



14th Edition

GOVERNMENT
BY THE PEOPLE
Bill of Rights Edition

Burns ■ Peltason ■ Cronin

NATIONAL VERSION

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GOVERNMENT BY THE PEOPLE

Bill of Rights Edition

James MacGregor Burns

Williams College

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University of California, Irvine

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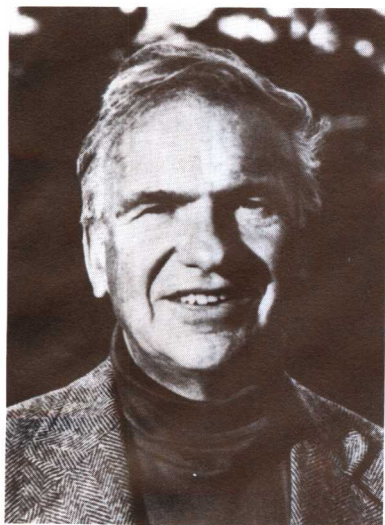
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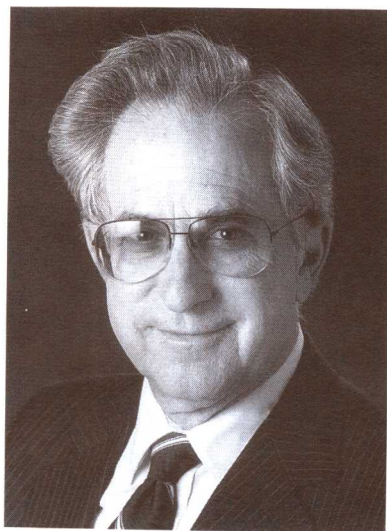
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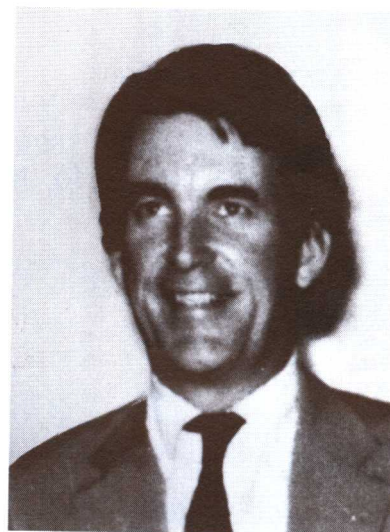
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James MacGregor Burns, a native and lifelong resident of Massachusetts, is Woodrow Wilson Professor of Political Science at Williams College, where he has taught for the past forty years. He has written several books, including *The Power to Lead* (1984); *The Vineyard of Liberty* (1982); *Leadership* (1979); *The Deadlock of Democracy: Four Party Politics in America* (1963); *Roosevelt: The Lion and the Fox* (1956); and *Roosevelt: The Soldier of Freedom* (1970). His most recent book is *The Crosswinds of Freedom* (1989). Active in professional and civic life, Burns is a past president of the American Political Science Association and a former congressional candidate. Although his major love is writing (for which he has won numerous prizes, including the Pulitzer Prize and the National Book Award), he can sometimes be found chopping wood, running, skiing, or playing tennis in his own cherished Berkshire community of Williamstown.



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Tom Cronin is a leading student of the American presidency and national leadership and policymaking processes. He earned his Ph.D. from Stanford University and served as a White House Fellow and White House staff aide. Cronin was the 1986 recipient of the American Political Science Association's Charles E. Merriam Award for "significant contribution to the art of government." Cronin's writings include *The State of the Presidency* (1980); *U.S. v. Crime-in-the-Streets* (1981); and *Direct Democracy: The Politics of Initiative, Referendum, and Recall* (1989). He is the McHugh Distinguished Professor of American Institutions and Leadership at The Colorado College. A former candidate for the U.S. Congress and President of the Presidency Research Group, Cronin has lectured at over 200 colleges and universities. He has appeared as a political analyst on *Nightline*, *Late Night America*, *The Today Show*, C-SPAN, CNN, and several PBS and network documentaries.

Preface

A PERSONAL MESSAGE FROM THE AUTHORS

You are using this book during a time of celebration of old and newly claimed freedoms around the world. In July of 1989 the French enjoyed the two-hundredth birthday of their Declaration of the Rights of Man, which was issued a few weeks after the outbreak of their Revolution. Soviet citizens have been experimenting in recent years with *glasnost* and *perestroika*—with relaxing oppressive rules and trying out democratic processes. Eastern European countries have been allowing opposition forces to criticize their regimes and even nominate candidates for high office. And in America we are celebrating the two-hundredth anniversary of the final ratification in December of 1791 of our Bill of Rights, the first ten amendments to the Constitution.

This Bill of Rights Edition of *Government by the People* focuses on past and present struggles for liberty in America, the extension of the original Bill of Rights to embrace a broad range of political, economic, and social rights, and the current conflict over new rights.

The framers of our Constitution warned that we must be vigilant in safeguarding our rights and liberties, and we are reminded of that warning even as we celebrate the birthday of our Bill of Rights. In the spring of 1989 one nation—the most populous in the world—suddenly plunged back into the darkness of suppression of the freedoms of speech, press, and assembly. A few months before the bloody suppression of protest in Beijing and other Chinese cities, two of the authors of this volume met with hundreds of students and scholars in Chinese universities. The third author heads a university that has admitted many Chinese and large numbers of Chinese-American students. We three authors know of their aspirations for political liberty, democracy, human rights.

We dedicate this Bill of Rights Edition of *Government by the People* to our fellow teachers in China and to the students there who still carry the torch of liberty and democracy toward a new era of freedom some day in China.

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We wish to acknowledge the indispensable help we have received from many scholars. Professors Lois L. Duke of the University of Alabama, L. Sandy Maisel of Colby College, and Mark Petracca of the University of California at Irvine contributed their extensive knowledge of American politics and government to the redrafting of several chapters in this revision. Professor Duke made substantive contributions to Chapters 11, 12, and 13; Professor Maisel helped enormously in revising Chapters 10 and 13; Professor Petracca provided important fresh insights to Chapters 19 and 22.

We were indeed fortunate to have had an outstanding group of professors prepare the instructional aids that accompany this text. James V. Calvi, West Texas State College, wrote the margin annotations for the instructor's edition. Michael F. Digby, Georgia College, and Raymond L. Lee and Dorothy A. Palmer of Indiana University of Pennsylvania prepared the revised Instructor's Manual. Larry Elowitz of Georgia College prepared the Instructor's Guide to the transparency package. Simulations were devised by Robert Loevy of Colorado College, and Barbara Feinberg wrote the Test Item File. Our thanks to them all.

We wish to thank Pat Dennis, Kathy North, and Harriett Speegle for first-class editorial assistance. We also thank David N. Lowland for superb research assistance, Ann B. Armstrong for careful proofreading, and Marj Billings for secretarial assistance. David Sandford, Sean Gallup, and other members of a winter study course at Williams College in Editing and Writing Political Science contributed useful critiques; Sandford and Gallup made further contributions to the new edition. Michael Dawson and Milton Djuric proofread various chapters, and the Faculty Secretarial Office at Williams College helped immensely with manuscript preparation.

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Ed Stanford at Prentice Hall for their encouragement and guidance. Special thanks to Dolores Mars for all her kindnesses and good cheer, and to all these other highly skilled professionals at Prentice Hall: Ann Marie McCarthy, senior managing editor; Peter Havens and Bob Anderson, manufacturing buyers; Terri Peterson and Roland Hernandez, marketing managers; Lori Morris and Joelle Burrows, photo researchers; Lee Cohen and Jayne Conte, designers; and Kim Bryne and Colette Conboy, supplements.

Finally, we thank the scores of students and professors who have sent us letters or called us with suggestions

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REVIEWERS

Each edition of this comprehensive text profits from the informed and sometimes sharp criticisms of our political science colleagues around the country. This Fourteenth

for improving *Government by the People*. Please know we welcome your calls and notes concerning specific matters in the book that you like or dislike; they will help make this an even better book in future editions.

As we record our debt to all these people for their help, the three of us also hereby absolve them of any responsibility for what we have written. We would appreciate it if you, our readers, would point out errors and send comments, suggestions, and advice to us at our addresses below, or care of the Political Science Editor, Prentice Hall, Englewood Cliffs, New Jersey 07632.

Edition benefitted from the critical suggestions, most but not all of which we have taken, from these reviewers:

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Contents

ABOUT THE AUTHORS viii

PREFACE ix

PART ONE: CONSTITUTIONAL DEMOCRACY IN AMERICA

- 1 LIBERTY AND ORDER:
THE GRAND EXPERIMENT** 1
The Roots of the Bill of Rights 4
The Philadelphia Convention, 1787 7
To Adopt or Not to Adopt? 13
What Kind of Constitution 17

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Into the Third Century—And Some
Questions 23

Notes 24

- 2 THE LIVING CONSTITUTION** 25
Checking Power with Power 26
Judicial Review and
the “Guardians of the
Constitution” 28
Checks and Balances—
Does It Work? 31
The Constitution as an Instrument
of Government 34
Changing the Letter of the
Constitution 37
Ratification Politics: ERA and the D.C.
Amendment 42

Summary 44/Further Reading 44/Notes 45

- 3 AMERICAN FEDERALISM:
PROBLEMS AND PROSPECTS** 46
Why Federalism? 48

Constitutional Structure of American
Federalism 51
Triumph of the Nationalist
Interpretation 56
Umpires of the Federal System 60
Federal Grants 62
Federal Regulations 64
Two Levels or Three? Crazy-Quilt
Federalism 65
The Politics of Federalism 66
Summary 70/Further Reading 70/Notes 71

PART TWO: CIVIL LIBERTIES

- 4 FIRST AMENDMENT RIGHTS** 72
A Wall of Separation 74
All Persons May Worship as They
Choose 76
Free Speech and Free People 78
Freedom of the Press 83
Other Media and Other
Messages 85
Libel, Obscenity, and Fighting
Words 89
Right of the People Peaceably
to Assemble, to Petition the Govern-
ment, and to Associate 93
Subversive Conduct and Seditious
Speech 96

Summary 98/Further Reading 98/Notes 99

- 5 EQUAL RIGHTS
UNDER THE LAW** 101
Equality and Equal Rights 102
Equal Protection of the Laws—
What Does It Mean? 112
How to Prove Discrimination 115
Barriers to Voting 118

Barriers to Public Accommodations,
Jobs, and Homes 121
Affirmative Action—
Is It Constitutional? 125
Summary 127/Further Reading 128/Notes 129

**6 RIGHTS TO LIFE, LIBERTY,
AND PROPERTY 131**
How Citizenship Is Acquired and
Lost 131
Rights of Aliens—Admission to the
United States 133
Constitutional Protection
of Property 138
Freedom from Arbitrary Arrest,
Questioning, and
Imprisonment 143
Rights of Persons Accused
of Crime 148
How Just Is Our System
of Justice? 152
The Supreme Court and Civil
Liberties 155

Summary 156/Further Reading 156/Notes 156

PART THREE: THE PEOPLE IN POLITICS

**7 POLITICAL CULTURE
AND IDEOLOGY 158**
Political Culture 159
The Never-Ending Quest for Additional
Rights 166
Liberalism, Conservatism, and Public
Policy 168
A Central Ideological Tension—
Political Equality versus
Capitalism 179
Ideology and Tolerance 182
Summary 184/Further Reading 185/Notes 185

**8 INTEREST GROUPS:
THE POLITICS OF FACTION 186**
The Maze of Group Interests 187
Major Interests: Size and Scope 191
Weapons of Group Power 194

PACs: Interest Groups
in Combat 198
Lobbying, Old and New 201
Controlling Factions—Two Hundred
Years Later 204
Summary 208/Further Reading 209/Notes 209

**9 MOVEMENTS:
THE POLITICS OF CONFLICT 210**
Movements: The Why and How 211
American Indians: The Oldest
Movement? 213
Blacks: Freedom Now 214
Women: The Continuing
Struggle 218
The Politics of Peace 225
Movements and the Constitution 227
Summary 228/Further Reading 228/Notes 229

**10 POLITICAL PARTIES:
INSTITUTIONS UNDER
CHANGE 230**
Parties: Their Rise and Their
Role 233
Party Functions: Then and Now 237
How the Parties Are Organized 245
Parties on Trial 248
Saving the Parties: Reform, Renewal,
and Realignment 257
Summary 266/Further Reading 266/Notes 267

**11 PUBLIC OPINION
AND VOTING 269**
How We Learn Our Political
Beliefs 269
The Fabric of Public Opinion 273
Taking the Pulse of the People 277
How We Vote: Electoral
Patterns 280
Nonvoting: Who Doesn't Vote and
Why 287
Summary 292/Further Reading 292/Notes 293

- 12 MEDIA POLITICS:
REALITY OR ILLUSION? 294**
The Power of the Mass Media 295
The Media and Public Opinion 298
The Image Campaign: The Mass
Media Election 303
Summary 310/Further Reading 311/Notes 311

- 13 ELECTIONS:
THE DEMOCRATIC
STRUGGLE 313**
Running for Office 314
Running for President 318
Is This the Way to Pick
Presidents? 327
Campaign Money 331
Interpreting the 1988 Elections 336
Summary 340/Further Reading 340/Notes 341

PART FOUR: THE POLICY MAKERS

- 14 CONGRESS:
THE PEOPLE'S BRANCH? 343**
Congress: An Overall View 345
The Powers of Congress 347
The Houses of Congress 350
Who Are the Legislators? 354
Getting to and Remaining in
Congress 355
The Job of the Legislator 357
Committees: The Little
Legislatures 365
Getting It Together: Conference
Committees and Senate-House
Coordination 369
Is Congress Effective?—
Congressional Reform 370
Summary 373/Further Reading 374/Notes 375

- 15 THE PRESIDENCY:
THE LEADERSHIP BRANCH? 376**
An Effective Presidency? 377
Is the Presidency Too Strong—Or Not
Strong Enough? 379
The Job of the President 380
Presidents as Crisis Managers 382

- Presidents as Morale-Building
Leaders 384
Presidents as Recruiters 385
Presidents as Priority Setters 386
Presidents as Legislative and Political
Coalition Builders 389
Presidents as Administrators 393
Can the Modern Presidency Survive
the Modern Media? 396
The Vice-Presidency 398
Making the Presidency Safe and
Effective 399
Summary 404/Further Reading 404/Notes 404

- 16 CONGRESS AND THE
PRESIDENT: THE POLITICS OF
SHARED POWERS 406**
Presidential Influence in
Congress 408
The Imperial Presidency
Argument 410
Congress Reasserts Itself 416
The President and Congress:
The Continuing Struggle 428
The Imperial Congress
Argument 429
Summary 432/Further Reading 432/Notes 433

- 17 JUDGES:
THE BALANCING BRANCH 434**
The Scope of Judicial Power 435
Federal Justice 437
Prosecution and Defense:
Federal Lawyers 442
How Federal Judges Are
Selected 443
How the Supreme Court
Operates 448
Judicial Power in a Democracy 455
Summary 459/Further Reading 459/Notes 460

- 18 BUREAUCRATS:
THE REAL POWER?**
Who Are the Bureaucrats? 464
The United States Civil Service:
A Brief History 467

Bureaucracy in Action:
 The Classical or Textbook
 Model 468
 Bureaucrats as Administrators—
 Some Realities 470
 Administrators in Action: Case
 Studies 473
 What the Public Thinks
 of Bureaucrats 477
 The Case Against Big Bureaucracy
 and Its Waste 479
 The Case for Bureaucracy 483
 Controlling the Bureaucrats: Who and
 How? 485
Summary 492/Further Reading 492/Notes 493

PART FIVE: THE POLITICS OF NATIONAL POLICY

19 MAKING PUBLIC POLICY 494
 Getting Things Done in Washington:
 The Players 495
 Competing Models of Policy
 Making 497
 National Policy Formation 504
 Policy Implementation 511
Summary 514/Further Reading 515/Notes 515

20 MAKING FOREIGN POLICY 517
 Defining and Defending Our Vital
 Interests 519
 The Cold War and Its Legacy 520
 Foreign Policy Strategies 526
 The Politics of Making Foreign
 Policy 529
 The Policy Machinery 535
 International Organizations and the
 UN 540
Summary 542/Further Reading 542/Notes 592

**21 PROVIDING FOR THE COMMON
 DEFENSE 544**
 The Nation's Defense
 Objectives 545
 How Much Is Enough? 549

Will U.S. Conventional Forces Be
 Strong Enough to Win? 553
 Reorganizing for a More Effective
 Defense 556
 Arms Build-Up and Arms
 Control 560
 Security and Liberty:
 Not by Force Alone 564
Summary 565/Further Reading 565/Notes 656

22 MAKING ECONOMIC AND SOCIAL POLICY 566

The Politics of Taxation and
 Spending 566
 Managing the Economy 572
 Fiscal Policy: Remedies 574
 Government Subsidies: How and
 Why 577
 Helping Business 578
 Helping Farmers 579
 Helping Retirees and the
 Disabled 583
 Helping the Needy 584
Summary 587/Further Reading 587/Notes 588

**23 THE POLITICS OF
 REGULATION 589**
 What Is Regulation? 590
 Regulating Business 595
 Regulating Labor-Management
 Relations 599
 Regulation to Protect the
 Environment 603
 Regulating Occupational Safety and
 Health: A Case Study 606
 Regulatory Outcomes and
 Issues 609
 The Deregulation Debate 611
Summary 614/Further Reading 615/Notes 615

24 THE DEMOCRATIC FAITH 616
 The Case for Government by the
 People 618
 Participation and Representation 619
 The Role of the Politician 621

What Kind of Political
Leadership? 622
Thinking about Leadership 623
Democratic Leadership 626
The Democratic Faith 626
Notes 628

APPENDIX 629

The Declaration
of Independence 629
The Federalist, No. 10, James
Madison 630

The Federalist, No. 51, James
Madison 633
The Federalist, No. 78, Alexander
Hamilton 635
Presidential Election Results, 1798–
1988 638

GLOSSARY 640

PHOTOGRAPHS 651

INDEX 653

1

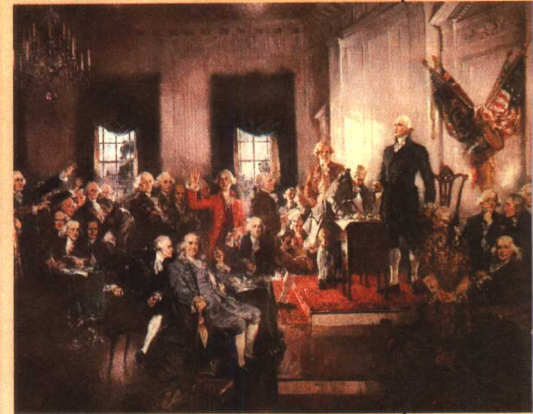
Liberty and Order: The Grand Experiment

If you had been in New York City (the new nation's temporary capital) in the spring or summer of 1789 and looking for young Congressman James Madison, you might have spotted him during the day on the floor of the recently established House of Representatives debating tax and tariff bills with his fellow legislators. But "after hours" you would most likely have found him at his lodgings in Mrs. Elsworth's boardinghouse on Maiden Lane, laboring over his writing desk piled with letters from state capitals and a big scrapbook of his own. It was hardly a dramatic sight—this slight, rather nondescript man writing slowly with a goosequill pen, amid sounds of fishmongers and draymen coming through the open windows from the nearby waterfront. But the situation was momentous, for Madison was composing the early drafts of what would become the Bill of Rights.

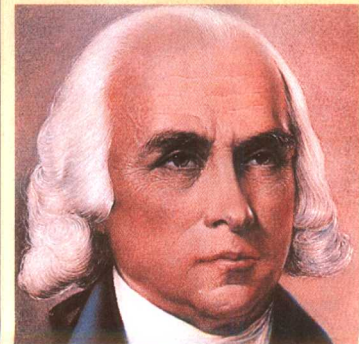
Why momentous? Because nothing touches your life—whether you are a student or not, foreign or native born, under or over eighteen—more intimately than the freedoms guaranteed in the Bill of Rights. Most of humankind throughout history have not been free to say or hear what governments forbade, to worship as they wished, to put up posters on a wall, or to edit a newspaper without fear of arrest or censorship. But when you see a police car, you do not tremble in fear—unless you are breaking the speed limit or otherwise violating the law—that you will be taken into custody or thrown into jail. Millions and millions of people today do not enjoy such luxuries of freedom.

You are reading this book at the time of the celebration of the birth of the Bill of Rights, the first ten amendments to the Constitution. What we are really celebrating are not only these ten amendments but the Constitution itself, for this great charter, drafted in Philadelphia in the historic convention of 1787, and its later amendments form a structure of liberty.

The Constitution divides governmental power in order to restrain it from sweeping away our liberties. An elaborate system of checks and balances, which



James Madison (1751–1836), a Virginian, was a key member of the Constitutional Convention of 1787, authored several impressive *Federalist* essays advocating ratification, served as speaker of the House of Representatives, and later became our fourth president. He is sometimes called the "father of the Constitution" and chief architect of the Bill of Rights.





The ideal of liberty still inspires people today, as it did in the recent demonstrations in China that were so brutally repressed.

we will analyze in depth, curbs the arbitrary use of governmental power. Provisions in the 1787 Constitution and later amendments—especially the “Big Ten” and the Thirteenth, Fourteenth, and Fifteenth adopted after the Civil War—restrict the government and seek to guarantee to all the people an array of fundamental rights.

In 1789, Madison had little time for diversion—for strolling down Broad Street to Frances’ Tavern, or watching an American comedy on John Street, or listening to Handel’s *Messiah* in famous old Trinity Church at the end of Wall Street. Sitting at his writing desk, he faced a daunting task—culling the provisions for essential rights and liberties from scores of proposals that had been sent to him from a dozen new states, and making a package of these rights for Congress to consider. He had to work quickly too. Some members of Congress were pressing for a *second* constitutional convention, which Madison and others feared might become a runaway caucus of radicals. “The business goes on still very slowly,” he wrote to his father in Virginia. “We are in a wilderness without a single footstep to guide us.”¹

Not far from young Madison, however, lived and worked a man who *was* seeking to guide the nation—George Washington. Inaugurated as the nation’s first president only a few weeks earlier in April 1789, Washington believed in freedom of religion, speech, and the other liberties, but he was far more concerned about another great aim—holding the struggling young nation together, maintaining order and stability, strengthening the unity of states that had often quarreled with one another and were now still living uneasily under a common constitution.

Take a coin out of your pocket and you will note how Madison’s prime concern, *liberty*, and Washington’s prime concern, *unity* or *union*, have formed parallel ideas throughout our history. As you study your quarter or dime or nickel, you will find the word LIBERTY in relatively large letters. This is appropriate, for liberty (or freedom) has been the central value or end for Americans throughout our national experience. You will also find the Latin words, E PLURIBUS UNUM, meaning unity out of diversity, or union out of many.

Most Americans recognized that liberty could not survive except in a unified, stable, orderly society. But how could these two great values, *liberty* and *order*, be reconciled when they came into collision with each other—for example, when freedom of speech or religion led to riots and bloodshed in the streets? This was the challenge that faced the founding fathers and has confronted us ever since. How did they meet it? In brief, by establishing a constitutional system that would realize *both* great ideals. Their way of doing that will be described fully in this and later chapters.

But how were they able to establish such a properly balanced constitutional system? In part because they were brilliant scholars of politics who at the same time had been deeply immersed in the day-to-day, nuts-and-bolts problems of governing. In part because they had long worked together and shared, or at least understood, one another’s views, whether as revolutionaries or later as constitutionalists. And in part because they were men of moderation who understood the need for both liberty and order. Just as Washington was willing to accept a Bill of Rights, Madison understood the need for order, as he had already shown in his brilliant writings.

Above all, these founders of the republic were a team of like-minded but independent thinkers and politicians, and each had a “support staff” who supplied ideas and advice. Washington worked closely with his vice-president, John Adams, and his Treasury secretary, Alexander Hamilton. Madison had the support of hundreds of state leaders who submitted proposals for the amendments he was drafting.



The Declaration of Independence Committee set down on paper the ideals and goals that were later incorporated in the Constitution. Shown here are Thomas Jefferson, Roger Sherman, Benjamin Franklin, Robert Livingston, and John Adams.

These were young, or at least youthful-minded, men in 1789; Madison was 38, Hamilton, 34, others even younger; Washington was a patriarch at 57. It was, in Michael Kammen's words, a "season of youth."²

Of course these old-time revolutionary comrades did not always agree on specifics. Washington wanted primarily to establish the presidency as an office of special honesty and integrity, an office that would transcend politics; some of his old friends found him too stiff and standoffish in dealing with everyday political matters. Vice-President John Adams wanted the president's title to be "His Highness" or the like to give the presidency more dignity; his old comrades believed that the one-time youthful revolutionary was becoming more and more conservative, or at least pompous. Treasury Secretary Alexander Hamilton wanted the new national government to take a strong lead in economic matters; many of those who had fought with him against King George did not want to create an overly centralized and powerful government like the British system. James Madison wanted above all to put through his Bill of Rights amendments. Washington gave him modest encouragement, writing his good congressional friend that the proposals would do no harm and some of them might even do some good.³

These four men—Washington, Adams, Hamilton, Madison—played commanding roles, as revolutionaries, constitution framers, political brokers, as policy makers, during the whole founding period of the new national government, from the 1770s until the end of the century.

A fifth man, Thomas Jefferson, not yet present in New York, probably had the greatest long-run influence of all. During those formative months of 1789, Thomas Jefferson was still minister to France, where he had a front row seat for the unfolding drama of the French Revolution. At the age of 33 Jefferson had won fame in the Old World as well as the New as the main drafter of the Declaration of Independence in 1776. He staunchly supported his close friend Madison in pressing for a Bill of Rights to be added to the Constitution. Soon he was sailing home across the Atlantic to become Washington's—and the nation's—first secretary of state.

These five men worked closely in establishing the new government, until they fell out in the rising partisan conflict of the 1790s. Each had a special role: Washington as the soldier, statesman, and unifier; Adams as the intellectual leader of the increasingly conservative Federalists; Hamilton as the political economist who favored government-business cooperation in expanding the economy; Jefferson as the nation's first great political philosopher to hold high office; Madison

as the preeminent political scientist. Of course this is an oversimplification, for each of these men shared the others' roles. These five men, moreover, were only the "tip of the iceberg" of several hundred brilliant and creative national, state, and local leaders of that period. (Certain women, lacking the right to vote or hold office, still found ways to exert some influence).

Whatever the conflicts among these leaders, two goals, two values, united them: liberty and order. How liberty and order were defined, how they could be attained, how they could be secured—these paramount questions had occupied Americans ever since the first settlers arrived, and they are still troubling us in the era of President George Bush.

Let us now turn back briefly to the early struggle for liberty in America and discuss the new order established by the 1787 Constitution. Then we will pick up again the framing and adoption of the Bill of Rights in the crucial years 1787 to 1791 that are being commemorated in the current bicentennial celebrations.

The Roots of the Bill of Rights

History records that James Madison labored alone, day after day, drafting the Bill of Rights in his boarding house lodgings. But in a broader sense we know Madison was not alone. Helping him wield his pen were the barons who gathered at Runnymede in 1215 to extract from King John liberties "to all free men of our kingdom" (or at least to barons). Present too were Lord Coke and others who, in the 1628 Petition of Right, established certain rights of Englishmen as law; the English revolutionaries who curbed the power of the King in the Bill of Rights of 1689 and gained such rights as freedom of speech and debate in Parliament; the framers of the earlier Habeas Corpus Act of 1679, designed to put checks on the power of the British government and guarantee such rights as those against self-incrimination and "punishments equal to offences." The fact that these rights on paper had not always been carried out in practice only strengthened Madison's determination to spell out Americans' rights clearly and boldly.

Standing at Madison's elbow too were the great thinkers of ancient and of more recent times, some of whom he had read as a student at Princeton: the Greek philosophers who spoke out for the rights of the *aristoi*—literally the best people—although not of course for slaves and others of low rank; Martin Luther and John Calvin, who fought for religious liberty from Catholic authority but then suppressed the liberties of fellow Protestants; and John Locke and the other great thinkers of the seventeenth and eighteenth centuries who built the philosophical foundations for the protection of individual liberty against the state.



"You know, the idea of taxation with representation doesn't appeal to me very much either."

Drawing by Handelsman; © 1970 The New Yorker Magazine, Inc.

THE AMERICAN ROOTS

Above all, Madison had the American experience to guide him. For almost two centuries Europeans had been sailing to the New World in search of liberty—especially religious liberty—as well as land and jobs. While still aboard their *Mayflower*, the Pilgrims had drawn up a compact to protect their religious freedom and to make possible "just and equale laws." In America editors found that they could speak out freely in their columns; dissenters could distribute leaflets; agitators could protest in taverns or in the streets. But the picture of freedom in America was a mixed one. The Puritans in Massachusetts soon estab-

lished a **theocracy**,* and not all religious sects in the colonies were granted equal religious liberty. Dissenters were occasionally chased out of town, and some printers had their shops closed or were even physically attacked.

Americans, in short, were struggling through these early centuries with the basic questions of the balance of unity and diversity, stability and dissent, order and liberty. Puritan theocrats continued to worry, in Joyce Appleby's words, "about what would maintain order in a society lacking an established church, an attachment to place, and the uncontested leadership of men of merit."⁴ Nine of the thirteen colonies eventually set up a state church. Throughout the 1700s Massachusetts Puritans barred a man from voting unless he belonged to the proper church in town (women could not vote at all). To the Anglican establishment in Virginia, campaigns for toleration were in themselves subversive.

Still, most colonial Americans in most places enjoyed a wide array of liberties. When Peter Zenger, a New York newspaper printer, was jailed in 1737 by royal authority on the charge of seditious libel and his conviction upheld in court, Zenger's attorney appealed to a jury and won a "not guilty" verdict. Increasingly the question arose as to how the people could secure American liberties, rather than leave them in the hands of mobs, sheriffs, or religious establishments. The answer was to bind liberties tightly into colonial acts and constitutions. The Maryland Act for the Liberties of the People legislated that "all the inhabitants of this Province being Christians (slaves excepted) should have such rights liberties immunities priviledges and free customs" as any natural born subject of England. The Massachusetts Body of Liberties of 1641, which served somewhat as a model for later New York and Pennsylvania charters, guaranteed freedom of speech and petition at public meetings, right of counsel, trial by jury, "the same justice and law" for every person.⁵

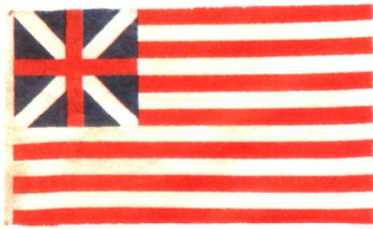
As feeling against the British mounted during the 1770s and revolutionary fervor sharpened, Americans were more and more determined to fight for their rights against the British and for their liberties in general. A year after fighting with the Redcoats broke out in Lexington, Concord, and other areas, the Declaration of Independence proclaimed in ringing tones that all men are created equal, endowed by their Creator with certain unalienable rights; that among those are life, liberty, and the pursuit of happiness; that to secure those rights governments are instituted among men; and that whenever a government became destructive of those ends, it is the right of the people to alter or abolish it.

We know these great ideals so well that we almost take them for granted, but the revolutionary leaders did not. They were deadly serious about these rights and willing to fight for them, willing to pledge their lives, fortunes, and sacred honor for them. They determinedly set about guaranteeing liberty in the constitutions that the states adopted as they broke away from the Crown. All the bills of rights in the new state constitutions guaranteed free speech, freedom of religion, and the natural rights to life, liberty, and property. All the declarations spelled out rights of persons accused of crime, such as knowing the nature of the accusation, being confronted by the accusers, and receiving a timely and public trial by jury.⁶

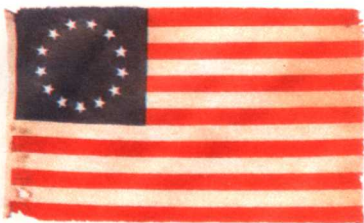
TOWARD UNITY AND ORDER

The quest for liberty, for rights, for "pluribus" could go only so far. As the war against the British widened, the need arose for a stronger central government that could rise above the states and conduct a revolutionary war. For a time the

* Words that appear in boldfaced type throughout the text are defined in the Glossary at the end of the book.



The Grand Union—1776



First Stars and Stripes—1777

Continental Congress, which had led the way toward revolution, tried to direct hostilities against the British, but it took a man of George Washington's iron resolve to unify and direct the war effort. Sensing the need for more unity, Congress established a new national government under the **Articles of Confederation**. At first hardly worthy of the term "government," the Articles were not approved by all the state legislatures until 1781, after Washington's troops had been fighting for five years.

The new Confederation was a move toward a stronger national government, but a limited and inadequate one. Having fought a war against a strong central government in London, Americans were reluctant to create another one. The Articles established more of a fragile league of friendship than a national government. From 1777 to 1788 Americans made some progress under this confederation. But with the end of the war in 1783, the sense of urgency that had produced unity began to fade. Within the states, conflict between creditors and debtors grew intense. And foreign threats by no means disappeared with the defeat of the Redcoats. The English, French, and Spanish surrounded the new nation, which—internally divided and lacking a strong central government—made a tempting prize.

As pressures on the Confederation mounted, many leaders became convinced that it would not be enough merely to revise the Articles of Confederation. To create a union strong enough to deal with internal diversity and factionalism, as well as resist external threats, they needed to set up a stronger central government with adequate powers. They therefore set out to establish a republican government that could be made to work by and for *ordinary people*.⁷

Although many Americans increasingly recognized the need to give Congress authority to regulate commerce and collect a few taxes, they were still suspicious of central government. But finally, in the late summer of 1786, under the leadership of Alexander Hamilton, those who favored a truly national government took advantage of a meeting in Annapolis, Maryland (on problems of trade and navigation, attended by delegates from five states) to issue a call for a "plenipotentiary Convention." Such a convention would have full authority to consider basic amendments to the Articles of Confederation. The delegates to the **Annapolis Convention** requested the legislatures of their states to appoint commissioners to meet in Philadelphia on the second Monday of May, 1787, "to devise such further provisions as shall appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union." This convention, held in August 1786, issued the call for what became the Constitutional Convention. The Annapolis Convention itself, attended by delegates from only five states, was unable to deal with these broader problems.

For a short time all was quiet. Then, late in 1786, messengers rode into George Washington's plantation at Mr. Vernon with the kind of news that he and other leaders had dreaded. Led by Daniel Shays, some farmers in western Massachusetts, crushed by debts and taxes, were rebelling against foreclosures, forcing judges out of their courtrooms, and freeing debtors from jails. Washington was appalled. Ten years before he had been leading Americans in a patriots' war against the British. Now Americans were fighting Americans!

"What, gracious God, is man?" Washington exclaimed. Clearly liberty as license had been allowed to go too far. Indeed, such disorder was a threat to liberty itself. If government could not check such disorders, he wrote to his friend Madison, "what security has a man for life, liberty or property?" It was obvious that without a stronger central government, "thirteen Sovereignities pulling against each other, and all tugging at the federal head will soon bring ruin on the whole." Not all Americans reacted as Washington did to what came to be known as **Shays's**