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## Battle Over a Bank: Defining the Limits of Federal Power Under a New Constitution

In the dark, early morning hours of February 23, 1791, the candles were lit at 79 Third Street in Philadelphia. Inside, Treasury Secretary Alexander Hamilton and his wife, Elizabeth, were hurriedly finishing a report that President George Washington was expecting in just a few hours.<sup>1</sup> The report was a defense of Hamilton's recent proposal for a national bank, which he hoped would bolster the American economy and assist the federal government in managing its finances. Congress had approved the plan, but some of the president's advisers warned that the federal government lacked the authority to establish a bank because the Constitution did not grant it the power to charter corporations. Washington, "greatly perplexed" by the constitutional issue, had requested a rebuttal from Hamilton.<sup>2</sup> After many hours of work on the document, "which occupied him the greatest part of the night," Hamilton finally delivered it to the president after the sun rose that morning.<sup>3</sup>

In his rebuttal, Hamilton argued that Congress had "implied powers," not specifically listed in the Constitution, which lawmakers could use when necessary to achieve legitimate goals. As a sovereign entity, he maintained, the federal government inherently possessed certain fundamental capabilities, including the power to charter corporations. He also interpreted the Constitution's "necessary and proper" clause, which authorized Congress to "make all Laws which shall be necessary and proper for carrying into Execution" its specified powers, as a license to act in this case. Because the proposed bank would assist Congress in executing its fiscal responsibilities, Hamilton believed that incorporating the bank fell well within Congress's constitutional authority.

As President Washington considered all of the arguments, he knew that his decision to sign or veto the bank bill would extend far beyond the issue of the bank itself. If he approved, his assent would potentially encourage the broad exercise of implied powers in the future. A veto, on the other hand, would send the message that Congress had no authority beyond the powers explicitly listed in the Constitution. Either way, President Washington would be lending his considerable weight and prestige to one side of this seminal constitutional debate, and he was well aware that much was riding on his decision.

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## Toward a New Constitution: The Debate over Federal Power, and its Limits

The United States' first national constitution, the Articles of Confederation, had quickly proved inadequate after its ratification in 1781. Although the intention had been to create an extremely weak federal government, with most powers (including the power to tax) reserved for the states, many of the nation's leading figures had concluded by 1786 that the experiment was failing. Trade was collapsing, the economic outlook was bleak, the federal government was in default, and a rebellion over debt collection had broken out in western Massachusetts. Stunned by the turn of events since leading the nation to victory over the British just a few years before, George Washington declared that he was "mortified beyond expression" in witnessing "the clouds which have spread over the brightest morn that ever dawned upon any Country."<sup>4</sup> By 1787 there was a growing belief among many of the nation's political leaders that only revision or even total replacement of the Articles of Confederation could save the republic. From May through September of that year, fifty-five delegates representing twelve of the thirteen states (all but Rhode Island) convened in Philadelphia to draft a new constitution.<sup>5</sup>

The delegates' first major task was to design a structure for the new government. On May 29 the Virginia delegation presented a proposal that would divide federal power among three branches—an executive, a judiciary, and a bicameral legislature where each state would be represented in proportion to its population. Although the "Virginia Plan" became the basis for much of the discussion at the convention, it was not without competition. In mid-June, New Jersey's William Paterson offered a plan that included the same three branches but retained the Articles' unicameral Congress in which each state had one vote. The two different models for Congress provoked vigorous debate, as populous states tended to support proportional representation while smaller ones feared being "destroyed" or "enslaved" unless they were guaranteed an equal voice in Congress.<sup>6</sup> (For population estimates by state, see **Exhibits 1a** and **1b**.) The disagreement lasted until July when the delegates finally embraced Roger Sherman's "Great Compromise," which included the Virginia Plan's bicameral legislature and proportional representation in the lower house, but granted each state equal representation in the upper house.<sup>a</sup>

The convention's next major task was to decide what this new legislature would do. The Virginia Plan recommended that Congress be authorized "to legislate in all cases to which the separate States are incompetent," but several delegates thought this formulation was too general, preferring instead that the new constitution identify specific Congressional powers. A full list finally emerged on August 6, when the convention's Committee of Detail distributed a written draft of the Constitution for discussion. Ultimately, the Constitution would grant Congress a broad range of powers, including the power to "lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States," to "borrow money on the credit of the United States," to "regulate Commerce with foreign Nations, and among the several States," and to "coin Money, regulate the Value thereof . . . and fix the Standard of Weights and Measures." Congress would also gain authority over naturalization and bankruptcy, and it would be empowered to establish a postal system, safeguard intellectual property rights, set up a system of federal courts, administer a national capital, call forth militia to enforce federal laws and combat insurrection or invasion, organize the nation's armed forces, and declare war. Finally, Congress would have the authority to "make all

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<sup>a</sup> An important later compromise concerned how to account for slaves when determining the size of each state's delegation in the lower house of Congress. Southern delegates wanted to count slaves, at least in part, but some northerners accused these delegates of hypocrisy. "Upon what principle is it that the slaves shall be computed in the representation," Gouverneur Morris of New Jersey asked. "Are they men? Then make them Citizens and let them vote. Are they property? Then why is no other property included?" The convention ultimately decided to count three-fifths of a state's slave population for purposes of both congressional representation and taxation by state, which became known as the Three-Fifths Compromise. See James Madison, *Notes of Debates in the Federal Convention of 1787* (Athens: Ohio University Press, 1984), 411 (8 Aug. 1787). See also Donald L. Robinson, *Slavery in the Structure of American Politics, 1765–1820* (New York: Harcourt Brace Jovanovich, 1971), chap. 5.

Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”<sup>7</sup> (The U.S. Constitution is reprinted in **Appendix I**.)

To complement the list of congressional powers, some delegates also hoped to include an explicit list of limitations on federal authority. Several of their proposed restrictions took the form of declarations of what the government could *not* do, while others were phrased as obligations to citizens. The convention voted to bar both the federal government and the states from passing bills of attainder (laws that declared specific individuals guilty of crimes without trial) and ex post facto laws (which retroactively made past actions illegal and punishable). The federal government was also prohibited from suspending the right of habeas corpus (the right of a prisoner to appear before a court), except in cases of rebellion or foreign invasion, and trial by jury was guaranteed for all criminal cases. Although the final document that the convention produced offered no general statement of freedom of religion, it did prohibit religious qualifications for government offices.<sup>8</sup>

Delegates who favored a more extensive list of limitations were disappointed. When Charles Pinckney of South Carolina and Elbridge Gerry of Massachusetts recommended a clause ensuring “liberty of the Press,” Connecticut’s Roger Sherman replied that such language was “unnecessary” because “[t]he power of Congress does not extend to the Press,” and a majority of delegates voted against the language. Suggestions for limitations on standing armies, the right to a jury trial in civil cases, and a prohibition against forced quartering of soldiers were also successfully resisted.<sup>9</sup>

As the convention drew to a close, however, some delegates continued to insist that the limitations on federal power did not go far enough. In their view, the proposed Constitution would create a federal government that was too strong. On September 8, for example, Edmund Randolph of Virginia highlighted a number of features to which he objected, including the vague “necessary and proper” clause, the extent of Congress’s enumerated powers, and “the want of a more definite boundary between the General & State Legislatures—and between the General and State Judiciaries.” Discouraged, he announced that “he verily believed [the Constitution] would end in Tyranny” and called for a second convention to consider amendments.<sup>10</sup>

Randolph’s fellow Virginian George Mason objected in equally blunt terms, having earlier declared that “he would sooner chop off his right hand than put it to the Constitution as it now stands.” With little time remaining at the convention, he suggested that “he wished the plan had been prefaced with a Bill of Rights” to protect against government overreach.<sup>11</sup> Mason was well acquainted with the idea of a bill of rights. In 1776 he had been the principal author of Virginia’s Declaration of Rights, which had included freedoms of the press and of religion, a ban on cruel and unusual punishments, and other protections for Virginia’s citizens. In the intervening years, similar statements modeled after the Virginia Declaration had been approved in other states as well.<sup>12</sup> Mason’s suggestion that the convention adopt a national bill of rights was not nearly as successful, however. Roger Sherman swiftly deflected the proposal, arguing that the rights granted in the state constitutions were sufficient to protect the people, and Sherman’s position prevailed once again.<sup>13</sup>

Yet Randolph and Mason’s fears of government tyranny were hardly assuaged. When the time came to sign the document on September 17, 1787, they and Elbridge Gerry were the only delegates present (of those still attending) who refused to add their names.<sup>14</sup> Other delegates, led by the elderly and esteemed Benjamin Franklin, beseeched them to lend their signatures to make the convention’s verdict unanimous, but the three abstainers held fast. Randolph declared that he “was dictated by his conscience” and warned that presenting the Constitution to the states without opportunity for amendment beforehand would “produce . . . anarchy & civil convulsions.”<sup>15</sup>

Of the thirty-nine delegates who signed the Constitution, few, if any, were completely satisfied with the result. Most signed despite lingering concerns and objections, believing that rejecting the document would be a far worse option. “[C]onsidering the present plan as the best that was to be attained,” said Gouverneur Morris, no doubt summarizing the sentiments of many, “[I] should take it with all its faults.”<sup>16</sup> After the convention adjourned, the document was sent to the states for ratification, sparking intense debate from one end of the country to the other.

## The Fight over Ratification

Although the Articles of Confederation required unanimity among the states for any amendment to its provisions, the framers of the Constitution decided that the Articles could be replaced altogether if nine of the thirteen states ratified the new document. Even after the bar had been lowered in this way, however, winning the approval of nine states was far from certain. A powerful “Anti-Federalist” opposition was determined to prevent ratification. Anti-Federalists waged their campaign in the press and in convention halls across the nation, warning that the Constitution would create an undemocratic and oppressive government. An early manifesto by Mason expressed the core of their critique: “There is no Declaration of Rights, and . . . the Declarations of Rights in the separate States are no security.”<sup>17</sup> In their literature and speeches at the ratifying conventions, Anti-Federalists listed the fundamental protections they believed the Constitution lacked, such as freedom of the press and prohibitions on standing armies during peacetime.<sup>18</sup> “The liberties of America were not secured by the system,” asserted Elbridge Gerry in Massachusetts, defending his refusal to sign the Constitution, “[and] it was my duty to oppose it.”<sup>19</sup>

Among proponents of the Constitution, known as Federalists, one of the first to argue against the proposed bill of rights was James Wilson of Pennsylvania. Wilson asserted that because Congress would be limited to the powers specified in the Constitution, it would be unable to infringe on the people’s rights. In fact, he suggested that an additional declaration of rights might “imply that some degree of power was given” to Congress that had never been intended.<sup>20</sup> Alexander Hamilton developed Wilson’s arguments in essay 84 of *The Federalist* (which would later become known as *The Federalist Papers*), a collected series of essays Hamilton authored with James Madison and John Jay in support of the Constitution. “The Constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS,” he wrote. The fact that the Constitution proclaimed itself an instrument of “We, the people,” Hamilton insisted, signified that the people retained their natural rights without having to declare them. Hamilton also repeated Wilson’s assertion that specifying further rights was unnecessary and potentially dangerous. “Why declare that things shall not be done which there is no power to do?” he asked.<sup>21</sup>

Although Hamilton was unequivocal in his argument in *Federalist* 84, an earlier *Federalist* essay – by one of Hamilton’s colleagues – had suggested a somewhat different perspective. In *Federalist* 44, James Madison wrote at length on the “necessary and proper” clause, explaining that such language was a practical necessity, the only viable alternative to detailing a “complete digest of laws . . . accommodated . . . to all the possible changes which futurity may produce.” The clause, Madison argued, granted Congress all the powers it needed to fulfill its obligations, whatever those powers might be. “No axiom is more clearly established in law, or in reason,” he wrote, “than that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included.”<sup>22</sup>

Despite strong Anti-Federalist efforts, the Federalists repeatedly triumphed at the ratifying conventions, and on June 21, 1788, New Hampshire became the ninth state to ratify. This ensured that

the Constitution would enter into force and become the foundation of a new government. On the day New Hampshire breathed life into the Constitution, however, Virginia, New York, North Carolina, and Rhode Island had still yet to ratify, and they would not fall under the new government's purview unless they did. The absence of Virginia and New York, large and economically influential states that together contained nearly a third of the country's population, would seriously undermine the legitimacy of the Union if they failed to approve the document. Furthermore, if Virginia rejected the Constitution, then its favorite son, George Washington, would be ineligible for the presidency. Washington was the clear favorite to become the nation's first chief executive, and a government devoid of his leadership would find it almost impossible to achieve legitimacy in the eyes of countless Americans.<sup>23</sup> Ratification by only nine states, in other words, would not be sufficient after all.

### *Virginia Debates Ratification*

The Virginia ratifying convention had begun on June 2, 1788. Although 170 delegates attended, Anti-Federalist leader Patrick Henry alone spoke for nearly a fourth of the total time.<sup>24</sup> In his lengthy speeches, Henry warned that "Congress will have an unlimited, unbounded command over the soul of this Commonwealth [of Virginia]" under the new Constitution. He believed that the Constitutional Convention had gone too far by replacing the Articles of Confederation instead of simply revising them. "A general peace, and a universal tranquility prevailed in this country" under the Articles, he asserted, and it was now threatened by a "consolidated" national government.<sup>25</sup> One of Henry's vocal allies at the Virginia convention, George Mason, reiterated his pleas for a bill of rights.<sup>26</sup>

Virginia Federalists, led by Madison and—quite surprisingly—Governor Edmund Randolph, defended the Constitution against Henry's attacks. Randolph stood by his decision not to sign the document, but explained, "When I withheld my subscription, I had not even a glimpse of the genius of America, relative to the principles of the new Constitution."<sup>27</sup> He argued that although the document was far from perfect, refusing to ratify it was not worth the threat to national unity that Virginia's rejection would pose.<sup>28</sup> Madison buttressed Randolph's case and directly addressed Henry's arguments. He challenged the assertion that the Constitution somehow empowered Congress to oppress the states and the people, and all but mocked Henry's contention that the nation had been tranquil under the Articles. "If this be their happy situation," Madison asked, "why has every State acknowledged the contrary?" Echoing a blistering critique of the Articles he had prepared in advance of the Constitutional Convention, Madison attacked the lack of a "general controuling power" under the old system, and explained his theory that "the loss of liberty very often resulted from factions and divisions . . . [and] local considerations," rather than excessive power in the center.<sup>29</sup>

Madison and Randolph carried the day, and on June 25 the Virginia convention narrowly agreed to ratify the Constitution. At the same time, however, the Virginians approved forty amendments that they thought should be incorporated into the Constitution, including provisions asserting freedom of religion, speech, and the press, protections against unreasonable search and seizure, a right to bear arms, and several modifications of federal rules and procedures. Massachusetts, South Carolina, and New Hampshire had similarly recommended amendments as part of their ratification processes. After New York did the same, becoming the eleventh state to ratify in late July, the fate of the Constitution was far more certain, but approximately 200 amendments, containing perhaps seventy-five different recommendations, were now part of the public debate alongside the Constitution itself.<sup>30</sup>

## Madison and the Bill of Rights

The states' proposed amendments reflected a widespread sentiment that the Constitution, while necessary and acceptable, needed improvement. Having failed to prevent ratification, the Anti-Federalists now championed amending the Constitution, especially with a bill of rights, and planned and petitioned (unsuccessfully) for a second constitutional convention to achieve that end.<sup>31</sup> No state voiced its dissatisfaction with the Constitution more loudly than North Carolina, which rejected the document in the summer of 1788 due largely to its lack of a bill of rights. Many leaders believed that the right amendments might draw North Carolina back into the fold.<sup>32</sup>

Even Madison, the principal intellectual force behind much of the Constitution, supported amending it with a bill of rights. Madison outlined his nuanced opinion on the matter in an October 1788 letter to Thomas Jefferson. He first asserted that a bill of rights was technically unnecessary because such rights were already implied, and that enumerating them might suggest that Americans lacked other rights that were not specified. He was also certain that the powers of the federal government were already significantly constrained and that bills of rights were nothing but "parchment barriers" whose "inefficacy" had been demonstrated in the past "on those occasions when [their] controul [was] most needed." Yet Madison also wrote that his "own opinion has always been in favor of a bill of rights." While he doubted that a list of this sort would be sufficient to contain "overbearing majorities," he believed it could provide a basis from which to criticize such abuses of power. If rights were declared, he reasoned, they would "become incorporated with the national sentiment" and discourage factions from infringing on others' rights. Furthermore, if the federal government ever became too strong, "a bill of rights will be a good ground for an appeal to the sense of the community."<sup>33</sup>

In March 1789 Madison departed Montpelier, his slave plantation in Virginia, to join the national legislature in New York City as a member of the newly created U.S. House of Representatives. He soon announced that he would present a federal bill of rights for the chamber's consideration. The proposal Madison prepared derived many of its amendments from the states' recommendations.<sup>34</sup> It opened with a new preamble for the Constitution, which declared that "all power is originally vested in, and consequently derived from, the people." The rights that followed included freedom of religion, speech, assembly, petition, and the press, as well as "the right of the people to keep and bear arms." While these protections were aimed mainly at safeguarding the people against federal power, Madison specified that the states too would be prohibited from infringing on freedom of religion, speech, and the press, as well as on the right to trial by jury for criminal cases. The proposed amendments also contained protections against forced quartering of soldiers during peacetime, "cruel and unusual punishment," and "unreasonable searches and seizures."<sup>35</sup>

Madison's proposal went beyond merely listing basic rights. It also clarified the nature of rights and of government powers enumerated in the Constitution. So as not to insinuate that unlisted rights were not protected, Madison wrote that the "exceptions here or elsewhere in the Constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution." He declared further that the "powers not delegated by this Constitution, nor prohibited by it to the states, are reserved to the States respectively." His proposal also incorporated several additional constitutional revisions suggested by the state conventions. These included enlarging the House of Representatives, which proponents believed would make its members more responsive to their constituents, and barring any law that changed the compensation of members of Congress from becoming operational "before the next ensuing election of Representatives."<sup>36</sup>

When Madison presented his work to the House on June 8, 1789, several lawmakers showed little interest in discussing it. There were plenty of other important tasks for the young government to attend to—such as setting up courts and executive offices and passing revenue laws—which they believed were more urgent than producing a bill of rights. Opponents also contended that the Constitution had not yet been tested and that it was unwise to modify it until its weaknesses had been determined. “The Constitution may be compared to a ship that has never yet put to sea,” said Georgia’s James Jackson. “[S]he is now laying in the dock—we have had no tryal as yet; we do not know how she may steer.”<sup>37</sup> Even after Madison guided his colleagues through his proposed amendments, one by one in a speech lasting hours, many congressmen remained unconvinced. The House voted to delay further discussion of the bill until July 21, and when that day arrived Madison was exasperated to find many in the House still unwilling to discuss his amendments in any detail. Although Madison “begged” his fellow congressmen to at least “indulge him,” they instead forwarded the bill to a select committee for revision, and included Madison on the committee.<sup>38</sup>

The House finally took up the edited proposals in the middle of August.<sup>39</sup> One significant debate concerned the final provision, which reserved to the states all powers “not delegated by this Constitution, nor prohibited by it to the states.” Thomas Tucker of South Carolina and Elbridge Gerry wanted the amendment to read, “The powers not *expressly* delegated by this Constitution,” so as to clearly bar congressional assumption of unwritten powers. Madison forcefully opposed this recommendation, however, declaring that “it was impossible to confine a government to the exercise of express powers . . . there must necessarily be admitted powers by implication, unless the constitution descended to recount every minutiae.”<sup>40</sup> The House rejected Tucker and Gerry’s proposals, and in the end—even over stalwart opposition to the very idea of amending the Constitution—approved some form of each of Madison’s amendments except for the new preamble, which it removed.<sup>41</sup>

The Senate received the amendments on August 25, but details of its deliberations remain largely unknown because early Senate discussions were not reported. The Senate made primarily cosmetic changes to the House bill, rewording several clauses and consolidating the House’s seventeen amendments into twelve. One significant modification dropped Madison’s proposal to extend rights to speech, conscience (religious conviction), and trial by jury to the states. That is, these protections, like the others, would only constrain the federal government, not the states. Members of the House and Senate soon met to reconcile their versions into a consolidated Bill of Rights, and approved the final language in late September 1789 (see **Appendix II**). President Washington, who had taken office in April, then sent the twelve proposed amendments to the states. Each amendment would have to be ratified by three-quarters of the states in order to be added to the Constitution.<sup>42</sup>

## Madison and Hamilton

During the first year of the new government, Madison did not limit his attention to the Bill of Rights. In fact, he established himself as one of the most influential figures in national politics, even though he sat in the popularly elected House of Representatives rather than in the more elite Senate or in the executive branch. When Congress turned to the important task of raising revenues, Madison took a leading role and shepherded successful legislation relating to tariff and trade policy. He even acted as an unofficial advisor to the president, counseling him on both how to behave and how to govern—to such an extent that some historians have suggested Madison nearly filled the role of “prime minister” in the early Washington administration.<sup>43</sup>

One of Madison’s most important contributions in 1789 was the creation of the office of Secretary of the Treasury. Since 1784, national financial policy had been managed by a three-member Treasury Board,

but Madison believed that a single head of the Treasury Department would be more likely to produce “well-digested plans.”<sup>44</sup> Sympathetic to Madison’s argument, but fearful of centralizing too much power in the executive branch, Congress created the department with a single secretary, but mandated that he prepare reports for Congress, not the president, though the president could remove him from office. To fill this influential position, Madison recommended his longtime friend and collaborator on the *Federalist Papers*, Alexander Hamilton, whom President Washington appointed in September.<sup>45</sup>

Hamilton was a committed nationalist who had long believed in the federal government’s potential to bolster the nation’s economy. As a New York delegate to the Constitutional Convention, he had proposed a plan that would have granted the national government superiority over the states to a far greater degree than was ultimately established under the Constitution.<sup>46</sup> In Hamilton’s opinion, “American liberty and happiness had much more to fear from the encroachments of the great states, than from those of the general government.” As the first secretary of the Treasury, he would inevitably set precedents for future secretaries, and, as he himself put it, he aspired “to trace out his own path, and to adjust for himself the import and bearings of the delicate and important provisions in the Constitution and in the laws.”<sup>47</sup>

### *The Report on Public Credit*

One of Hamilton’s most important responsibilities as Treasury secretary was managing the national debt, which in 1789 exceeded \$50 million (see **Exhibit 2**).<sup>48</sup> Congress had amassed this substantial debt during the rebellion against Britain and the early postwar years, and had fallen behind on servicing its debt in large measure because it lacked the power to tax under the Articles of Confederation. The new Constitution, which granted Congress the power to tax, required that “All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.”<sup>49</sup> As the nation’s creditors began petitioning for payment, Congress directed Hamilton to draft a report on how the government could best meet its obligations.<sup>50</sup>

Hamilton replied promptly, submitting his “Report on Public Credit” in January 1790. The report began by emphasizing the importance of good credit: “States, like individuals, who observe their engagements, are respected and trusted.” Toward this end, Hamilton recommended funding the entire national debt, even though many parts of it were currently in arrears and some government bonds were trading in the market for as little as 25 cents on the dollar. In many cases the original holders of the debt—such as former soldiers who had been paid for their wartime service in bonds—had since sold out to speculators, often at significant discounts, once the government had failed to pay interest on these bonds under the Articles. Hamilton now proposed that the federal government pay the current holders of the debt, rather than the original owners (i.e., the speculators, rather than the former soldiers). To do otherwise, he reasoned, would have been “a breach of contract; a violation of the rights of a fair purchaser,” and plainly unconstitutional.<sup>51</sup>

Hamilton also boldly recommended that the federal government assume all of the states’ war debts, which in 1790 amounted to about \$26 million (see **Exhibit 3**). Such an arrangement, he contended, would better serve creditors because the national government would be better at raising revenue. Hamilton believed that if the states were left to raise the funds themselves, “collision and confusion” among the states’ “interfering regulations” would depress the nation’s economy, the revenue extracted from it, and creditors’ receipts. Federal assumption, he reasoned, would also ensure that creditors had a stake in the success of the entire nation and its revenue stream, rather than in individual states that might have different interests and “give place to mutual jealousy and opposition.” Hamilton believed, moreover, that the national government had an obligation to treat the nation’s creditors equally.



Particularly because the states themselves had assumed responsibility for much of the national debt during the 1780s, when the federal government was unable to pay, he suggested it would be “most equitable, that there should be the same measure of retribution for all.” Furthermore, he appealed to American patriotism by arguing that the war against Britain had been a collective struggle, and that there was no “good reason why the expenses for the particular defense of a part, in a common war, should not be a common charge.”<sup>52</sup>

Although Madison agreed on the need to fully fund the debt, he strongly objected to the rest of Hamilton’s plan. To begin with, the idea of paying speculators who, in his view, had traded on the federal government’s weakness under the Articles of Confederation (buying up distressed government bonds from financially desperate veterans for a fraction of their par value) struck Madison as “radically immoral and consequently impolitic.” Instead, he sought to divide payment between the two main classes of claimants, reimbursing the current holders of the debt (i.e., the so-called speculators) at the highest market rate and delivering the remainder to the original holders, many of whom had been forced to sell their claims under immense financial pressure. Madison also opposed Hamilton’s proposal to assume the states’ debts at their 1790 values. Doing so, Madison claimed, would be an “injustice” to the states that had already paid off much of their debts.<sup>53</sup> “A simple unqualified assumption of the existing debts would bear peculiarly hard on Virginia,” he noted. “[I]f such an assumption were to take place she would pay towards the discharge of the debts, in the proportion of 1 / 5 and receive back to her Creditor Citizens 1 / 7 or 1 / 8, whilst Massts. [Massachusetts] would pay not more than 1 / 7 or 1 / 8 and receive back not less than 1 / 5.” (On the relative burden of state debts in 1790, see **Exhibit 3**.) Madison again offered a counterproposal, suggesting that the federal government assume the states’ debts at the levels pertaining at the end of the war in 1783, which would cost the federal government more but would, in Madison’s eyes, be “more just & satisfactory.”<sup>54</sup> For his part, Hamilton expressed outrage at Madison’s fierce opposition to his plan, calling it “a perfidious desertion of the principles which [Madison] was solemnly pledged to defend.”<sup>55</sup>

Debate over the debt program divided Congress into Hamilton and Madison blocs, and in the words of one observer “seemed to unchain all those fierce passions which a high respect for the government and for those who administered it, had in a great measure restrained.”<sup>56</sup> Although Madison’s proposal to discriminate between current and original debt holders never gained much traction, his opposition to Hamilton’s plan for assumption of state debts attracted many adherents, who insisted that the proposal to fully fund the debt be voted on separately from the proposal to assume state debts. Hamilton and his supporters, however, demanded that the two be voted on together. The controversy had a sectional dimension to it: Perhaps in part because many people believed the northern states had retired less of their war debt than their southern counterparts, and that much of the debt was owed to northern creditors, northern congressmen tended to side with Hamilton and southern ones with Madison. As threats of secession began to circulate among New Englanders weary of southern resistance, the debate over Hamilton’s proposals on the public debt seemed to threaten the very survival of the Union.<sup>57</sup>

The contentious debate lasted until July 1790, when Hamilton, Madison, and Secretary of State Thomas Jefferson finally arrived at a deal over dinner in New York City. Madison and Jefferson, both of Virginia, agreed to persuade southern congressmen to support Hamilton’s plan, but in exchange the national capital would be removed from New York City – temporarily to Philadelphia (which helped ensure a few critical votes from the Pennsylvania delegation) and then permanently to a spot on the Potomac River on the northern edge of Virginia. With this compromise, along with some monetary compensation for the less indebted states, including Virginia, Congress passed most of the core elements of Hamilton’s plan in August 1790.<sup>58</sup>

## Debating a National Bank

By this time all thirteen states were officially members of the Union. Congress's proposed Bill of Rights had convinced North Carolina to ratify the Constitution in November 1789, and Rhode Island had followed suit the following May. By the middle of 1790, nine of the thirteen states—one shy of the three-quarters necessary for adoption—had ratified most of the twelve amendments that made up the proposed Bill of Rights. Not all of these states, however, had approved two of the amendments (the first two on Congress's list of twelve) that dealt with the allocation of representation in the House and congressional salaries (see **Exhibit 4**).<sup>59</sup> As the nation waited for one more state to approve the other ten amendments, a new battle broke out over the meaning of the Constitution's existing text.

Although Secretary Hamilton had scored a significant victory with the passage of his debt plan, he regarded it as only one part of a broader financial program. In December 1790 he presented a new report to Congress, this time recommending the establishment of a national bank. The proposal attracted a great deal of attention as there were then only three banks operating in the United States—the Bank of North America in Philadelphia, the Bank of New York in Manhattan, and the Bank of Massachusetts in Boston—whose combined authorized capital was less than \$3.5 million.<sup>60</sup> The national bank Hamilton was proposing would have authorized capital of up to \$10 million, giving it, in his words, “a scale which will entitle it to the confidence, and be likely to render it equal to the exigencies, of the public.”<sup>61</sup>

Hamilton opened his *Report on a National Bank* by highlighting three major benefits he believed a large, federally chartered bank would confer upon the nation. First, he noted the “active and productive quality” of specie (gold and silver) when deposited in a bank, where it could undergird a disproportionate volume of new loans. “[T]he money which a merchant keeps in his chest, waiting for a favourable opportunity to employ it, produces nothing till that opportunity arrives,” Hamilton wrote. “But if . . . he either deposits it in a bank, or invests it in the stock of a bank,” this helps build “a fund upon which himself and others can borrow to a much larger amount.” In this way, “banks become nurseries of national wealth.” Second, he believed that the bank could aid the government in times of emergency by providing loans as needed. Third, he suggested that the bank could facilitate tax collection, both by providing loans to taxpayers who needed funds to cover their obligations to the government and by providing a “circulating medium” (banknotes backed by specie) in which those obligations could be paid. “[W]hatever enhances the quantity of circulating money,” he wrote, “adds to the ease with which every industrious member of society may acquire that portion of it, of which he stands in need; and enables him the better to pay his taxes, as well as to supply his other wants.”<sup>62</sup>

In the December report, Hamilton also rebutted a number of popular objections to banking, such as fears of usury and unsound speculation. His last and most detailed rebuttal was to the claim that banks “tend to banish gold and silver out of the country” and replace them with unbacked paper money—a fear that Hamilton acknowledged was rooted in memories of financial and monetary turmoil during and after the war.<sup>63</sup> He made it clear that the national bank's notes would be backed by specie and that there was a vital difference “between a paper currency, issued by the mere authority of government, and one issued by a bank, payable in coin.” Paper notes issued by the new national bank, he insisted, would promote productive economic activity by unlocking “passive” wealth, greatly facilitate both private and public transactions, and ultimately bolster the nation's standing in the international economy.<sup>64</sup>

The Senate passed a bill on January 20, 1791, to create the bank Hamilton was proposing, but the legislation was briefly slowed down in the House, where James Madison, with support from Secretary of State Jefferson, was leading a group of southern congressmen in resisting the bill. Many southern farmers harbored strong suspicions of the banking sector, and their representatives in Congress argued

that a government-backed bank would hoard the nation's specie, provoke inflation by printing paper money, and give undue advantage to northern commercial interests.<sup>65</sup> One opponent in the House announced "that he would no more be seen entering a bank than a house of ill fame."<sup>66</sup> Many southerners also feared that the proposal to establish the bank in Philadelphia would ensure a strong northern orientation within the Treasury, and potentially someday reverse the recent agreement to move the nation's capital southward.<sup>67</sup>

### *Constitutional Objections*

Madison himself objected to the bank principally on constitutional grounds, insisting that the Constitution granted Congress no power to charter a national bank or any other corporation. In fact, Madison had been wrestling with the issue of national incorporation for many years. In 1781 he had cast "an acquiescing, rather than affirmative vote" in the Continental Congress to charter the national Bank of North America,<sup>b</sup> which he believed was not authorized under the Articles of Confederation but nonetheless economically necessary.<sup>68</sup> At the Constitutional Convention in 1787, he had proposed that Congress be empowered "to grant charters of incorporation where the interest of the U.S. might require & the legislative provisions of individual States may be incompetent," but a majority of his fellow delegates had voted down the idea.<sup>69</sup> Now that Hamilton was attempting what the Convention had rejected, Madison declared that the Constitution "is a grant of particular powers only, leaving the general mass in other hands." He could find no power granted in the Constitution that would allow Congress to charter the bank, irrespective of Congress's powers to tax, borrow, and provide for the general welfare. Even the "necessary and proper" clause, Madison now maintained, was "merely declaratory of what would have resulted by unavoidable implication, as the appropriate, and, as it were, technical means of executing those powers." Under any wider interpretation of that clause, he suggested, the "essential characteristic of the Government, as composed of limited and enumerated powers, would be destroyed."<sup>70</sup>

Despite Madison's objections, the bank bill passed the House of Representatives on February 8, 1791, and reached President Washington a week later. The president appeared to have concerns about the proposed legislation, and Madison later recalled that Washington had "held several free conversations with me on the Subject, in which he listened favorably as I thought to my views of it, but certainly without committing himself in any manner whatever." Washington subsequently asked Madison to write a statement for him on the issue in case he ultimately decided to veto the bill.<sup>71</sup>

Thomas Jefferson and his fellow cabinet member Edmund Randolph, now the U.S. attorney general, also opposed the bill and conveyed their views in writing directly to the president. Central to both of their arguments was a strong belief that the federal government was one of limited, enumerated powers. Both mentioned the provision in the proposed Bill of Rights, only slightly revised from Madison's original wording, that "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people."<sup>72</sup> Although the Bill of Rights had not yet been ratified by the requisite number of states, Jefferson considered the principle behind this provision to be "the foundation of the Constitution" and warned that "[t]o take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition."<sup>73</sup> Randolph interpreted Congress's approval of the amendment in 1789 as tantamount to an official declaration that the national legislature "claim[ed] no powers which are not delegated to it."<sup>74</sup>

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<sup>b</sup> The Bank of North America shifted to become a state bank, rather than a national bank, when the State of Pennsylvania rechartered it in 1787. See F. Cyril James, "The Bank of North America and the Financial History of Philadelphia," *Pennsylvania Magazine of History and Biography*, Jan. 1940, 67–68.

Having asserted the primacy of the Constitution's written text, both Jefferson and Randolph set out to prove that none of the enumerated powers allowed for a national bank. Both men focused on Congress's powers to tax, borrow, and regulate commerce as being potentially related to the bank, but ultimately rejected the notion that any of the three provided the requisite authority. The Constitution allowed Congress to levy taxes and pay debts, Jefferson wrote, but "no debt is paid by this bill, nor any tax laid."<sup>75</sup> Randolph acknowledged that the provision of banknotes might make taxes *easier* to pay, but insisted that finding "the mode of procuring the money [rested] on the resources of the debtors" and was not the government's responsibility.<sup>76</sup> Acknowledging similarly that Congress had the power to borrow, Jefferson noted that the bill "neither borrows money nor ensures the borrowing of it," because the bank would not be obligated to lend to the government. Nor did he believe that the power to *establish* a bank—"a subject of commerce," in Jefferson's parlance—could conceivably be derived from Congress's authority to *regulate* commerce. "To make a thing which may be bought and sold," he wrote, "is not to prescribe regulations for buying and selling."<sup>77</sup>

Both Jefferson and Randolph also grappled with the possibility that the power to incorporate a bank could potentially be based on one of the Constitution's other, more open-ended provisions. Jefferson first examined the clause authorizing Congress to "lay taxes for *the purpose of* providing for the general welfare," and considered whether "providing for the general welfare" might encompass the creation of a bank. His answer, in a word, was no. Members of Congress were "not to do anything they please to provide for the general welfare," Jefferson declared, "but only to *lay taxes* for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless."<sup>c</sup> He next turned to the "necessary and proper" clause, suggesting that it should only enable Congress to do what was strictly needed to operationalize the enumerated powers, not to do anything "merely 'convenient' for effecting" them. "If such a latitude of construction be allowed to this phrase as to give any non-enumerated power," he wrote, "it will go to everyone, for there is not one which ingenuity may not torture into a *convenience* in some instance or other, to some one of so long a list of enumerated powers."<sup>78</sup>

### *Hamilton's Defense of the Bank*

Washington sent the opinions of Jefferson and Randolph to Hamilton and asked for his response. On February 22 the secretary of the Treasury worked through the night penning a defense of his proposal that directly answered the Virginians' criticisms.<sup>79</sup> He showed little deference to their arguments, suggesting from the start that "principles of construction like those espoused by the Secretary of State and Attorney General, would be fatal to the just and indispensable authority of the United States." While acknowledging the obvious—that the Constitution did not specifically authorize Congress to charter a bank—he offered a detailed and closely reasoned argument for the constitutionality of the bill. First, he referenced the

general principle . . . inherent in the very definition of government . . . that every power, vested in a government, is in its nature sovereign, and includes by force of the term, a right to employ all the means requisite, and fairly applicable, to the attainment of the ends of such power and which are not precluded by restrictions and exceptions specified in the constitution, or not immoral, or not contrary to the essential ends of political society.<sup>80</sup>

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<sup>c</sup> The relevant clause from the Constitution (Art. I, §8) reads as follows: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States." For the full text of the U.S. Constitution, see **Appendix I**.

Sovereign authorities, according to Hamilton, inherently possessed all powers germane to their spheres of responsibility, limited in these spheres only by what their constitutions specifically prohibited. “[I]t is unquestionably incident to sovereign power to erect corporations,” he pronounced. The power to charter the bank, in Hamilton’s mind, was so basic and essential to government that it could be safely assumed to exist.<sup>81</sup>

Although Hamilton believed that this reasoning alone should be sufficient, he laid siege to Jefferson and Randolph’s central argument that the power to charter a corporation had to be enumerated in the Constitution to be valid. Their belief that the bill assumed a significant new congressional power, he argued, was fundamentally misguided. Incorporating a bank, Hamilton explained, was not “some great independent substantive thing” like trade or tax collection, but merely a tool to help achieve those goals—a “mean to an end,” not an end in itself. Such measures, he maintained, were protected by the “necessary and proper” clause. He excoriated Jefferson for suggesting a dangerously restrictive interpretation of the word “necessary,” which he believed would unduly constrain Congress. Admitting that “no government has a right to do merely what it pleases,” Hamilton nonetheless offered a far more liberal interpretation of what “necessary and proper” implied: “The relation between the measure and the end; between the nature of the mean employed toward the execution of a power, and the object of that power must be the criterion of constitutionality, not the more or less of necessity or utility.” He warned, moreover, that “adherence to the letter of [the Constitution’s enumerated] powers would at once arrest the motion of government.”<sup>82</sup>

Armed with this interpretation of the “necessary and proper” clause, Hamilton demonstrated the connections he perceived between the bank and the powers expressly listed in the Constitution. He observed, for example, that through the issuance of paper banknotes, a national bank would assist Congress in implementing its taxing power “by increasing the quantity of circulating medium” and “by creating a convenient species of medium in which [taxes] are to be paid.” Observing further that “[m]oney is the very hinge on which commerce turns,” Hamilton suggested that nationally recognized banknotes would facilitate interstate commerce, another field in which Congress had explicit constitutional authority. Hamilton also highlighted the bank’s potential role as a lender to the government itself, which he believed was consistent with Congress’s power to borrow and to defend the nation, particularly because such loans could prove vital in times of national emergency.<sup>83</sup>

President Washington received Hamilton’s memorandum on the morning of February 23, 1791. Having consulted his closest advisers on the constitutionality of the bank, he had obtained sharply conflicting advice. The decision to sign or veto the bank bill was now solely in his hands. Given his extraordinary stature as the hero of the Revolution and the nation’s first president, the path he chose promised to set a powerful precedent. One observer reported that on February 25, as Congress awaited Washington’s judgment, “there was general uneasiness . . . the President stood on the brink of a precipice [and the] glorious reputation he has so deservedly established” hung in the balance.<sup>84</sup> As Washington weighed the arguments on each side, he understood what was at stake and knew that his decision, whichever direction he chose, would become a defining feature of his presidency.

**Exhibit 1a** Population of American Colonies and States, Estimates, 1650-1790

Colony/State	1790	1780	1770	1760	1750	1700	1650
New Hampshire	141,885	87,802	62,396	39,093	27,505	4,958	1,305
Massachusetts	475,327	268,627	235,308	202,600	188,000	55,941	16,603
Rhode Island	68,825	52,946	58,196	45,471	33,226	5,894	785
Connecticut	237,946	206,701	183,881	142,470	111,280	25,970	4,139
New York	340,120	210,541	162,920	117,138	76,696	19,107	4,116
New Jersey	184,139	139,627	117,431	93,813	71,393	14,010	
Pennsylvania	434,373	327,305	240,057	183,703	119,666	17,950	
Delaware	59,096	45,385	35,496	33,250	28,704	2,470	185
Maryland	319,728	247,959	202,599	162,267	141,073	29,604	4,504
Virginia	747,610	538,004	447,016	339,726	236,681	58,560	18,731
North Carolina	393,751	270,133	197,200	110,442	72,984	10,720	
South Carolina	249,073	180,000	124,244	94,074	74,000	6,260	
Georgia	82,548	56,071	23,375	9,578	5,200		
<b>TOTAL</b>	<b>3,734,421</b>	<b>2,631,101</b>	<b>2,090,119</b>	<b>1,573,625</b>	<b>1,186,408</b>	<b>251,444</b>	<b>50,368</b>

Source: Adapted from *Historical Statistics of the United States*, Millennial Edition Online, eds. Susan B. Carter, Scott Sigmund Gartner, Michael R. Haines, Alan L. Olmstead, Richard Sutch, and Gavin Wright (Cambridge University Press, 2006), Series Eg 1-20. [hsus.cambridge.org](http://hsus.cambridge.org). 1790 figures adapted from Campbell Gibson and Kay Jung, "Historical Census Statistics on Population Totals By Race, 1790 to 1990, and By Hispanic Origin, 1970 to 1990, For The United States, Regions, Divisions, and States," *U.S. Census Bureau*, September 2002, Table A-26. [www.census.gov/population/www/documentation/twps0056/twps0056.html](http://www.census.gov/population/www/documentation/twps0056/twps0056.html).

Note: Massachusetts figures include Plymouth colony and Maine. Maine became a separate state – the 23<sup>rd</sup> state – in 1820.

**Exhibit 1b** Estimated Free and Slave Populations, 1790

State	Free	Slave
New Hampshire	141,727	158
Massachusetts	475,327	0
Rhode Island	67,877	948
Connecticut	235,182	2,764
New York	318,796	21,324
New Jersey	172,716	11,423
Pennsylvania	430,636	3,737
Delaware	50,209	8,887
Maryland	216,692	103,036
Virginia	454,983	292,627
North Carolina	293,179	100,572
South Carolina	141,979	107,094
Georgia	53,284	29,264
Total	3,052,587	681,834

Source: Adapted from Gibson and Jung, "Historical Census Statistics on Population Totals By Race, 1790 to 1990, and By Hispanic Origin, 1970 to 1990, For The United States, Regions, Divisions, and States," Table A-26, [www.census.gov/population/www/documentation/twps0056/twps0056.html](http://www.census.gov/population/www/documentation/twps0056/twps0056.html).

**Exhibit 2** Hamilton's Account of the National Debt, January 1790

Debt	Amount (\$)
Foreign, principal	10,070,307.00
Foreign, arrears of interest	1,640,071.62
Domestic, liquidated principal	27,383,917.74
Domestic, interest	13,030,168.20
Domestic, unliquidated principal	(est.) 2,000,000.00
TOTAL	54,124,464.56

Source: Adapted from Alexander Hamilton, "Report on Public Credit," in the *Annals of Congress*, House of Representatives, Volume I, 1<sup>st</sup> Congress, 3<sup>rd</sup> Session, pp. 2055-2056. Online at Library of Congress, <http://memory.loc.gov/ammem/amlaw/lwac.html>.

**Exhibit 3** State Debts (in dollars), 1790

State	Total State Debt, estimated as of January 1790	State Debt per Capita	Amount Ultimately Assumed by the Federal Government	Amount Assumed per Capita
New Hampshire	300,000	2.11	282,595	1.99
Massachusetts	5,226,801	11.00	3,981,733	8.38
Rhode Island	510,000	7.41	200,000	2.91
Connecticut	1,951,173	8.20	1,600,000	6.72
New York	1,167,575	3.43	1,183,716	3.48
New Jersey	788,681	4.28	695,202	3.78
Pennsylvania	2,200,000	5.06	777,983	1.79
Delaware	50,000	0.85	59,161	1.00
Maryland	800,000	2.50	517,491	1.62
Virginia	3,680,743	4.92	2,934,416	3.93
North Carolina	3,480,000	8.84	1,794,803	4.56
South Carolina	5,386,232	21.63	3,999,651	16.06
Georgia	950,000	11.51	246,030	2.98
TOTAL	26,491,205	7.09	18,272,781	4.89

Source: Adapted from Hamilton, "Report on Public Credit"; William G. Anderson, *The Price of Liberty: The Public Debt of the American Revolution* (Charlottesville: University Press of Virginia, 1983), pp. 35-36; and Edwin J. Perkins, *American Public Finance and Financial Services, 1700-1815* (Columbus: Ohio State University Press, 1994), p. 215. In the "Total State Debt" column, the figures for New York, New Jersey, Connecticut, Virginia, Massachusetts, and South Carolina are more exact than the others because they were provided to Hamilton directly by the states themselves. The others are estimates and reported by Anderson (as well as in part by Hamilton). Regarding the "Amount Ultimately Assumed" column, Perkins notes that the final federal law limited assumption to a maximum of \$4 million per state.

**Exhibit 4** Dates of Ratification, Constitution and the Bill of Rights, by State, to 25 February 1791

State	Ratified Constitution	Ratified Bill of Rights (10 Amendments)	Ratified House Reform Amendment	Ratified Compensation Amendment
New Hampshire	21 June 1788	25 January 1790	Yes	No
Massachusetts	6 February 1788			
Rhode Island	29 May 1790	11 June 1790	Yes	No
Connecticut	9 January 1788			
New York	26 July 1788	24 February 1790	Yes	No
New Jersey	18 December 1787	20 November 1789	Yes	No
Pennsylvania	12 December 1787	10 March 1790	Yes	No
Delaware	7 December 1787	28 January 1790	No	Yes
Maryland	28 April 1788	19 December 1789	Yes	Yes
Virginia	25 June 1788			
North Carolina	21 November 1789	22 December 1789	Yes	Yes
South Carolina	23 May 1788	19 January 1790	Yes	Yes
Georgia	2 January 1788			

Source: Adapted from "Adoption of the Ten Amendments," "Ratification of the Bill of Rights by the First Congress," and Gordon Lloyd, "The Six Stages of Ratification," at TeachingAmericanHistory.org by the Ashbrook Center at Ashland University, <http://teachingamericanhistory.org>, <http://teachingamericanhistory.org/ratification/timeline-state.html>.



## Appendix I: The United States Constitution

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

### *Article I*

#### **Section 1**

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

#### **Section 2**

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

#### **Section 3**

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the

Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

#### **Section 4**

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

#### **Section 5**

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

## Section 6

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

## Section 7

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

## Section 8

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

## **Section 9**

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

### **Section 10**

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## ***Article II***

### **Section 1**

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes,

then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

## Section 2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

### Section 3

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

### Section 4

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

## *Article III*

### Section 1

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

### Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;-- between a State and Citizens of another State,--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

### Section 3

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

## *Article IV*

### **Section 1**

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

### **Section 2**

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

### **Section 3**

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

### **Section 4**

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.

## *Article V*

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.



*Article VI*

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

*Article VII*

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

## Appendix II:

### Amendments Approved by Congress and Sent to the States, Sept. 1789<sup>d</sup>

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution:

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as Amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz:

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Article the first . . . After the first enumeration required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which, the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred, after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

Article the second . . . No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Article the third . . . Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article the fourth . . . A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article the fifth . . . No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article the sixth . . . The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article the seventh . . . No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any

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<sup>d</sup> The text can be found online through the Yale Law School Avalon Project at [http://avalon.law.yale.edu/18th\\_century/resolu02.asp](http://avalon.law.yale.edu/18th_century/resolu02.asp).

criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article the eighth . . . In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article the ninth . . . In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article the tenth . . . Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article the eleventh . . . The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article the twelfth . . . The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

## Endnotes

<sup>1</sup> David Jack Cowen, *The Origins and Economic Impact of the First Bank of the United States, 1791–1797* (New York: Garland, 2000), 7.

<sup>2</sup> James Madison quoted in *ibid.*, 20.

<sup>3</sup> Report cover letter quoted in *ibid.*, 7.

<sup>4</sup> George Washington, “To Henry Lee, Jr., 31 October 1786,” in *The Papers of George Washington Digital Edition*, <http://rotunda.upress.virginia.edu/founders/GEWN.html>.

<sup>5</sup> Although 55 delegates attended at the start of the Constitutional Convention, only 41 were in attendance on the last day, 17 Sept. 1787.

<sup>6</sup> David Brearly (NJ) and Luther Martin (MD) in James Madison, *Notes of Debates in the Federal Convention of 1787* (Athens: Ohio University Press, 1984), 94, 203.

<sup>7</sup> Madison, *Notes*, 31, 43–44, 389–390. The powers of Congress are listed in the U. S. Constitution, Art. I, §8.

<sup>8</sup> Many of these rights were summarized in a proposal by Charles Pinckney on 20 Aug. 1787. See Madison, *Notes*, 485–487; Robert Allen Rutland, *The Birth of the Bill of Rights, 1776–1791* (Boston: Northeastern University Press, 1991), 114–115.

<sup>9</sup> Madison, *Notes*, 640; see also 486, 630, 639.

<sup>10</sup> *Ibid.*, 614–615.

<sup>11</sup> *Ibid.*, 566, 630. See also Rutland, *Bill of Rights*, 115–116; Richard Labunski, *James Madison and the Struggle for the Bill of Rights* (New York: Oxford University Press, 2006), 8–11.

<sup>12</sup> Rutland, *Bill of Rights*, chaps. 3 and 4, esp. 38–39. The Virginia Declaration incorporated language dating back to the 1689 English Bill of Rights, which limited the power of the monarchy, forbade “excessive bail” and “cruel and unusual punishment,” protected Englishmen’s right to petition the king, and allowed Protestants to keep weapons for self-defense. See *ibid.*, 8–9; “An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown,” at the Avalon Project, Yale Law School. [http://avalon.law.yale.edu/17th\\_century/england.asp](http://avalon.law.yale.edu/17th_century/england.asp).

<sup>13</sup> Madison, *Notes*, 630.

<sup>14</sup> Although three of the 41 delegates in attendance on 17 Sept. 1787 refused to sign the proposed constitution, one delegate signed in absentia, bringing the total number of signers to 39.

<sup>15</sup> *Ibid.*, 657.

<sup>16</sup> *Ibid.*, 656.

<sup>17</sup> Rutland, *Bill of Rights*, 124. Quotation from George Mason, “Objections to this Constitution of Government,” online at Chapin Library of Rare Books, Williams College, <http://chapin.williams.edu/collect/masonobj.html>. Also quoted in Rutland, 120.

<sup>18</sup> See Mason, “Objections to this Constitution,” and Rutland, *Bill of Rights*, chap. 7.

<sup>19</sup> Quoted in Rutland, *Bill of Rights*, 123.

<sup>20</sup> Quoted in *ibid.*, 133.

<sup>21</sup> Federalist 84.

<sup>22</sup> Federalist 44. See also Cowen, *Origins and Economic Impact*, 18.

<sup>23</sup> Labunski, *James Madison*, 60, 28.

<sup>24</sup> *Ibid.*, 68, 73–74.

<sup>25</sup> Quotations in *ibid.*, 61, 77.

<sup>26</sup> *Ibid.*, 104–105.

<sup>27</sup> Quoted in *ibid.*, 78.

<sup>28</sup> Ibid., 78.

<sup>29</sup> Quotations in *ibid.*, 90, 91.

<sup>30</sup> Ibid., 114, 199.

<sup>31</sup> Rutland, *Bill of Rights*, 188–189; Labunski, *James Madison*, 190.

<sup>32</sup> Rutland, *Bill of Rights*, 185–187; Labunski, *James Madison*, 202.

<sup>33</sup> Madison, “To Thomas Jefferson” (17 Oct. 1788), in *The Papers of James Madison Digital Edition*, <http://rotunda.upress.virginia.edu/founders/JSMN.html>.

<sup>34</sup> Labunski, *James Madison*, 184, 187, 199.

<sup>35</sup> “James Madison’s Proposed Amendments,” included in *ibid.*, *append. 1*, 265–268.

<sup>36</sup> Ibid.

<sup>37</sup> Labunski, *James Madison*, 192–196, quotation at 195.

<sup>38</sup> Ibid., 197–216, quotation at 213.

<sup>39</sup> Ibid., 217; see *append. 2*, 269–271, for the full committee bill.

<sup>40</sup> Quoted in *ibid.*, 230.

<sup>41</sup> Ibid., 218, 231–232. In a contentious change, the House also converted the amendments from modifications of the Constitution’s original text into new articles to be appended to it.

<sup>42</sup> Ibid., 235–240.

<sup>43</sup> John C. Miller, *The Federalist Era, 1789–1801* (New York: Harper, 1960), 15; Labunski, *James Madison*, 187.

<sup>44</sup> Quoted in Miller, *The Federalist Era*, 26.

<sup>45</sup> Ibid., 26, 36.

<sup>46</sup> See Madison, *Notes*, 138–139. Under Hamilton’s plan, state governors would have been appointed by the national government, and these governors would have had the authority to veto any laws passed by their legislatures.

<sup>47</sup> Quotations in Miller, *The Federalist Era*, 33, 34.

<sup>48</sup> Miller, *The Federalist Era*, 38.

<sup>49</sup> Art. VI. See also Miller, *The Federalist Era*, 37.

<sup>50</sup> Miller, *The Federalist Era*, 39.

<sup>51</sup> Alexander Hamilton, “Report on Public Credit,” in the *Annals of Congress*, House of Representatives, vol. 1, 1st Congress, 3rd Sess., p. 2042, 2046, 2049. Online at <http://memory.loc.gov/ammem/amlaw/lwac.html>.

<sup>52</sup> Ibid., 2050, 2051, 2052, 2053.

<sup>53</sup> Miller, *The Federalist Era*, 42, 45–47, quotations at 42, 47. See also Madison’s letter to Edmund Pendleton (4 Mar. 1790) in *Papers of James Madison*.

<sup>54</sup> Madison, letter to Pendleton.

<sup>55</sup> Miller, *The Federalist Era*, 41–42, quotation at 41.

<sup>56</sup> John Marshall’s biography of Washington quoted in *ibid.*, 47.

<sup>57</sup> Ibid., 41–48. See also Benjamin Ulysses Ratchford, *American State Debts* (Durham, NC: Duke University Press, 1941), esp. 56–68.

<sup>58</sup> Miller, *The Federalist Era*, 48–49.

<sup>59</sup> Rutland, *Bill of Rights*, 216–217. Virginia, Massachusetts, Georgia, and Connecticut were the four states that hadn’t ratified the Bill of Rights by the end of 1790.

<sup>60</sup> Bray Hammond, "Long and Short Term Credit in Early American Banking," *Quarterly Journal of Economics* 49, no. 1 (1934): 86; Robert E. Wright, "Origins of Commercial Banking in the United States, 1781-1830," at <https://eh.net/encyclopedia/origins-of-commercial-banking-in-the-united-states-1781-1830>), table 1. A fourth state bank, the Bank of Maryland, was chartered in 1790 with authorized capital of \$300,000; it opened for business early the next year. See Alfred Cookman Bryan, *History of State Banking in Maryland* (Baltimore: Johns Hopkins Press, 1899), 19-20.

<sup>61</sup> Alexander Hamilton, *The Report of the Secretary of the Treasury on the Subject of a National Bank* (New York: S. Whiting and Co., 1811), 36, 3. Online at [http://fraser.stlouisfed.org/docs/bankunitedstates/bankoftheunitedstates\\_hamilton\\_1790.pdf](http://fraser.stlouisfed.org/docs/bankunitedstates/bankoftheunitedstates_hamilton_1790.pdf).

<sup>62</sup> *Ibid.*, 5, 7, 8-9.

<sup>63</sup> *Ibid.*, 15; for Hamilton's discussion of the Articles period, see 19, 20.

<sup>64</sup> *Ibid.*, 22, 21.

<sup>65</sup> Cowen, *Origins and Economic Impact*, 16-17.

<sup>66</sup> Miller, *The Federalist Era*, 56. The language is Miller's and is not a direct quote from the (unspecified) congressman.

<sup>67</sup> Cowen, *Origins and Economic Impact*, 17-18.

<sup>68</sup> Quoted in Miller, *The Federalist Era*, 57. During debates over Hamilton's bank proposal, Madison said that the Bank of North America was "the child of necessity. It could never be justified by the regular powers of the articles of Confederation." *Annals of Congress*, House of Representatives, vol. 1, 1st Congress, 3rd Sess., p. 1947, online at <http://memory.loc.gov/ammem/amlaw/lwac.html>.

<sup>69</sup> Madison, *Notes*, 638-639.

<sup>70</sup> *Annals of Congress*, pp. 1945, 1946-1947, 1947.

<sup>71</sup> Cowen, *Origins and Economic Impact*, 19-20.

<sup>72</sup> Thomas Jefferson, "Jefferson's Opinion on the Constitutionality of a National Bank," at the Avalon Project, Yale Law School, [http://avalon.law.yale.edu/18th\\_century/bank-tj.asp](http://avalon.law.yale.edu/18th_century/bank-tj.asp). Note that in referencing what Congress had originally proposed as the Twelfth Amendment, but that was later ratified by the states as the Tenth, Jefferson used wording (quoted here) that differs slightly from the wording of the actual amendment.

<sup>73</sup> *Ibid.*

<sup>74</sup> Randolph's opinion is reprinted in Walter Dellinger and H. Jefferson Powell, "The Constitutionality of the Bank Bill: The Attorney General's First Constitutional Law Opinions," *Duke Law Journal* 44, no. 110 (1994): 121-130, quotation at 123.

<sup>75</sup> "Jefferson's Opinion."

<sup>76</sup> Randolph in Dellinger and Powell, "Constitutionality of the Bank Bill," 126.

<sup>77</sup> "Jefferson's Opinion."

<sup>78</sup> *Ibid.*

<sup>79</sup> Cowen, *Origins and Economic Impact*, 20-21.

<sup>80</sup> Alexander Hamilton, "Hamilton's Opinion as to the Constitutionality of the Bank of the United States," at the Avalon Project, Yale Law School, [http://avalon.law.yale.edu/18th\\_century/bank-ah.asp](http://avalon.law.yale.edu/18th_century/bank-ah.asp).

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> John Rutledge, Jr. quoted in Cowen, *Origins and Economic Impact*, 22.