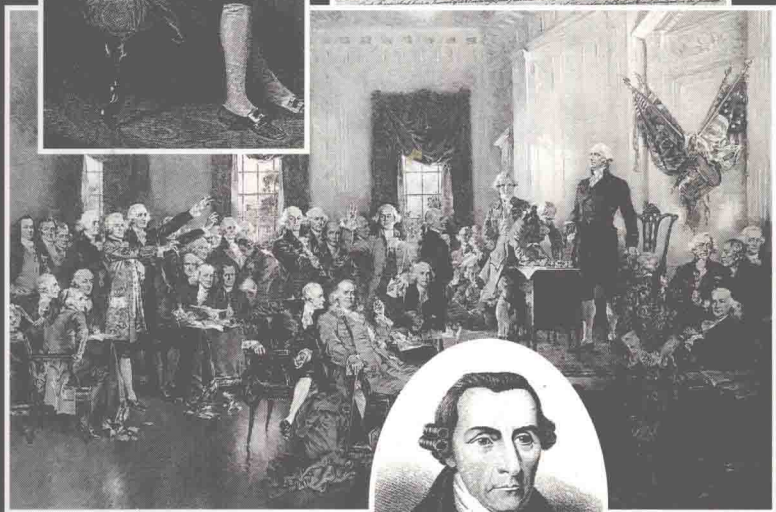
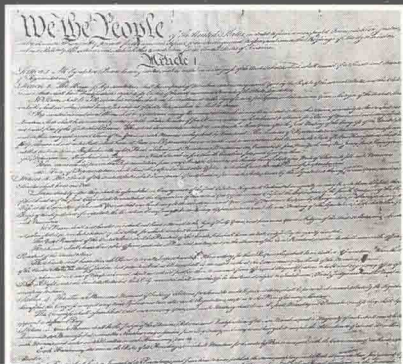


THE CREATION OF THE CONSTITUTION

OPPOSING VIEWPOINTS®



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THE CREATION OF THE CONSTITUTION

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David L. Bender, *Publisher*
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John C. Chalberg, Ph.D., professor of history,
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*"America was born of revolt, flourished in dissent,
became great through experimentation."*

Henry Steele Commager, American Historian, 1902-1984

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Foreword

Aboard the *Arbella* as it lurched across the cold, gray Atlantic, John Winthrop was as calm as the waters surrounding him were wild. With the confidence of a leader, Winthrop gathered his Puritan companions around him. It was time to offer a sermon. England lay behind them, and years of strife and persecution for their religious beliefs were over, he said. But the Puritan abandonment of England, he reminded his followers, did not mean that England was beyond redemption. Winthrop wanted his followers to remember England even as they were leaving it behind. Their goal should be to create a new England, one far removed from the authority of the Anglican church and King Charles I. In Winthrop's words, their settlement in the New World ought to be "a city upon a hill," a just society for corrupt England to emulate.

A Chance to Start Over

One June 8, 1630, John Winthrop and his company of refugees had their first glimpse of what they came to call New England. High on the surrounding hills stood a welcoming band of fir trees whose fragrance drifted to the *Arbella* on a morning breeze. To Winthrop, the "smell off the shore [was] like the smell of a garden." This new world would, in fact, often be compared to the Garden of Eden. Here, John Winthrop would have his opportunity to start life over again. So would his family and his shipmates. So would all those who came after them. These victims of conflict in old England hoped to find peace in New England.

Winthrop, for one, had experienced much conflict in his life. As a Puritan, he was opposed to Catholicism and Anglicanism, both of which, he believed, were burdened by distracting rituals and distant hierarchies. A parliamentarian by conviction, he despised Charles I, who had spurned Parliament and created a private army to do his bidding. Winthrop believed in individual responsibility and fought against the loss of religious and political freedom. A gentleman landowner, he feared the rising economic power of a merchant class that seemed to value only money. Once Winthrop stepped aboard the *Arbella*, he hoped, these conflicts would not be a part of his American future.

Yet his Puritan religion told Winthrop that human beings are fallen creatures and that perfection, whether communal or individual, is unachievable on this earth. Therefore, he faced a paradox: On the one hand, his religion demanded that he attempt to

live a perfect life in an imperfect world. On the other hand, it told him that he was destined to fail.

Soon after Winthrop disembarked from the *Arbella*, he came face-to-face with this maddening dilemma. He found himself presiding not over a utopia but over a colony caught up in disputes as troubling as any he had confronted in his English past. John Winthrop, it seems, was not the only Puritan with a dream of a heaven on earth. But others in the community saw the dream differently. They wanted greater political and religious freedom than their leader was prepared to grant. Often, Winthrop was able to handle this conflict diplomatically. For example, he expanded participation in elections and allowed the voters of Massachusetts Bay greater power.

But religious conflict was another matter because it was grounded in competing visions of the Puritan utopia. In Roger Williams and Anne Hutchinson, two of his fellow colonists, John Winthrop faced rivals unprepared to accept his definition of the perfect community. To Williams, perfection demanded that he separate himself from the Puritan institutions in his community and create an even "purer" church. Winthrop, however, disagreed and exiled Williams to Rhode Island. Hutchinson presumed that she could interpret God's will without a minister. Again, Winthrop did not agree. Hutchinson was tried on charges of heresy, convicted, and banished from Massachusetts.

John Winthrop's Massachusetts colony was the first but far from the last American attempt to build a unified, peaceful community that, in the end, only provoked a discord. This glimpse at its history reveals what Winthrop confronted: the unavoidable presence of conflict in American life.

American Assumptions

From America's origins in the early seventeenth century, Americans have often held several interrelated assumptions about their country. First, people believe that to be American is to be free. Second, because Americans did not have to free themselves from feudal lords or an entrenched aristocracy, America has been seen as a perpetual haven from the troubles and disputes that are found in the Old World.

John Winthrop lived his life as though these assumptions were true. But the opposing viewpoints presented in the American History Series should reveal that for many Americans, these assumptions were and are myths. Indeed, for numerous Americans, liberty has not always been guaranteed, and disputes have been an integral, sometimes welcome part of their life.

The American landscape has been torn apart again and again by a great variety of clashes—theological, ideological, political,

economic, geographical, and social. But such a landscape is not necessarily a hopelessly divided country. If the editors hope to prove anything during the course of this series, it is not that the United States has been destroyed by conflict but rather that it has been enlivened, enriched, and even strengthened by Americans who have disagreed with one another.

Thomas Jefferson was one of the least confrontational of Americans, but he boldly and irrevocably enriched American life with his individualistic views. Like John Winthrop before him, he had a notion of an American Eden. Like Winthrop, he offered a vision of a harmonious society. And like Winthrop, he not only became enmeshed in conflict but eventually presided over a people beset by it. But unlike Winthrop, Jefferson believed this Eden was not located in a specific community but in each individual American. His Declaration of Independence from Great Britain could also be read as a declaration of independence for each individual in American society.

Jefferson's Ideal

Jefferson's ideal world was composed of "yeoman farmers," each of whom was roughly equal to the others in society's eyes, each of whom was free from the restrictions of both government and fellow citizens. Throughout his life, Jefferson offered a continuing challenge to Americans: Advance individualism and equality or see the death of the American experiment. Jefferson believed that the strength of this experiment depended upon a society of autonomous individuals and a society without great gaps between rich and poor. His challenge to his fellow Americans to create—and sustain—such a society has itself produced both economic and political conflict.

A society whose guiding document is the Declaration of Independence is a society assured of the freedom to dream—and to disagree. We know that Jefferson hated conflict, both personal and political. His tendency was to avoid confrontations of any sort, to squirrel himself away and write rather than to stand up and speak his mind. It is only through his written words that we can grasp Jefferson's utopian dream of a society of independent farmers, all pursuing their private dreams and all leading lives of middling prosperity.

Jefferson, this man of wealth and intellect, lived an essentially happy private life. But his public life was much more troublesome. From the first rumblings of the American Revolution in the 1760s to the North-South skirmishes of the 1820s that ultimately produced the Civil War, Jefferson was at or near the center of American political history. The issues were almost too many—and too crucial—for one lifetime: Jefferson had to choose between sup-

porting or rejecting the path of revolution. During and after the ensuing war, he was at the forefront of the battle for religious liberty. After endorsing the Constitution, he opposed the economic plans of Alexander Hamilton. At the end of the century, he fought the infamous Alien and Sedition Acts, which limited civil liberties. As president, he opposed the Federalist court, conspiracies to divide the union, and calls for a new war against England. Throughout his life, Thomas Jefferson, slaveholder, pondered the conflict between American freedom and American slavery. And from retirement at his Monticello retreat, he frowned at the rising spirit of commercialism he feared was dividing Americans and destroying his dream of American harmony.

No matter the issue, however, Thomas Jefferson invariably supported the rights of the individual. Worried as he was about the excesses of commercialism, he accepted them because his main concern was to live in a society where liberty and individualism could flourish. To Jefferson, Americans had to be free to worship as they desired. They also deserved to be free from an over-reaching government. To Jefferson, Americans should also be free to possess slaves.

Harmony, an Elusive Goal

Before reading the articles in this anthology, the editors ask readers to ponder the lives of John Winthrop and Thomas Jefferson. Each held a utopian vision, one based upon the demands of community and the other on the autonomy of the individual. Each dreamed of a country of perpetual new beginnings. Each found himself thrust into a position of leadership and found that conflict could not be avoided. Harmony, whether communal or individual, was a forever elusive goal.

The opposing visions of Winthrop and Jefferson have been at the heart of many differences among Americans from many backgrounds through the whole of American history. Moreover, their visions have provoked important responses that have helped shape American society, the American character, and many an American battle.

The editors of the American History Series have done extensive research to find representative opinions on the issues included in these volumes. They have found numerous outstanding opposing viewpoints from people of all times, classes, and genders in American history. From those, they have selected commentaries that best fit the nature and flavor of the period and topic under consideration. Every attempt was made to include the most important and relevant viewpoints in each chapter. Obviously, not every notable viewpoint could be included. Therefore, a selective, annotated bibliography has been provided at the end of each

book to aid readers in seeking additional information.

The editors are confident that as this series reveals past conflicts, it will help revitalize the reader's views of the American present. In that spirit, the American History Series is dedicated to the proposition that American history is more complicated, more fascinating, and more troubling than John Winthrop or Thomas Jefferson ever dared to imagine.

John C. Chalberg
Consulting Editor

Introduction

"The Constitution was a product of division, debate, and disagreement, yet the very process of its writing and ratification helped America redefine itself and create a sense of unity."

Independence from Great Britain meant both opportunity and crisis for the thirteen American colonies along the Atlantic seaboard. No longer were they under the authority of King George III and the British Parliament. No longer were the colonies subject to a constitutional monarchy. On the other hand, no longer did there seem to be *any* sovereign authority in the new United States of America.

Radical revolutionaries such as Tom Paine believed that sovereignty now resided in the individual American citizen. But were Americans prepared to accept this prescription? Could the crisis of sovereignty created by the Declaration of Independence of 1776 be resolved simply by declaring each American sovereign and autonomous? Was the American Revolution a fight for anarchy? No doubt most newly independent Americans would have answered no to all of these questions.

The Declaration of Independence posited that sovereignty was to be found in "governments . . . deriving their just powers from the consent of the governed." But how was this consent to be granted? The answer, many Americans believed, lay in written constitutions specifying the duties, structures, and limitations of government. Unlike the British constitution familiar to educated Americans, which was simply the aggregate of that country's laws and structures of government as they had evolved over centuries, the charters Americans resolved to adopt would be antecedent to government. As historians Oscar and Mary Handlin explain in *The Dimensions of Liberty*:

In the New World the term, constitution, no longer referred to the actual organization of power developed through custom,

prescription, and precedent. Instead it had come to mean a written frame of government setting fixed limits on the use of power. The American view was, of course, closely related to the rejection of the old conception that authority descended from the Crown to its officials. In the newer view—that authority was derived from the consent of the governed—the written constitution became the instrument by which the people entrusted power to their agents.

By the end of 1781, ten of the thirteen former colonies had drafted and ratified state constitutions. (Connecticut and Rhode Island had simply revised their colonial charters by removing all references to royal authority; New Hampshire, on its fourth try, finally ratified a state constitution in 1783.) The new state constitutions and the 1777 Articles of Confederation (America's first national constitution) all reveal a broad consensus on the ideals of government, marked by a suspicion of political power. To the revolutionary generation, power was not to be a commodity available for the taking by ambitious politicians. This generation was wary of authority—and of politicians who desired it. Power was to be husbanded, divided, limited.

Accordingly, governors of many states were given limited veto and appointive powers. Most control was granted to the legislatures, which were presumably more responsive to the people. To ensure this responsiveness to their constituents, legislators and governors were in many state constitutions subject to rotation in office. For instance, in Virginia the governor was elected to a one-year term and could hold office for no more than three consecutive terms. The distrust of authority was particularly evident in the Articles of Confederation, which provided for no executive or judicial authority at all, and which gave its national legislature, the Continental Congress, no direct powers over the states.

The End of Consensus

The debates of 1786-1788 surrounding the creation of the Constitution, which are described in this book, reflect the end of this national consensus on the necessity of establishing sovereign governments coupled with the reluctance to grant them power. The development of opposing views can be understood by examining the actions and reactions of two noted Virginians, James Madison and Patrick Henry, to three critical events—Shays's Rebellion of 1786, the Constitutional Convention of 1787, and the Virginia state ratifying convention of 1788.

Although Madison and Henry were both plantation owners active in politics and both supporters of American independence, they had important dissimilarities, not the least of which was a difference in age. Henry was part of the generation that had at-