carolina followed with its approval. Obstinate Rhode Island grudgingly approved ratification in 1790, after the new federal government had been established. George Washington won easy and uncontested election to the presidency.

The battle over ratification left hard feelings. When elections to the First Congress were held a short time later, candidates’ original stance on ratification proved important. The new Senate had two vocal Anti-Federalists, and the House elected fourteen. During the ratification battle, state conventions proposed a total of 124 amendments to the Constitution. One of the first actions of the new Congress was enactment of a “Bill of Rights,” consisting of ten amendments to the Constitution, which Madison originally had opposed. The Bill of Rights represented a victory for the Anti-Federalists, who feared that government could not be trusted to stay within the bounds of the Constitution.

Ratification had been won, but the task of establishing a new federal government for the new nation lay ahead.