

The American Revolution, like all revolutions, could not fulfill all the high hopes of its leaders. Within a decade after Independence was declared, many Revolutionary leaders had come to doubt the way America was going. Not only were they aware that the Confederation was too weak to accomplish its tasks, both at home and abroad, but they were also having second thoughts about the immense power that had been given to the popular state legislatures in 1776. In the mid-1780s frustration with piecemeal changes in the Articles of Confederation came together with mounting concern over examples of legislative tyranny and other political and social conditions in the states to produce a powerful momentum for constitutional change. The result was the federal Constitution of 1787.

This new national Constitution, which replaced the Articles of Confederation, not only limited the authority of the states but also created an unprecedented concentration of power at the federal level. Many Americans could only conclude that the new Constitution represented as radical a change as the Revolution itself. At last, in the eyes of some, the inauguration of a new federal government promised the harmony and stability that would allow America to become a great and glorious nation.

THE CRITICAL PERIOD

For some Americans the 1780s had become a critical period, a point at which the Revolution and the entire experiment in republicanism seemed to be in danger. The very success of the Revolution in opening up opportunities for prosperity to new and lower levels of the population helped to create a

sense of crisis among certain members of the Revolutionary elite.

Too many ordinary people, some felt, were distorting republican equality, defying legitimate authority, and blurring those natural distinctions that all gentlemen, even republican gentlemen, thought essential for social order. Everywhere, even among the sturdy independent yeomen—Jefferson's "chosen people of God"—private interests, selfishness, and moneymaking seemed to be destroying social affection and public spirit—the very qualities of virtue that were required of republican citizens. The passing of unjust and confusing laws by the state legislatures—"democratic despotism," it was called—suggested that the people were too self-interested to be good republicans. Some therefore feared that America was doomed to share the fate that had befallen the ancient republics, Britain, and other corrupt nations. Americans, concluded Governor William Livingston of New Jersey, in a common elitist reckoning of 1787, "do not exhibit the virtue that is necessary to support a republican government."

The Revolution had radically democratized the new state legislatures by increasing the number of their members and altering their social character. Men of more humble and more rural origins and less educated than those who had sat in the colonial assemblies now became representatives. In New Hampshire, for example, in 1765 the colonial assembly had contained only thirty-four members, almost all well-to-do gentlemen from the coastal region around Portsmouth. By 1786 the state's House of Representatives had increased to eighty-eight members. Most of these were ordinary farmers or men of moderate wealth, and many were from the western areas of the state. In other states the change was less dramatic but no less significant.

The need to bring the state governments closer to more ordinary people was also reflected in the shifts of most of the state capitals from their colonial locations on the eastern coastline to new sites in the interior—from Portsmouth to

Concord in New Hampshire, from New York City to Albany in New York, from the dual colonial capitals Burlington and Perth Amboy to Trenton in New Jersey, from Philadelphia to Lancaster in Pennsylvania, from Williamsburg to Richmond in Virginia, from New Bern to Raleigh in North Carolina, from Charleston to Columbia in South Carolina, and from Savannah to Augusta in Georgia.

Everywhere electioneering and the open competition for office increased, along with demands for greater public access to governmental activities. The number of contested elections and the turnover of legislative seats multiplied. Assembly proceedings were opened to the public, and a growing number of newspapers (which now included dailies) began to report legislative debates. Self-appointed leaders, speaking for newly aroused groups and localities, took advantage of the enlarged suffrage and the annual elections of the legislatures (a radical innovation in most states) to seek membership in the assemblies. New petty entrepreneurs like Abraham Yates, a part-time lawyer and shoemaker from Albany, and William Findley, a Scotch-Irish ex-weaver from western Pennsylvania, bypassed the traditional hierarchy and vaulted into political leadership in the states.

Under these circumstances many of the state legislatures could scarcely fulfill what many Revolutionaries in 1776 had assumed was their republican responsibility to promote the general good. In every state, decisions had to be made about the loyalists and their confiscated property, the distribution of taxes among the citizens, and the economy. Yet with the general political instability, the common welfare in the various states was increasingly difficult to define. By the 1780s James Madison concluded that "a spirit of *locality*" in the state legislatures was destroying "the aggregate interests of the community." This localist spirit, he thought, was a consequence of having small districts or towns elect members of the state legislatures. Each representative, said Ezra Stiles, president of Yale College, was concerned only with the special interests of

his electors. Whenever a bill is read in the legislature, "every one instantly thinks how it will affect his constituents."

This kind of narrow-minded politics was not new to America. But the proliferation of economic and social interests in the post-Revolutionary years, along with the greater sensitivity of the enlarged elected popular assemblies to conflicting demands of these interests, now dramatically increased the intensity and importance of such parochial-interest politics. Debtor farmers urged low taxes, the staying of court actions to recover debts, and the printing of paper money. Merchants and creditors called for high taxes on land, the protection of private contracts, and the encouragement of foreign trade. Artisans pleaded for price regulation of agricultural products, the abolition of mercantile monopolies, and tariff protection against imported manufactures. And entrepreneurs everywhere petitioned for legal privileges and corporate grants.

All this political scrambling among contending interests made lawmaking in the states seem chaotic. Laws, as the Vermont Council of Censors said in 1786 in a common complaint, were "altered—realttered—made better—made worse; and kept in such a fluctuating position, that persons in civil commission scarcely know what is law." As James Madison pointed out, more laws were enacted by the states in the decade following independence than in the entire colonial period. Many of them were simply private acts for individuals or resolves redressing minor grievances. But every effort of the legislatures to respond to the excited pleas and pressures of the various interests alienated as many as it satisfied and brought lawmaking itself into contempt.

By the mid-1780s many American leaders had come to believe that the state legislatures, not the governors, were the political authority to be most feared. Not only were some of the legislatures violating the individual rights of property-owners through their excessive printing of paper money and

their various acts on behalf of debtors, but in all the states the assemblies also pushed beyond the generous grants of legislative authority of the 1776 Revolutionary constitutions and were absorbing numerous executive and judicial duties—directing military operations, for example, and setting aside court judgments. It began to seem that the once benign legislative power was no more trustworthy than the detested royal power had been. Legislators were supposedly the representatives of the people who annually elected them. But "173 despots would surely be as oppressive as one," wrote Jefferson in 1785 in his *Notes on Virginia*. "An elective despotism was not the government we fought for."

These growing fears of tyrannical legislatures forced many leaders to have second thoughts about their popularly elected assemblies. Indeed, the ink was scarcely dry on the Revolutionary state constitutions before some were suggesting that they needed to be revised. Beginning with the New York constitution of 1777 and proceeding through the constitutions of Massachusetts in 1780 and New Hampshire in 1784, constitution-makers now sought a very different distribution of the powers of government from the distribution made in 1776.

Instead of draining all power from the governors and placing it in the legislatures, particularly in the lower houses, as the early state constitutions had done, these later constitutions strengthened the executives, senates, and judiciaries. The Massachusetts constitution of 1780 especially seemed to many to have recaptured some of the best characteristics of the English constitutional balance, which had been forgotten during the popular enthusiasm of 1776. The new Massachusetts governor, with a fixed salary and elected directly by the people, had more of the independence and some of the powers of the old royal governors, including those of appointing to offices and vetoing legislation.

With the Massachusetts constitution as a model, other

constitutional reformers, including Madison and Jefferson in Virginia and James Wilson and Robert Morris in Pennsylvania, worked to revise their own state constitutions. The popular legislatures were reduced in size and their authority curbed. Senates or upper houses were instituted where they did not exist, as in Pennsylvania, Georgia, and Vermont. In states where senates did exist, they were made more stable through longer terms and higher property qualifications for their members. The governors were freed of their dependence on the legislatures and given the central responsibility for government. And judges became independent guardians of the constitutions. By 1790, Pennsylvania, South Carolina, and Georgia had reformed their constitutions along these conservative lines. New Hampshire, Delaware, and Vermont soon followed in the early 1790s.

At the same time that political leaders were attempting to restrengthen the authority of governors, senates, and judges, they also tried to limit the power of the legislatures by appealing to the fundamental law that was presumably embodied in the states' written constitutions. Since many of the constitutions had been created by simple legislative act, it was not easy to distinguish between fundamental and ordinary law.

At first, several of the states had grappled with various devices to distinguish between their fundamental constitutions and ordinary legislation. Some simply declared their constitutions to be fundamental; others required a special majority or successive acts of the legislature for amending the constitution. But none of these measures proved effective against repeated legislative encroachments.

In attempting to solve this problem Americans gradually came to believe that if a constitution was to be truly immune from legislative tampering, it would have to be created, as Jefferson said in 1785, "by a power superior to that of the ordinary legislature." For a solution, Americans fell back on the institution of the convention. In 1775–76 the convention had

been merely an ad hoc legislative meeting, lacking legal sanction but made necessary by the crown's refusal to call together the regular representatives of the people. Now, however, the convention became a special alternative institution representing the people and having the exclusive authority to write or amend a constitution. When Massachusetts and New Hampshire came to write new constitutions in the late 1770s and early 1780s, the proper pattern of constitution-making and constitution-altering had become clear. Constitutions were formed by specially elected conventions and then placed before the people for ratification.

With this idea of a constitution as fundamental law immune from legislative encroachment firmly in hand, some state judges during the 1780s began cautiously moving in isolated cases to impose restraints on what the assemblies were enacting as law. In effect, they said to the legislatures, as George Wythe, judge of the Virginia Supreme Court, did in 1782, "Here is the limit of your authority; and, hither, shall you go, but no further." These were the hesitant beginnings of what eventually would come to be called judicial review. Many leaders, however, were as yet unwilling to allow appointed judges to set aside laws that had been made by the people represented in democratically elected legislatures. "This," said a perplexed James Madison in 1788, "makes the Judiciary Department paramount in fact to the Legislature, which was never intended and can never be proper."

As vigorously as all these constitutional reforms of the states were urged and adopted in the 1780s, however, they never seemed sufficient. By the mid-1780s many reformers were thinking of shifting the arena of constitutional change from the states to the nation and were looking to a modification of the structure of the central government as the best and perhaps only answer to America's political and social problems.

Even before the Articles of Confederation were ratified in 1781, the experiences of the war had exposed the weakness of

the Congress and had encouraged some Americans to think about making changes in the central government. By 1780 the war was dragging on longer than anyone had expected and the skyrocketing inflation of the paper money used to finance it was unsettling commerce and business. With congressional delegates barred from serving more than three years in any six-year period, leadership in the Confederation was fluctuating and confused. The states ignored congressional resolutions and refused to supply their allotted contributions to the central government. With no ability to raise money, the Congress simply ceased paying interest on the public debt. The Continental Army smoldered with resentment at the lack of pay and began falling apart through desertions and even outbreaks of mutiny. All these circumstances forced mercantile and creditor interests, especially those centered in the mid-Atlantic states, to seek to add to the powers of the Congress. Reformers tried to strengthen the Congress by broadly interpreting the Articles, by directly amending them (which required the consent of all the states), and even by threatening the states with military force.

A shift in congressional leadership in the early eighties allowed these concerned national groups to exert greater influence. Older popular radicals like Richard Henry Lee and Arthur Lee of Virginia and Samuel Adams of Massachusetts were replaced by such younger men as James Madison of Virginia and Alexander Hamilton of New York, who were more interested in authority and stability than in popular democracy. Disillusioned by the ineffectiveness of the Confederation, these nationalists in the Congress set about reversing the localist and power-weakening emphasis of the Revolution. They strengthened the regular army at the expense of the militia and promised pensions to the Continental Army officers. They reorganized the departments of war, foreign affairs, and finance in the Congress and replaced the committees that had been running them with individuals. The key

individual in the nationalists' program was Robert Morris, a wealthy Philadelphia merchant who was made superintendent of finance and virtual head of the Confederation in 1781. In order to attach financial and commercial groups to the central government, Morris undertook to stabilize the economy and fund the national debt. He persuaded Congress to recommend to the states that paper-money laws be repealed and to require that the states' contributions to the general expenses be paid in gold or silver. And he sought to establish a national bank and to make federal bonds more secure for investors.

Carrying out this nationalist program depended upon amending the Articles so as to grant the Confederation the power to levy a 5 percent duty on imports. Once the Congress had adequate revenues independent of the states, the Confederation could pay its debts and would become more attractive to prospective buyers of its bonds. Although Morris was able to induce Congress to charter the Bank of North America, the rest of the nationalists' economic proposals narrowly failed. Not only did the states ultimately refuse to approve the impost amendment, but many were slow in supplying the money that had been requisitioned by Congress. Nor was Congress able to get even a restricted authority to regulate commerce.

After the allied victory at Yorktown in October 1781 and the opening of peace negotiations with Great Britain, interest in the Congress declined and some individuals became desperate. The prospect of Congress's demobilizing the army without fulfilling its promises of back pay and pensions created a crisis that brought the United States as close to a military coup d'état as it has ever been. In March 1783, the officers of Washington's army encamped at Newburgh on the Hudson River issued an address to the Congress concerning their pay. They actually plotted some sort of military action against the Confederation. Only when Washington

personally intervened and refused to support a movement that was designed, he said, "to open the floodgates of civil discord, and deluge our rising empire in blood" was the crisis averted.

News of the peace in 1783 shattered much of the unionist sentiment that had existed during the war. By December 1783 the Congress, in Jefferson's opinion, had lost much of its usefulness. "The constant session of Congress can not be necessary in time of peace," he said. After clearing up the most urgent business, the delegates should "separate and return to our respective states, leaving only a Committee of the states," and thus "destroy the strange idea of their being a permanent body."

Congressional power, which had been substantial during the war years, now began to disintegrate. The delegates increasingly complained how difficult it was even to gather a quorum. The Congress could not even agree on a permanent home: It wandered from Philadelphia to Princeton to Annapolis to Trenton and finally to New York City. The states reasserted their authority and began taking over the payment of the federal debt that many had earlier hoped to make the cement of union. By 1786 the states had converted nearly one third of the federal securities into state bonds, thus creating a vested interest among public creditors in the sovereignty of the individual states. Under these circumstances the influence of those, as Hamilton called them, "who think continentally" rapidly declined, and the chances of amending the Confederation piecemeal declined with them. The only hope of reform now seemed to lie in some sort of convention of all the states.

In Europe the reputation of the United States dwindled as rapidly as did its credit. The Dutch and French would lend money only at extraordinary rates of interest. Since American ships now lacked the protection of the British flag, many of them were seized by corsairs from the Muslim states of North Africa and their crews were sold into slavery. The

Congress had no money to pay the necessary tribute and ransoms to these Barbary pirates.

Amid a world of hostile monarchical empires the new republican confederacy was even hard-pressed to maintain its territorial integrity. Britain refused to send a minister to the United States and ignored its treaty obligations to evacuate its military posts in the Northwest, claiming that the United States had not honored its own commitments. The treaty of peace had stipulated that the Confederation would recommend to the states that loyalist property confiscated during the Revolution be restored to its owners and that neither side would make laws obstructing the recovery of prewar debts. When the states flouted these treaty obligations, the impotent Confederation could do nothing.

Britain was known to be plotting with the Indians and encouraging separatist movements in the Northwest and in the Vermont borderlands, and Spain was doing the same in the Southwest. Spain in fact refused to recognize American claims to the territory between Florida and the Ohio River. In 1784 in an effort to bring American settlers moving into Kentucky and Tennessee under its control, Spain closed the Mississippi to American trade. Many westerners were ready to deal with any government that could ensure access to the sea for their agricultural produce. As Washington noted in 1784, the western settlers were "on a pivot. The touch of a feather would turn them any way."

In 1785–86, John Jay, a New York aristocrat and the secretary of foreign affairs, negotiated a treaty with the Spanish minister to the United States, Diego de Gardoqui. By the terms of this agreement Spain was opened to American trade in return for America's renunciation of its right to navigate the Mississippi for several decades. Out of fear of being denied an outlet to the sea in the West, the southern states prevented the necessary nine-state majority in the Congress from agreeing to the treaty. But the desire of a majority of seven states to sacrifice western interests for the sake of

northern merchants aroused long-existing sectional jealousies and threatened to shatter the Union.

Despite the efforts of the diplomatic commission of Jefferson, Franklin, and Adams to negotiate liberal commercial treaties, the mercantilist empires of the major European nations remained generally closed to the new republic in the 1780s. The French were unwilling to take as much American produce as had been expected, and Britain effectively barred competitive American goods from its markets while recapturing American consumer markets for its own goods. The Confederation lacked the authority to retaliate with its own trade regulations, and several attempts to grant the Congress a restricted power over commerce were lost amid state and sectional jealousies. The Confederation Congress watched helplessly as the separate states attempted to pass ineffectual navigation acts of their own. By the mid-1780s, for example, Connecticut was laying heavier duties on goods from Massachusetts than on those from Great Britain.

In the end, the Confederation's inability to regulate commerce finally precipitated reform of the Articles. Jefferson, Madison, and other leaders with agrarian interests wanted American farmers free to sell their surplus crops abroad. They feared that if they were prohibited from doing so the farmers would sink into lethargy and lose their industriousness. More important, if the United States did not sell its agricultural produce in Europe, it would be unable to pay for manufactured goods imported from Europe and would therefore be compelled to begin large-scale manufacturing for itself. These developments in turn would eventually destroy the farmer-citizenry on which republicanism was based and would create in America the same kind of corrupt, rank-conscious, and dependent society that existed in Europe. Thus the Confederation desperately needed commercial regulatory power in order to compel the European states to open their markets to American agricultural goods.

*New
Federal
Constitution*

THE PHILADELPHIA CONVENTION

By 1786 these accumulated pressures made some sort of revision of the Articles inevitable. Virginia's desire for trade regulation led to a convention of several states at Annapolis in September 1786. Those who attended the meeting quickly realized that commerce could not be considered apart from other problems and called for a larger convention in Philadelphia in May of the following year. After several states agreed to send delegates to Philadelphia, the Confederation Congress belatedly recognized the approaching convention and in February 1787 authorized it to revise the Articles of Confederation.

By 1787 almost every political leader in the country, even those who later opposed the new Constitution, expected some new powers to be added to the Confederation Congress. Reform of the Articles in some way or other—particularly by granting the Congress a limited authority to tax and the power to regulate trade—was in the air. This desire to do something about the central government gave the nationalists like James Madison their opportunity, and it helps explain the willingness of people to accede to the meeting at Philadelphia.

Yet few people expected what the Philadelphia Convention eventually created—a new Constitution that utterly transformed the structure of the central government and promised a radical weakening of the states. The extraordinarily powerful national government that emerged from Philadelphia possessed far more than the additional congressional powers that were required to solve the United States' difficulties in credit, commerce, and foreign affairs. Given the Revolutionaries' loyalty to the sovereignty of their states and their deep-rooted fears of centralized governmental authority, the formation of the new Constitution was a truly remarkable achievement. It cannot be explained

simply by the obvious weaknesses of the Articles of Confederation.

In the end, it was also the problems within the separate states in the 1780s that made possible constitutional reform of the central government. The unjust and confusing laws coming out of the state legislatures, Madison informed Jefferson in 1787, had become "so frequent and so flagrant as to alarm the most stedfast friends of Republicanism." These popular abuses by the state legislatures, said Madison, "contributed more to that uneasiness which produced the Convention, and prepared the public mind for a general reform, than those which accrued to our national character and interest from the inadequacy of the Confederation to its immediate objects."

In 1786 a rebellion of nearly 2,000 distressed debtor farmers threatened with foreclosure of their mortgages broke out in western Massachusetts. The rebellion, led by a former militia captain, Daniel Shays, closed the courts and threatened to take over a federal arsenal. But more alarming, it occurred in the very state, Massachusetts, that was considered to have the best-balanced constitution. Although Shays's rebels were defeated by militia troops, his sympathizers were victorious at the polls early in 1787. Consequently the newly chosen state representatives soon enacted the kinds of debtor relief legislation that Shays had wanted and that other states were enacting. This legislation convinced many that calling for people to obey the law was a remedy for insurrections only; it did not solve the peculiar problem of legislative tyranny. By voting the sympathizers of Shays into legislative office, the people had made it possible, as one Boston newspaper complained in May 1787, for "sedition itself [to] make laws."

Thus by 1786–87 the reconstruction of the central government was being sought as a means of correcting not only the weaknesses of the Articles but also the democratic despotism and the internal political abuses of the states. A new central government, some believed, could save both the Congress

Philly Conv. 1787

from the states and the states from themselves. New groups joined those already working to invigorate the national government. Urban artisans hoped that a stronger national government would prevent competition from British imports. Southerners, particularly in Virginia, wanted to gain proportional representation of their growing population. And most important, members of the gentry up and down the continent momentarily submerged their sectional and economic differences in the face of what seemed to them a threat to individual liberty from the tyranny of legislative majorities within the states. Creating a new central government was no longer simply a matter of cementing the union, or of standing strong in foreign affairs, or of satisfying the demands of particular creditor, mercantile, and army interests. It was now a matter, as Madison declared, that would "decide forever the fate of republican government."

Fifty-five delegates representing twelve states attended the Philadelphia Convention in the summer of 1787. (Rhode Island, which was acutely jealous of its local autonomy, refused to have anything to do with efforts to revise the Articles.) Although many of the delegates were young men—their average age was forty-two—most were well-educated and experienced members of America's political elite. Thirty-nine had served in Congress at one time or another, eight had worked in the state constitutional conventions, seven had been state governors, and thirty-four were lawyers. One third were veterans of the Continental Army, that great dissolvent of state loyalties, as Washington once called it. Nearly all were gentlemen, "natural aristocrats," who took their political superiority for granted as an inevitable consequence of their social and economic position.

Washington's presence was crucial, but he hesitated to attend. In December 1783 he had voluntarily surrendered his sword to the Congress and had retired to Mount Vernon, promising never again to engage in public affairs. This almost unprecedented willingness to give up political power had

electrified the world and had established his worldwide fame as a modern version of the ancient Roman farmer-soldier Cincinnatus. Washington's earlier pledge to withdraw from public life, however, made him reluctant to risk his reputation by getting involved in politics. But friends convinced him that people might think that by not attending the Convention he wanted the federal government to fail so that he could manage a military takeover. So he came and was immediately made president of the Convention.

Some of the other luminaries of the Revolution were not present: Samuel Adams was ill; Thomas Jefferson and John Adams were serving as ministers abroad; and Richard Henry Lee and Patrick Henry, although selected by the Virginia legislature, refused to attend the Convention, Henry saying that he "smelt a rat." The most influential delegations were those of Pennsylvania and Virginia, which included Gouverneur Morris and James Wilson of Pennsylvania and Edmund Randolph, George Mason, and James Madison of Virginia.

The Virginia delegation took the lead and presented the Convention with its first working proposal. This, the Virginia Plan, was largely the effort of the thirty-six-year-old Madison. Short, shy, and soft-spoken, habitually dressed in black, trained to no profession but widely read and possessing an acute and questioning mind, Madison devoted his life to public service. He understood clearly the historical significance of the meeting of the Convention, and it is because of his decision to make a detailed private record of the debates of the Convention that so much is known of what was said that summer in Philadelphia.

Madison's initial proposals for reform were truly radical. They were not, as he pointed out, mere expedients or simple revisions of the Articles; they promised "systematic change" of government. Madison wanted to create a general government that would no longer be a confederation of independent republics but a national republic in its own right. It would operate directly on individuals and be organized as most of the

state governments had been organized, with an executive, a bicameral legislature, and a separate judiciary. This national republic would be superimposed on the states. The states would now stand to the central government, in John Jay's words, "in the same light in which counties stand to the state, of which they are parts, viz., merely as districts to facilitate the purposes of domestic order and good government." Thus the radical Virginia Plan provided for a two-house national legislature with the authority to legislate "in all cases to which the states are incompetent" and to veto or "to negative all laws passed by the several states, contravening in the opinion of the National Legislature, the articles of Union." If the national government had the power to veto all state laws, Madison believed, it could then play the same role the English crown had been supposed to play in the British Empire—that of a "disinterested & dispassionate umpire" over clashing interests.

For many in the Philadelphia Convention, however, this Virginia plan was much too extreme. Most delegates were prepared to grant substantial power to the federal government, including the right to tax, regulate commerce, and execute federal laws. But many refused to allow such a weakening of state authority as the Virginia Plan proposed. Opponents of the nationalists, led by delegates from New Jersey, Connecticut, New York, and Delaware, countered with their own proposal, the New Jersey Plan (so-called because it was introduced by William Paterson of New Jersey). This New Jersey Plan essentially amended the Articles of Confederation by adding to the powers of Congress, but at the same time it maintained the basic sovereignty of the states. With two such opposite proposals before it, the Convention approached a crisis in the middle of June 1787.

During the debate that followed, the nationalists, led by Madison and Wilson, were able to retain the basic features of the Virginia Plan and convince a majority of the states at the Convention to reject the New Jersey Plan. Yet the nationalists

had to make some concessions. Instead of granting the national legislature a blanket authority "to legislate in all cases to which the separate States are incompetent," as the Virginia Plan proposed, the Convention granted the Congress (in Article I, Section 8 of the Constitution) a list of enumerated powers, including the powers to tax, to borrow and coin money, and to regulate commerce. And instead of giving the national legislature the right to veto harmful state laws, the Convention forbade the states from exercising certain sovereign powers whose abuse had helped to create the crisis of the 1780s. In Article I, Section 10 of the final Constitution, the states were barred from carrying on foreign relations, levying tariffs, coining money, emitting bills of credit, passing ex post facto laws, or doing anything to relieve debtors of the obligations of their contracts. In contrast to the extensive fiscal powers given to the Congress, the states were rendered nearly economically incompetent. Not only did the new Constitution prohibit the states from imposing customs duties—the eighteenth century's most common and efficient form of taxation—but it also denied the states the authority to issue paper money, and thus succeeded in doing what the British government's various currency acts in 1751 and 1764 had tried and generally failed to do.

The Convention decided on a strong and single executive. The president was to stand alone, unencumbered by an executive council except one of his own choosing. With command over the armed forces, with the authority to direct diplomatic relations, with power over appointments to the executive and judicial branches that few state governors possessed, and with a four-year term of office and perpetually reeligible for reelection, the president was a magistrate who, as Patrick Henry later charged, could "easily become king." To ensure the president's independence, he was not to be elected by the legislature, as the Virginia Plan had proposed. Since the Framers believed that few presidential candidates in the future would enjoy wide popular recognition through-

out the country, they provided for local elections of "electors" equal in number to the representatives and senators from each state. These electors would cast ballots for the president. But if no candidate received a majority—which in the absence of political parties and organized electioneering was normally expected—the final selection from the five candidates with the most votes would be made by the House of Representatives, with each state delegation having one vote.

The Virginia Plan's suggestion of a separate national judiciary to hold office "during good behavior" was accepted without dispute. The structure of the national judiciary was left to the Congress to devise. The right of this judiciary, however, to set aside acts of the Congress or of the state legislatures was by no means clearly established.

The nationalists in the Convention reluctantly gave way on several crucial issues, particularly on the national legislature's authority to veto state legislation. But they fought longest and hardest to hold on to the principle of proportional representation in both houses of the legislature, and this dispute almost stalemated the Convention. It was decided that both taxation and representation in the House of Representatives ought to be based on population, and not on the states as such or on landed wealth. The nationalists like Madison and Wilson, however, wanted representation in the Senate also to rest on population. Any suggestion that the individual sovereignty of the states ought to be represented equally smacked too much of the old Articles of Confederation. Hence the nationalists came to regard the eventual "Connecticut Compromise," by which each state secured two senators in the upper house of the legislature, as a disastrous defeat.

Although Madison and Wilson lost the battles over the congressional veto of state laws and proportional representation in both houses, they and the other Federalists (as those who supported the Constitution shrewdly came to call themselves) had essentially won the war over the basic nature of

the central government. Once the New Jersey Plan, which preserved the essentials of the Articles of Confederation, was rejected on June 19 in favor of the Virginia Plan, the opponents, or Anti-Federalists, found themselves forced, as Richard Henry Lee complained, to accept "this or nothing." And most Anti-Federalists wanted some sort of central government.

Although the Articles of Confederation required that amendments be made by the unanimous consent of the state legislatures, the delegates to the Philadelphia Convention decided to bypass the state legislatures and submit the Constitution to specially elected state conventions for ratification. Approval by only nine of the thirteen states was necessary for the new government to take effect. This transgression of earlier political principles was only one of many to which the Anti-Federalists objected.

THE FEDERALIST-ANTI-FEDERALIST DEBATE

The federal government established by the Philadelphia Convention seemed to violate the principles of 1776 that had guided the Revolutionary constitution-makers. The new Constitution provided for a strong government with an extraordinary amount of power given to the president and the Senate. It also created a single republican state that would span the continent and encompass all the diverse and scattered interests of the whole of American society—an impossibility for a republic according to the best political science of the day. During the debates over ratification in the fall and winter of 1787–88, the Anti-Federalists focused on these Federalist violations of the earlier Revolutionary assumptions about the nature of power and the need for a small homogeneous society in a republican state. They charged that the new federal government resembled a monarchy in its concentration of power at the expense of liberty. Because the society it was to govern was so extensive and heterogeneous, the Anti-

Federalists asserted, the federal government would have to act tyrannically. Inevitably, America would become a single consolidated state, with the individuality of the separate states sacrificed to a powerful national federal government. And this would happen, the Anti-Federalists argued, because of the logic of sovereignty. That powerful principle of eighteenth-century political science, which the British had used so effectively against the colonists in the imperial debate, held that no society could long possess two legislatures: it must inevitably have one final, indivisible lawmaking authority. "We shall find it impossible to please two masters," declared the Anti-Federalists. There could be no compromise: "It is either a federal or a consolidated government, there being no medium as to kind." Because the Constitution was to be the "supreme law of the land," the Anti-Federalists had no doubt that the proposed central government "must eventually annihilate the independent sovereignties of the several states." The doctrine of sovereignty dictated that result.

Despite these formidable Anti-Federalist arguments, the Federalists did not believe that the Constitution repudiated the Revolution and the principles of 1776. They answered the Anti-Federalists not by denying the principle of sovereignty but by relocating it in the people at large. In doing so they forged an entirely new way of thinking about the relation of government to society. It marked one of the most creative moments in the history of political thought.

During the decade since Independence, American political culture had been transformed. Americans, it now appeared clear, had effectively transferred this sovereignty, this final lawmaking authority, from the institutions of government to the people at large. Ever since 1776 the American people, unlike the English, had refused to accept the fact that the election of their representatives eclipsed their existence; in the Americans' view the people "out of doors" continued to act outside of all the official institutions of government.

During the 1780s the people had organized various committees, conventions, and other extralegal bodies in order to voice grievances or to achieve political goals. By doing so, they had continued common practices that had been used during the Revolution itself. Vigilante and mob actions of various kinds had done quickly and efficiently what the new state governments were often unable to do—control prices, prevent profiteering, and punish Tories. Everywhere people had extended the logic of “actual” representation and had sought to instruct and control the institutions of government. Unlike the British in relation to their House of Commons, the American people never surrendered to any political institution or even to all political institutions together their full and final sovereign power.

By 1787–88 all this activity by the people outside of government tended to give reality, even legal reality, to this idea that sovereignty in America resided and remained in the people at large, and not in any specific institutions of government. Only by believing that sovereignty was held by the people outside of government could Americans make theoretical sense of their recent remarkable political inventions—their conception of a written constitution that was immune from legislative tampering, their special constitution-making conventions, their processes of constitutional ratification, and their unusual ideas of “actual” representation. This idea of sovereignty remaining in the people at large rather than being deposited in any institution of government opened up entirely new ways of thinking about government.

To meet the Anti-Federalist arguments against the Constitution, the Federalists were now determined to exploit this new understanding of the ultimate power of the people at large. True, they said, the Philadelphia Convention had gone beyond its instructions to amend the Articles of Confederation. It had drawn up an entirely new government, and it had provided for the new Constitution’s ratification by special

state conventions. Had not Americans learned during the previous decade that legislatures were not competent to create or to change constitutions? If the federal Constitution was to be truly a fundamental law, then, the Federalists argued, it had to be ratified “by the supreme authority of the people themselves.” Hence it was “We the people of the United States,” and not the states, that ordained and established the Constitution.

By locating sovereignty in the people rather than in any particular governmental institution, the Federalists could now conceive of what previously had been a contradiction in politics—two legislatures operating simultaneously over the same community—the very issue over which the British Empire had broken. Thus they could answer the principal Anti-Federalist objection to the Constitution—that the logic of sovereignty would dictate that the national Congress would become the one final supreme indivisible lawmaking authority. Only by making the people themselves, and not their representatives in the state legislatures or in the Congress, the final supreme lawmaking authority could the Federalists explain the emerging idea of federalism, that unusual division of legislative responsibilities between the national and state governments in which neither is final and supreme. This idea became the model for similar divisions of legislative power elsewhere in the world.

By asserting that all sovereignty rested with the people, the Federalists were not saying, as theorists had for ages, that all governmental power was merely derived from the people. Instead, they were saying that sovereignty remained always with the people and that government was only a temporary and limited agency of the people—out to the various government officials, so to speak, on a short-term, always recallable loan. No longer could any parts of the state and federal governments, even the popular houses of representatives, ever fully represent the people; instead, all elected parts of the

We the people

governments—senators and governors and presidents—were now regarded in one way or another as simply partial representatives of the people. This new thinking made nonsense of the age-old theory of mixed or balanced government in which monarchy, aristocracy, and democracy were set against one another. Even though the American governments, at both the state and federal level, contained monarchlike executives and aristocratic senates, they now began to be called unmixed democracies or representative democracies. Since the process of election had become the sole criterion of representation, all elected governmental officials, including senators and executives, were considered equal agents of the people. If judges themselves were likewise considered agents of the people, which is the way many Federalists now described them, then by rights they ought to be elected by the people—which, of course, is precisely what many of the states began to do. Today a majority of states have popularly elected judiciaries.

This new understanding of the relation of the society to government now enabled the Federalists to explain the expansion of a single republican state over a large continent of diverse groups and interests. The Federalists—especially Madison—seized on Scottish philosopher David Hume's radical suggestion that a republican government might operate better in a large territory than in a small one, and ingeniously turned on its head the older assumption that a republic must be small and homogeneous in its interests. The Federalists argued that American experience since 1776 had demonstrated that no republic could be made small enough to avoid the clashing of rival parties and interests. (Tiny Rhode Island was the most faction-ridden of all.) The extended territory of the new national republic was actually its greatest source of strength, wrote Madison in *The Federalist*, No. 10, the most famous of the eighty-five essays that he, Alexander Hamilton, and John Jay wrote in defense of the Constitution in New York. By extending the political arena over the whole nation, Madison concluded, the number of in-

terests and factions in the society would increase to the point where they would check one another and make it less likely that a factious and tyrannical majority could combine in government to oppress the rights of minorities and individuals.

As an added benefit, Madison predicted that the elevated and expanded sphere of national politics would act as a filter, refining the kind of men who would become national leaders. Representatives to the national Congress would have to be elected from relatively large districts—a fact that Madison hoped would inhibit demagogic electioneering. If the people of a particular state—New York, for example—had to elect only ten men to the federal Congress in contrast to the sixty-six they elected to their state legislature, they would be far more likely to ignore the illiberal, narrow-minded men with “factious tempers” and “local prejudices” who had dominated the state legislatures in the 1780s—the Yateses and the Findleys—and instead elect to the new federal government only those educated gentlemen with “the most attractive merit and the most . . . established characters.” In this way the new federal government would avoid the problems that had plagued the states in the 1780s.

Although the Federalists in creating the Constitution may have intended to curb the populist forces the Revolution had released, the language and principles they used to defend the Constitution were decidedly popular. Indeed, most Federalists felt they had little choice in using democratic rhetoric. The proponents of the Constitution did not need John Dickinson to warn them in Philadelphia that “when this plan goes forth, it will be attacked by the popular leaders. Aristocracy will be the watchword; the Shibboleth among its adversaries.” Precisely because the Anti-Federalists, as Hamilton observed in the New York ratifying convention, did talk “so often of an aristocracy,” the Federalists were continually compelled in the ratifying debates to minimize, even disguise, the elitist elements of the Constitution. And in fact the Federalists of 1787–88 were not rejecting democratic electoral politics; nor

were they trying to reverse the direction of the republican Revolution. They saw themselves rather as saving the Revolution from its excesses, in Madison's words, creating "a republican remedy for the diseases most incident to republican government." They shared a common American agreement that all American governments had to be "strictly republican" and derived "from the only source of just authority—the People."

The Anti-Federalists provided little match for the arguments and the array of talents that the Federalists gathered in support of the Constitution in the ratifying conventions that were held in the states throughout the fall, winter, and spring of 1787–88. Apart from a few distinguished leaders like George Mason and Richard Henry Lee of Virginia, most Anti-Federalists were ordinary state-centered men with only local interests and loyalties. They tended to lack the influence and education of the Federalists, and often they had neither social nor intellectual confidence. They had difficulty making themselves heard both because their speakers, as one Anti-Federalist in Connecticut complained, "were browbeaten by many of those Cicero'es as they think themselves and others of Superior rank," and because much of the press was closed to them. Out of a hundred or more newspapers printed in the late 1780s, only a dozen supported the Anti-Federalists.

Many of the small states—Delaware, New Jersey, Connecticut, and Georgia—commercially dependent on their neighbors or militarily exposed, ratified immediately. The critical struggles took place in the large states of Massachusetts, Virginia, and New York, and acceptance of the Constitution in these states was achieved only by narrow margins and by the promise of future amendments. (Under the leadership of Madison, the first federal Congress attempted to fulfill this promise and proposed twelve amendments to the Constitution. In 1791 ten of them were ratified by the states, and these became the Bill of Rights.) North Carolina and Rhode Island rejected the Constitution, but after New York's

ratification in July 1788 the country was ready to go ahead and organize the new government without them.

Despite the difficulties and the close votes in some states, the country's eventual acceptance of the Constitution was almost inevitable. Since the Confederation Congress had virtually ceased to exist, the alternative was governmental chaos. Yet in the face of the great number of wealthy and influential people who supported the Constitution, what in the end remains extraordinary is not the political weakness and disunity of Anti-Federalism but its strength. That large numbers of Americans could actually reject a plan of government that was backed by George Washington and nearly the whole of the "natural aristocracy" of the country said more about the changing character of American politics and society than did the Constitution's acceptance. It was indeed a portent of the democratic world that was coming.

The Anti-Federalists may have lost the contest over the Constitution, but by 1800 they and their Jeffersonian-Republican successors eventually won the larger struggle over what kind of society and culture America was to have, at least for a good part of the nineteenth century. Not only as president in 1801 did Jefferson reduce the power of the national government, but those who had been Anti-Federalists—narrow-minded middling men with interests to promote—soon came to dominate American politics, especially in the North, to a degree that Federalist gentry had never imagined possible.

In the 1780s the arch-Anti-Federalist William Findley had pointed the way. In a debate in the Pennsylvania assembly over the role of interest in public affairs, Findley set forth a rationale for modern democratic interest-group politics that has scarcely been bettered. Unlike his patrician opponents, who continued to hold out a vision of disinterested leadership, Findley argued that since everyone had interests to promote, self-made middling men like himself, who had no lineage, possessed no great wealth, and had never been to college, had as much right to political office as wealthy gentry

who had gone to Harvard or Princeton. This was what American equality meant, he said. Furthermore, since everyone did have interests to promote, it was now quite legitimate for candidates for public office to campaign for election on behalf of the interests of their constituents. This was a radical departure from customary practice, for none of the Founders ever thought it was proper for a political leader to campaign for office. In this debate Findley anticipated all of the popular political developments of the next generation—the increased electioneering and competitive politics; the open promotion of interests in legislation, including the proliferation of chartered banks and other private corporations; the emergence of political parties; the extension of the actual and direct representation in government of particular groups, including ethnic and religious groups; and the eventual weakening, if not the repudiation, of the classical republican ideal that legislators were supposed to be disinterested umpires standing above the play of interests. This was democracy as Americans came to know it.

As the Federalists of the 1790s eventually discovered to their dismay, this democracy was no longer a technical term of political science describing the people's representation in the lower houses of representation. And it was no longer a simple form of government that could be skeptically challenged and contested as it had been since the ancient Greeks. Instead, it became the civic faith of the United States to which all Americans must unquestionably adhere. The emergence of this rambunctious middling democracy was the most significant consequence of the American Revolution.