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Founding a Nation, 1783–1789

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In this late eighteenth-century engraving, Americans celebrate the signing of the Constitution beneath a temple of liberty.



FOCUS QUESTIONS

- What were the achievements and problems of the Confederation government?
- What major disagreements and compromises molded the final content of the Constitution?
- How did Anti-Federalist concerns raised during the ratification process lead to the creation of the Bill of Rights?
- How did the definition of citizenship in the new republic exclude Native Americans and African-Americans?

During June and July of 1788, civic leaders in cities up and down the Atlantic coast organized colorful pageants to celebrate the ratification of the United States Constitution. For one day, Benjamin Rush commented of Philadelphia's parade, social class "forgot its claims," as thousands of marchers—rich and poor, businessman and apprentice—joined in a common public ceremony. New York's Grand Federal Procession was led by farmers, followed by the members of every craft in the city from butchers and coopers (makers of wooden barrels) to bricklayers, blacksmiths, and printers. Lawyers, merchants, and clergymen brought up the rear. The parades testified to the strong popular support for the Constitution in the nation's cities. And the prominent role of skilled artisans reflected how the Revolution had secured their place in the American public sphere. Elaborate banners and floats gave voice to the hopes inspired by the new structure of government. "May commerce flourish and industry be rewarded," declared Philadelphia's mariners and shipbuilders.

Throughout the era of the Revolution, Americans spoke of their nation as a "rising empire," destined to populate and control the entire North American continent. While Europe's empires were governed by force, America's would be different. In Jefferson's phrase, it would be "an empire of liberty," bound together by a common devotion to the principles of the Declaration of Independence. Already, the United States exceeded in size Great Britain, Spain, and France combined. As a new nation, it possessed many advantages, including physical isolation from the Old World (a significant asset between 1789 and 1815, when European powers were almost constantly at war), a youthful population certain to grow much larger, and a broad distribution of property ownership and literacy among white citizens.

On the other hand, while Americans dreamed of economic prosperity and continental empire, the nation's prospects at the time of independence were not entirely promising. Control of its vast territory was by no means secure. Nearly all of the 3.9 million Americans recorded in the first national census of 1790 lived near the Atlantic coast. Large areas west of the Appalachian Mountains remained in Indian hands. The British retained military posts on American territory near the Great Lakes, and there were fears that Spain might close the port of New Orleans to American commerce on the Mississippi River.

Away from navigable waterways, communication and transportation were primitive. The country was overwhelmingly rural—fewer than one American in thirty lived in a place with 8,000 inhabitants or more. The population consisted of numerous ethnic and religious groups and some 700,000 slaves, making unity difficult to achieve. No republican government had ever been established over so vast a territory or with so

diverse a population. Local loyalties outweighed national patriotism. “We have no Americans in America,” commented John Adams. It would take time for consciousness of a common nationality to sink deep roots.

Today, with the United States the most powerful country on earth, it is difficult to recall that in 1783 the future seemed precarious indeed for the fragile nation seeking to make its way in a world of hostile great powers. Profound questions needed to be answered. What course of development should the United States follow? How could the competing claims of local self-government, sectional interests, and national authority be balanced? Who should be considered full-fledged members of the American people, entitled to the blessings of liberty? These issues became the focus of heated debate as the first generation of Americans sought to consolidate their new republic.

AMERICA UNDER THE CONFEDERATION

THE ARTICLES OF CONFEDERATION

The first written constitution of the United States was the Articles of Confederation, drafted by Congress in 1777 and ratified by the states four years later. The Articles sought to balance the need for national coordination of the War of Independence with widespread fear that centralized political power posed a danger to liberty. It explicitly declared the new national government to be a “perpetual union.” But it resembled less a blueprint for a common government than a treaty for mutual defense—in its own words, a “firm league of friendship” among the states. Under the Articles, the thirteen states retained their individual “sovereignty, freedom, and independence.” The national government consisted of a one-house Congress, in which each state, no matter how large or populous, cast a single vote. There was no president to enforce the laws and no judiciary to interpret them. Major decisions required the approval of nine states rather than a simple majority.

The only powers specifically granted to the national government by the Articles of Confederation were those essential to the struggle for independence—declaring war, conducting foreign affairs, and making treaties with other governments. Congress had no real financial resources. It could coin money but lacked the power to levy taxes or regulate commerce. Its revenue came mainly from contributions by the individual states. To amend the Articles required the unanimous consent of the states, a formidable obstacle to change. Various amendments to strengthen the national government were proposed during the seven years (1781–1788) when the Articles of Confederation were in effect, but none received the approval of all the states.



The creation of a nationally controlled public domain from western land ceded by the states was one of the main achievements of the federal government under the Articles of Confederation.

The Articles made energetic national government impossible. But Congress in the 1780s did not lack for accomplishments. The most important was establishing national control over land to the west of the thirteen states and devising rules for its settlement. Disputes over access to western land almost prevented ratification of the Articles in the first place. Citing their original royal charters, which granted territory running all the way to the “South Sea” (the Pacific Ocean), states like Virginia, the Carolinas, and Connecticut claimed immense tracts of western land. Land speculators, politicians, and prospective settlers from states with clearly defined boundaries insisted that such land must belong to the nation at large. Only after the land-rich states, in the interest of national unity, ceded their western claims to the central government did the Articles win ratification.

CONGRESS AND THE WEST

Establishing rules for the settlement of this national domain—the area controlled by the federal government, stretching from the western boundaries of existing states to the Mississippi River—was by no means easy. Although some Americans spoke of it as if it were empty, some 100,000 Indians in fact inhabited the region. In the immediate aftermath of independence, Congress took the position that by aiding the British, Indians had forfeited the right to their lands. Little distinction was made among tribes that had sided with the enemy, those that had aided the patriots, and those in the interior that had played no part in the war at all. At peace conferences at Fort Stanwix, New York, in 1784 and Fort McIntosh near Pittsburgh the following year, American representatives demanded and received large surrenders of Indian land north of the Ohio River. Similar treaties soon followed with the Cherokee, Choctaw, and Chickasaw tribes in the South, although here Congress guaranteed the permanency of the Indians’ remaining, much-reduced holdings. The treaties secured national control of a large part of the country’s western territory.

When it came to disposing of western land and regulating its settlement, the Confederation government faced conflicting pressures. Many leaders believed that the economic health of the new republic required that farmers have access to land in the West. But they also saw land sales as a potential source of revenue and worried that unregulated settlement would produce endless conflicts with the Indians. Land companies, which lobbied Congress vigorously, hoped to profit by purchasing real estate and reselling it to settlers. The government, they insisted, should step aside and allow private groups to take control of the West’s economic development.

SETTLERS AND THE WEST

The arrival of peace meanwhile triggered a large population movement from settled parts of the original states into frontier areas like upstate New York and across the Appalachian Mountains into Kentucky and Tennessee. To settlers, the right to take possession of western lands and use them as they saw fit was an essential element of American freedom. When a group of Ohioans petitioned Congress in 1785, assailing landlords and speculators



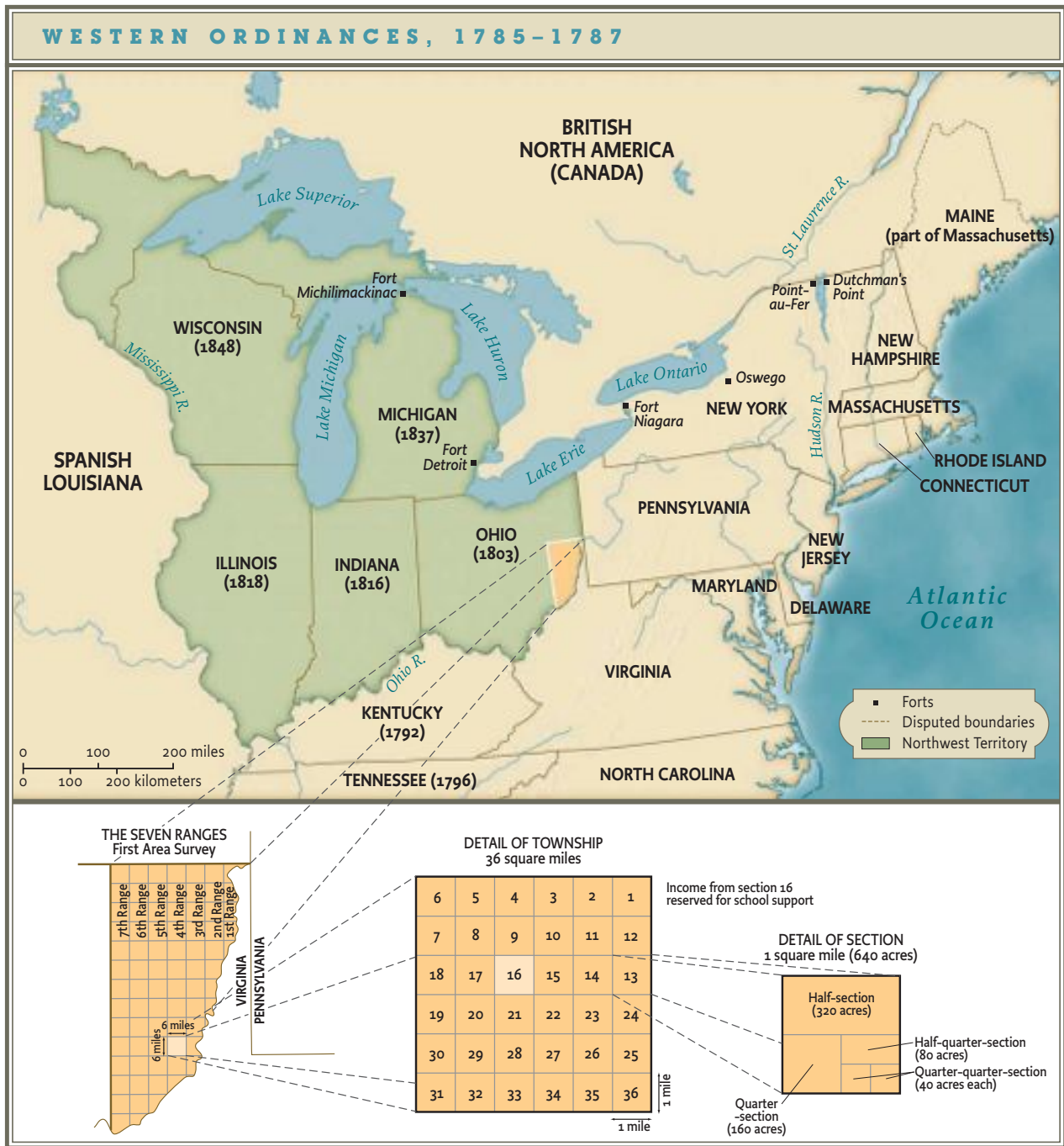
An engraving from The Farmer's and Mechanics Almanac shows farm families moving west along a primitive road.

who monopolized available acreage and asking that preference in land ownership be given to “actual settlements,” their motto was “Grant us Liberty.” Indeed, settlers paid no heed to Indian land titles and urged the government to set a low price on public land or give it away. They frequently occupied land to which they had no legal title. By the 1790s, Kentucky courts were filled with lawsuits over land claims, and many settlers lost land they thought they owned. Eventually, disputes over land forced many early settlers (including the parents of Abraham Lincoln) to leave Kentucky for opportunities in other states.

At the same time, however, like British colonial officials before them, many leaders of the new nation feared that an unregulated flow of population across the Appalachian Mountains would provoke constant warfare with Indians. Moreover, they viewed frontier settlers as disorderly and lacking in proper respect for authority—“our debtors, loose English people, our German servants, and slaves,” Benjamin Franklin had once called them. Establishing law and order in the West and strict rules for the occupation of land there seemed essential to attracting a better class of settlers to the West and avoiding discord between the settled and frontier parts of the new nation.

THE LAND ORDINANCES

A series of measures approved by Congress during the 1780s defined the terms by which western land would be marketed and settled. Drafted by Thomas Jefferson, the Ordinance of 1784 established stages of self-government for the West. The region would be divided into districts initially governed by Congress and eventually admitted to the Union as member states. By a single vote, Congress rejected a clause that would have prohibited slavery



A series of ordinances in the 1780s provided for both the surveying and sale of lands in the public domain north of the Ohio River and the eventual admission of states carved from the area as equal members of the Union.

throughout the West. A second ordinance, in 1785, regulated land sales in the region north of the Ohio River, which came to be known as the Old Northwest. Land would be surveyed by the government and then sold in “sections” of a square mile (640 acres) at \$1 per acre. In each township, one section would be set aside to provide funds for public education. The system promised to control and concentrate settlement and raise money for Congress. But settlers violated the rules by pressing westward before the surveys had been completed.

Like the British before them, American officials found it difficult to regulate the thirst for new land. The minimum purchase price of \$640, however, put public land out of the financial reach of most settlers. They generally ended up buying smaller parcels from speculators and land companies. In 1787, Congress decided to sell off large tracts to private groups, including 1.5 million acres to the Ohio Company, organized by New England land speculators and army officers. (This was a different organization from the Ohio Company of the 1750s, mentioned in Chapter 4.) For many years, national land policy benefited private land companies and large buyers more than individual settlers. And for many decades, actual and prospective settlers pressed for a reduction in the price of government-owned land, a movement that did not end until the Homestead Act of 1862 offered free land on the public domain.

A final measure, the Northwest Ordinance of 1787, called for the eventual establishment of from three to five states north of the Ohio River and east of the Mississippi. Thus was enacted the basic principle of what Jefferson called the “empire of liberty”—rather than ruling over the West as a colonial power, the United States would admit the area’s population as equal members of the political system. Territorial expansion and self-government would grow together.

The Northwest Ordinance pledged that “the utmost good faith” would be observed toward local Indians and that their land would not be taken without consent. This was the first official recognition that Indians continued to own their land. Congress realized that allowing settlers and state government simply to seize Indian lands would produce endless, expensive military conflicts on the frontier. “It will cost much less,” one congressman noted, “to conciliate the good opinion of the Indians than to pay men for destroying them.” But national land policy assumed that whether through purchase, treaties, or voluntary removal, the Indian presence would soon disappear. The Ordinance also prohibited slavery in the Old Northwest, a provision that would have far-reaching consequences when the sectional conflict between North and South developed. But for years, owners brought slaves into the area, claiming that they had voluntarily signed long-term labor contracts.

THE CONFEDERATION’S WEAKNESSES

Whatever the achievements of the Confederation government, in the eyes of many influential Americans they were outweighed by its failings. Both the national government and the country at large faced worsening economic problems. To finance the War of Independence, Congress had borrowed large sums of money by selling interest-bearing bonds and paying soldiers and suppliers in notes to be redeemed in the

future. Lacking a secure source of revenue, it found itself unable to pay either interest or the debts themselves. With the United States now outside the British empire, American ships were barred from trading with the West Indies. Imported goods, however, flooded the market, undercutting the business of many craftsmen, driving down wages, and draining money out of the country.

With Congress unable to act, the states adopted their own economic policies. Several imposed tariff duties on goods imported from abroad. Indebted farmers, threatened with the loss of land because of failure to meet tax or mortgage payments, pressed state governments for relief, as did urban craftsmen who owed money to local merchants. In order to increase the amount of currency in circulation and make it easier for individuals to pay their debts, several states printed large sums of paper money. Others enacted laws postponing debt collection. Creditors considered such measures attacks on their property rights. In a number of states, legislative elections produced boisterous campaigns in which candidates for office denounced creditors for oppressing the poor and importers of luxury goods for undermining republican virtue.

SHAYS'S REBELLION

In late 1786 and early 1787, crowds of debt-ridden farmers closed the courts in western Massachusetts to prevent the seizure of their land for failure to pay taxes. They called themselves “regulators”—a term already used by protesters in the Carolina backcountry in the 1760s. The uprising came to be known as Shays’s Rebellion, a name affixed to it by its opponents, after Daniel Shays, one of the leaders and a veteran of the War for Independence. Massachusetts had firmly resisted pressure to issue paper money or in other ways assist needy debtors. The participants in Shays’s Rebellion believed they were acting in the spirit of the Revolution. They modeled their tactics on the crowd activities of the 1760s and 1770s and employed liberty trees and liberty poles as symbols of their cause. They received no sympathy from Governor James Bowdoin, who dispatched an army headed by former revolutionary war general Benjamin Lincoln. The rebels were dispersed in January 1787, and more than 1,000 were arrested. Without adherence to the rule of law, Bowdoin declared, Americans would descend into “a state of anarchy, confusion and slavery.”

Observing Shays’s Rebellion from Paris where he was serving as ambassador, Thomas Jefferson refused to be alarmed. “A little rebellion now and then is a good thing,” he wrote to a friend. “The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.” But the uprising was the culmination of a series of events in the 1780s that persuaded an influential group of Americans that the national government must be strengthened so that it could develop uniform economic policies and protect property owners from infringements on their rights by local majorities. The actions of state legislatures (most of them elected annually by an expanded voting population), followed by Shays’s Rebellion, produced fears that the Revolution’s democratic impulse had gotten out of hand.

“Our government,” Samuel Adams wrote in 1785, “at present has liberty for its object.” But among proponents of stronger national authority, liberty had lost some of its luster. The danger to individual rights, they came to



A Bankruptcy Scene. Creditors repossess the belongings of a family unable to pay its debts, while a woman weeps in the background. Popular fears of bankruptcy led several states during the 1780s to pass laws postponing the collection of debts.



James Madison, “father of the Constitution,” in a miniature portrait painted by Charles Willson Peale in 1783. Madison was only thirty-six years old when the Constitutional Convention met.



Alexander Hamilton, another youthful leader of the nationalists of the 1780s, was born in the West Indies in 1755. This portrait was painted by Charles Willson Peale in the early 1790s.

believe, now arose not from a tyrannical central government, but from the people themselves. “Liberty,” declared James Madison, “may be endangered by the abuses of liberty as well as the abuses of power.” To put it another way, private liberty, especially the secure enjoyment of property rights, could be endangered by public liberty—unchecked power in the hands of the people.

NATIONALISTS OF THE 1780S

Madison, a diminutive, colorless Virginian and the lifelong disciple and ally of Thomas Jefferson, thought deeply and creatively about the nature of political freedom. He was among the group of talented and well-organized men who spearheaded the movement for a stronger national government. Another was Alexander Hamilton, who had come to North America as a youth from the West Indies, served at the precocious age of twenty as an army officer during the War of Independence, and married into a prominent New York family. Hamilton was perhaps the most vigorous proponent of an “energetic” government that would enable the new nation to become a powerful commercial and diplomatic presence in world affairs. Genuine liberty, he insisted, required “a proper degree of authority, to make and exercise the laws.” Men like Madison and Hamilton were nation-builders. They came to believe during the 1780s that Americans were squandering the fruits of independence and that the country’s future greatness depended on enhancing national authority.

The concerns voiced by critics of the Articles found a sympathetic hearing among men who had developed a national consciousness during the Revolution. Nationalists included army officers, members of Congress accustomed to working with individuals from different states, and diplomats who represented the country abroad. In the army, John Marshall (later a chief justice of the Supreme Court) developed “the habit of considering America as my country, and Congress as my government.” Influential economic interests also desired a stronger national government. Among these were bondholders who despaired of being paid so long as Congress lacked a source of revenue, urban artisans seeking tariff protection from foreign imports, merchants desiring access to British markets, and all those who feared that the states were seriously interfering with property rights. While these groups did not agree on many issues, they all believed in the need for a stronger national government.

In September 1786, delegates from six states met at Annapolis, Maryland, to consider ways for better regulating interstate and international commerce. The delegates proposed another gathering, in Philadelphia, to amend the Articles of Confederation. Shays’s Rebellion greatly strengthened the nationalists’ cause. “The late turbulent scenes in Massachusetts,” wrote Madison, underscored the need for a new constitution. “No respect,” he complained, “is paid to the federal authority.” Without a change in the structure of government, either anarchy or monarchy was the likely outcome, bringing to an end the experiment in republican government. Every state except Rhode Island, which had gone the farthest in developing its own debtor relief and trade policies, decided to send delegates to the Philadelphia convention. When they assembled in

May 1787, they decided to scrap the Articles of Confederation entirely and draft a new constitution for the United States.

A NEW CONSTITUTION

The fifty-five men who gathered for the Constitutional Convention included some of the most prominent Americans. Thomas Jefferson and John Adams, serving as diplomats in Europe, did not take part. But among the delegates were George Washington (whose willingness to lend his prestige to the gathering and to serve as presiding officer was an enormous asset), George Mason (author of Virginia's Declaration of Rights of 1776), and Benjamin Franklin (who had returned to Philadelphia after helping to negotiate the Treaty of Paris of 1783, and was now eighty-one years old). John Adams described the convention as a gathering of men of "ability, weight, and experience." He might have added, "and wealth." Few men of ordinary means attended. Although a few, like Alexander Hamilton, had risen from humble origins, most had been born into propertied families. They earned their livings as lawyers, merchants, planters, and large farmers. Nearly all were quite prosperous by the standards of the day.

At a time when fewer than one-tenth of 1 percent of Americans attended college, more than half the delegates had college educations. A majority had participated in interstate meetings of the 1760s and 1770s, and twenty-two had served in the army during the Revolution. Their shared social status and political experiences bolstered their common belief in the need to strengthen national authority and curb what one called "the excesses of democracy." To ensure free and candid debate, the deliberations took place in private. Madison, who believed the outcome would have great consequences for "the cause of liberty throughout the world," took careful notes. They were not published, however, until 1840, four years after he became the last delegate to pass away.

THE STRUCTURE OF GOVERNMENT

It quickly became apparent that the delegates agreed on many points. The new Constitution would create a legislature, an executive, and a national judiciary. Congress would have the power to raise money without relying on the states. States would be prohibited from infringing on the rights of property. And the government would represent the people. Hamilton's proposal for a president and Senate serving life terms, like the king and House of Lords of England, received virtually no support. The "rich and well-born," Hamilton told the convention, must rule, for the masses "seldom judge or determine right." Most delegates, however, hoped to find a middle ground between the despotism of monarchy and aristocracy and what they considered the excesses of popular self-government. "We had been

A fifty-dollar note issued by the Continental Congress during the War of Independence. Congress's inability to raise funds to repay such paper money in gold or silver was a major reason why nationalists desired a stronger federal government.





The Philadelphia State House (now called Independence Hall), where the Declaration of Independence was signed in 1776 and the Constitutional Convention took place in 1787.

too democratic,” observed George Mason, but he warned against the danger of going to “the opposite extreme.” The key to stable, effective republican government was finding a way to balance the competing claims of liberty and power.

Differences quickly emerged over the proper balance between the federal and state governments and between the interests of large and small states. Early in the proceedings, Madison presented what came to be called the Virginia Plan. It proposed the creation of a two-house legislature with a state’s population determining its representation in each. Smaller states, fearing that populous Virginia, Massachusetts, and Pennsylvania would dominate the new government, rallied behind the New Jersey Plan. This called for a single-house Congress in which each state cast one vote, as under the Articles of Confederation. In the end, a compromise was reached—a two-house Congress consisting of a Senate in which each state had two members, and a House of Representatives apportioned according to population. Senators would be chosen by state legislatures for six-year terms. They were thus insulated from sudden shifts in public opinion. Representatives were to be elected every two years directly by the people.

THE LIMITS OF DEMOCRACY

Under the Articles of Confederation, no national official had been chosen by popular vote. Thus, the mode of choosing the House of Representatives represented an expansion of democracy. Popular election of at least one part of the political regime, Madison declared, was “essential to every plan of free government.” The Constitution, moreover, imposed neither property nor religious qualifications for voting, leaving it to the states to set voting rules.

Overall, however, the new structure of government was less than democratic. The delegates sought to shield the national government from the popular enthusiasms that had alarmed them during the 1780s and to ensure that the right kind of men held office. The people would remain sovereign, but they would choose among the elite to staff the new government. The delegates assumed that the Senate would be composed of each state's most distinguished citizens. They made the House of Representatives quite small (initially 65 members, at a time when the Massachusetts assembly had 200), on the assumption that only prominent individuals could win election in large districts.

Nor did the delegates provide for direct election of either federal judges or the president. Members of the Supreme Court would be appointed by the president for life terms. The president would be chosen either by members of an electoral college or by the House of Representatives. The number of electors for each state was determined by adding together its allocation of senators and representatives. A state's electors would be chosen either by its legislature or by popular vote. In either case, the delegates assumed, electors would be prominent, well-educated individuals better qualified than ordinary voters to choose the head of state.

The actual system of election seemed a recipe for confusion. Each elector was to cast votes for two candidates for president, with the second-place finisher becoming vice president. If no candidate received a majority of the electoral ballots—as the delegates seem to have assumed would normally be the case—the president would be chosen from among the top three finishers by the House of Representatives, with each state casting one vote. The Senate would then elect the vice president. The delegates devised this extremely cumbersome system of indirect election because they did not trust ordinary voters to choose the president and vice president directly.

THE DIVISION AND SEPARATION OF POWERS

Hammered out in four months of discussion and compromise, the Constitution is a spare document of only 4,000 words that provides only the briefest outline of the new structure of government. (See the Appendix for the full text.) It embodies two basic political principles—federalism, sometimes called the “division of powers,” and the system of “checks and balances” between the different branches of the national government, also known as the “separation of powers.”

Federalism refers to the relationship between the national government and the states. Compared to the Articles of Confederation, the Constitution significantly strengthened national authority. It charged the president with enforcing the law and commanding the military. It empowered Congress to levy taxes, borrow money, regulate commerce, declare war, deal with foreign nations and Indians, and promote the “general welfare.” Madison proposed to allow Congress to veto state laws, but this proved too far-reaching for most delegates. The Constitution did, however, declare national legislation the “supreme Law of the Land.” And it included strong provisions to prevent the states from infringing on property rights. They were barred from issuing paper money, impairing contracts, interfering with interstate commerce, and levying their own import or export duties. On the other hand, most day-to-day affairs of government, from education

to law enforcement, remained in the hands of the states. This principle of divided sovereignty was a recipe for debate, which continues to this day, over the balance of power between the national government and the states.

The “separation of powers,” or the system of “checks and balances,” refers to the way the Constitution seeks to prevent any branch of the national government from dominating the other two. To prevent an accumulation of power dangerous to liberty, authority within the government is diffused and balanced against itself. Congress enacts laws, but the president can veto them, and a two-thirds majority is required to pass legislation over his objection. Federal judges are nominated by the president and approved by Congress, but to ensure their independence, the judges then serve for life. The president can be impeached by the House and removed from office by the Senate for “high crimes and misdemeanors.”

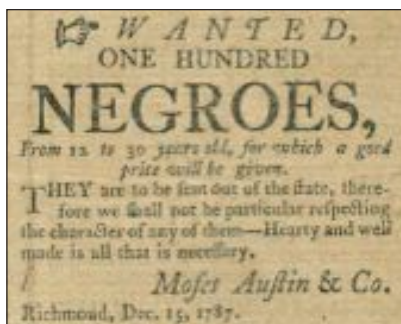
THE DEBATE OVER SLAVERY

The structure of government was not the only source of debate at the Constitutional Convention. As Madison recorded, “the institution of slavery and its implications” divided the delegates at many sessions. Those who gathered in Philadelphia included numerous slaveholders, as well as some dedicated advocates of abolition. Madison, like Jefferson a Virginia slaveholder who detested slavery, told the convention that the “distinction of color” had become the basis for “the most oppressive dominion ever exercised by man over man.” Yet he later assured the Virginia ratifying convention that the Constitution offered slavery “better security than any that now exists.”

The words “slave” and “slavery” did not appear in the Constitution—a concession to the sensibilities of delegates who feared they would “contaminate the glorious fabric of American liberty.” As Luther Martin of Maryland wrote, his fellow delegates “anxiously sought to avoid the admission of expressions which might be odious to the ears of Americans.” But, he continued, they were “willing to admit into their system those *things* which the *expressions signified*.” The document prohibited Congress from abolishing the African slave trade for twenty years. It required states to return to their owners fugitives from bondage. And it provided that three-fifths of the slave population would be counted in determining each state’s representation in the House of Representatives and its electoral votes for president.

South Carolina’s delegates had come to Philadelphia determined to defend slavery, and they had a powerful impact on the final document. They originated the fugitive slave clause, the three-fifths clause, and the electoral college. They insisted on strict limits on the power of Congress to levy taxes within the states, fearing future efforts to raise revenue by taxing slave property. They threatened disunion if the Atlantic slave trade were prohibited immediately, as the New England states and Virginia, with its abundance of native-born slaves, demanded. Their threats swayed many delegates. Gouverneur Morris, one of Pennsylvania’s delegates, declared that he was being forced to decide between offending the southern states or doing injustice to “human nature.” For the sake of national unity, he said, he would choose the latter.

This advertisement for the sale of 100 slaves from Virginia to states farther south appeared in a Richmond newspaper only a few months after the signing of the Constitution. Slavery was a major subject of debate at the Constitutional Convention.





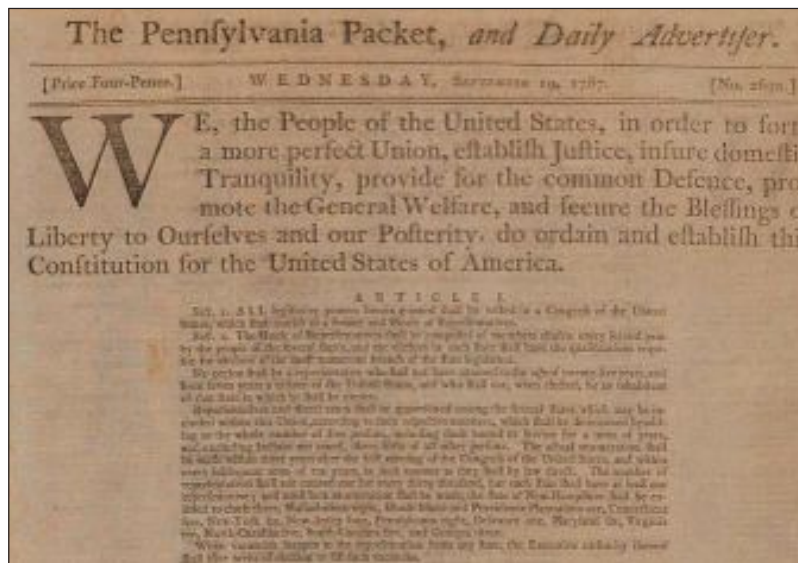
SLAVERY IN THE CONSTITUTION

The Constitution's slavery clauses were compromises, efforts to find a middle ground between the institution's critics and defenders. Taken together, however, they embedded slavery more deeply than ever in American life and politics. The slave trade clause allowed a commerce condemned by civilized society—one that had been suspended during the War of Independence—to continue until 1808. On January 1, 1808, the first day that Congress was allowed under the Constitution, it prohibited the further importation of slaves. But in the interim, partly to replace slaves who had escaped to the British and partly to provide labor for the expansion of slavery to fertile land away from the coast, some 170,000 Africans were brought to the new nation as slaves. South Carolina and Georgia imported 100,000. This number represented more than one-quarter of all the slaves brought to mainland North America after 1700.

The fugitive slave clause accorded slave laws “extraterritoriality”—that is, the condition of bondage remained attached to a person even if he or she escaped to a state where slavery had been abolished. John Jay, while serving in Spain on a diplomatic mission, once wrote of how he missed the “free air” of America. Jay was probably unaware of the phrase’s full implications. In the famous *Somerset* case of 1772, the lawyer for a West Indian slave brought to Britain had obtained his client’s freedom by invoking the memorable words, “the air of England is too pure for a slave to breathe” (that is, the moment any person sets foot on British soil, he or she becomes free). Yet the new federal Constitution required all the states, North and South, to recognize and help police the institution of slavery. For slaves, there was no “free air” in America.

The Constitution gave the national government no power to interfere with slavery in the states. And the three-fifths clause allowed the white South to exercise far greater power in national affairs than the size of its

The Signing of the Constitution, by mid-nineteenth-century American artist Thomas Pritchard Rossiter, depicts the conclusion of the Constitutional Convention of 1787. Among the founding fathers depicted are James Wilson, signing the document at the table in the center, and George Washington, presiding from the dais with an image of the sun behind him.



The preamble to the Constitution, as printed in a Pennsylvania newspaper two days after the Constitutional Convention adjourned.

free population warranted. The clause greatly enhanced the number of southern votes in the House of Representatives and therefore in the electoral college (where, as noted above, the number of electors for each state was determined by adding together its number of senators and representatives). Of the first sixteen presidential elections, between 1788 and 1848, all but four placed a southern slaveholder in the White House.

Even the initial failure to include a Bill of Rights resulted, in part, from the presence of slavery. As South Carolina delegate Charles C. Pinckney explained, “such bills generally begin with declaring that all men are by nature born free,” a declaration that would come “with a very bad grace, when a large part of our property

consists in men who are actually born slaves.”

But some slaveholders detected a potential threat buried in the Constitution. Patrick Henry, who condemned slavery but feared abolition, warned that, in time of war, the new government might take steps to arm and liberate the slaves. “May Congress not say,” he asked, “that every black man must fight? Did we not see a little of this [in the] last war?” What Henry could not anticipate was that the war that eventually destroyed slavery would be launched by the South itself to protect the institution.

THE FINAL DOCUMENT

Gouverneur Morris put the finishing touches on the final draft of the new Constitution, trying to make it, he explained, “as clear as our language would permit.” For the original preamble, which began, “We the people of the States of New Hampshire, Massachusetts,” etc., he substituted the far more powerful, “We the people of the United States.” He added a statement of the Constitution’s purposes, including to “establish justice,” promote “the general welfare,” and “secure the blessings of liberty”—things the Articles of Confederation, in the eyes of most of the delegates, had failed to accomplish.

The last session of the Constitutional Convention took place on September 17, 1787. Benjamin Franklin urged the delegates to put aside individual objections and approve the document, whatever its imperfections. “The older I grow,” he remarked, “the more apt I am to . . . pay more respect to the judgment of others.” Of the forty-five delegates who remained in Philadelphia, thirty-nine signed the Constitution. It was then sent to the states for ratification.

The Constitution created a new framework for American development. By assigning to Congress power over tariffs, interstate commerce, the coining of money, patents, rules for bankruptcy, and weights and measures, and by prohibiting states from interfering with property rights, it made possible a national economic market. It created national political institutions, reduced the powers of the states, and sought to place limits on popular



This satirical engraving by Amos Doolittle (who created the image of the Battle of Concord in Chapter 5) depicts some of the issues in the debate over the ratification of the Constitution. The wagon in the center is carrying Connecticut and sinking into the mud under the weight of debts and paper money as “Federalists” and “Antifederalists” try to pull it out. Federalists call for the state to “comply with Congress” (that is, to pay money requisitioned by the national government); the Antifederalists reply “tax luxury” and “success to Shays,” a reference to Shays’s Rebellion. The Connecticut shoreline and the buildings of Manhattan are on the right. Underneath the three merchant ships is a phrase criticizing the tariffs that states were imposing on imports from one another (which the Constitution prohibited). At the bottom is the biblical motto, “A house divided against itself cannot stand,” later made famous by Abraham Lincoln.

democracy. “The same enthusiasm, *now* pervades all classes in favor of *government*,” observed Benjamin Rush, “that actuated us in favor of *liberty* in the years 1774 and 1775.” Whether “all classes” truly agreed may be doubted, for the ratification process unleashed a nationwide debate over the best means of preserving American freedom.

THE RATIFICATION DEBATE AND THE ORIGIN OF THE BILL OF RIGHTS

THE FEDERALIST

Even though the Constitution provided that it would go into effect when nine states, not all thirteen as required by the Articles of Confederation, had given their approval, ratification was by no means certain. Each state

held an election for delegates to a special ratifying convention. A fierce public battle ensued, producing hundreds of pamphlets and newspaper articles and spirited campaigns to elect delegates. To generate support, Hamilton, Madison, and Jay composed a series of eighty-five essays that appeared in newspapers under the pen name Publius and were gathered as a book, *The Federalist*, in 1788. Hamilton wrote fifty, Madison thirty, and Jay the remainder. Today, the essays are regarded as among the most important American contributions to political thought. At the time, however, they represented only one part of a much larger national debate over ratification, reflected in innumerable pamphlets, newspaper articles, and public meetings.

Again and again, Hamilton and Madison repeated that rather than posing a danger to Americans' liberties, the Constitution in fact protected them. Hamilton's essays sought to disabuse Americans of their fear of political power. Government, he insisted, was an expression of freedom, not its enemy. Any government could become oppressive, but with its checks and balances and division of power, the Constitution made political tyranny almost impossible. Hamilton insisted that he was "as zealous an advocate for liberty as any man whatever." But "want of power" had been the fatal flaw of the Articles. At the New York ratifying convention, Hamilton assured the delegates that the Constitution had created "the perfect balance between liberty and power."

"EXTEND THE SPHERE"

Madison, too, emphasized how the Constitution was structured to prevent abuses of authority. But in several essays, especially *Federalist* nos. 10 and 51, he moved beyond such assurances to develop a strikingly new vision of the relationship between government and society in the United States. Madison identified the essential dilemma, as he saw it, of the new republic—government must be based on the will of the people, yet the people had shown themselves susceptible to dangerous enthusiasms. Most worrisome, they had threatened property rights, whose protection was the "first object of government." The problem of balancing democracy and respect for property would only grow in the years ahead because, he warned, economic development would inevitably increase the numbers of poor. What was to prevent them from using their political power to secure "a more equal distribution" of wealth?

The answer, Madison explained, lay not simply in the way power balanced power in the structure of government, but in the nation's size and diversity. Previous republics had existed only in small territories—the Dutch republic, or Italian city-states of the Renaissance. But, argued Madison, the very size of the United States was a source of stability, not, as many feared, weakness. "Extend the sphere," he wrote. The multiplicity of religious denominations, he argued, offered the best security for religious liberty. Likewise, in a nation as large as the United States, so many distinct interests—economic, regional, and political—would arise, that no single one would ever be able to take over the government and oppress the rest. Every majority would be a coalition of minorities, and thus "the rights of individuals" would be secure.

Madison's writings did much to shape the early nation's understanding

of its new political institutions. In arguing that the size of the republic helped to secure Americans' rights, they reinforced the tradition that saw continuous westward expansion as essential to freedom. And in basing the preservation of freedom on the structure of government and size of the republic, not the character of the people, his essays represented a major shift away from the "republican" emphasis on a virtuous citizenry devoted to the common good as the foundation of proper government. Madison helped to popularize the "liberal" idea that men are generally motivated by self-interest, and that the good of society arises from the clash of these private interests.

THE ANTI-FEDERALISTS

Opponents of ratification, called Anti-Federalists, insisted that the Constitution shifted the balance between liberty and power too far in the direction of the latter. Anti-Federalists lacked the coherent leadership of the Constitution's defenders. They included state politicians fearful of seeing their influence diminish, among them such revolutionary heroes as Samuel Adams, John Hancock, and Patrick Henry. Small farmers, many of whom supported the state debtor-relief measures of the 1780s that the Constitution's supporters deplored, also saw no need for a stronger central government. Some opponents of the Constitution denounced the document's protections for slavery; others warned that the powers of Congress were so broad that it might enact a law for abolition.

Anti-Federalists repeatedly predicted that the new government would fall under the sway of merchants, creditors, and others hostile to the interests of ordinary Americans. Repudiating Madison's arguments in *Federalist* nos. 10 and 51, Anti-Federalists insisted that "a very extensive territory cannot be governed on the principles of freedom." Popular self-government, they claimed, flourished best in small communities, where rulers and ruled interacted daily. Only men of wealth, "ignorant of the sentiments of the middling and lower class of citizens," would have the resources to win election to a national government. The result of the Constitution, warned Melancton Smith of New York, a member of Congress under the Articles of Confederation, would be domination of the "common people" by the "well-born." "This," Smith predicted, "will be a government of oppression."

Liberty was the Anti-Federalists' watchword. America's happiness, they insisted, "arises from the freedom of our institutions and the limited nature of our government," both threatened by the new Constitution. Maryland Anti-Federalists had caps manufactured bearing the word "Liberty," to wear to the polls when members of the state's ratification convention were elected. To the vision of the United States as an energetic great power, Anti-Federalists counterposed a way of life grounded in local, democratic institutions. "What is Liberty?" asked James Lincoln of South Carolina. "The power of governing yourselves. If you adopt this constitution, have you this power? No."

Anti-Federalists also pointed to the Constitution's lack of a Bill of Rights, which left unprotected rights such as trial by jury and freedom of speech and the press. The absence of a Bill of Rights, declared Patrick Henry, was "the most absurd thing to mankind that ever the world saw." State constitutions had bills of rights, yet the states, Henry claimed, were now being

Order of Proceffion,
In honor of the Constitution of the United States.

THIS DAY.
AT 8 o'clock this morning, 23d of July, 10 guns will fire, when the Proceffion will parade, and proceed by the following rout, viz.

Down Broad-way to Great Dock-Street, thence through Hanover-square, Queen, Chatham, Division and Arundel-Streets; and from thence through Bullock-Street to Bayard's-house.

2 Horsemen with Trumpets.
1 piece of Artillery.
First Division.
Foresters with hoes, carrying axes.
Columbus in his ancient dress, on horseback.
6 Foresters, &c.
A Plough.
A Harrow.
Farmers.

Fourth Division.
Carpenters.
Farriers.
Hatters.
Peruke-makers and Hair-dressers.
Fifth Division.
White Smiths.
Cutlers.
Stone Malons.
Brick Layers.
Painters and Glaziers.
Cabinet Makers.
Windsor Chair Makers.
Upholsterers.
Fringe Makers.
Paper Stainers.
Civil Engineers.
Sixth Division.
Ship Wrights.
Black Smiths.
Ship Joiners.
Boat Builders.

In New York City's Grand Federal Procession of 1788, celebrating the ratification of the Constitution, members of each trade and occupation marched together. This document illustrates the variety of crafts in the pre-industrial city.

asked to surrender most of their powers to the federal government, with no requirement that it respect Americans' basic liberties.

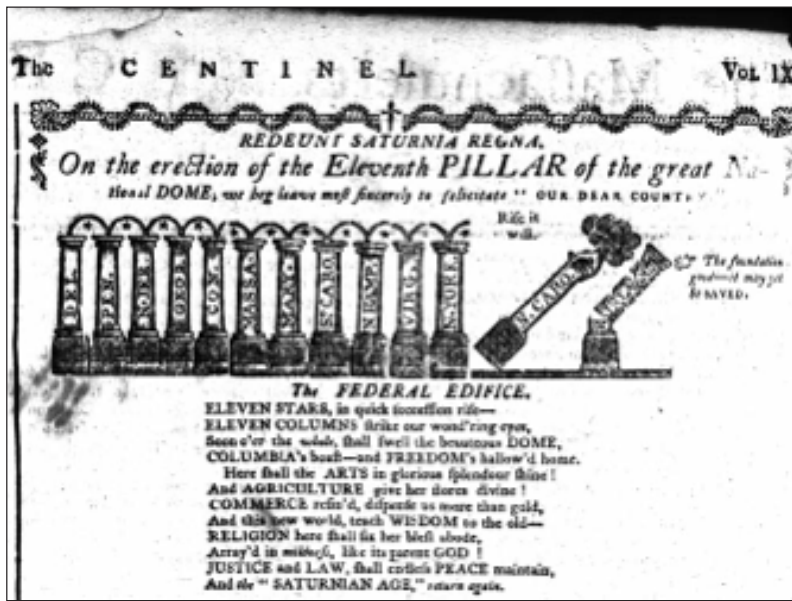
In general, pro-Constitution sentiment flourished in the nation's cities and in rural areas closely tied to the commercial marketplace. The Constitution's most energetic supporters were men of substantial property. But what George Bryan of Pennsylvania, a supporter of ratification, called the "golden phantom" of prosperity also swung urban artisans, laborers, and sailors behind the movement for a government that would use its "energy and power" to revive the depressed economy. Anti-Federalism drew its support from small farmers in more isolated rural areas such as the Hudson Valley of New York, western Massachusetts, and the southern back-country.

In the end, the supporters' energy and organization, coupled with their domination of the colonial press, carried the day. Ninety-two newspapers and magazines existed in the United States in 1787. Of these, only twelve published a significant number of Anti-Federalist pieces. Madison also won support for the new Constitution by promising that the first Congress would enact a Bill of Rights. By mid-1788, the required nine states had ratified. Although there was strong dissent in Massachusetts, New York, and Virginia, only Rhode Island and North Carolina voted against ratification, and they subsequently had little choice but to join the new government. Anti-Federalism died. But as with other movements in American history that did not immediately achieve their goals—for example, the Populists of the late nineteenth century—some of the Anti-Federalists' ideas eventually entered the political mainstream. To this day, their belief that a too-powerful central government is a threat to liberty continues to influence American political culture.

THE BILL OF RIGHTS

Ironically, the parts of the Constitution Americans most value today—the freedoms of speech, the press, and religion; protection against unjust criminal procedures; equality before the law—were not in the original document. All of these but the last (which was enshrined in the Fourteenth Amendment after the Civil War) were contained in the first ten amendments, known as the Bill of Rights. Madison was so convinced that the balances of the Constitution would protect liberty that he believed a Bill of Rights "redundant or pointless." Amendments restraining federal power, he believed, would have no effect on the danger to liberty posed by unchecked majorities in the states, and no list of rights could ever anticipate the numerous ways that Congress might operate in the future. "Parchment barriers" to the abuse of authority, he observed, would prove least effective when most needed. Madison's prediction would be amply borne out at future times of popular hysteria, such as during the Red Scare following World War I and the McCarthy era of the 1950s, when all branches of government joined in trampling on freedom of expression, and during World War II, when hatred of a foreign enemy led to the internment of more than 100,000 Japanese-Americans, most of them citizens of the United States.

Nevertheless, every new state constitution contained some kind of declaration of citizens' rights, and large numbers of Americans—Federalist



An engraving and poem, published in 1788 in an American newspaper, after New York became the eleventh state to ratify the new Constitution. North Carolina would ratify in 1789 and Rhode Island in 1790.

and Anti-Federalist alike—believed the new national Constitution should also have one. In order to “conciliate the minds of the people,” as Madison put it, he presented to Congress a series of amendments that became the basis of the Bill of Rights, which was ratified by the states in 1791. The First Amendment prohibited Congress from legislating with regard to religion or infringing on freedom of speech, freedom of the press, or the right of assembly. The Second upheld the people’s right to “keep and bear arms” in conjunction with “a well-regulated militia.” Others prohibited abuses such as arrests without warrants and forcing a person accused of a crime to testify against himself, and reaffirmed the right to trial by jury.

In a sense, the Bill of Rights offered a definition of the “unalienable rights” Jefferson had mentioned in the Declaration of Independence—rights inherent in the human condition. Not having been granted by government in the first place, they could not be rescinded by government. In case any had been accidentally omitted, the Ninth Amendment declared that rights not specifically mentioned in the Constitution were “retained by the people.” Its suggestion that the Constitution was not meant to be complete opened the door to future legal recognition of rights not grounded in the actual text (such as the right to privacy). The Tenth Amendment, meant to answer fears that the federal government would ride roughshod over the states, affirmed that powers not delegated to the national government or prohibited to the states continued to reside with the states.

The roots and even the specific language of some parts of the Bill of Rights lay far back in English history. The Eighth Amendment, prohibiting excessive bail and cruel and unusual punishments, incorporates language that originated in a declaration by the House of Lords in 1316 and was repeated centuries later in the English Bill of Rights and the constitutions of a number of American states.

Other provisions reflected the changes in American life brought about by the Revolution. The most remarkable of these was constitutional recognition of religious freedom. Unlike the Declaration of Independence, which invokes the blessing of divine providence, the Constitution is a purely secular document that contains no reference to God and bars religious tests for federal officeholders. The First Amendment prohibits the federal government from legislating on the subject of religion—a complete departure from British and colonial precedent. Under the Constitution it was and remains possible, as one critic complained, for “a papist, a Mohomatan, a deist, yea an atheist” to become president of the United States. Madison was so adamant about separating church and state that he even opposed the appointment of chaplains to serve Congress and the military.

Today, when Americans are asked to define freedom, they instinctively

turn to the Bill of Rights and especially the First Amendment, with its guarantees of freedom of speech, the press, and religion. Yet the Bill of Rights aroused little enthusiasm on ratification and for decades was all but ignored. Not until the twentieth century would it come to be revered as an indispensable expression of American freedom. Nonetheless, the Bill of Rights subtly affected the language of liberty. Applying only to the federal government, not the states, it reinforced the idea that concentrated national power posed the greatest threat to freedom. And it contributed to the long process whereby freedom came to be discussed in the vocabulary of rights.

Among the most important rights were freedom of speech and the press, vital building blocks of a democratic public sphere. Once an entitlement of members of Parliament and colonial assemblies, free speech came to be seen as a basic right of citizenship. Although the legal implementation remained to be worked out, and serious infringements would occur at many points in American history, the Bill of Rights did much to establish freedom of expression as a cornerstone of the popular understanding of American freedom.

“WE THE PEOPLE”

NATIONAL IDENTITY

The colonial population had been divided by ethnicity, religion, class, and status and united largely by virtue of their allegiance to Britain. The Revolution created not only a new nation but also a new collective body, the American people, whose members were to enjoy freedom as citizens in a new political community. Since government in the United States rested on the will of the people, it was all the more important to identify who the people were.

The Constitution opens with the words, “We the People,” describing those who, among other things, are to possess “the Blessings of Liberty” as a birthright and pass them on to “Posterity.” (Abraham Lincoln would later cite these words to argue that since the nation had been created by the people, not the states, the states could not dissolve it.) Although one might assume that the “people” of the United States included all those living within the nation’s borders, the text made clear that this was not the case. The Constitution identifies three populations inhabiting the United States: Indians, treated as members of independent tribes and not part of the American body politic; “other persons”—that is, slaves; and the “people.” Only the third were entitled to American freedom.

Every nation confronts the task of defining its identity. Historians have traditionally distinguished between “civic nationalism,” which envisions the nation as a community open to all those devoted to its political institutions and social values, and “ethnic nationalism,” which defines the nation as a community of descent based on a shared ethnic heritage, language, and culture. At first glance, the United States appears to conform to the civic model. It lacked a clear ethnic identity or long-established national boundaries—the political principles of the Revolution held Americans together. To be an American, all one had to do was commit oneself to an ideology of liberty, equality, and democracy. From the outset, however,

A medal issued to Red Jacket, a Seneca chief, during his visit to Philadelphia (then the national capital) in 1792. It depicts George Washington offering an Indian a peace pipe. The agricultural scene in the background was intended to suggest that Indians should take up farming.





American nationality combined both civic and ethnic definitions. For most of our history, American citizenship has been defined by blood as well as by political allegiance.

INDIANS IN THE NEW NATION

The early republic's policies toward Indians and African-Americans illustrate the conflicting principles that shaped American nationality. American leaders agreed that the West should not be left in Indian hands, but they disagreed about the Indians' ultimate fate. The government hoped to encourage the westward expansion of white settlement, which implied one of three things: the removal of the Indian population to lands even farther west, their total disappearance, or their incorporation into white "civilization" with the expectation that they might one day become part of American society.

Many white Americans, probably most, deemed Indians savages unfit for citizenship. Indian tribes had no representation in the new government, and the Constitution excluded Indians "not taxed" from being counted in determining each state's number of congressmen. The treaty system gave them a unique status within the American political system. But despite this recognition of their sovereignty, treaties were essentially ways of transferring land from Indians to the federal government or the states. Often, a

The signing of the Treaty of Greenville of 1795, painted by an unknown member of General Anthony Wayne's staff. In the treaty, a group of tribes ceded most of the area of the current state of Ohio, along with the site that became the city of Chicago, to the United States.



By 1790, the Indian population had declined significantly from the early colonial era, but the area west of the Appalachian Mountains was still known as “Indian country.”

treaty was agreed to by only a small portion of a tribe, but the whole tribe was then forced to accept its legitimacy.

During Washington's administration, Secretary of War Henry Knox hoped to deal with Indians with a minimum of warfare and without undermining the new nation's honor. He recognized, he said in 1794, that American treatment of the continent's native inhabitants had been even "more destructive to the Indian" than Spain's conduct in Mexico and Peru. His conciliatory policy had mixed results. Congress forbade the transfer of Indian land without federal approval. But several states ignored this directive and continued to negotiate their own agreements.

Open warfare continued in the Ohio Valley. In 1791, Little Turtle, leader of the Miami Confederacy, inflicted a humiliating defeat on American forces led by Arthur St. Clair, the American governor of the Northwest Territory. With 630 dead, this was the costliest loss ever suffered by the United States Army at the hands of Indians. In 1794, 3,000 American troops under Anthony Wayne defeated Little Turtle's forces at the Battle of Fallen Timbers. This led directly to the Treaty of Greenville of 1795, in which twelve Indian tribes ceded most of Ohio and Indiana to the federal government. The treaty also established the "annuity" system—yearly grants of federal money to Indian tribes that institutionalized continuing government influence in tribal affairs and gave outsiders considerable control over Indian life.

Many prominent figures, however, rejected the idea that Indians were innately inferior to white Americans. Thomas Jefferson believed that Indians merely lived at a less advanced stage of civilization. Indians could become full-fledged members of the republic by abandoning communal landholding and hunting in favor of small-scale farming. Once they "possessed property," Jefferson told one Indian group, they could "join us in our government" and, indeed, "mix your blood with ours."

To pursue the goal of assimilation, Congress in the 1790s authorized President Washington to distribute agricultural tools and livestock to Indian men and spinning wheels and looms to Indian women. To whites, the adoption of American gender norms, with men working the land and women tending to their homes, would be a crucial sign that the Indians were becoming "civilized." But the American notion of civilization required so great a transformation of Indian life that most tribes rejected it. One missionary was told, "If we want to work, we know how to do it according to our own way and as it pleases us." To Indians, freedom meant retaining tribal autonomy and identity, including the ability to travel widely in search of game. "Since our acquaintance with our brother white people," declared a Mohawk speaker at a 1796 treaty council, "that which we call freedom and liberty, becomes an entire stranger to us." There was no room for Indians who desired to retain their traditional way of life in the American empire of liberty.

BLACKS AND THE REPUBLIC

By 1790, the number of African-Americans far exceeded the Indian population within the United States. The status of free blacks was somewhat indeterminate. Nowhere does the original Constitution define who in fact are

Table 7.1 TOTAL POPULATION AND BLACK POPULATION OF THE UNITED STATES, 1790

State	Total Population	Slaves	Free Blacks
New England:			
New Hampshire	141,899	158	630
Vermont*	85,341	0	271
Massachusetts	378,556	0	5,369
Connecticut	237,655	2,764	2,771
Rhode Island	69,112	948	3,484
Maine**	96,643	0	536
Middle States:			
New York	340,241	21,324	4,682
New Jersey	184,139	11,423	2,762
Pennsylvania	433,611	3,737	6,531
South:			
Delaware	59,096	8,887	3,899
Maryland	319,728	103,036	8,043
Virginia	747,610	292,627	12,866
North Carolina	395,005	100,572	5,041
South Carolina	249,073	107,094	1,801
Georgia	82,548	29,264	398
Kentucky*	73,677	12,430	114
Tennessee*	35,691	3,417	361
Total	3,929,625	697,624	59,557

*Vermont, Kentucky, and Tennessee were territories that had not yet been admitted as states.

**Maine was part of Massachusetts in 1790.

citizens of the United States. The individual states were left free to determine the boundaries of liberty. The North's gradual emancipation acts assumed that former slaves would remain in the country, not be colonized abroad. Northern statesmen like Hamilton, Jay, and Franklin worked for abolition, and some helped to establish schools for black children. During the era of the Revolution, free blacks enjoyed at least some of the legal rights accorded to whites, including, in most states, the right to vote. Some cast ballots in the election of delegates to conventions that ratified the Constitution. The large majority of blacks, of course, were slaves, and slavery rendered them all but invisible to those imagining the American community. Slaves, as Edmund Randolph, the nation's first attorney general, put it, were “not . . . constituent members of our society,” and the language of liberty did not apply to them.

One of the era's most widely read books, *Letters from an American Farmer*, published in France in 1782 by Hector St. John de Crèvecoeur, strikingly illustrated this process of exclusion. Born in France, Crèvecoeur had taken part in the unsuccessful defense of Quebec during the Seven Years' War. Instead of returning home, he came to New York City in 1759. As a trader and explorer, he visited most of the British mainland colonies, as well as the Ohio and Mississippi Valleys. Crèvecoeur eventually married the daughter of a prominent New York landowner and lived with his own family on a farm in Orange County. Seeking to remain neutral during the War of Independence, he suffered persecution by both patriots and the British, and eventually returned to France.

In *Letters from an American Farmer*, Crèvecoeur popularized the idea, which would become so common in the twentieth century, of the United States as a melting pot. “Here,” he wrote, “individuals of all nations are melted into a new one.” The American left behind “all his ancient prejudices and manners [and received] new ones from the new mode of life he has embraced.” Crèvecoeur was well aware of what he called “the horrors of slavery.” But when he posed the famous question, “What then is the American, this new man?” he answered, “a mixture of English, Scotch, Irish, French, Dutch, Germans, and Swedes. . . . He is either a European, or the descendant of a European.” This at a time when fully one-fifth of the population (the highest proportion in U.S. history) consisted of Africans and their descendants.

Like Crèvecoeur, many white Americans excluded blacks from their conception of the American people. The Constitution empowered Congress to create a uniform system by which immigrants became citizens, and the Naturalization Act of 1790 offered the first legislative definition of American nationality. With no debate, Congress restricted the process of becoming a citizen from abroad to “free white persons.”

The law initiated a policy that some historians, with only partial accuracy, call “open immigration.” For Europeans, the process was indeed open. Only in the last quarter of the nineteenth century were groups of whites, beginning with prostitutes, convicted felons, lunatics, and persons likely to become a “public charge,” barred from entering the country. For the first century of the republic, virtually the only white persons in the entire world ineligible to claim American citizenship were those unwilling to renounce hereditary titles of nobility, as required in an act of

1795. And yet, the word “white” in the Naturalization Act excluded a large majority of the world’s population from emigrating to the “asylum for mankind” and partaking in the blessings of American freedom. For eighty years, no non-white immigrant could become a naturalized citizen. Africans were allowed to do so in 1870, but not until the 1940s did persons of Asian origin become eligible. (Native Americans were granted American citizenship in 1924.)

JEFFERSON, SLAVERY, AND RACE

Man’s liberty, John Locke had written, flowed from “his having reason.” To deny liberty to those who were not considered rational beings did not seem to be a contradiction. White Americans increasingly viewed blacks as permanently deficient in the qualities that made freedom possible—the capacity for self-control, reason, and devotion to the larger community. These were the characteristics that Jefferson, in a famous comparison of the races in his book *Notes on the State of Virginia*, published in 1785, claimed blacks lacked, partly due to natural incapacity and partly because the bitter experience of slavery had (quite understandably, he felt) rendered them disloyal to the nation. Jefferson was reluctant to “degrade a whole race of men from the rank in the scale of beings which their Creator may perhaps have given them.” He therefore voiced the idea “as a suspicion only,” that blacks “are inferior to the whites in the endowments both of body and mind.” Yet this “unfortunate” circumstance, he went on, “is a powerful obstacle to the emancipation of these people.”

Jefferson was obsessed with the connection between heredity and environment, race and intelligence. His belief that individuals’ abilities and achievements are shaped by social conditions inclined him to hope that no group was fixed permanently in a status of inferiority. He applied this principle, as has been noted, to Indians, whom he believed naturally the equal of whites in intelligence. In the case of blacks, however, he could not avoid the “suspicion” that nature had permanently deprived them of the qualities that made republican citizenship possible. Benjamin Banneker, a free African-American from Maryland who had taught himself the principles of mathematics, sent Jefferson a copy of an astronomical almanac he had published, along with a plea for the abolition of slavery. Jefferson replied, “Nobody wishes more than I do to see such proofs as you exhibit, that nature has given to our black brethren, talents equal to the other colors of men.” To his friend Joel Barlow, however, Jefferson suggested that a white person must have helped Banneker with his calculations.

“Nothing is more certainly written in the book of fate,” wrote Jefferson, “than that these people are to be free.” Yet he felt that America should have a homogeneous citizenry with common experiences, values, and inborn abilities. Americans’ essential sameness would underpin the ideal of equal rights for all, making it possible to realize the idea of the public good. Black Americans, Jefferson affirmed, should eventually enjoy the natural rights enumerated in the Declaration of Independence, but in Africa or the Caribbean, not in the United States. He foresaw Indians merging with whites into a single people, but he was horrified by the idea of miscegenation between blacks and whites. Unlike Indians, blacks, he believed, were unfit



The artist John Singleton Copley, best known for his portraits of prominent Americans and Britons, painted this young African-American in the late 1770s. The subject probably worked on a New England fishing boat. This is one of the era’s very few portraits of a black person.

for economic independence and political self-government. Freeing the slaves without removing them from the country would endanger the nation's freedom. In his will, Tadeusz Kosciuszko, a Polish aristocrat who fought for American independence, left funds for Jefferson to purchase and free slaves, “giving them liberty in my name.” But when his friend died in 1817, Jefferson transferred the money to an official of the American Colonization Society, an organization dedicated to sending freed slaves to Africa. Eventually, the funds were divided among Kosciuszko's heirs in Europe.

Jefferson reflected the divided mind of his generation. Some prominent Virginians assumed that blacks could become part of the American nation. Edward Coles, an early governor of Illinois, brought his slaves from Virginia, freed them, and settled them on farms. Washington, who died in 1799, provided in his will that his 277 slaves would become free after the death of his wife, Martha. (Feeling uncomfortable living among men and women who looked forward to her death, she emancipated them the following year.) Jefferson thought of himself as a humane owner. The slave cabins at his estate, Monticello, one visitor wrote, “are all much better than I have seen on any other plantation,” although he could not help adding that “their cabins form a most unpleasant contrast with the palace that rises so near them.” Believing the slave trade immoral, Jefferson tried to avoid selling slaves to pay off his mounting debts. But his will provided for the freedom of only five, all relatives of his slave Sally Hemings, with whom he appears to have had fathered one or more children. When he died in 1826, Jefferson owed so much money that his property, including the majority of his more than 200 slaves, was sold at auction, thus destroying the slave community he had tried to keep intact.

PRINCIPLES OF FREEDOM

Even as the decline of apprenticeship and indentured servitude narrowed the gradations of freedom among the white population, the Revolution widened the divide between free Americans and those who remained in slavery. Race, one among many kinds of legal and social inequality in colonial America, now emerged as a convenient justification for the existence of slavery in a land that claimed to be committed to freedom. Blacks' “natural faculties,” Alexander Hamilton noted in 1779, were “probably as good as ours.” But the existence of slavery, he added, “makes us fancy many things that are founded neither in reason or experience.”

“We the people” increasingly meant only white Americans. “Principles of freedom, which embrace only half mankind, are only half systems,” declared the anonymous author of a Fourth of July speech in Hartford, Connecticut, in 1800. “Declaration of Independence,” he wondered, “where art thou now?” The answer came from a Richmond newspaper: “Tell us not of principles. Those principles have been annihilated by the existence of slavery among us.”

SUGGESTED READING**BOOKS**

- Amar, Akhil Reed. *Bill of Rights: Creation and Reconstruction* (1998). Presents the history of the Bill of Rights from its ratification through the Reconstruction era.
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