

Honors U.S. History  
Wellesley High School

*Defining the Limits of the New Constitution*

**HBS CASE STUDY: THE FEDERAL NEGATIVE  
BATTLE OVER THE BANK**

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## James Madison, the 'Federal Negative,' and the Making of the U.S. Constitution

On June 8th, 1787, at the Constitutional Convention in Philadelphia, delegates from across the United States began discussing a curious proposal to expand federal power over the states. James Madison of Virginia had suggested that the new constitution include a "federal negative," which would give Congress the authority to veto any law passed by a state legislature. He viewed this as a critical safeguard against unchecked power at the state level. In late May, Madison's Virginia delegation had presented a plan for the constitution that included a watered-down version of the federal negative. Now, in June, Charles Pinckney of South Carolina revived the original version, calling it "the corner stone of an efficient national Government."<sup>1</sup>

Not everyone agreed with Pinckney's assessment, however. Opponents charged that Madison's federal negative would allow Congress to "enslave the states" and let "large States crush the small ones."<sup>2</sup> Indeed, the question of how much power – and what types of power – to vest in the federal government went to the very heart of the debate that unfolded in Philadelphia that summer.

The Constitutional Convention of 1787 capped a tumultuous period in American history. In 1783, after eight years of war, Britain formally recognized its former colonies as the independent United States of America. Within just a few years, however, the triumphant Americans found themselves facing calamities on many fronts, ranging from federal insolvency and widespread economic recession to an armed rebellion in western Massachusetts. Said George Washington, the hero of the Revolutionary War, "I am really mortified beyond expression that in the moment of our Acknowledged Independence we should, by our conduct, verify the predictions of our transatlantic foe, & render ourselves ridiculous & contemptible in the eyes of all Europe."<sup>3</sup>

Sharing Washington's frustration and embarrassment, James Madison came to believe that the economic and social turmoil plaguing America in the mid-1780s could be traced to defects in the Articles of Confederation, which had been adopted as the nation's governing document in 1781. After extensive research on past republics and confederacies, Madison concluded that the theory of state sovereignty underlying the Articles was deeply flawed: lodging nearly all power in the states was a recipe for disaster. What was needed, Madison argued, was an entirely new constitution that would create a strong but limited central government with well-defined powers, including the power to veto state laws. Whether Madison could persuade his fellow delegates at the Constitutional Convention was

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far from clear, but there could be little doubt how much was at stake as the new nation struggled to find its footing in Philadelphia.

## **Toward a New Nation<sup>a</sup>**

The United States began as thirteen British colonies located along the eastern seaboard of North America. The region possessed an abundance of natural resources – especially land – and the typical colonist lived well by world standards. One prominent historian maintained that as of 1774 the colonists' living standards were "probably the highest achieved for the great bulk of the population in any country up to that time."<sup>4</sup> Between 1650 and 1750, the total population of the North American colonies increased from 50,000 to 1.2 million; and by 1770, the population had nearly doubled again, reaching over 2 million (see **Exhibit 1**). Over three-quarters of the population worked in agriculture, and about two-thirds of white male farmers owned their own land. Blacks, nearly all of whom were slaves, comprised about one-fifth of the population as of 1770. Although slavery was legal in all of the colonies, most slaves worked in the South, typically cultivating rice and tobacco for export. Cotton was not yet an important crop.

Although disputes occasionally arose between the colonies and the mother country, before the 1760s they were few and far between. The British Government controlled trade and foreign policy, but otherwise left the colonists a great deal of authority over their own affairs. Although in principle most colonies were run by governors appointed by the British crown, in practice the colonies' elected assemblies enjoyed considerable power and discretion. Apart from a few import duties that were set in Britain, these assemblies decided local tax policy themselves.<sup>5</sup> The colonists were legally required to trade within the British Empire in most cases but still benefitted from guaranteed markets for their agricultural products, from access to English manufactured goods, and from the protection of the British military.

### *"Taxation without Representation"*

This mutually beneficial relationship only began to deteriorate as the British felt new financial pressures in the 1760s. After concluding a very long but ultimately successful war against French and Native American forces on North American soil in 1763, the British Government determined that the colonists were vastly under-taxed. Compared to citizens of the British Isles, the American colonists paid next to nothing in taxes. British officials, who faced a dramatically enlarged national debt after the French and Indian War, believed that the Americans should begin to share the costs of their own defense (see **Exhibit 2**).<sup>6</sup>

In 1764, therefore, the British Parliament passed the Sugar Act, which placed new regulations on the colonial sugar trade and imposed heavy taxes on a number of popular colonial imports, including wine and silk. Although some New Englanders attempted to fight the edict by refusing to buy British goods, their non-importation campaign failed to achieve widespread acceptance. The colonists' response was far more dramatic the following year, when the British passed the Stamp Act, which levied taxes on nearly all types of colonial documents from newspapers to licenses. Incensed colonists reacted violently, burning effigies of British officials and physically threatening tax collectors. In most places, the colonists' tactics effectively blocked implementation of the Stamp Act. The non-importation campaign also took on new life during the crisis and began exacting a heavy toll on British exporters.

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<sup>a</sup> Portions of this case borrow heavily from David Moss, "Constructing a Nation: The United States and Their Constitution, 1763-1792," HBS Case No. 9-795-063 (Boston: Harvard Business School Publishing, 1994).

In the emerging rebellion, the colonists coalesced around the principle of "no taxation without representation." The British Parliament had seized the power to tax from the monarchy in the Glorious Revolution of 1688, and this right was often celebrated as a foundation of British freedom and parliamentary democracy. The colonists viewed the new taxes in North America as a violation of these same ideals because they had no elected representatives in Parliament. The British government strenuously disagreed, claiming that the colonies *did* have a voice in Parliament through the principle of "virtual representation." This idea, championed by Chancellor of the Exchequer George Grenville, suggested that each Member of Parliament represented the whole empire, not only those who voted him into office.<sup>7</sup>

Although Parliament bowed to political pressures at home and repealed the Stamp Act, the conflict was by no means over. British military commanders in North America began redeploying troops from the interior to the coastal cities in response to the colonists' increasingly organized resistance. Meanwhile, Parliament passed the Townshend Acts in 1767, which levied a variety of new taxes on colonial imports, riling the colonists once again. By 1770, tempers were so short in Boston that nervous British troops fired on an unruly group of demonstrators, killing five of them. The "Boston Massacre" only further inflamed the colonists' feelings of injustice and mistrust.

After yet another tactical retreat in 1770, involving the repeal of most of the Townshend duties, Parliament passed the Tea Act in 1773. The Tea Act offered special advantages to British traders who re-exported tea to the colonies. Its primary purpose was to eliminate smuggled Dutch tea from the American market and thus bolster Britain's troubled East India Company. As a byproduct, it also severely undercut New England merchants who had enjoyed a lucrative trade in smuggled tea, and it effectively re-imposed an existing tax on tea imports, which the smuggling operations had circumvented. Convinced that these new British rules further infringed on their independence, the colonists again resorted to violence. They threatened incoming ships carrying tea, and, one night in December, dramatically dumped 105,000 pounds of British tea cargo into the Boston Harbor. Outraged at the "Boston Tea Party," the Royal Government immediately shut down Boston's port and attempted to place Massachusetts under military rule. Declared King George III, "The die is now cast. The Colonies must either submit or triumph."<sup>8</sup>

As the King suspected, dissent was now spreading rapidly and threatening to become a full-scale rebellion. In September 1774, representatives from twelve colonies (all except Georgia) met in Philadelphia for a "Continental Congress," which quickly revived and intensified the non-importation campaign. Massachusetts citizens began establishing their own governmental institutions the very same year. The boiling resentment between the Americans and the British came to a head on April 19<sup>th</sup>, 1775, when the first shots of the American Revolution were fired just outside of Boston, on the Lexington town green. To their astonishment, British military leaders soon discovered that the American rebels – though highly unconventional and undisciplined by traditional standards – constituted a formidable challenge.

## Managing the War Effort

By the time the American colonists formally declared their independence from Britain on July 4, 1776, the philosophical question about what form of government was best had become a pressing practical one. British administrative structures began crumbling in the early 1770s as the rebellion took hold, leaving the colonists little choice but to erect new governmental institutions. Revolutionary leaders in most states established ad hoc legislative bodies in order to raise taxes and form militias. Through the pivotal year of 1776, seven states adopted formal constitutions, and most of the others soon followed. By embracing these new legal frameworks, "Americans had discovered a way to

legalize revolution.”<sup>9</sup> Significantly, all of the state constitutions were grounded on the principle of popular sovereignty and, in most cases, extended suffrage to all white males who owned at least a small amount of property.<sup>10</sup>

Although most governmental authority and responsibility remained firmly lodged at the state level, the Continental Congress played an important role in coordinating the war effort against Britain – for example, by creating the Continental Army and appointing George Washington of Virginia as its Commander-in-Chief. Over the course of the war, the army never reached the full strength that many national leaders envisaged.<sup>11</sup> The American people largely distrusted centralized military power, especially given their experience under British rule. Reflecting this anxiety (and adding to the challenge of managing the war effort), the Americans fielded fourteen distinct force structures during the war: thirteen state militias and the Continental Army itself.<sup>12</sup>

Financing the war effort proved equally challenging, especially since it was unclear whether the Continental Congress had the legal authority or the popular support necessary to levy taxes. Perhaps as a consequence, Congress initially financed the war at least in part through extensive issues of paper money (see Exhibit 3). The bills, known as “Continental,” were ostensibly backed by future tax revenues rather than gold or silver. From 1775 until 1780, when the printing stopped, Congress had issued well over \$200 million in paper currency, triggering severe depreciation and bringing the phrase “not worth a Continental” into common parlance (see Exhibits 4 and 5).<sup>13</sup> The scientist and statesman Benjamin Franklin, however, argued that the inflation was not such a bad thing: “The general Effect of the Depreciation among the Inhabitants of the States, has been this, that it has operated as a *gradual Tax* upon them. ... Thus it has proved a Tax on Money, a kind of Property very difficult to be taxed in any other Mode; and it has fallen more equally than many other Taxes, as those People paid most who being richest had most Money passing thro’ their Hands.”<sup>14</sup>

Although issues of paper money covered a large portion of federal spending until 1780 (see Exhibits 3-6), the Continental Congress also financed the war through borrowing – particularly from France, Spain, and Holland, but also from domestic creditors. Because investors were naturally wary about loaning large sums to a new government, interest rates rose as wartime borrowing accelerated.<sup>15</sup>

Like Congress, most states initially tried to avoid levying taxes, relying instead on paper money to finance the war effort. As inflation rose, however, many states finally began imposing higher taxes. In some cases, wartime taxes exceeded those collected under British rule, provoking citizens to protest, evade payment, and even occasionally riot. Ultimately even these higher taxes proved insufficient, forcing states to rely on extensive borrowing and, in some cases, continued use of the printing press to finance the war.<sup>16</sup>

## Forging a Confederation

As early as 1775, a number of political leaders, including Benjamin Franklin, had suggested that the authority of the Continental Congress should be grounded in a written constitution. Lawmakers began working on such a document in June 1776, based on the general understanding that the states would be left to manage their internal affairs while Congress would handle foreign affairs. Several significant points of contention emerged during the drafting process, however, including whether more populous states would have more votes in Congress and whether slave populations would be counted when calculating each state’s share of wartime expenses.

As the summer of 1776 came to a close, the drafting process was largely abandoned – in part because several core issues remained contentious, but also because the military situation was becoming

increasingly dire.<sup>17</sup> British forces seized control of New York City that August, and the city became a stronghold for colonists loyal to Britain. General Washington fled with his troops to Pennsylvania, but over the winter captured Trenton and Princeton in New Jersey. In October 1777, the British took Philadelphia, the nation's capital, but this victory proved costly to the British in both money and lives as a result of their generals' poor coordination and George Washington's clever maneuvering. Although Washington's army faced starvation conditions at Valley Forge in Pennsylvania that winter, the Americans' strategic position had already begun to improve in October of 1777, when the American General Horatio Gates succeeded in halting a British army descending from Canada in the Battle of Saratoga.<sup>18</sup>

That same month, members of the Continental Congress resumed work on a governing document. Worsening inflation as well as the potential for an alliance with France renewed the desire for a formal accord to undergird and clarify Congress's authority. Lawmakers ultimately resolved their differences by agreeing that each state would have one vote in the unicameral Congress, war expenses would be distributed based on the value of each state's land and improvements, and Congress would not manage state boundaries or western lands. Representatives finally completed drafting the document, called the Articles of Confederation, in mid-November 1777.<sup>19</sup>

As the war gradually turned in the Americans' favor, individual states began ratifying the Articles. Virginia moved first, approving the document near the close of 1777, and Maryland completed the process as the last state to ratify in early 1781.<sup>20</sup> Just seven months later, the British Commander Lord Cornwallis found himself surrounded by American forces and their newfound French allies, and he surrendered to General Washington at Yorktown, Virginia, on October 17, 1781.<sup>21</sup> Although the war was not yet officially over, it was now rapidly winding down, and the victorious Americans increasingly turned their attention to matters of domestic governance.

### *"A Firm League of Friendship"*

The Articles of Confederation, which announced that each state "retains its sovereignty" and that together the states would form "a firm league of friendship with each other," vested limited authority in a national Congress without creating either a chief executive or a judiciary. Specifically, the Articles conferred upon Congress the exclusive power to declare war, to enter into treaties and alliances, to settle disputes between the states, to regulate weights and measures, to oversee a national postal system, and to borrow. Nowhere, however, did the Articles grant the national government superiority relative to the states or the means to compel them to follow its laws.

Although the Articles placed relatively few restrictions on the states, there was a clear attempt to prevent them from discriminating against each other's citizens. The people of each state, the document declared, "shall be entitled to all privileges and immunities of free citizens in the several States; and ... shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof...." Significantly, the Articles also left virtually all control over both foreign and interstate commerce with the states, rather than with Congress.

While permitting the various states to collect taxes and impose tariffs, and requiring the federal government to honor its war debts, the Articles did not grant Congress the power to levy taxes. Instead, according to the Articles, "All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State."

Finally, in terms of representation, the Articles granted each state delegation one vote in Congress and mandated that all members of the body (who could not hold office for more than three years out of six) would face election every year. On important bills, nine votes out of thirteen would be necessary for passage, and unanimous consent of the states would be required in order to amend the Articles themselves.

## A "Critical Period"

Although 1781 was a glorious year for the young United States, with the victory at Yorktown and the ratification of the Articles of the Confederation, the struggle to establish a viable nation had only just begun. Indeed, the new nation faced enormous challenges after the war came to a close. One of Harvard's student commencement speakers in 1787, John Quincy Adams, declared that during this "critical period," Americans found themselves "groaning under the intolerable burden of ... accumulated evils."<sup>22</sup> Similarly, John Jay of New York had warned in a letter to George Washington the previous year, "Our affairs seem to lead to some crisis, some revolution—something that I cannot foresee or conjecture. I am uneasy and apprehensive; more so than during the war. ... The case is now altered; we are going and doing wrong...."<sup>23</sup> Anxiety was in the air during this "critical period," and with good reason.

### *Congress's Limited Power*

One of the first major problems to become apparent, even before the war officially ended, was the appallingly weak financial position of the new federal government. Congress had accumulated \$27 million in debt during the war.<sup>24</sup> Yet under the Articles it was unable to impose national taxes or force the states to provide funds. In 1781, Congress collected only \$422,000 of \$5 million requested from the states, with no contribution at all from Georgia, the Carolinas, or Delaware.<sup>25</sup> Two years later, after persistent attempts to put Congress's fiscal house in order, Superintendent of Finance Robert Morris resigned in frustration, declaring, "It can no longer be a doubt to Congress that our public credit is gone."<sup>26</sup>

Congress could not pay its expenses, or its debts, without reliable income. Soldiers expecting payment for their wartime service were particularly alarmed, and several officers in Newburgh, New York, even threatened mutiny until George Washington himself intervened, delivering a moving speech to his officer corps in defense of the republic. Although a frightened Congress temporarily calmed the waters by enacting an expansive military pension in 1783, Pennsylvania soldiers who were tired of waiting for compensation literally ran Congress out of Philadelphia later that same year.<sup>27</sup> Lacking funds well into the decade, Congress repeatedly defaulted on its debt obligations, both foreign and domestic.<sup>28</sup> At the urging of anxious creditors, Congress began transferring some of its debt burden into the more capable hands of the states. Several states had already been servicing parts of the national debt since 1780, and many state leaders viewed the assumption of the national debt as an expression of the "right to take care of [their] subjects."<sup>29</sup> By the middle of the decade, Pennsylvania, Maryland, and New Jersey alone had assumed \$9 million dollars of the national debt. Since states had the authority to tax their citizens, most were more successful at managing this debt than Congress had been. Congress did resume some interest payments in 1784, but paid creditors in new certificates rather than specie (i.e., gold or silver). These certificates—essentially a replacement of new debt for old—were naturally unpopular with recipients and quickly depreciated in value.<sup>30</sup>

Congress's weakness under the Articles was also evident in its inability to enforce the terms of the Treaty of Paris, the peace agreement between Britain and the United States that officially brought the

war to a close in September 1783.<sup>31</sup> With Congress lacking any real coercive power, the states defied important provisions of the treaty designed to protect loyalists from abuse and ensure payment of private debts to British creditors. Furious about these blatant violations, the British retaliated by keeping troops garrisoned in frontier forts on American soil, also in clear contravention of the treaty.<sup>32</sup>

Beyond treaty violations, the states frequently flouted the Articles of Confederation – for example, by enacting laws that discriminated against out-of-state merchants. As a case in point, New York laid heavy duties on New Jersey and Connecticut merchants who did business in New York City, provoking retaliatory sanctions from the victimized states.<sup>33</sup> At the same time, numerous states imposed tariffs on their neighbors, dramatically impeding interstate commerce.<sup>34</sup>

Beggar-thy-neighbor policies at the state level also sharply limited American effectiveness in negotiations over international trade. Because Congress lacked the power to impose tariffs and thus to retaliate against trade protection, it lacked the necessary bargaining power to negotiate a reasonable trade treaty with a foreign power. In fact, the British Government simply refused to negotiate with Congress at all, recognizing early on that Congress was virtually powerless and that the various states could easily be played off against one another. The result was that British goods poured into the states while American exports to Britain remained severely depressed by pre-war standards (see Exhibit 8). American commercial interests actively looked for alternative markets, particularly in Continental Europe, but they faced the same obstacles again and again. As John Adams, the American liaison to Great Britain (and John Quincy Adams's father), struggled to respond to Britain's aggressive posture, he fretted that a sound commercial standing for the United States would "never be secured until Congress shall be made supreme in foreign commerce."<sup>35</sup>

Immediately after the war, several "nationalist" politicians who worried about the consequences of an enfeebled Congress had suggested enhanced powers for the national government. In his role as Finance Superintendent, for example, Robert Morris of Pennsylvania proposed several amendments to the Articles that would have authorized national taxes, and James Madison of Virginia supported an amendment to grant Congress the power "to employ the force of the United States as well by sea as by land" to ensure compliance with national laws.<sup>36</sup> Such proposals, however, consistently failed to win the unanimous consent of the states that was required to amend the Articles (Rhode Island, sometimes referred to as "Rogue Island," was a frequent dissenter), and the nationalists' energy soon faded after 1783, at least temporarily.<sup>37</sup>

Other critics of Congress, meanwhile, harbored even more radical ideas for restoring order. In the middle of the military pension dispute, Colonel Lewis Nicola wrote to George Washington about the officers' grievances. Most famously, he suggested that an American monarchy be erected with Washington as king. Washington responded that if Nicola had "any regard for your Country, concern for yourself or posterity – or respect for me, to banish these thoughts from your Mind & never communicate, as from yourself, or anyone else, a sentiment of the like nature."<sup>38</sup>

### *Recession and Rebellion*

Amidst such political turmoil – and perhaps in part because of it – the American economy soon took a turn for the worse. Historians continue to debate the extent of the economic downturn in the mid-1780s, but nearly all agree that it was a difficult period and some believe that the downturn may have been extremely sharp. The most pessimistic estimates suggest that per capita GNP fell by more than half. If so, then the economic collapse in the mid-1780s was even worse than that experienced between 1929 and 1933 (the worst phase of the Great Depression). According to two scholars of the period,



"While the extent of the reduction in gross national product remains uncertain, it is clear that per capita product fell and that it fell enough to affect all levels of society."<sup>39</sup>

One consequence of the downturn is that many individual debtors found it difficult to make good on their obligations. Their woes were only compounded by the fact that the federal government, as well as a number of states, had fallen behind on servicing their own debts, leaving many former soldiers who had accepted bonds and certificates as payment for their wartime service in a tough financial squeeze. Many of these former soldiers had no choice but to sell their government certificates to speculators at deep discounts. In Massachusetts, for example, a farmer who had served in the Revolutionary army complained in a local newspaper that neither vendors nor workers would accept the government notes at par. "[T]he necessities of my family," he lamented, "obligated me to alienate [the notes] at one quarter of their original value."<sup>40</sup> Adding to the burden, many state governments raised taxes to pay off war debts, pushing numerous taxpayers with heavy financial commitments of their own to the breaking point.<sup>41</sup>

With countless farmers petitioning for debt relief, several state legislatures responded around 1786 by issuing substantial amounts of paper money, thereby allowing debtors to repay their debts in inflated currency. Rhode Island took the policy to its logical extreme, inducing rapid inflation and imposing penalties on creditors who refused to accept payment in the sharply depreciated paper money. Within a year, Rhode Island's paper dollar was worth only 16 cents in gold.<sup>42</sup> Although other states exercised more restraint, creditors across the country claimed that their property was being confiscated as a result of the inflationary policies.<sup>43</sup> In Virginia, James Madison warned that paper money "affects the Rights of property as much as taking away equal value in land."<sup>44</sup>

In contrast to Rhode Island, neighboring Massachusetts remained committed to both fiscal and monetary conservatism. The state legislature raised taxes to repay its debts and resolutely avoided a policy of inflation. The resulting pressure on small farmers was enormous, and many lost their property in court-ordered foreclosures. One former Continental Army officer, Daniel Shays, was so angry about the plight of farmers in the state that in late August of 1786 he led a small rebellion in western Massachusetts, its ranks eventually surging to over 2000 men. His goal was to prevent the courts – either through force or intimidation – from seizing the delinquent farmers' property. Although rumors circulated that the rebels intended to unseat the state government, nothing of the sort ever happened and the uprising was ultimately put down in early 1787. There is little doubt, however, that the newly elected legislature in Massachusetts heard Shays' message, for they quickly passed a variety of relief measures including a moratorium on debts.

In the minds of many Americans, moreover, the crisis in Massachusetts epitomized all that was wrong with the new Confederation. Economic elites who had never been very comfortable with the idea of broad-based democracy wondered whether they were headed for a future of class warfare and even mob rule. George Washington saw the whole episode as a terrible embarrassment: "To be more exposed in the eyes of the world & more contemptible than we already are, is hardly possible," he lamented.<sup>45</sup> Particularly after the nation's extraordinary triumph over the British, what could explain its shocking fall from grace in the eyes of so many Americans, including the hero of the Revolution himself?

## Madison's Diagnosis

This question of what had gone wrong captivated James Madison, a Virginia statesman who had been active in both national and state politics throughout the revolutionary and postwar eras. Born in

1751 into an affluent slaveholding family<sup>b</sup>, Madison has been described as possessing "a keen and inquiring mind coupled with a voracious intellectual appetite."<sup>46</sup> He attended the College of New Jersey, which later became Princeton University, and went on to study with its president, John Witherspoon.

Although physically diminutive and reserved in personality, Madison had a penchant for politics and political battles. Frustrated upon returning from New Jersey in the early 1770s that his own Virginia Anglican Church was a source of intolerance against other denominations, he furiously denounced its "diabolical, hell-conceived principle of persecution."<sup>47</sup> Not long afterward, as the rebellion against Britain took hold, Madison began to assist county and state governments, and at the age of 25 helped to write Virginia's state constitution.<sup>48</sup> Elected to the Continental Congress in 1780, Madison had borne witness to its various deficiencies, and he was disappointed when his nationalist projects failed to take hold. After rejoining the Virginia legislature in 1784, he and his allies successfully defeated proposals both to declare Christianity the state religion and to expand issuances of paper money. Nevertheless, the mere existence of these movements likely contributed to his growing unease about the direction of American politics.<sup>49</sup>

In March 1784, Madison asked his friend Thomas Jefferson, then in Paris on a diplomatic mission, to send him whatever books "may throw light on the general Constitution & droit public [public law] of the several confederacies which have existed."<sup>50</sup> Madison reasoned that by understanding why past confederations had succeeded or failed, he could better identify what ailed the American confederation. By January 1786, he had received two trunks of books in English, French, and Latin at Montpelier, his family's plantation estate.<sup>51</sup> Sitting in his library, Madison began working through the books, conducting a thorough historical review spanning thousands of years. The lessons he gleaned would shape his thinking on the young American republic as well as his arguments at the Constitutional Convention in Philadelphia the following year.

### *History as a Guide*

The books on Madison's reading list included, among others, recent French works in the Enlightenment *philosophie* tradition and numerous classical Greek texts.<sup>52</sup> The confederations he surveyed ranged from the Amphyctionic and Achaean confederacies of ancient Greece to the Belgic confederacy in the Netherlands (also known as the United Netherlands), which was still in place in the 1780s.

Madison took careful notes on each confederation's structure and operations, specifically commenting on the deficiencies he perceived in each. He noted that several confederation governments had been unable to control their members, even in policy areas where they held explicit authority. For example, he pointed out that Athens and Sparta had waged their many wars against each other while co-members of the Amphyctionic confederacy, despite the federal authority's prerogative to mediate such conflicts.<sup>53</sup> The central authority of the Belgic confederacy, meanwhile, had to consult 52 different cities—and sometimes procure their unanimous consent—when negotiating any treaty, causing long delays and easy manipulation by foreign powers. With each member city able to hold up the whole, the confederacy proved exceedingly slow in enacting policies. Madison believed that such "[a] weak constitution must necessarily terminate in dissolution for want of proper powers."<sup>54</sup>

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<sup>b</sup> Although Madison would later speak out against slavery, he never freed his own slaves. Significantly, he also wrote a precursor to the infamous Three-Fifths Compromise for the Articles of Confederation, though the provision was not adopted.

*"Vices of the Political System of the United States"*

Having completed his historical investigation of confederations from around the world, Madison began preparing a critique of the new confederation in America. The resulting 1787 document, entitled "Vices of the Political System of the United States," identified a range of national failings and attributed them to deficiencies "radically and permanently inherent in ... the present System."<sup>55</sup>

He began by highlighting the states' persistent violations of the Articles of Confederation, such as their breaches of international treaties and their regular refusal to honor Congress's requests for funds. Although Madison criticized the states for these actions, he mainly faulted the Articles for denying the national government the capacity to enforce its policies. The authors of the Articles, he wrote, had trusted too much "that the justice, the good faith, the honor, [and] the sound policy"<sup>56</sup> of the state legislatures would obviate the need for such enforcement power at the federal level. "A sanction is essential to the idea of law, as coercion is to that of Government," he explained, and without either he believed the existing system had little to recommend it.<sup>57</sup>

Even the state legislatures' constitutional actions, Madison lamented, had often undercut the national interest. He complained that the states had regularly failed to pursue "concert in matters where public interest require[d] it," particularly in setting uniform commercial policies.<sup>58</sup> Instead, they had passed laws to limit interstate trade or to support debtors at the expense of out-of-state creditors, which pit states and citizens against each other in a manner Madison called "destructive of the general harmony."<sup>59</sup>

In the final section of "Vices," Madison went beyond merely listing the country's problems and proposed an explanation as to why there had been so much "injustice" in the states' laws (see **Appendix**).<sup>60</sup> In doing so, he rejected the traditional assumption – perhaps most strongly associated with Montesquieu and his studies of the ancient Greek republics – that republican government worked best on a small scale.<sup>61</sup> Madison began by observing that all communities contained various factions such as economic classes, religious groups, and political parties. If a single faction, or a small concert of factions, won control of a legislature, "what [was] to restrain them from unjust violations of the rights and interests of the minority, or of individuals?" Madison suggested that small republics, with less competition among political groups, were more vulnerable to this problem of tyranny of the majority. In large republics, by contrast, "[t]he Society becomes broken into a greater variety of interests, of pursuits, of passions, which check each other, whilst those who may feel a common sentiment have less opportunity of communication and concert." With diverse factions tempering each other's influence, he suggested, a larger republic's legislature would enact sounder and fairer policies.

Implicit throughout "Vices" was Madison's longing for constitutional reforms that would strengthen the national government and expand its influence over the states. He clearly articulated his desire to grant Congress powers of "sanction" and "coercion."<sup>62</sup> But his frustrations about the states' failure to work together implied that the federal government required not only greater enforcement power, but also a broader span of authority. Notably, he wished to see an "enlargement of the sphere" of democratic policymaking to weaken the influence of faction, implying a shift in power from the state to the national level.<sup>63</sup> Such changes would be impossible under the current system, however, because the states' "sovereignty, freedom, and independence" were enshrined in the Articles of Confederation.<sup>64</sup> Madison thus intimated that only fundamental changes to the nation's constitution – or perhaps a completely new one – would be sufficient to correct the republic's flaws.

### *Vision for a New Constitution*

By the time he completed "Vices," Madison had begun describing potential constitutional reforms in his correspondence with other national leaders.<sup>65</sup> Together, these proposals comprised a program that would "lead to such a systematic change" in American governance, he wrote, that it would replace, rather than merely alter, the Articles of Confederation.<sup>66</sup>

Madison's proposed system would be built on "a due supremacy of the national authority" and would leave the states with enough power to be "subordinately useful."<sup>67</sup> To that end, he sought to grant the national government "positive and compleat authority in all cases which require uniformity," such as the setting of trade regulations and customs rates.<sup>68</sup> This federal supremacy would extend to new judicial and executive branches of the national government, each superior to the analogous state institutions. To further bolster the national government's authority, Madison proposed a "right of coercion" against delinquent states that would enable the federal government to carry out its laws "by force."<sup>69</sup>

As a further check on the states, Madison proposed that Congress hold a veto over state laws "in all cases whatsoever."<sup>70</sup> He explained his reasoning in a letter to Jefferson:

The effects of this provision would be not only to guard the national rights and interests against invasion, but also to restrain the States from thwarting and molesting each other, and even from oppressing the minority within themselves by paper money and other unrighteous measures which favor the interest of the majority.<sup>71</sup>

Madison believed that this veto, which scholars call the "federal negative," was essential to Congress's supremacy under his model.<sup>72</sup> "Without this defensive power," he warned, "every positive power that can be given on paper will be evaded & defeated."<sup>73</sup>

In addition to suggesting new powers for Congress, Madison also recommended modifications to its structure and mechanisms of representation. His proposal would split the existing unitary Congress into two houses: one elected by the people or state legislatures and another "to consist of a more select number, holding their appointments for a longer term."<sup>74</sup> Within those houses, Madison desired a "change [to] be made in the principle of representation" to foster greater equality between the states.<sup>75</sup> Although each state was nominally equal in Congress under the Articles' one-state-one-vote system, the larger states had always enjoyed more clout in national affairs due to their legislatures' greater "weight and influence."<sup>76</sup> Madison hoped to see these inequalities reduced "under a system...which would operate without the intervention of the State legislatures."<sup>77</sup>

### **The Constitutional Convention of 1787**

An emerging national "consensus" for constitutional reform would soon give Madison the chance to present his ideas on a national stage.<sup>78</sup> In 1785, as the individual states struggled against Britain's trade laws, support had grown for an amendment to the Articles of Confederation that would grant Congress new powers over international trade. At Madison's recommendation, a convention met the following September in Annapolis to discuss such an amendment, but only five states sent representatives.<sup>79</sup> Although the conference remained brief because of sparse attendance, the conferees suggested that another meeting be held the next year to discuss a wider array of constitutional issues. Congress sat on this recommendation for months. Some observers say that it was ultimately propelled to action only by fears of general unrest stemming from Shays' Rebellion. Whatever the cause,

Congress in February 1787 formally called for a new convention in Philadelphia "for the sole and express purpose of revising the Articles of Confederation."<sup>80</sup>

Madison was one of 55 delegates who attended the Convention that began on May 25. George Washington presided over the Convention, and every state except Rhode Island sent a delegation. Seated in a central location from which he could easily hear all members and take detailed notes, Madison was a leading contributor to the discussions.<sup>81</sup> Throughout the debates, he shared the theories he had derived from his extensive study of republics and confederacies, and peppered the debate with arguments he had rehearsed in "Vices of the Political System." Georgia delegate William Pierce described Madison as "blend[ing] together the profound politician, with the Scholar... the best informed Man of any point in debate."<sup>82</sup>

Madison's outsized influence over the Convention was further enhanced by his Virginia delegation, which presented a preliminary outline for the new constitution, inspired heavily by Madison's own recommendations. The "Virginia Plan," as it became known, dominated early discussions at the Convention.

### *The Structure of the New Government under the Virginia Plan*

The Virginia Plan included Madison's proposal for a bicameral Congress, specifying that the American people would elect the lower house, which in turn would select members of the upper house from candidates nominated by the state legislatures. State representation in Congress would be "proportioned to the Quotas of contribution [taxes], or to the number of free inhabitants."<sup>83</sup> The delegates quickly agreed to the bicameral structure, but remained at odds over how to select the members of each house.<sup>84</sup>

Some delegates worried about giving the people too much power. According to Elbridge Gerry of Massachusetts, the United States already suffered from an "excess of democracy." The people of his home state, he asserted, had been "misled into the most baneful measures and opinions" by "pretended patriots," and these episodes had convinced him of the dangers of too much democracy.<sup>85</sup> Agreeing that the people were unqualified to choose their congressmen, South Carolina's Charles Pinckney proposed that the selection of the lower house be left to the state legislatures instead.<sup>86</sup>

Supporters of a popularly elected house, meanwhile, were quick to invoke democratic ideals in its defense. It was only just, Virginia's George Mason argued, that "every class of the people" be represented in the government.<sup>87</sup> Madison, responding to Pinckney's proposal, spoke at length on his theory of faction and the virtues of a large republic. He repeated the criticisms of faction-prone state legislatures that he had developed in "Vices." Keeping state politics out of the lower house of Congress, he maintained, would "enlarge the sphere," ensuring a greater variety of interests.<sup>88</sup> Ultimately, Madison and his allies prevailed on this issue: Pinckney's proposal was rejected, and control over selecting the lower house was placed in the people's hands.

The Senate (as the conferees called the upper house) would be built on less democratic principles. Many delegates envisioned the Senate as the more careful and deliberative house, containing "the most distinguished characters, distinguished for their rank in life and their weight of property."<sup>89</sup> Madison predicted that the Senate, given its makeup, would stand as a vital bulwark against tyranny of the majority, even as American society evolved and (in his estimation) the proportion of poor laborers increased over time:

In framing a system which we wish to last for ages, we sh<sup>d</sup> not lose sight of the changes which ages will produce. An increase in population will of necessity increase the

proportion of those who will labour under all the hardships of life, & secretly sigh for a more equal distribution of the blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this Country, but symptoms, of a leveling spirit ... have sufficiently appeared ... to give notice of the future danger. How is this danger to be guarded ag<sup>st</sup> on republican principles? How is the danger in all cases of interested coalitions to oppress the minority to be guarded ag<sup>st</sup>? Among other means by the establishment of a body in the Gov<sup>t</sup> sufficiently respectable for its wisdom & virtue, to aid on such emergencies, the preponderance of justice by throwing its weight into the scale.<sup>90</sup>

Although the delegates largely agreed on the desired character of the Senate, there was considerable debate over how members of the upper house should be selected. Mirroring Pinckney's earlier idea for the lower house, John Dickenson of Delaware suggested that the state legislatures should select their senators, asserting that "[t]he preservation of the States in a certain agency is indispensable."<sup>91</sup> He hoped that the Senate, selected in this way, would be a body through which the states could exert an additional check on federal power. Madison opposed Dickenson's suggestion because he preferred a small Senate comprised of just a few elite leaders. Under Dickenson's proposal, the smallest states would each have at least one senator and, because Madison and his Virginia colleagues favored proportional representation, larger states would require proportionally larger numbers of senators, as in the lower house.<sup>92</sup> The Virginia Plan had ingeniously avoided this problem by granting election of the Senate to the lower house. In this way, *votes* for senators would be proportionally distributed among the states, while the final number of senators selected could remain small. Although Madison attempted to rally support for his model by reminding listeners of the state legislatures' role in the paper money crises, the delegates ultimately endorsed Dickenson's method of selection instead.<sup>93</sup>

Beyond the bicameral legislature, the Virginia Plan also included a new national executive branch with "a general authority to execute the National laws." When James Wilson of Pennsylvania moved that the executive be vested in one person, rather than a small council, there was "a considerable pause" in the discussion. Americans had been ruled by one man before, the King of England, and there was concern that Wilson's proposal might prove to be "the foetus of monarchy."<sup>94</sup> Wilson countered that a council would involve "nothing but uncontroled, continued, & violent animosities," whereas a unitary executive would be steadier and more decisive. Wilson also reassured the Convention that the executive's powers would be sufficiently limited that he could never rule like a king; instead, he would more closely resemble the governors to whom Americans had already entrusted their state operations.<sup>95</sup> In the end, the assembly agreed with Wilson that a single executive would be best, in part because nearly all assumed that George Washington, whom they admired and trusted, would become the first president.

Elbridge Gerry of Massachusetts next recommended granting the executive veto power over laws passed by Congress. The Virginia Plan would have conferred this power to a "Council of Revision" made up of the executive and members of the judicial branch, but Gerry wished to separate the judiciary from the laws it would be asked to rule upon. Delegates had already expressed anxiety about the creation of a single executive, and the prospect of empowering it still further immediately provoked opposition. As a matter of democratic principle, critics resisted "enabling any one man to stop the will of the whole."<sup>96</sup> They also feared that veto power would, in practice, give the executive nearly absolute control over the entire government.<sup>97</sup> This issue, like so many others, was ultimately settled through compromise: the executive would have veto power, but two-thirds votes in both houses of Congress could override it.

### *National Supremacy?*

As the delegates gradually worked out the structure of the new federal government, they also had to decide on its role vis-à-vis the states. Indeed, one of the first general principles voted on was "that a *national* Government ought to be established consisting of a *supreme* Legislative, Executive & Judiciary." Gouverneur Morris of Pennsylvania "explained the distinction between a *federal* and *national, supreme* government; the former being a mere compact resting on the good faith of the parties; the latter having a complete and *compulsive* operation. He contended that in all Communities there must be one supreme power, and one only."<sup>98</sup> Perhaps not surprisingly, some delegates wondered if the notion of national supremacy over the states went too far. Pinckney even questioned whether this new dynamic was intended to "abolish the State Governments altogether," though Edmund Randolph, the leading presenter of the Virginia Plan, assured him that it was not.<sup>99</sup> After relatively brief deliberation on the issue, the convention voted to endorse the supremacy provision.

A closely related issue was how to draw a dividing line between the powers of Congress and those of the states. The Virginia Plan proposed that Congress have "Legislative power in all cases to which the State Legislatures were individually incompetent." Some delegates, however, worried this language was excessively vague. To combat concerns that the convention was "running into an extreme in taking away the powers of the States,"<sup>100</sup> many delegates believed that Congress's authority should be limited by specifically enumerating its powers. Madison largely agreed with them, but made clear that in any future discussions of such powers "he would shrink from nothing which should be found essential to such a form of Government as would provide for the safety, liberty, and happiness of the community."<sup>101</sup> With the understanding that specifics might be discussed at a later date, the convention voted at the end of May in favor of the Virginia Plan's language on Congress, empowering it to act where the states "were individually incompetent."

### *The Federal Negative*

Madison's proposal for a Congressional veto over state laws – his "federal negative" – finally took center stage at the Convention on June 8. While his original proposal would have applied in "all cases whatsoever," Madison's Virginia colleagues had included a narrower version in the Virginia Plan that limited Congress's veto only to state laws "contravening in the opinion of the National Legislature the articles of Union." The Convention had assented to this more limited federal negative early on and without argument.<sup>102</sup> On June 8<sup>th</sup>, however, Pinckney suggested extending the veto to "all laws which [Congress] should judge to be improper," in line with Madison's original conception. Pinckney doubted that the Virginia Plan's more limited approach would be sufficient to keep the states in line and that "a universality of the power was indispensably necessary to render it effectual." He judged the absolute approach that he was proposing to be "the corner stone of an efficient National government," without which Congress would prove unable to enforce its policies.<sup>103</sup>

Madison seconded Pinckney's motion. He warned that a limited federal negative, intended to nullify only unconstitutional state laws, was liable to become "a fresh source of contention" between the states and the federal government, as they battled over the question of constitutionality. Perhaps most troubling, while such disagreements might necessitate that Congress impose its decisions by force, Madison questioned whether such federal coercion would be feasible:

Could the national resources, if exerted to the utmost, enforce a national decree against Massachusetts, abetted, perhaps, by several of her neighbours? It would not be possible. A small proportion of the community, in a compact situation, acting on the defensive, and at one of its extremities, might at any time bid defiance to the national authority.<sup>104</sup>

Fortunately, Madison predicted, an absolute federal negative would eliminate such potentially violent disagreements. "The negative would render the use of force unnecessary," he declared. "The States could of themselves pass no operative act, any more than one branch of a legislature, where there are two branches, can proceed without the other. But in order to give the negative this efficacy, it must extend to all cases."<sup>105</sup>

Wilson joined Pinckney and Madison in supporting the absolute federal negative, stressing that excessive state independence threatened national unity. He reviewed the history of American attitudes toward federalism, noting that an early confidence that the United States would "bury all local interests & distinctions" had gradually dissolved under the "jealousy & ambition" of the state governments. "Leave the whole at the mercy of each part," he asked, "and will not the general interest be continually sacrificed to local interests?"<sup>106</sup>

Opponents of the absolute negative expressed horror at the thought of so explicitly sacrificing the states' control over their own affairs. While Gerry saw the usefulness of vetoing paper money laws, he feared that an absolute negative would allow Congress to "enslave the states." Any insidious interests with clout in Congress—even foreign operators, Gerry suggested—might oppress the states if Congress were granted such power.<sup>107</sup>

Critics also argued that an absolute negative would *enable* interstate abuses rather than curtail them. Gerry worried that the more populous states, which had greater influence in Congress, might use the negative to impose their will on smaller states, potentially even dissuading new states from joining the union. Delaware's Gunning Bedford offered his own state as an illustration of Gerry's point: under proportional representation, Pennsylvania and Virginia would together control one-third of Congress, while Delaware would control just one-ninetieth. "Will not these large States crush the small ones [with the negative]" he asked, "whenever they stand in the way of their ambitious or interested views?"<sup>108</sup>

With both sides having made their case, the proposal was finally put to a vote at the end of the day's session on June 8, 1787. Whether Madison's notion of an absolute federal veto over state laws would live or die was now up to the 55 delegates who together comprised the Constitutional Convention in Philadelphia.



**Exhibit 1** Estimated Population of American Colonies and States, 1650-1780

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

Note: Massachusetts figures include Plymouth colony and Maine.

**Exhibit 2** Tax Collections in the American Colonies under the British Revenue Laws, 1765-1774 (pounds sterling)

Year	Total of 1760s Acts	Sugar Act (1764, 1766)	Stamp Act (1765)	Townshend Act (1767)	Navigation Act (1673)
1765	17,383	14,091	3,292		2,954
1766	26,696	26,696			7,373
1767	34,041	33,844		197	3,905
1768	37,861	24,659		13,202	1,160
1769	45,499	39,938		5,561	1,294
1770	33,637	30,910		2,727	1,828
1771	31,761	27,086		4,675	1,446
1772	45,870	42,570		3,300	1,490
1773	42,103	39,531		2,572	2,517
1774	27,995	27,074		921	672

Source: Adapted from *Historical Statistics of the United States*, Series Eg 420-424.

**Exhibit 3** Funding the War for Independence (millions of pounds sterling, estimated)

Source	Funds
Continental paper money	46
State paper money	64
Congressional domestic bonds	6
Congressional debt certificates	16
Foreign loans to Congress	10
State debt	23

Source: Adapted from Arthur H. Reede, *The Financing of the American Revolution* (Fairport, NY: Rochester Press, 1996), p. 103.

**Exhibit 4** Continental Paper Money Emitted

Year	Currency emitted	Value in Gold
1775	\$6,000,000	\$6,000,000
1776	\$19,000,000	\$17,300,000
1777	\$13,000,000	\$4,530,000
1778	\$63,400,000	\$11,695,000
1779	\$124,800,000	\$5,964,000
1780 & 1781	\$1,592,222	

Source: Adapted from E. James Ferguson, *The Power of the Purse* (Chapel Hill: University of North Carolina Press, 1961), p. 30; and Reede, *The Financing of the American Revolution*, p. 324. The depreciated values for 1780 and 1781 are unavailable; Reede notes that these years technically saw the issue of a new currency intended to replace the old.

**Exhibit 5** Continental Currency Required to Buy \$1 Specie (gold)

Month	Price
January 1777	\$1.25
July 1777	\$3.00
January 1778	\$4.00
July 1778	\$4.00
January 1779	\$8.00
July 1779	\$19.00
October 1779	\$30.00
January 1780	\$42.50
July 1780	\$62.50
January 1781	\$100.00
April 1781	\$167.50

Source: Adapted from Ferguson, *The Power of the Purse*, p. 32. These conversion rates are for "old" Continental currency, issued before 1780.

**Exhibit 6** Congressional Spending (excluding foreign expenditures and expansion of floating debt), 1775-1781

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Year	Spending (Continental currency)	Specie (Gold) Value
1775-1776	\$20,064,666	\$20,064,666
1777	\$26,426,333	\$24,986,646
1778	\$66,965,269	\$24,289,438
1779	\$149,703,856	\$10,794,620
1780	\$83,799,556	\$3,000,000
1781	\$13,654,983	\$1,942,465

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Source: Adapted from Ferguson, *The Power of the Purse*, pp. 28-29. Some, but not all, of the spending was funded through currency emissions. The "Continental currency" values reflect mainly "old" Continental currency, issued before 1780. Congress issued a relatively small amount of new currency in 1780 and 1781, which traded at a more favorable conversion rate relative to gold.

**Exhibit 7** Congress's Payments To, and Receipts From, the States during the War of Independence, expressed in specie (gold) value

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State	Paid to state	Received from state
New Hampshire	\$440,974	\$466,544
Massachusetts	\$1,245,737	\$3,167,020
Rhode Island	\$1,028,511	\$310,395
Connecticut	\$1,016,273	\$1,607,295
New York	\$822,803	\$1,545,889
New Jersey	\$366,729	\$512,916
Pennsylvania	\$2,087,276	\$2,629,410
Delaware	\$63,817	\$208,878
Maryland	\$609,617	\$945,537
Virginia	\$482,881	\$1,963,811
North Carolina	\$788,031	\$219,835
South Carolina	\$1,014,808	\$499,325
Georgia	\$679,412	\$122,744

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Source: Robert A. Becker, "Currency, Taxation, and Finance, 1775-1787," in Jack P. Greene and J. R. Pole (eds.), *A Companion to the American Revolution* (Malden, MA: Blackwell Publishing, 2004), p. 394.

**Exhibit 8** American Exports and Imports, with England, 1700-1786 (pounds sterling)

Year	Exports	Imports
1700	395,021	344,341
1710	249,814	293,659
1720	468,188	319,702
1730	572,585	536,860
1740	718,416	813,382
1750	814,768	1,313,083
1760	761,099	2,611,764
1770	1,015,535	1,925,571
1771	1,339,840	4,202,472
1772	1,258,515	3,012,635
1773	1,369,229	2,079,412
1774	1,373,846	2,590,437
1775	1,920,950	196,162
1776	103,964	55,415
1777	12,619	57,295
1778	17,694	33,986
1779	20,579	349,797
1780	18,560	825,431
1781	99,847	847,883
1782	28,676	256,325
1783	314,058	1,435,229
1784	701,190	3,418,407
1785	775,892	2,078,744
1786	743,644	1,431,255

Source: Adapted from Historical Statistics of the United States, Series Eg 429 and 436.



DAVID MOSS

MARC CAMPASANO

## 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>

<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
<b>TOTAL</b>	<b>26,491,205</b>	<b>7.09</b>	<b>18,272,781</b>	<b>4.89</b>

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.