

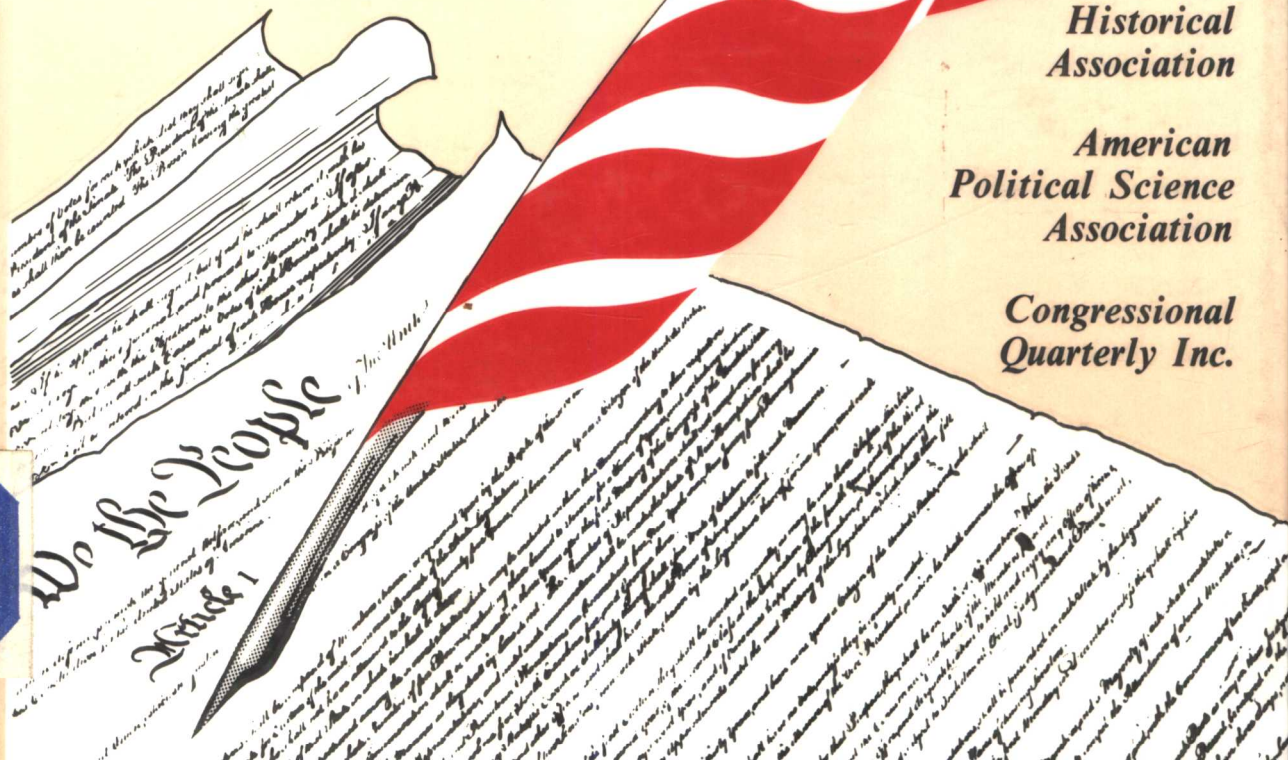
# *This Constitution*

## *From Ratification to the Bill of Rights*

**American  
Historical  
Association**

**American  
Political Science  
Association**

**Congressional  
Quarterly Inc.**



*this Constitution*  
*From Ratification*  
*to the*  
*Bill of Rights*

American Political Science Association  
— American Historical Association



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## Preface

In 1982, Project '87, a joint effort of the American Historical Association and the American Political Science Association, began publication of a quarterly magazine entitled *this Constitution: A Bicentennial Chronicle*. Conceived and developed by Sheilah Mann, the director of Project '87, and supported by the National Endowment for the Humanities as part of its special initiative on the Bicentennial of the United States Constitution, *this Constitution* provided a link between the scholars of constitutional history, politics, and theory and a public audience engaged in thinking about constitutional questions. Its final issue, number 18, appeared in the spring of 1988.

This volume is the second of two collections of essays from *this Constitution*. The first took articles from issues 1 through 12; this volume contains selections from issues 13 through 18.<sup>1</sup> The first collection highlighted constitutional principles and theory. This volume focuses on the founding period, beginning with the deliberations of the Constitutional Convention, proceeding to the public response to the document and its design for a government, then the initiation of the government under the new charter and the adoption of the Bill of Rights. The book concludes with essays devoted to questions of contemporary rights and constitutional adaptation.

The magazine benefited from the direction of its editorial board, chaired first by Harry Scheiber, University of California at Berkeley, then by Frank Sorauf, University of Minnesota, and finally by Milton Klein, University of Tennessee. Other members included Patricia Bonomi, New York University; Frances K. Burke, Suffolk University; Bonnie Cochran, Bethesda-Chevy Chase (Md.) High School; Milton C. Cummings, Johns Hopkins University; Charles Eldredge, National Museum of American Art; Margaret Horsnell, American International College; James O. Horton, George Washington University; Gary Puckrein, National Museum of American History; Dot Ridings, League

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<sup>1</sup> The article by Paul J. Weber, "Call a Second Convention?", appears for the first time in this volume.

of Women Voters; and Richard Wilson, Montgomery County (Md.) Public Schools. Charles S. Snyder created the original design for the magazine and laid out each issue; Rebecca Hirsh found the photographs that accompany the articles.

Support for *this Constitution* came also from the founders of Project '87—James MacGregor Burns and Richard B. Morris—and the members of the joint committee of scholars, which has governed Project '87 over the last decade.

The ultimate contribution came from the authors who responded to Project '87's invitation to share their expertise with a wider national and international audience. Through their efforts, the magazine, like all of Project '87's materials and programs, has rested upon a solid foundation of scholarship, tailored to the specific needs of readers and users in public and educational settings.

Project '87 is grateful to the staff of Congressional Quarterly, especially David R. Tarr, Colleen McGuiness, Carolyn McGovern, and Kathryn C. Suárez, for making the articles from *this Constitution* available to a still larger readership.

Cynthia Harrison  
Managing Editor, *this Constitution*  
Deputy Director, Project '87

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# *The Origins of the Constitution*

Gordon S. Wood

When did the story of the Constitution begin? Some might say it began more than twenty-five hundred years ago in the city-states of ancient Greece. Others might place its beginnings nearly three-quarters of a millennium back in the fields of Runnymede. Still others might say the Constitution had its origins three centuries or so ago during the tumultuous years of the seventeenth-century English revolutions. Or others, more patriotic perhaps, might date the beginnings of the Constitution from events in the Western Hemisphere, from the Mayflower Compact, the Massachusetts Charter of 1629, or from any number of charters and constitutional documents that the colonists resorted to during the first century and a half of American history. More likely, the story of the Constitution might begin with the imperial crisis and debate of the 1760s. It is just possible that the forty years between 1763 and 1803 in America were the greatest era in constitutionalism in modern Western history. Not only did Americans establish the modern conception of a constitution as a written document defining and delimiting the powers of government, but they also made a number of other significant constitutional contributions to the world, including the device of a convention for creating and amending constitutions, the process of popular ratification of constitutions, and the practice of judicial review by which judges measure ordinary legislation against the fundamental law of the constitution. During these brief forty years of great constitutional achievements between 1763 and 1803 the story of the Constitution of 1787 is only a chapter. But it is a crucial and significant chapter.

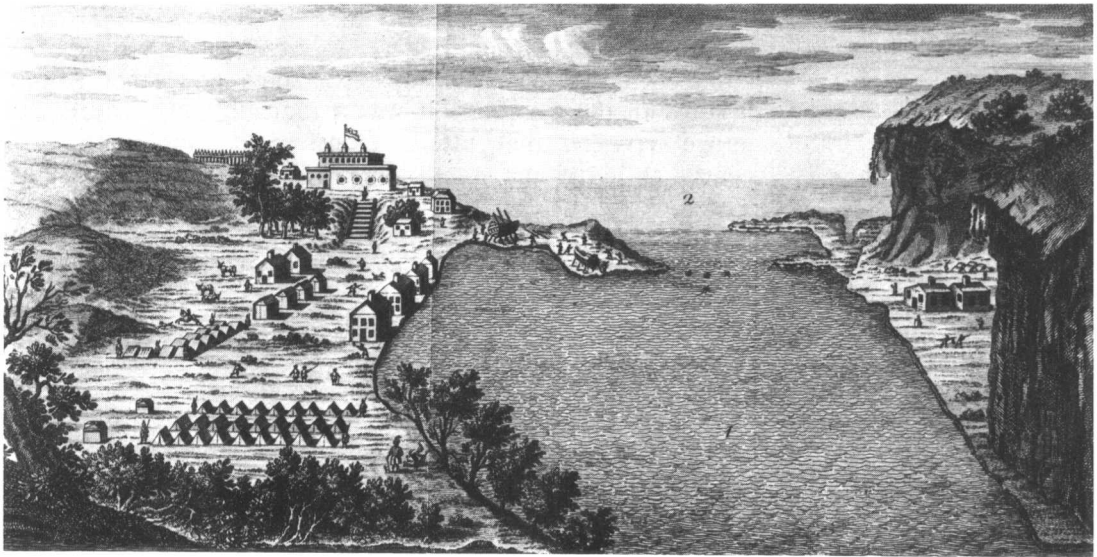
It is hard for us today to appreciate what an extraordinary, unforeseen achievement the Constitution of 1787 was. We take a strong national government so much for granted that we can scarcely understand why the American Revolution-

aries of 1776 did not create the Constitution at once. But in 1776 virtually no American contemplated something like the Constitution of 1787. No one in 1776 even imagined for Americans a powerful continental-wide national government operating directly on individuals. The colonists in the British empire had experienced enough abuses from far-removed governmental power to make them leery of creating another distant government. And besides, the best minds of the eighteenth century, including Montesquieu, said that a large continental-sized republic was a theoretical impossibility. In 1776 it was obvious to all Americans that their central government would have to be a confederation of some sort, some sort of league or alliance of the thirteen independent states. The Articles of Confederation created such a central government.

### **Confederation**

The Articles of Confederation were our first national constitution. Proposed by the Continental Congress in 1777, they were not ratified by all the states until 1781. Although we today pay very little attention to the Articles and can hardly take them seriously, at the time they were a remarkable achievement. The Articles created a much stronger federal government than many Americans expected; it was in fact as strong as any similar republican confederation in history. Not only were substantial powers concerning diplomacy, the requisitioning of soldiers, and the borrowing of money granted to the Confederation Congress, but the Articles specifically forbade the separate states to conduct foreign affairs, make treaties, and declare war. All travel restrictions and discriminatory trade barriers between the states were eliminated, and the citizens of each state were entitled to the “privileges and immunities” of the citizens of all states. When we compare these achievements with what the present-day European nations are struggling to attain in their own continental union, we can better appreciate what an extraordinary accomplishment the Articles represented.

Despite the notable strength of this Confederation, however, it was clear that it was something less than a unitary national government. Under the Articles the crucial powers of commercial regulation and taxation—indeed, all final lawmaking authority—remained with the states. Congressional resolutions were only recommendations to be left to the states to enforce. And should there be any doubts of the decentralized nature of the Confederation, Article 2 stated bluntly that “each



Fort Oswego on Lake Ontario, one of the outposts where the British maintained troops in violation of the 1783 Treaty of Paris

State retains its sovereignty, freedom and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.” The “United States of America” had a literal meaning that is unfamiliar to us today. The Confederation was based on the equal representation of each state in the Congress. It was less a single government than it was a treaty among sovereign states. It was intended to be and remained, as Article 3 declared, “a firm league of friendship” among states jealous of their individuality. Not only ratification of the Articles of Confederation but any subsequent amendment of them required the consent of all the states.

As a confederation the United States achieved a good deal, including the winning of the war and independence from Great Britain. But scarcely a half dozen years after the final ratification of the Articles in 1781, the Confederation was virtually moribund and nearly every American was calling for its reform. The Confederation government was not adequate to the demands of the 1780s; a more powerful central government was needed. The calling of the Philadelphia Convention in 1787 and the new Constitution were the results.

It seems to be a simple story, but it is not. For despite a general dissatisfaction with the Articles by 1786-1787 and a general willingness to add to the powers of Congress, the

Constitution that was created in 1787 was not what most people expected. The new federal government was not simply a stronger league of friendship with some additional powers granted to the Congress. It was a radically new government altogether—one that utterly transformed the structure of central authority and greatly weakened the power of the states. The Constitution of 1787 created an overarching national republic that operated on individuals directly; its creation was inconceivable a decade earlier. What had happened? What could have changed American thinking so dramatically? Given the Americans' loyalty to their states and their deep-rooted fears of centralized governmental authority, explaining the Constitution of 1787 is not as easy as it looks.

Some Americans in the 1780s talked about a crisis in the United States, and historians have seized upon this talk and labeled the 1780s "the Critical Period of American History." Yet documenting a real crisis in the society, a crisis sufficient to justify the radical change of government in 1787, is not a simple matter. To be sure, there was an economic depression in 1784-1785 caused by the buying spree and the overextensions of credit following the war, but by 1786 the country was coming out of it and people were aware of returning prosperity. Commerce was confused and disrupted, but the commercial outlook was far from bleak. American merchants were pushing out in every direction in search of markets and were sailing even as far away as China. The 1780s do not seem to be a time of crisis; they were in fact a time of unprecedented exuberance and expansion. The American population grew as never before (or since), and more Americans than ever were off in pursuit of happiness and prosperity. "There is not upon the face of the earth a body of people more happy or rising into consequence with more rapid stride, than the inhabitants of the United States of America," the secretary of the Continental Congress Charles Thomson wrote Thomas Jefferson in 1786. "Population is increasing, new houses building, new lands clearing, new settlements forming, and new manufacturers establishing with a rapidity beyond conception." The general mood was optimistic and expectant.

No wonder then that many historians have doubted that there was anything really critical happening in the society. Perhaps the critical period, wrote Charles Beard in his *An Economic Interpretation of the Constitution* published in 1913, was not really critical after all, "but a phantom of the imagination produced by some undoubted evils which could

have been remedied without a political revolution.” Perhaps the crisis, said Jackson Turner Main in his 1961 study, *Antifederalists*, was only “conjured up” by a few leaders since “actually the country faced no such emergency.” Was the movement for the Constitution something of a fraud without justification in the social and economic reality of the day?

But then we have all those despairing statements by Americans in the 1780s declaring that America was in the midst of a crisis more serious than anything experienced during the darkest days of the war. Many believed that America’s great experiment in republicanism was in danger and that America’s “vices” were plunging the nation into “ruin.” The enlightened Philadelphia physician Benjamin Rush went so far as to say that Americans were on the verge of “degenerating into savages or devouring each other like beasts of prey.” Even the sober and restrained George Washington was astonished at the changes the few years since 1776 had produced: “From the high ground we stood upon, from the plain path which invited our footsteps, to be so fallen! so lost! it is really mortifying.”

How can we explain such excited and despondent statements—statements that can be multiplied over and over? What had happened? Could Americans, so confident in 1776, have lost their nerve so quickly? Could any problems with the Articles of Confederation, with the weaknesses of the union, have brought forth such fearful handwringing? Explaining the sense of crisis in the 1780s and hence the movement for the Constitution requires something more than just detailing the defects of the Confederation Congress. Such defects, however serious, could hardly account for the pervasive sense of crisis.

There are in fact two levels of explanation for the Constitution, two different sets of problems, two distinct reform movements in the 1780s that eventually came together to form the Convention of 1787. One operated at the national level and involved problems of the Articles of Confederation. The other operated at the state level and involved problems in the state legislatures. The national problems account for the ready willingness of people in 1786-1787 to accede to the convening of delegates at Philadelphia. But the state problems, problems that went to the heart of America’s experiment in republicanism, account for the radical and unprecedented nature of the federal government created in Philadelphia.

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### National Problems

The weaknesses of the Articles of Confederation were apparent early, even before the Articles were formally ratified in 1781. By 1780 the war was dragging on longer than anyone had expected, and the skyrocketing inflation of the paper money that was being used to finance it was unsettling commerce and business. The Articles barred congressional delegates from serving more than three years in any six-year period, and leadership in the Confederation was changeable and confused. The states were ignoring congressional resolutions and were refusing to supply their allotted contributions to the central government. The Congress stopped paying interest on the public debt. The Continental army was smoldering with resentment at the lack of pay and was falling apart through desertions and even outbreaks of mutiny. All these circumstances were forcing various groups, including the army and merchant and creditor interests centered in the mid-Atlantic states, to seek to add to the powers of the Congress. They tried to strengthen the Congress by broadly interpreting its enumerated powers, by directly amending the Articles, and even by threatening military force against those states that did not fulfill their obligations to Congress.

A shift in congressional leadership in the early 1780s demonstrated the increasing influence of these concerned groups. Older popular radicals such as Richard Henry Lee of Virginia and Samuel Adams of Massachusetts were replaced by such younger men as James Madison of Virginia and Alexander Hamilton of New York. These new leaders were more interested in authority and stability than in popular liberty. Disillusioned by the Confederation's ineffectiveness, these nationalists in the Congress set about reversing the localist and centrifugal thrust of the Revolution. They strengthened the regular army at the expense of the militia and promised pensions to the Continental army officers. They reorganized the departments of war, foreign affairs, and finance in the Congress and replaced the committees that had been running these department with individuals.

The key man in the nationalists' program was Robert Morris, a wealthy Philadelphia merchant who was made superintendent of finance and virtual head of the Confederation in 1781. Morris undertook to stabilize the economy and to involve financial and commercial groups with the central government. He persuaded the Congress to recommend to the states that paper-money laws be repealed and to require that the states' contributions to the general expenses be paid in



specie (gold or silver coin), and he sought to establish a bank to make the federal government's bonds more secure for investors.

Carrying out this nationalist program depended on amending the Articles so as to grant the Confederation the power to levy a 5 percent duty on imports. Once the Congress had revenues independent of the states, the Confederation could pay its debts and would become more attractive to prospective buyers of its bonds. Although Morris was able to get the Congress to charter the Bank of North America, the rest of the nationalists' economic proposals failed to get the consent of all the states. In 1782 congressional efforts to get the states to approve the 5 percent import amendment foundered first on Rhode Island's refusal and then on Virginia's. When a compromise attempt in 1783 to get a revenue for Congress also came to nothing, those who hoped to reform the Articles became increasingly discouraged.

After the victory at Yorktown in October 1781 and the opening of peace negotiations with Great Britain, the States rapidly lost interest in the Congress. Some nationalists even sought to use the unrest in the army to further their cause. The prospect of the Congress's demobilizing the army without fulfilling its promises of back pay and pensions created a crisis that brought the United States as close to a military coup d'état as it has ever been. In March 1783 the officers of Washington's army, encamped at Newburgh on the Hudson River, issued an address to the Congress concerning their pay and actually considered some sort of military action against the Confederation. Only when Washington personally intervened and refused to support a movement that he said was designed "to open the floodgates of civil discord, and deluge our rising empire in blood" was the crisis averted.

Before resigning his commission as commander in chief, Washington in June 1783 wrote a circular letter to the states, which he called his "legacy" to the American people. In it he recommended the creation of "a supreme power to regulate and govern the general concerns of the confederated republic." This was the moment, said Washington, "to give such a tone to our federal government as will enable it to answer the ends of its institution." It was a time of testing for the American people, "the eyes of the whole world are turned upon them." Upon the willingness of the states to grant sufficient power to Congress to fulfill its needs and preserve its credit depended whether the United States would "be respectable and prosperous, or contemptible and miserable, as a nation . . . whether the



Samuel Adams