
OPTIONS IN BRIEF

OPTION 1 — UNITE AROUND THE CONSTITUTION

Our nation is on the brink of anarchy. Our current plight has been brought upon us by the Articles of Confederation and the pettiness of the states. If we want to save our nation, we must immediately adopt the Constitution that was drafted in Philadelphia. The national government proposed in the Constitution will have the authority to act on behalf of all of our citizens. Our opponents are trying to frighten the public with groundless fears. But look seriously at what is being proposed. The Constitution puts forth a structure in which our nation will be governed by leaders of wisdom, experience, justice, and virtue. The record of so-called "democracy" in several states has proven the logic of this approach. We learned twelve years ago that we had to join together or perish. Today, we must follow the same path if we are to fulfill the destiny that Divine Providence has laid out for us.

OPTION 2 — CLEARLY DEFINE INDIVIDUAL RIGHTS

Beware the Federalist Constitution! The document that is being forced on the country is dangerously flawed. Let us step back and weigh the present situation. There is no crisis that demands an immediate response. We must calmly and deliberately go about revising the Constitution to establish a solid foundation for forming a more perfect union. We must carefully define and limit the authority we grant our government. We must add to the Constitution a bill of rights to safeguard the liberties of America's citizens. We should not take anything for granted. Even governments established in the name of liberty have been known to infringe on the liberties of the citizenry. With so much in doubt, we must not act in haste. The noble experiment we are carrying out on these shores demands that we strive for perfection.

OPTION 3 — TRUST IN THE COMMON CITIZEN

Free citizens — defend your rights! The self-anointed aristocracy that gathered in Philadelphia last summer has devised a scheme to deprive Americans of their liberties. Are we to trade the liberty cap of the free citizen for the yoke of the serf? Never! The Federalists have whipped up fears of chaos to win support for their Constitution. In fact, they are concerned mainly with protecting their wealth and investments. The strong national government suggested by the Philadelphia convention would allow only a handful of wealthy men to participate in the affairs of the republic. Our political system must be grounded in the common citizen — not a privileged elite. The states are the proper defenders of the republican form of government. We must remember always that the only source of legitimate authority is the citizenry. We must not give away the rights we shed blood to gain.

Option 1

UNITE AROUND THE CONSTITUTION

Our nation is on the brink of anarchy. At home, the threat of rebellion and revolt hangs over us, while commerce is hamstrung by the tangle of laws and taxes imposed by the states. On our borders, foreign powers occupy our territory with little regard for our claims. In the capitals of Europe, we are mocked for our weakness and inability to pay our debts.

Our current plight has been brought upon us by the Articles of Confederation and the pettiness of the states. Fortunately, we finally have before us the means to escape from our predicament. If we want to save our nation, we must immediately adopt the Constitution that was drafted in Philadelphia.

The states have proven that they are incapable of promoting our national well-being. They have been unwilling to provide the national government the money necessary to pay America's debts and carry out the functions required of a nation. Seized by the popular forces of democracy, several have flooded their economies with worthless paper money, passed laws preventing creditors from collecting their debts, and thwarted commerce from neighboring states.

The national government proposed in the Constitution will have the authority to act on behalf of all of our citizens. The president will see that America's laws are enforced fairly and consistently. The Supreme Court will ensure that the Constitution becomes the standard by which the laws of the states are judged. The Congress will take measures to address the nation's problems and end the feuding among the states.

Of course, there are doubters. Some say that the United States is too large to be governed as a single state. To them we respond that the size of our republic will be turned to our advantage. In a nation so large and diverse, no region or narrow interest group will be able to dominate the national government and act contrary to the public good. The Constitution's division of power among the three components of the national government will also protect our freedoms and liberties. The executive, judicial, and legislative branches each have the authority to check the abuses and excesses of the others.

Our opponents are trying to frighten the public with groundless fears. They claim that the state governments will be abolished. In fact, the Constitution grants the states and the citizenry all of the powers not specifically assigned to the national government. They argue that the national government will take away the natural rights of life, liberty, and property. On the contrary, the very preamble of the Constitution emphasizes the importance of individual rights.

Finally, they cry "aristocracy!" But look seriously at what is being proposed. The Constitution puts forth a structure in which our nation will be governed by leaders of wisdom, experience, justice, and virtue. Elected officials in the executive and legislative branches will serve for limited terms, and may be voted out of office. The record of so-called "democracy" in several states has proven the logic of this approach. The Constitution makes way for men of high standing to take their rightful place in government.

The men who gathered in Philadelphia know what is best for the nation. They spent long hours deliberating the same issues that are now being raised. Rather than attack their motives, we should thankfully trust in their judgment. How many young states have had the benefit of a George Washington to guide them through their early years? Ancient Rome would have been blessed to have had such patriots. Do you imagine that they would somehow betray the best interests of our country?

We learned twelve years ago that we had to join together or perish. Today, we must follow the same path if we are to fulfill the destiny that Divine Providence has laid out for us. If we are to create a more perfect union, we must ratify the new Constitution.

FROM THE RECORD

Newspaper essay by John Jay, New York lawyer:

"It would be more to the interest of the people of America that they should be one nation, under one federal government than that they should divide themselves into separate confederacies and give to the head of each the same kinds of powers which they are advised to place in one national government.

"Independent America was not composed of detached and distant territories, but of one connected, fertile, wide spreading country. Providence has been pleased to give this one connected country to one united people, a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels of arms and efforts, fighting side by side throughout a long and bloody war, have nobly established their general liberty and independence.

"The convention was composed of men highly distinguished by their patriotism, virtue and wisdom. They passed many months in cool uninterrupted and daily consultations; and finally, without having been awed by power, or influenced by any passions except love for their country, they presented and recommended to the people the plan produced by their joint and very unanimous counsels."

Newspaper essay by Alexander Hamilton, New York lawyer:

"If these states should be either wholly disunited or only united in partial confederacies, the subdivisions will have frequent and violent contests with each other. The causes of hostility are numerous. Some take their origin entirely in private passions and interests. If Shays had not been a desperate debtor it is much to be doubted whether Massachusetts would have been plunged into a civil war. The genius of a republic is pacific [peaceful]; the spirit of commerce has a tendency to soften the manners of men and to extinguish those inflammable humours which have so often kindled into wars. A firm Union will be of the utmost moment to the peace and liberty of the states as a barrier against domestic faction and insurrection....

"We have reached almost the last stage of national humiliation. There is scarcely any thing that can wound the pride, or degrade the character of an independent nation which we do not experience. Do we owe debts to foreigners and to our own citizens? These remain without any proper or satisfactory provision for their discharge. Have we valuable territories and important posts in the possession of a foreign power, which by express stipulations ought long since to have been surrendered? We have neither troops, nor treasury, nor government....The price of improved land in most parts of the country is much lower than can be accounted for by the market and can only be fully explained by that want [lack] of private and public confidence [in the government and economy].

"We must extend the authority of the union to the persons of the citizens — the only proper objects of government. Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint....We cannot expect that the persons entrusted with the administration of the [states] will execute the resolutions or degrees of the general authority. The reverse of this results from the constitution of human nature."

Newspaper essay by James Madison, Virginia land-owner:

"Among the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction [interest groups]. The instability, injustice and confusion introduced into the public councils have been the mortal diseases under which popular [democratic] governments have everywhere perished. Our [state] governments are too unstable, the public good is disregarded in the conflicts of rival parties, and measures are too often decided, not according to the rules of justice, and the rights of the minority party, but by the superior force of an interested and over-bearing majority.

"The latent cause of faction is sown in the nature of man. The most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are

without property have ever formed distinct interests in society.

“The cause of faction cannot be removed; and relief is only to be sought in the means of controlling its effects. The two great points of difference between a Democracy and a Republic are, first, the delegation of the government, in the latter to a small number of citizens elected by the rest: secondly, the greater number of citizens and greater sphere of country, over which the latter may be extended....

“Extend the sphere [territory] and you take in a

greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens....

“Wherever the real power in government lies, there is the danger of oppression. In our [state] governments the real power lies in the majority of the community, and the invasion of private rights is chiefly, not from acts of government contrary to the sense of its citizens, but from acts in which government is the mere instrument of the majority of citizens.”

BELIEFS AND ASSUMPTIONS UNDERLYING OPTION 1

1. Men of wisdom, virtue, and experience should be responsible for guiding our young republic.
2. Governments controlled by the popular forces of democracy eventually slide into anarchy and civil war. Many of the states currently controlled by popular factions have already taken the first steps toward self-destruction.
3. Divine Providence has intended that our people — bound by language, custom, religion, geography, and values — form a strong, unified nation.
4. The central government should assume the powers necessary to effectively govern national affairs, leaving the remaining responsibilities in the hands of the states.

SUPPORTING ARGUMENTS FOR OPTION 1

1. Establishing a strong, central government will advance our foreign relations, allowing our nation to pay its debts, protect its citizens, and enforce the treaties America has signed with foreign countries.
2. The large, well-structured republic that has been proposed will block selfish interests from turning government to their own advantage at the expense of the common good.
3. A strong, central government will settle disputes among the states and prevent local uprisings, such as Shays' Rebellion, from erupting.
4. Checks and balances among the legislative, executive, and judicial branches of government will ensure that no individual or institution threatens the liberties of our citizens.

Option 2

CLEARLY DEFINE INDIVIDUAL RIGHTS

Beware the Federalist Constitution! The document that is being forced on the country is dangerously flawed. Like peddlers of shabby merchandise, the Federalists are concealing the defects of their goods, exaggerating the benefits, and insisting that you act immediately. The American people have more sense than that.

Almost all of us recognize that there are serious shortcomings in the present system. Almost all of us are frustrated that one or two states have thwarted efforts to strengthen the national government under the Articles of Confederation. That was why Congress and all but one of the states took steps to convene the gathering in Philadelphia. Indeed, the delegates were perhaps justified in going beyond their duties to draft a new Constitution. The document they produced is certainly worthy of consideration. But do these men, distinguished as they may be, possess a monopoly on wisdom? Are we to accept their judgement without question, as if they speak with the voice of God?

For a moment, let us step back and weigh the present situation. There is no crisis that demands an immediate response. We are not threatened with invasion. Yet we are told that we must rush to enact the proposed Constitution. The best approach is quite the opposite. We must calmly and deliberately go about revising the Constitution to establish a solid foundation for forming a more perfect union.

First, we must recognize that those who are given power over others frequently abuse it. This is human nature. Power tends to corrupt the soul. As citizens of these United States of America, we must carefully define and limit the authority we grant our government. In particular, we must guard against the dangers of placing a standing army in the hands of a powerful executive. From Caesar in ancient Rome to Cromwell in 17th century England, history contains many examples of military strongmen who have taken away the liberties of their people. We must learn from the misfortunes of the past. We cannot assume that our country's army will always be led by selfless patriots like George Washington.

Second, and most important, we must add to the Constitution a bill of rights to safeguard the liberties of America's citizens. Only a few short years ago, we took up arms to defend our rights as Englishmen. The most far-sighted leaders of our state governments have insisted that bills of rights be inserted into their state constitutions. Should not these same rights be guaranteed in our national Constitution? We should not take anything for granted. Even governments established in the name of liberty have been known to infringe on the liberties of the citizenry. The rights that we hold most dear — trial by a jury of our peers, freedom of worship, an unfettered press — must be clearly spelled out in our Constitution.

The Federalists admit that amendments to the proposed Constitution are needed. But they want you to first buy the goods and then address the problems. They argue that the document produced in Philadelphia is as fragile as a house of cards. Make one or two modifications, they warn, and the whole structure will come tumbling down. But consider the danger in their line of reasoning. The Federalists plan to establish a strong national government and then to immediately ask the officials at the head of our country to voluntarily reduce their powers. Should we expect such restraint from men in authority?

With so much in doubt, we must not act in haste. There is no more important task before the American people than the framing of a Constitution. We are a nation of laws, and our laws will derive their legitimacy from the wisdom of our Constitution. We will most likely not undertake this project again in our lifetimes. Let us craft the document that will govern America with the utmost precision. The noble experiment we are carrying out on these shores demands that we strive for perfection.

FROM THE RECORD

Newspaper essay by "A Plebian," New York:

"The plan [proposed Constitution] is defective. Some of the powers granted are dangerous; others not well defined. Amendments are necessary. Why then not amend it? Why not remove the cause of danger? The instrument is yet in the hands of the people; it is not signed, sealed, and delivered. The people have the power to give it any form they please. With regard to our public and national concerns, what is there in our condition that threatens us with any immediate danger? We are at peace with all the world."

Newspaper essay by "Brutus," New York:

"Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged [reduced] their authority. This is a sufficient reason to induce you to be careful, in the first instance, how you deposit the powers of government....The powers of the general [national] legislature extend to every case that is of the least importance — there is no thing valuable to human nature, nothing dear to freeman, but what is within its power.

"The common good, therefore, is the end [goal] of civil government....But it is not necessary for this purpose that individuals should relinquish all their natural rights. Some are of such a nature that they cannot be surrendered....Others are not necessary to be resigned in order to attain the end for which government is instituted. Rulers have the same propensities as other men; they are as likely to use the power with which they are vested for private purposes, and to the injury and oppression of those over whom they are placed....The peoples in all countries where any sense of freedom remains have fixed barriers against the encroachments of their rulers. The country from which we have derived our origin [Britain] is an eminent example of this. Their Magna Charta and bill of rights have long been the boast, as well as the security, of that nation....This principle is a fundamental one in all the constitutions of our own states.

"For the security of life, in criminal prosecutions, the bills of rights of most of the states have declared that no man shall be held to answer for a crime until he is made fully acquainted with the charge brought against him; he shall not be compelled to accuse or furnish evidence against himself, the witness against him shall be brought face to face, and he shall be fully heard by himself or counsel. Are not provisions of this kind as necessary in the general government, as in that of a particular state?

"In the bills of rights of the states it is declared that a well regulated militia is the proper and natural defense of a free government — that as standing armies in time of peace are dangerous, they are not to be kept up, and that the military should be kept under strict subordination to, and controlled by the civil power. The same security is as necessary in this Constitution and much more so; for the general government will have the sole power to raise and to pay armies.

Resolution of the Massachusetts Ratifying Convention:

"It is the opinion of this Convention that certain amendments and alterations in the said Constitution would remove the fears and quiet the apprehensions of many of the good people of the Commonwealth, and more effectually guard against an undue administration of the federal government....That it be explicitly declared that all powers not expressly delegated by the aforesaid Constitution are reserved to the several states, to be by them exercised....That no person shall be tried for any crime by which he may incur an infamous punishment, or loss of life, until he be first indicted by a grand jury."

Letter from Thomas Jefferson, Virginia landowner, to James Madison:

"I do not like the omission of a bill of rights providing clearly and without the aid of sophisms for freedom of religion, against monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by jury....A bill of rights is what the

people are entitled to against every government on earth, general or particular, and what no just government should refuse or rest on inference....I hope therefore a bill of rights will be formed to guard the peoples against the federal government, as they are already guarded against their state governments in most instances."

Pamphlet by Robert Whitehill, Pennsylvania landowner:

"It is the nature of power to seek its own increase, and thus the loss of liberty is the necessary conse-

quence of a loose or extravagant delegation of authority. National freedom has been and will be the sacrifice of ambition and power; and it is our duty to employ the present opportunity in stipulating such restrictions as are best calculated to protect us from oppression and slavery....In entering into the social compact, men ought not to leave their rulers at large, but erect a permanent land mark by which they may learn the extent of their authority, and the people be able to discover the first encroachments on their liberties."

BELIEFS AND ASSUMPTIONS UNDERLYING OPTION 2

1. Governments inevitably seek to increase their power at the expense of individual liberty.
2. Considering that these United States do not face an immediate crisis, we should move calmly and carefully to craft a constitution for our nation.
3. A bill of rights should be included in the national Constitution to protect individuals from the power of a strong, central government.
4. A standing army under the control of a strong government poses a threat to individual liberty.

SUPPORTING ARGUMENTS FOR OPTION 2

1. Including specific rights — such as freedom of religion, trial by jury, and freedom of the press — in the national Constitution will safeguard individual liberty.
2. Carefully balancing political power between the national government and the states will best protect the freedom and independence for which we have fought.
3. Building a strong consensus around the Constitution through compromise will ensure the success of our new national government.
4. Clearly defining the limits of government power will prevent the rise of a military dictatorship.

Option 3

TRUST IN THE COMMON CITIZEN

Free citizens — defend your rights! For six years, we fought to throw off the tyranny of British rule. Now we face a new threat from within our borders. The self-anointed aristocracy that gathered in Philadelphia last summer has devised a scheme to deprive Americans of their liberties. They are telling us that the American people are incapable of self-government and that we must turn our public affairs over to the so-called “better classes.” Is this the freedom for which we shed blood? Are we to trade the liberty cap of the free citizen for the yoke of the serf? Never!

Look closely at the small circle of conspirators that assembled in Philadelphia. It is made up almost exclusively of rich merchants, investors, and lawyers. These were not the men who stood bravely at the Concord Bridge and Valley Forge. Few can plow a straight furrow or hold out hands calloused from honest work. And yet, these same men want us to bow to them as if they were Roman patricians.

The Federalists have whipped up fears of chaos to win support for their Constitution. In fact, they are concerned mainly with protecting their wealth and investments. The crises that they have manufactured are no more than the inevitable birth pangs of our new nation. The proposed Constitution is hardly the answer to our problems. The strong national government suggested by the Philadelphia convention would allow only a handful of wealthy men to participate in the affairs of the republic. Who else would be able to travel 700 miles to serve in Congress or seek justice in the national court?

Our political system must be grounded in the common citizen — not a privileged elite. There is no better guarantee of liberty than a democracy founded on the good judgment of independent small farmers. Political power must be widely dispersed to give the greatest number of our citizens an opportunity to participate in government. None of us is more than a few days journey away from our state capitals, even in Virginia and Georgia. The states are the proper defenders of the republican form of government.

In contrast to the state governments, there is little room in the proposed Constitution for the common man to express his views. At every turn, the popular voice of democracy is stifled. Only the representatives in the lower house would be chosen by the citizens at large. In the Senate, small states would be equal to large states in voting power. The plantation owners of the southern states have even insisted that their slaves be taken into account in determining representation.

Of particular danger is the clause which grants Congress the power “to make all laws which shall be necessary and proper” to fulfill its role. This is a blank check that the American people are expected to blindly sign. The delegates to the Philadelphia convention are asking us to turn over the rights that inspired our struggle for independence. Perhaps they should have reread the Declaration of Independence before drafting their Constitution.

What our would-be aristocrats in fact have in mind is a return to the Old World. Under the proposed Constitution, the president would conspire with the Senate to secure his re-election and rule with the authority of a king. Together, they would exercise their treaty-making power to impose their will on the entire nation. The national government would grow rich on taxes, while the state legislatures would be starved of revenue. Should any of the states raise a cry of protest, the president would be quick to order a professional standing army to punish his critics. A military tyranny would be just over the horizon.

Our patriots did not give their lives to create such a government. On the contrary, the proposed Constitution is a slap in the face to the cause of liberty. We must remember always that the only source of legitimate authority is the citizenry. We must not give away the rights we shed blood to gain.

FROM THE RECORD

Newspaper essay by "Philadelphiensis," Pennsylvania:

"The president general will be king to all intents and purposes [under the proposed Constitution], and one of the most dangerous kind....He is vested with powers exceeding those of the most despotic monarch we know of in modern times. What a handsome return have these men made to the people of America for their confidence. Through the misconduct of these bold conspirators we have lost the most glorious opportunity that any country ever had to establish a free system of government. America under one purely democratic rule would be rendered the happiest and most powerful in the universe, but under the proposed one, composed of an elective king and a standing army, officers by his sycophants, the starvelings of Cincinnati, and an aristocratic Congress of the well born, an iota of happiness, freedom, or national strength cannot exist."

Letter from Thomas Jefferson, Virginia landowner, to James Madison:

"The president seems a bad edition of a Polish king. He may be reelected from four years to four years for life. Reason and experience prove to us that a chief magistrate, so continuable, is an officer for life. I wish that at the end of the four years they had made him [the president] ineligible a second time."

Newspaper essay by Elbridge Gerry, Massachusetts merchant:

"The Constitution proposed has few, if any federal features, but is rather a system of national government....However respectable the members may be who signed the Constitution, it must be admitted that a free people are the proper guardians of their rights and liberties — that the greatest men may err and that their errors are sometimes of the greatest magnitude."

Newspaper essay by George Mason, Virginia landowner:

"The Senate with its great powers will destroy any balance in the government and enable them to accomplish what usurpations they please upon the

rights and liberties of the people....The judiciary is so constructed and extended as to absorb and destroy the judiciaries of the several states; thereby rendering law as tedious, intricate and expensive, and justice as unattainable, by a great part of the community, as in England, and enabling the rich to oppress and ruin the poor....

"By declaring all treaties supreme laws of the land, the Executive and the Senate have in many cases, an exclusive power of legislation....By requiring only a majority to make all commercial and navigation laws, the five southern states (whose produce and circumstances are totally different from that of the eight Northern and Eastern states) will be ruined....This government will commence in a moderate Aristocracy; it is at present impossible to foresee whether it will produce a monarchy or a corrupt oppressive Aristocracy."

Newspaper essay by Richard Henry Lee, Virginia landowner:

"It must be admitted that our federal system [Articles of Confederation] is defective, and that some of the state governments are not well administered. But we attribute to the defects in our government many evils and embarrassments which are most clearly the result of the late war....

"It is the opinion of many great authors that a free elective government cannot be extended over large territories. One national government and general legislature alone can never extend equal benefits to all parts of the United States. Different laws, customs, and opinions exist in the different states....It would be impossible to collect a representation of the parts of the country five, six, and seven hundred miles from the seat of government.

"The people of this country, in one sense, may all be democratic; but if we make the proper distinction between the few men of wealth and abilities, and consider them as the natural aristocracy of the country, and the great body of the people, the middle and lower classes, as the democracy in it, this federal representative branch [Congress] will have but very little democracy in it.

“When [and if] the people shall adopt the proposed Constitution, it will be their last and supreme act. Whenever this Constitution or any part of it shall be incompatible with the ancient customs, rights, the laws, or the state constitutions heretofore established in the United States, it will entirely abolish them and do them away....Once power is transferred from the many to the few, all changes become extremely difficult; the government in this case being beneficial to the few, they will be exceedingly clever and adroit in preventing any measures which may lead to a change; and nothing will produce it, but great exertions and

severe struggles on the part of the common people.”

Newspaper essay by “Brutus,” New York:

“The legislature of the United States are vested with the great and uncontrollable powers of laying and collecting taxes, regulating trade, instituting courts...and other general powers. And are by this clause invested with the power of making all laws, proper and necessary, for carrying all these into execution. They may so exercise this power as entirely to annihilate all the state governments.”

BELIEFS AND ASSUMPTIONS UNDERLYING OPTION 3

1. Concentrated power inevitably attracts power-hungry men. The political foundation of our republic must rest on the good sense of the common citizen.
2. The hardships that presently afflict many of us are related to the effects of the War of Independence, not to the Articles of Confederation.
3. The territory of these United States is much too large and its people too diverse for a republican form of government to operate fairly and effectively.
4. Maintaining a balance of political power between a strong, central government and the states would be impossible. Eventually, the national government would deprive the states of their sources of revenue and authority.

SUPPORTING ARGUMENTS FOR OPTION 3

1. Protecting the power of state governments will thwart the ambitions of those seeking to impose a monarchy or an aristocracy on our nation.
2. A loose confederation will allow each state to develop along its chosen path and avoid regional conflicts on divisive issues, such as slavery and trade.
3. Dividing political authority among the states will ensure that the common citizen has greater access to power and will be more likely to participate in government.
4. Building our political system around the common citizen will elevate the character and virtue of those in whom we place our trust.

What Was James Madison's Legacy to American Constitutionalism and Politics?

Purpose of the lesson

This lesson examines the legacy of the “philosopher statesman,” James Madison. Madison combined the intellectual knowledge and creativity of the scholar with the practical savvy of the politician, a man of strong principles who also realized the value of compromise. He was one of the principal architects of the constitutional and political institutions that continue to shape our nation's life today. In his ability to translate ideas into action Madison also exemplified what has become an important characteristic of American citizenship.

When you have completed this lesson, you should be able to judge the degree to which Madison deserves to be considered the “father” of both the Constitution and the Bill of Rights. You should also be able to explain and evaluate Madison's successes and failures in putting his ideals into practice as regards political parties and slavery.

Who Was James Madison?

James Madison (1751–1836) was born in Virginia and raised on his father's plantation in that state, Montpelier, in Orange County. His parents encouraged his studies, engaging tutors to provide a classical education and sending him to the College of New Jersey (now Princeton University), where he excelled.

After college Madison had difficulty choosing a career, showing little interest in law or the clergy, the traditional professions of those who went to college. Within a few years, however, he was drawn into the growing colonial resistance to the imperial policies of Great Britain. He was elected to the Virginia convention in 1776, where he helped draft the state's new constitution. In 1779 Madison was elected as the youngest delegate to the Continental Congress. Despite his youth, he quickly became one of the Congress's most active members. His service in the Virginia state assembly (1784–87) convinced him of the dangers inherent in the powerful state legislatures and of the weaknesses of the Articles of Confederation. He became an advocate of a stronger central government, helped bring about the Philadelphia Convention in 1787, and was elected as a Virginia delegate to the Convention.

Madison was a slim man who stood just five feet four

inches tall. One colleague described him as “no bigger than half a piece of soap.” Almost painfully shy, he had a soft voice and suffered from chronic ill health. Lacking physical charisma, he influenced others primarily by the force of his intellect and his political skills. Madison's knowledge of constitutionalism, as well as his willingness to find compromises, made him one of the most influential delegates at the Constitutional Convention.

After the Convention, Madison helped lead the effort to win ratification of the Constitution. He wrote many of the most important essays that became known as *The Federalist*. In Virginia's ratifying convention, his knowledge and reasoning overcame the firebrand objections of Patrick Henry to secure approval of the Constitution. In the new government Madison was elected to the House of Representatives, where he became its most influential member, drafting the Bill of Rights and supporting legislation that gave strength to the new federal government. He was a close friend and advisor of George Washington in the first years of his presidency.

With Thomas Jefferson, Madison formed the nation's first political party in the 1790s in opposition to the policies of Alexander Hamilton. Madison served as secretary of state during Jefferson's presidency and was elected president in 1808. He led the new nation through its first major war (the War of 1812). His wife Dolley was so successful in establishing the hospitality of the presidency that she inspired the term “First Lady.” At the end of his second term in 1817, Madison retired to his home, Montpelier, where he continued to serve as advisor and confidant to many leaders of the day. He died there in 1836.

What role did Madison play at the Philadelphia Convention?

In later years Madison denied that he was the “Father of the Constitution,” observing that the nation's charter was “the work of many heads and many hands” rather than the “the offspring of a single brain.” Other delegates to the Convention, however, acknowledged Madison's special stature, one noting that “he blends together the profound politician, with the scholar.”

Madison showed this blend of abilities in his preparation for the Convention. He researched texts examining every form of government that was known. He summarized his conclusions in two papers, one on “Ancient and Modern



Why do you suppose Madison took a front seat at the convention?

Confederations,” the other on “Vices of the Political System of the United States.” From his studies and his own experience in government, Madison concluded that a confederated form of government would not work and that small-scale republics had inherent shortcomings because of their size. Madison designed an alternative constitutional framework that would avoid these problems. Introduced at the Convention by Virginia’s delegates, it became known as the Virginia Plan.

Madison’s Virginia Plan determined in large measure the direction the Philadelphia Convention would take. It ensured that the work of the delegates would focus not on whether the Articles of Confederation should be replaced, but rather on the composition of the new government to replace it.

Madison’s views, however, did not always prevail at the Convention. Of the 71 suggestions he proposed or supported, 40 were voted down. He was disappointed that the Convention delegates rejected proportional representation for the Senate in favor of equal representation of the states (the Great Compromise). He considered this a breach of republican principles of representative government. He also opposed giving the selection of senators to state legislatures. The Virginia Plan’s call for Congress to have a veto power over some state legislation was also rejected in favor of the more general Supremacy Clause. This compromise, however, would later provide the basis for judicial review and for

accomplishing much the same purpose Madison had in mind. The delegates’ work on the executive branch, to which Madison had given little thought beforehand, sharpened his appreciation of the Constitution’s use of checks and balances, a benefit he would emphasize in his *Federalist* essays.

Madison was probably the most active Convention delegate. His role in the debates, in which he spoke over 160 times, and as the Convention’s unofficial secretary, taking detailed notes of the proceedings in his own special shorthand, required Madison’s almost constant attendance that summer. The effort, he later confessed, “almost killed him.”

What were the major themes of Madison’s *Federalist* essays?

Along with his co-authors, Alexander Hamilton and John Jay, Madison wrote as a partisan defender of the Constitution against the attacks of the Anti-Federalists. Madison wrote 24 of his 29 *Federalist* essays in seven weeks, at the remarkable pace of three essays a week. Many of these essays rank among the best political thought ever produced.

His *Federalist* writings allowed Madison to expand upon his vision of republican government and on his belief that

the proposed Constitution would accommodate both the ideals and the political realities of the young republic. In *Federalist 10*, which many scholars consider to be Madison's masterpiece, he redefined the traditional concepts of democracy and a republic. He demonstrated that by "extending the sphere" of republican government to a national scope, the nation could avoid many of the problems of such a form of government at the local level. The greater diversity of large republics minimized the evils of faction and popular passion, making it more difficult for tyrannical majorities to combine.

The representative government provided by the Constitution for such a republic, he argued, would also shield those in government from local passions. Larger constituencies and the indirect procedures for selecting a president, senators, and federal judges would encourage the choice of the most qualified. Madison described such provisions in the Constitution as a "republican remedy" for the "diseases most incident to republican government."

In *Federalist 51* Madison offered what is perhaps the best explanation of a system of government based on separation of powers that has ever been written. Acknowledging that if "men were angels" no government would be needed, Madison argued that any government "administered by men over men" must be so constituted so as to control itself as well as the governed.

The electoral process provided a primary means of controlling government, but "auxiliary precautions" were also needed. The Constitution would provide these precautions by so constituting the national government in its separate branches as to discourage the abuse of power. A system of checks and balances, Madison believed, would give "to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others." A president, for example, would have both the necessary powers and the self-interest to resist encroachments from the legislature or judiciary. Similarly, Congress and the Supreme Court would combine personal motives and constitutional powers to resist any intrusion by the other branches. "Ambition," Madison declared, "must be made to counteract ambition."

Madison, Hamilton, and Jay wrote *The Federalist* as part of a campaign for ratification of the Constitution in New York. Their writings have since become a classic text for representative democracy, translated and read by many people around the world.

What contribution did Madison make to establishing the principles of religious freedom?

From his first year in the Virginia legislature in 1776, Madison was an advocate of religious freedom. In colonial Virginia, the Anglican (Episcopal) church was

established by law as the official religion and received public funding. Madison became convinced such favoritism was wrong, because it discriminated against Baptists and other religions in Virginia. Madison believed that allowing a diversity of faiths to exist together on an equal footing was the best assurance against religious persecution and strife. Though he helped persuade George Mason to endorse the "liberty of conscience for all" in the Virginia Declaration of Rights (1776), he was not able to separate church and government in Virginia's new constitution. Madison, however, did not give up. Ten years later in the Virginia legislature he led the effort to adopt the Statute for Religious Freedom drafted by Thomas Jefferson. The law provided the basis for ending a state church in Virginia and granting equal freedom to all faiths. In Madison's words it "extinguished forever the ambitious hope of making laws for the human mind."

Madison's strong belief in religious freedom is also evident in his drafting of the U.S. Bill of Rights. He had originally opposed adding a bill of rights to the Constitution because he doubted the effectiveness of mere "paper barriers" to tyranny and because he did not see a need for such formal guarantees in a government limited to enumerated powers. He had promised his Baptist friends and others, however, that he would work for the addition of a bill of rights if the Constitution were adopted. He also became convinced that a formal declaration of rights would widen support for the new Constitution and would help the nation's courts protect the rights of minorities against majority encroachments.

Almost single-handedly, Madison worked through the summer of 1789 to draft and secure agreement on the measure. Overcoming the apathy and skepticism of congressional colleagues and working out an acceptable draft from among many proposals required all of Madison's political skills. Though many among the Framers could claim to have had a hand in "fathering" the Constitution, the Bill of Rights was primarily Madison's offspring.

Critical Thinking Exercise

EXAMINING JAMES MADISON'S CHANGING VIEWS ON PARTY

In his *Federalist* essays and earlier writings Madison reflected the negative view of party and faction that was common to eighteenth-century thought. In *Federalist 10* he defined a faction as a "number of citizens...united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." Though he acknowledged that partisan differences were inevitable in a free society, Madison feared these

differences would bring “instability, injustice, and confusion...into the public councils.” The only value Madison would grant party animosities was a negative one: by their diversity and competition they would cancel each other out, making it difficult for dangerous majorities to form or to stay together if they did combine.

Madison changed such views when he himself became a partisan in the 1790s. Believing that Hamilton’s financial, economic and diplomatic plans for the young republic were both bad policy and contrary to the letter and spirit of the Constitution, he organized an opposition in Congress that was called “Mr. Madison’s party.” This became the basis for the nation’s first organized national political party, the Democratic Republicans, led by Madison and Jefferson in opposition to the policies of president John Adams. Their party efforts in the press and through local political clubs helped to bring about Jefferson’s defeat of Adams in the presidential election of 1800.

Madison maintained that his partisan activity had not betrayed his earlier principles. Popular elections, as he had said in his *Federalist* essays, were a legitimate way of preventing bad government. A party that represented the true majority in the nation, he argued, was consistent with the ideals of representative government and republicanism, especially in opposition to those who sought to undermine such principles. Madison’s critics, however, accused him of hypocrisy. He had drafted the Constitution with the object of shielding those in government from popular passions. As a party politician, his critics argued, Madison was now playing to such passions for his own ends.

It is doubtful that Madison realized in the 1790s that his partisan activities were laying the basis for a national party system in the United States. In his later years, however, he concluded that political parties had become unavoidable in America because “the Constitution itself must be an unailing source of party distinctions.” The growing sectionalism of party differences and the deep political divide over the issue of slavery, however, alarmed him. He hoped that for the sake of the Union Americans might overcome their partisan animosities and emulate the Framers’ spirit of compromise.

1. Do you agree with Madison’s early definition of a faction? Why or why not? Is there a difference between a “faction” and a “party”? Explain your position.
2. Was Madison consistent throughout his public career in his views and practice regarding political parties? Explain your position.
3. Do the growing sectional differences of American parties in the early nineteenth century and their sharp divisions over such issues as slavery undermine Madison’s belief that large-scale republics worked better than smaller ones? Why or why not?



Why did Madison become a party politician?

4. The two-party system was not envisioned by the Framers in their drafting of the Constitution. Had it been, would they have drafted a different document? Would they have changed their views about separated powers and checks and balances? Why or why not?
5. Do you think a party system works better with a system of divided powers or with a parliamentary system of government? Explain your position.
6. Do you agree with Madison that differing interpretations of the Constitution make political parties inevitable? What other factors help determine party differences today?

What was Madison’s position on slavery?

Another issue on which Madison had difficulty living up to his ideals was the institution of slavery. Slavery remained a moral dilemma for him. He denounced the institution but lived off the fruits of slave labor all his life. Financial difficulties late in life led Madison to sell some slaves and he decided against freeing his slaves upon his death in order to provide for his wife’s later years.

Nevertheless, Madison remained a consistent and persistent critic of the institution of slavery throughout his public career. The influence of Dolley Madison’s Quaker background may have strengthened his anti-slavery sentiments. At the Philadelphia Convention Madison denounced slavery and was instrumental in



Why did Madison find slavery a moral dilemma?

keeping the words “slave” and “slavery” out of the Constitution in order that it not acknowledge expressly a “property in men.”

Madison believed that slavery harmed both slave and slaveholder. It violated the natural rights of the former and corrupted the civic virtue of the latter, undermining the slaveholder’s moral integrity and instilling in him a contempt for honest labor. Madison also believed that slavery tainted the American experiment in self-government, which he regarded as an important turning point in the history of the world.

Madison hoped that the end of the foreign slave trade in 1808 would force planters to hire free labor and that westward expansion would disperse the slave population and diminish the economic value of slavery to the south. Pessimistic about the ability of freed blacks and whites to live together in one society, however, he actively supported colonization efforts that sent free blacks back to Africa. Madison also feared that a quick solution to the slavery problem threatened the Union. Even though he regarded the institution as “this dreadful calamity which has so long afflicted our country and filled so many with

despair,” Madison, like Lincoln a generation later, placed the survival of the Union first. In his last public statement, “Advice to My Country,” Madison declared it to be “nearest my heart and deepest in my convictions” that “the Union of the States be cherished and perpetuated.”

Why did Madison decide to publish his notes of the Philadelphia Convention?

The wisdom of compromise, even with so difficult an issue as slavery, was one lesson Madison hoped his fellow citizens might learn from the work of the Philadelphia Convention. The last surviving Framer, Madison feared that with the passage of years the significance of that work was in danger of becoming a lost inheritance to future generations of Americans. He therefore arranged for his notes of the Convention to be published after his death. A public record of the Framers’ deliberations, he hoped, would put their work in its proper historical context and help to secure its legacy for the future.

The Federalist No. 10 (James Madison)

Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations.

The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true.

It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy that it was worse than the disease. Liberty is to faction what air is to fire, an ailment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment of different leaders ambitiously contending for preeminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good. So strong is this propensity of mankind to fall into mutual animosities that, where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their

unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property.

Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors and those who are debtors fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment and, not improbably, corrupt his integrity. With equal, nay, with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party or, in other words, the most powerful faction must be expected to prevail.

Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? [These] are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number is a shilling saved to their own pockets.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole. The inference to which we are brought is that the *causes* of faction cannot be removed and that relief is only to be sought in the means of controlling its *effects*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the

majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which this form of government can be rescued from the opprobrium under which it has so long labored and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of

citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is, whether small or extensive republics are more favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations:

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to center in men who possess the most attractive merit and the most diffusive and established character.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect: the great and aggregate interests being referred to the national, the local and particular to the state legislatures.

The other point of difference is the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less

to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears that the same advantage which a republic has over a democracy, in controlling the effects of factions, is enjoyed by a large over a small republic—is enjoyed by the Union over the states composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and to schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union increase this security? Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular states but will be unable to spread a general conflagration through the other states. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district than an entire state.

In the extent, and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.

Article V.

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 offence to be twice put in jeopardy of life or limb: nor shall be compelled in any 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 VI.

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 VII.

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 reexamined in any Court of the United States, than according to the rules of the common law.

Article VIII.

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

Article IX.

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

Article X.

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.

Articles I–X. proposed to the states by Congress. September 25, 1789

Ratification completed. December 15, 1791

Ratification declared. March 1, 1792

5.2: Patrick Henry Denounces the Constitution (1788)

By the time the Virginia convention came to debate the adoption of the Constitution on June 2, 1788, most of the nine states needed to put the document into effect had already ratified it. Still, the formation of a national government without Virginia was unthinkable: It was the largest state, and its leaders had been at the forefront of the patriot cause.

One of the most formidable opponents of the Constitution in Virginia was the patriot firebrand Patrick Henry. In a speech to the state ratification convention, Henry drew a dramatic contrast between power and liberty: Government could either exercise power effectively or protect individual freedom; it could not do both. Was he right? Does a strong government inevitably endanger liberty? Is the preservation of liberty the most important goal of government? Did the consolidated government Henry feared actually trample on rights? on states' rights? on individual rights? What revisions of the original document may have reduced fears of federal power over individuals?

Interestingly, in the 1790s, possibly out of admiration for the Federalist president George Washington, Henry became a member of the political party that favored expanding the new Constitution to maximize the power and authority of the government it had created.

Virginia Should Reject the Constitution

Patrick Henry

Mr. Chairman, the public mind, as well as my own, is extremely uneasy at the proposed change of government. Give me leave to form one of the number of those who wish to be thoroughly acquainted with the reasons of this perilous and uneasy situation, and why we are brought hither to decide on this great national question. I consider myself as the servant of the people of this commonwealth, as a sentinel over their rights, liberty, and happiness. I represent their feelings when I say that they are exceedingly uneasy at being brought from that state of full security, which they enjoyed, to the present delusive appearance of things. A year ago, the minds of our citizens were at perfect repose. Before the meeting of the late federal Convention at Philadelphia, a general peace and a universal tranquillity prevailed in this country; but, since that period, they are exceedingly uneasy and disquieted. When I wished for an appointment to this Convention, my mind was extremely agitated for the

Jonathan Elliot, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (Washington, DC: J. Elliot, 1840), vol. 3, pp. 21–22, 44–46, 58–60, 65–66.

situation of public affairs: I conceived the republic to be in extreme danger: If our situation be thus uneasy, whence has arisen this fearful jeopardy? It arises from this fatal system: it arises from a proposal to change our government—a proposal that goes to the utter annihilation of the most solemn engagements of the states. . . .

. . . Make the best of this new government—say it is composed by any thing but inspiration—you ought to be extremely cautious, watchful, jealous of your liberty; for, instead of securing your rights, you may lose them forever: If a wrong step be now made, the republic may be lost forever. If this new government will not come up to the expectation of the people, and they shall be disappointed, their liberty will be lost, and tyranny must and will arise. I repeat it again, and I beg gentlemen to consider that a wrong step, made now, will plunge us into misery, and our republic will be lost. It will be necessary for this Convention to have a faithful historical detail of the facts that preceded the session of the Federal Convention, and the reasons that actuated its members in proposing an entire alteration of government, and to demonstrate the dangers that awaited us. If they were of such awful magnitude as to warrant a proposal so extremely perilous as this, I must assert, that this Convention has an absolute right to a thorough discovery of every circumstance relative to this great event. And here I would make this inquiry of those worthy characters who composed a part of the late federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated government, instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand, What right had they to say, *We, the people*? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask: Who authorized them to speak the language of, *We, the people*, instead of, *We, the states*? States are the characteristics and the soul of confederation. If the states be not the agents of this compact, it must be one great, consolidated, national government, of the people of all the states. . . .

. . . Here is a resolution as radical as that which separated us from Great Britain. It is radical in this transition; our rights and privileges are endangered, and the sovereignty of the states will be relinquished: and cannot we plainly see that this is actually the case? The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change, so loudly talked of by some, and considered by others. Is this tame relinquishment of rights worthy of freemen? Is it worthy of that manly fortitude that ought to characterize republicans? It is said eight states have adopted this plan. I declare that if twelve states and a half had adopted it, I would, with manly firmness, and in spite of an erring world, reject it. You are not to inquire how your trade may be increased, nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your government. . . .

. . . We are come hither to preserve the poor commonwealth of Virginia, if it can be possibly done: something must be done to preserve your liberty and mine. The Confederation, this same despised government, merits, in my opinion, the highest encomium: it carried us through a long and dangerous war; it rendered us victorious

in that bloody conflict with a powerful nation: it has secured us a territory greater than any European monarch possesses: and shall a government which has been thus strong and vigorous, be accused of imbecility, and abandoned for want of energy? Consider what you are about to do before you part with the government. Take longer time in reckoning things: revolutions like this have happened in almost every country in Europe: similar examples are to be found in ancient Greece and ancient Rome—instances of the people losing their liberty by their own carelessness and the ambition of a few. We are cautioned by the honorable gentleman, who presides, against faction and turbulence. I acknowledge that licentiousness is dangerous, and that it ought to be provided against: I acknowledge, also, the new form of government may effectually prevent it: yet there is another thing it will as effectually do—it will oppress and ruin the people. . . .

. . . An opinion has gone forth, we find, that we are contemptible people: the time has been when we were thought otherwise. Under the same despised government, we commanded the respect of all Europe: wheretofore are we now reckoned otherwise? The American spirit has fled from hence: it has gone to regions where it has never been expected; it has gone to the people of France, in search of a splendid government—a strong, energetic government. Shall we imitate the example of those nations who have gone from a simple to a splendid government? Are those nations more worthy of our imitation? What can make an adequate satisfaction to them for the loss they have suffered in attaining such a government—for the loss of their liberty? If we admit this consolidated government, it will be because we like a great, splendid one. Some way or other we must be a great and mighty empire: we must have an army, and a navy, and a number of things. When the American spirit was in its youth, the language of America was different: liberty, sir, was then the primary object. We are descended from a people whose government was founded on liberty: our glorious forefathers of Great Britain made liberty the foundation of every thing. That country is become a great, mighty, and splendid nation: not because their government is strong and energetic, but, sir, because liberty is its direct end and foundation. We drew the spirit of liberty from our British ancestors: by that spirit we have triumphed over every difficulty. But now, sir, the American spirit, assisted by the ropes and chains of consolidation, is about to convert this country into a powerful and mighty empire. If you make the citizens of this country agree to become the subjects of one great consolidated empire of America, your government will not have sufficient energy to keep them together. Such a government is incompatible with the genius of republicanism. There will be no checks, no real balances, in this government. What can avail your specious, imaginary balances, your rope-dancing, chain-rattling, ridiculous ideal checks and contrivances? But, sir, we are not feared by foreigners: we do not make nations tremble. Would this constitute happiness, or secure liberty? I trust, sir, our political hemisphere will ever direct their operations to the security of those objects.

Consider our situation, sir: go to the poor man, and ask him what he does. He will inform you that he enjoys the fruits of his labor, under his own fig-tree, with his wife and children around him, in peace and security. Go to every other member of society—you will find the same tranquil ease and content; you will find no alarms or

disturbances. Why, then, tell us of danger, to terrify us into an adoption of this new form of government? And yet who knows the dangers that this new system may produce? They are out of the sight of the common people: they cannot foresee latent consequences. I dread the operation of it on the middling and lower classes of people: it is for them I fear the adoption of this system. I fear I tire the patience of the committee; but I beg to be indulged with a few more observations. When I thus profess myself an advocate for the liberty of the people, I shall be told I am a designing man, that I am to be a great man, that I am to be a demagogue; and many similar illiberal insinuations will be thrown out: but, sir, conscious rectitude outweighs those things with me. I see great jeopardy in this new government. I see none from our present one. . . .

This Constitution is said to have beautiful features; but when I come to examine these features, sir, they appear to me horribly frightful. Among other deformities, it has an awful squinting: it squints towards monarchy; and does not this raise indignation in the breast of every true American?

Your President may easily become king. Your Senate is so imperfectly constructed that your dearest rights may be sacrificed by what may be a small minority; and a very small minority may continue forever unchangeably this government, although horribly defective. Where are your checks in this government? Your strongholds will be in the hands of your enemies. It is on a supposition that your American governors shall be honest, that all the good qualities of this government are founded, but its defective and imperfect construction puts it in their power to perpetrate the worse of mischiefs, should they be bad men; and, sir, would not all the world, from the eastern to the western hemisphere, blame our distracted folly in resting our rights upon the contingency of our rulers being good or bad? Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty! I say that the loss of that dearest privilege has ever followed, with absolute certainty, every such mad attempt.

If your American chief be a man of ambition and abilities, how easy is it for him to render himself absolute! The army is in his hands, and if he be a man of address, it will be attached to him, and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design: and sir, will the American spirit solely relieve you when this happens? I would rather infinitely—and I am sure most of this Convention are of the same opinion—have a king, lords, and commons, than a government so replete with such insupportable evils. If we make a king, we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them; but the President, in the field, at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke. I cannot with patience think of this idea. If ever he violates the laws, one of two things will happen: he will come at the head of his army, to carry every thing before him; or he will give bail, or do what Mr. Chief Justice will order him. If he be guilty, will not the recollection of his crimes teach him to make one bold push for the American throne? Will not the immense difference between being master of every thing, and being ignominiously tried and punished, powerfully excite him to make

this bold push? But, sir, where is the existing force to punish him? Can he not, at the head of his army, beat down every opposition? Away with your President! we shall have a king: the army will salute him monarch: your militia will leave you, and assist in making him king, and fight against you: and what have you to oppose this force? What will then become of you and your rights? Will not absolute despotism ensue? . . .

I beg pardon of this house for having taken up more time than came to my share, and I thank them for the patience and polite attention with which I have been heard. If I shall be in the minority, I shall have those painful sensations which arise from a conviction of *being overpowered in a good cause*. Yet I will be a peaceable citizen. My head, my hand, and my heart, shall be at liberty to retrieve the loss of liberty, and remove the defects of that system in a constitutional way. I wish not to go to violence, but will wait with hopes that the spirit which predominated in the revolution is not yet gone, nor the cause of those who are attached to the revolution yet lost. I shall therefore patiently wait in expectation of seeing that government changed, so as to be compatible with the safety, liberty, and happiness, of the people.

5.3: The Constitution as a Usurpation (1787)

Richard Henry Lee was another Virginian who opposed the Constitution. He and Patrick Henry had been closely allied in the struggle against Great Britain and continued to be allies in the fight to derail the Constitution. In the following essay, the first of his anti-Constitution series collected as Letters of the Federal Farmer, Lee attacks both the motives and the methods of his opponents.

What does he mean by "aristocratical men"? Who, for example, might be included in that group? Did the craftsmen, small shopkeepers, and "mechanics" of the cities vote for pro-Constitution delegates to the states' adoption conventions?

The Constitution Will Encourage Aristocracy

Richard Henry Lee

The present moment discovers a new face in our affairs. Our object has been all along to reform our federal system, and to strengthen our governments—to establish peace, order, and justice in the community—but a new object now presents. The plan of government now proposed is evidently calculated totally to change, in time, our condition as a people. Instead of being thirteen republics, under a federal head, it is

clearly designed to make us one consolidated government. Of this, I think, I shall fully convince you in my following letters on this subject. This consolidation of the states has been the object of several men in this country for some time past. Whether such a change can ever be effected, in any manner; whether it can be effected without convulsions and civil wars; whether such a change will not totally destroy the liberties of this country—time only can determine.

To have a just idea of the government before us, and to show that a consolidated one is the object in view, it is necessary not only to examine the plan, but also its history, and the politics of its particular friends.

The Confederation was formed when great confidence was placed in the voluntary exertions of individuals, and of the respective states; and the framers of it, to guard against usurpation, so limited and checked the powers that, in many respects they are inadequate to the exigencies of the union. We find, therefore, members of Congress urging alterations in the federal system almost as soon as it was adopted. It was early proposed to vest Congress with powers to levy an impost, to regulate trade, &c., but such was that known to be the caution of the states in parting with power, the vestment even of these was proposed to be under several checks and limitations. During the war the general confusion and the introduction of paper money infused in the minds of people vague ideas respecting government and credit. We expected too much from the return of peace, and of course we have been disappointed. Our governments have been new and unsettled; and several legislatures, by making tender, suspension, and paper money laws, have given just cause of uneasiness to creditors. By these and other causes, several orders of men in the community have been prepared, by degrees, for a change of government; and this very abuse of power in the legislatures, which in some cases has been charged upon the democratic part of the community, has furnished aristocratical men with those very weapons, and those very means, with which in great measure they are rapidly effecting their favorite object. And should an oppressive government be the consequence of the proposed change, [posterity] may reproach not only a few overbearing, unprincipled men, but those parties in the states which have misused their powers.

The conduct of several legislatures, touching paper money and tender laws, has prepared many honest men for changes in government which otherwise they would not have thought of—when by the evils, on the one hand, and by the secret instigations of artful men, on the other, the minds of men were become sufficiently uneasy, a bold step was taken which is usually followed by a revolution or a civil war. A general convention for mere commercial purposes was moved for—the authors of this measure saw that the people's attention was turned solely to the amendment of the federal system; and that, had the idea of a total change been started, probably no state would have appointed members to the convention. The idea of destroying ultimately the state government and forming one consolidated system could not have been admitted. A convention, therefore, merely for vesting in Congress power to regulate trade was proposed. This was pleasing to the commercial towns, and the landed people had little or no concern about it. September, 1786, a few men from the middle states met at Annapolis and hastily proposed a convention to be held in May, 1787, for the purpose, generally, of amending the Confederation. This was done before the delegates of

Massachusetts and of the other states arrived. Still not a word was said about destroying the old constitution and making a new one. The states still unsuspecting and not aware that they were passing the Rubicon, appointed members to the new convention, for the sole and express purpose of revising and amending the Confederation—and, probably not one man in ten thousand in the United States till within these ten or twelve days, had an idea that the old ship was to be destroyed, and he put to the alternative of embarking in the new ship presented, or of being left in danger of sinking. The States, I believe, universally supposed the convention would report alterations in the Confederation which would pass an examination in Congress, and after being agreed to there, would be confirmed by all the legislatures, or be rejected.

Virginia made a very respectable appointment and placed at the head of it the first man in America. In this appointment there was a mixture of political characters: but Pennsylvania appointed principally those men who are esteemed aristocratical. Here the favorite moment for changing the government was evidently discerned by a few men, who seized it with address. Ten other states appointed, and tho' they chose men principally connected with commerce and the judicial department, yet they appointed many good republican characters—had they all attended we should now see, I am persuaded, a better system presented. The nonattendance of eight or nine men who were appointed members of the convention, I shall ever consider as a very unfortunate event to the United States. Had they attended, I am pretty clear that the result of the convention would not have had that strong tendency to aristocracy now discernible in every part of the plan. There would not have been so great an accumulation of powers, especially as to the internal police of this country, in a few hands as the constitution reported proposes to vest in them—the young visionary men and the consolidating aristocracy would have been more restrained than they have been. Eleven states met in the convention and after four months close attention presented the new constitution, to be adopted or rejected by the people. The uneasy and fickle part of the community may be prepared to receive any form of government; but I presume the enlightened and substantial part will give any constitution presented for their adoption a candid and thorough examination; and silence those designing or empty men who weakly and rashly attempt to precipitate the adoption of a system of so much importance. We shall view the convention with proper respect—and, at the same time that we reflect there were men of abilities and integrity in it, we must recollect how disproportionately the democratic and aristocratic parts of the community were represented. Perhaps the judicious friends and opposers of the new constitution will agree that it is best to let it rely solely on its own merits, or be condemned for its own defects.

5.4: “The Father of the Constitution” Defends His Offspring (1787, 1788)

If any one person was the guiding hand behind the Philadelphia deliberations that shaped the Constitution, it was James Madison of Virginia. In June 1788, Madison was called on to defend his handiwork

in the Virginia adoption convention against the attack of Patrick Henry and others.

In the section of Madison's defense excerpted below, he responds to Henry's attacks on the taxing powers conferred on the proposed new government. He reviews the severe handicaps the Articles of Confederation imposed on the ability of the general government to pay its bills. He also describes the financial and economic plight of the nation under the Confederation, as perceived by a nationalist.

In what ways, according to Madison, did the weak revenue-raising power of the Confederation government hurt the American nation? Do you see any connection between the antifederalists' fears of the taxing power of the new general government and the opposition to Britain after 1763? Was the conferring of greater taxing power on the new federal government in some ways a retreat from the "Spirit of '76"?

If a stronger central government were to be created by this new constitution, what would become of minorities or particular interests? Would they lose their autonomy in the new majority? And what of the nature of factions, the specific driving forces that seemed to place selfish interests before the public good? Could these be better controlled by the new government? In Federalist Paper Number 10, Madison argued that the new Constitution could indeed better address these issues.

The Constitution Should Be Ratified

James Madison

Mr. Chairman, in considering this great subject, I trust we shall find that part which gives the general government the power of laying and collecting taxes indispensable, and essential to the existence of any efficient or well-organized system of government: if we consult reason, and be ruled by its dictates, we shall find its justification there: if we review the experience we have had, or contemplate the history of nations, here we find ample reasons to prove its expediency. There is little reason to depend for necessary supplies on a body which is fully possessed of the power of withholding them. If a government depends on other governments for its revenues—if it must depend on the voluntary contributions of its members—its existence must be precarious. A government which relies on thirteen independent sovereignties for the means of its existence, is a solecism in theory and a mere nullity in practice. Is it consistent with reason that such a government can promote the happiness of any people? It is subversive of every principle of sound policy, to trust the safety of a community with a government totally destitute of the means of protecting itself or its

members. Can Congress, after the repeated unequivocal proofs it has experienced of the utter inutility and inefficacy of requisitions, reasonably expect that they would be hereafter effectual or productive? Will not the same local interests, and other causes, militate against a compliance? Whoever hopes the contrary must ever be disappointed. The effect, sir, cannot be changed without a removal of the cause. Let each county in this commonwealth be supposed free and independent: let your revenues depend on requisitions of proportionate quotas from them: let application be made to them repeatedly—is it to be presumed that they would comply, or that an adequate collection could be made from partial compliances? It is now difficult to collect taxes from them: how much would that difficulty be enhanced, were you to depend solely on their generosity? I appeal to the reason of every gentleman here, whether he is not persuaded that the present Confederation is as feeble as the government of Virginia would be in that case: to the same reason I appeal, whether it be compatible with prudence to continue a government of such manifest and palpable debility. . . .

I agree with the honorable gentleman (Mr. Henry) that national splendor and glory are not our objects; but does he distinguish between what will render us secure and happy at home, and what will render us respectable abroad? If we be free and happy at home, we shall be respectable abroad.

The Confederation is so notoriously feeble, that foreign nations are unwilling to form any treaties with us: they are apprized that our general government cannot perform any of its engagements, but that they may be violated at pleasure by any of the states. Our violation of treaties already entered into proves this truth unequivocally. No nation will, therefore, make any stipulations with Congress, conceding any advantages of importance to us: they will be the more averse to entering into engagements with us, as the imbecility of our government enables them to derive many advantages from our trade, without granting us any return. But were this country united by proper bands, in addition to other great advantages, we could form very beneficial treaties with foreign states. But this can never happen without a change in our system. Were we not laughed at by the minister of that nation, from which we may be able yet to extort some of the most salutary measures for this country? Were we not told that it was necessary to temporize till our government acquired consistency? Will any nation relinquish national advantages to us? You will be greatly disappointed, if you expect any such good effects from this contemptible system. Let us recollect our conduct to that country from which we have received the most friendly aid [France]. How have we dealt with that benevolent ally? Have we complied with our most sacred obligations to that nation? Have we paid the interest punctually from year to year? Is not the interest accumulating, while not a shilling is discharged of the principal? The magnanimity and forbearance of that ally are so great that she has not called upon us for her claims, even in her own distress and necessity. This, sir, is an additional motive to increase our exertions. At this moment of time a very considerable amount is due from us to that country and others.

[Here Mr. Madison mentioned the amount of the debts due to different foreign nations.]

We have been obliged to borrow money even to pay the interests of our debts. This is a ruinous and most disgraceful expedient. Is this a situation on which America can

rely for security and happiness? How are we to extricate ourselves? The honorable member told us we might rely on the punctuality and friendship of the states, and that they will discharge their quotas for the future. The contributions of the states have been found inadequate from the beginning, and are diminishing instead of increasing. From the month of June, 1787, till June, 1788, they have only paid 276,641 dollars into the federal treasury for the purposes of supporting the national government, and discharging the interest of the national debts—a sum so very insufficient, that it must greatly alarm the friends of their country. Suggestions and strong assertions dissipate before these facts. I shall no longer fatigue the committee at this time, but will resume the subject as early as I can.

Regulating the Violence of Faction Federalist Paper #10

James Madison

To the People of the State of New York:

Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. . . .

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes: the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these

faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

5.5: Alexander Hamilton on Pro- and Anti-Constitution Forces (1787)

Alexander Hamilton was a New York delegate to the Constitutional Convention. An intense nationalist, he had condemned the document that emerged from the deliberations at Philadelphia as too weak, too tilted toward local rights. Despite such misgivings, however, he much preferred it to the Articles of Confederation, and fought hard for its adoption by his state. Together with James Madison and John Jay, Hamilton authored a set of brilliant newspaper articles designed to convince New Yorkers of the wisdom of adopting the new frame of government. These became the famous Federalist Papers, one of the best commentaries on the Constitution to this day. Hamilton also participated in the actual New York convention debates and played a critical role in New York's ratification of the new government.

On the Expediency of Adopting the Federal
Constitution—Convention of New York,
June 24, 1788.

Alexander Hamilton

I am persuaded, Mr. Chairman, that I in my turn shall be indulged, in addressing the committee. We all, in equal sincerity, profess to be anxious for the establishment of a republican government, on a safe and solid basis. It is the object of the wishes of every honest man in the United States, and I presume that I shall not be disbelieved, when I declare, that it is an object of all others, the nearest and most dear to my own heart. The means of accomplishing this great purpose become the most important study which can interest mankind. It is our duty to examine all those means with peculiar attention, and to choose the best and most effectual. It is our duty to draw from nature, from reason, from examples, the best principles of policy, and to pursue and apply them in the formation of our government. We should contemplate and compare the systems, which, in this examination, come under our view; distinguish, with a careful eye, the defects and excellencies of each, and discarding the former, incorporate the latter, as far as circumstances will admit, into our Constitution. If we pursue a different course and neglect this duty, we shall probably disappoint the expectations of our country and of the world.

In the commencement of a revolution, which received its birth from the usurpations of tyranny, nothing was more natural, than that the public mind should be influenced by an extreme spirit of jealousy. To resist these encroachments, and to nourish this spirit, was the great object of all our public and private institutions. The zeal for liberty became predominant and excessive. In forming our confederation, this passion alone seemed to actuate us, and we appear to have had no other view than to secure ourselves from despotism. The object certainly was a valuable one, and deserved our utmost attention. But, sir, there is another object equally important, and which our enthusiasm rendered us little capable of regarding: I mean a principle of strength and stability in the organization of our government, and vigor in its operations. This purpose can never be accomplished but by the establishment of some select body, formed peculiarly upon this principle. There are few positions more demonstrable than that there should be in every republic, some permanent body to correct the prejudices, check the intemperate passions, and regulate the fluctuations of a popular assembly. It is evident, that a body instituted for these purposes, must be so formed as to exclude as much as possible from its own character, those infirmities and that mutability which it is designed to remedy. It is therefore necessary that it should be small, that it should hold its authority during a considerable period, and that it should have such an independence in the exercise of its powers, as will divest it as much as possible of local prejudices. It should be so formed as to be the centre of political knowledge, to pursue always a steady line of conduct, and to reduce

every irregular propensity to system. Without this establishment, we may make experiments without end, but shall never have an efficient government.

It is an unquestionable truth, that the body of the people in every country desire sincerely its prosperity; but it is equally unquestionable, that they do not possess the discernment and stability necessary for systematic government. To deny that they are frequently led into the grossest errors by misinformation and passion, would be a flattery which their own good sense must despise. That branch of administration especially, which involves our political relations with foreign states, a community will ever be incompetent to. These truths are not often held up in public assemblies; but they cannot be unknown to any who hear me. From these principles it follows, that there ought to be two distinct bodies in our government: one, which shall be immediately constituted by and peculiarly represent the people, and possess all the popular features; another, formed upon the principle, and for the purposes, before explained. Such considerations as these induced the convention who formed your State constitution, to institute a Senate upon the present plan. The history of ancient and modern republics had taught them, that many of the evils which these republics had suffered, arose from the want of a certain balance and mutual control indispensable to a wise administration: they were convinced that popular assemblies are frequently misguided by ignorance, by sudden impulses, and the intrigues of ambitious men; and that some firm barrier against these operations was necessary: they, therefore, instituted your Senate, and the benefits we have experienced have fully justified their conceptions. . . .

Gentlemen, in their reasoning, have placed the interests of the several States, and those of the United States in contrast; this is not a fair view of the subject: they must necessarily be involved in each other. What we apprehend is, that some sinister prejudice, or some prevailing passion, may assume the form of a genuine interest. The influence of these is as powerful as the most permanent conviction of the public good; and against this influence we ought to provide. The local interests of a State ought in every case to give way to the interests of the Union; for when a sacrifice of one or the other is necessary, the former becomes only an apparent, partial interest, and should yield, on the principle that the small good ought never to oppose the great one. When you assemble from your several counties, in the Legislature, were every member to be guided only by the apparent interests of his county, government would be impracticable. There must be a perpetual accommodation and sacrifice of local advantages to general expediency; but the spirit of a mere popular assembly would rarely be actuated by this important principle. It is therefore absolutely necessary that the Senate should be so formed, as to be unbiassed by false conceptions of the real interests, or undue attachment to the apparent good of their several States.

Gentlemen indulge too many unreasonable apprehensions of danger to the State government; they seem to suppose that the moment you put men into a national council, they become corrupt and tyrannical, and lose all their affection for their fellow-citizens. But can we imagine that the Senators will ever be so insensible of their own advantage, as to sacrifice the genuine interest of their constituents? The State governments are essentially necessary to the form and spirit of the general system. As long, therefore, as Congress has a full conviction of this necessity, they must even

upon principles purely national, have as firm an attachment to the one as to the other. This conviction can never leave them, unless they become madmen. While the constitution continues to be read, and its principles known, the States must, by every rational man, be considered as essential, component parts of The Union; and therefore the idea of sacrificing the former to the latter is wholly inadmissible.

The objectors do not advert to the natural strength and resources of State governments, which will ever give them an important superiority over the general government. If we compare the nature of their different powers, or the means of popular influence which each possesses, we shall find the advantage entirely on the side of the States. This consideration, important as it is, seems to have been little attended to. The aggregate number of representatives throughout the States may be two thousand. Their personal influence will, therefore, be proportionably more extensive than that of one or two hundred men in Congress. The State establishments of civil and military officers of every description, infinitely surpassing in number any possible correspondent establishments in the general government, will create such an extent and complication of attachments, as will ever secure the predilection and support of the people. Whenever, therefore, Congress shall meditate any infringement of the State constitutions, the great body of the people will naturally take part with their domestic representatives. Can the general government withstand such an united opposition? Will the people suffer themselves to be stripped of their privileges? Will they suffer their Legislatures to be reduced to a shadow and a name? The idea is shocking to common-sense.

From the circumstances already explained, and many others which might be mentioned, results a complicated, irresistible check, which must ever support the existence and importance of the State governments. The danger, if any exists, flows from an opposite source. The probable evil is, that the general government will be too dependent on the State Legislatures, too much governed by their prejudices, and too obsequious to their humors; that the States, with every power in their hands, will make encroachments on the national authority, till the Union is weakened and dissolved.

Every member must have been struck with an observation of a gentleman from Albany. Do what you will, says he, local prejudices and opinions will go into the government. What! shall we then form a constitution to cherish and strengthen these prejudices? Shall we confirm the distemper, instead of remedying it. It is undeniable that there must be a control somewhere. Either the general interest is to control the particular interests, or the contrary. If the former, then certainly the government ought to be so framed, as to render the power of control efficient to all intents and purposes; if the latter, a striking absurdity follows: the controlling powers must be as numerous as the varying interests, and the operations of the government must therefore cease; for the moment you accommodate these different interests, which is the only way to set the government in motion, you establish a controlling power. Thus, whatever constitutional provisions are made to the contrary, every government will be at last driven to the necessity of subjecting the partial to the universal interest. The gentlemen ought always, in their reasoning, to distinguish between the real, genuine good of a State, and the opinions and prejudices which may prevail respecting it: the

latter may be opposed to the general good, and consequently ought to be sacrificed; the former is so involved in it, that it never can be sacrificed.

There are certain social principles in human nature from which we may draw the most solid conclusions with respect to the conduct of individuals and of communities. We love our families more than our neighbors; we love our neighbors more than our countrymen in general. The human affections, like the solar heat, lose their intensity as they depart from the centre, and become languid in proportion to the expansion of the circle on which they act. On these principles, the attachment of the individual will be first and forever secured by the State governments; they will be a mutual protection and support. Another source of influence, which has already been pointed out, is the various official connections in the States. Gentlemen endeavor to evade the force of this by saying that these offices will be insignificant. This is by no means true. The State officers will ever be important, because they are necessary and useful. Their powers are such as are extremely interesting to the people, such as affect their property, their liberty, and life. What is more important than the administration of justice and the execution of the civil and criminal laws? Can the State governments become insignificant while they have the power of raising money independently and without control? If they are really useful; if they are calculated to promote the essential interests of the people; they must have their confidence and support. The States can never lose their powers till the whole people of America are robbed of their liberties. These must go together; they must support each other, or meet one common fate. On the gentlemen's principle, we may safely trust the State governments, though we have no means of resisting them; but we cannot confide in the national government, though we have an effectual constitutional guard against every encroachment. This is the essence of their argument, and it is false and fallacious beyond conception.

With regard to the jurisdiction of the two governments, I shall certainly admit that the Constitution ought to be so formed as not to prevent the States from providing for their own existence; and I maintain that it is so formed; and that their power of providing for themselves is sufficiently established. This is conceded by one gentleman, and in the next breath the concession is retracted. He says Congress has but one exclusive right in taxation—that of duties on imports; certainly, then, their other powers are only concurrent. But to take off the force of this obvious conclusion, he immediately says that the laws of the United States are supreme; and that where there is one supreme there cannot be a concurrent authority; and further, that where the laws of the Union are supreme, those of the States must be subordinate; because there cannot be two supremes. This is curious sophistry. That two supreme powers cannot act together is false. They are inconsistent only when they are aimed at each other or at one indivisible object. The laws of the United States are supreme, as to all their proper, constitutional objects: the laws of the States are supreme in the same way. These supreme laws may act on different objects without clashing; or they may operate on different parts of the same common object with perfect harmony. Suppose both governments should lay a tax of a penny on a certain article; has not each an independent and uncontrollable power to collect its own tax? The meaning of the maxim, there cannot be two supremes, is simply this—two powers cannot be

supreme over each other. This meaning is entirely perverted by the gentlemen. But, it is said, disputes between collectors are to be referred to the federal courts. This is again wandering in the field of conjecture. But suppose the fact is certain; is it not to be presumed that they will express the true meaning of the Constitution and the laws? Will they not be bound to consider the concurrent jurisdiction; to declare that both the taxes shall have equal operation; that both the powers, in that respect, are sovereign and co-extensive? If they transgress their duty, we are to hope that they will be punished. Sir, we can reason from probabilities alone. When we leave common-sense, and give ourselves up to conjecture, there can be no certainty, no security in our reasonings.

I imagine I have stated to the committee abundant reasons to prove the entire safety of the State governments and of the people. I would go into a more minute consideration of the nature of the concurrent jurisdiction, and the operation of the laws in relation to revenue; but at present I feel too much indisposed to proceed. I shall, with leave of the committee, improve another opportunity of expressing to them more fully my ideas on this point. I wish the committee to remember that the Constitution under examination is framed upon truly republican principles; and that, as it is expressly designed to provide for the common protection and the general welfare of the United States, it must be utterly repugnant to this Constitution to subvert the State governments or oppress the people.

FEDERALIST VERSUS REPUBLICAN

The founders of the United States planned well for a new national government, but they left out one vital piece: political parties. In every modern democracy voters with similar social, economic, political, ideological, and cultural views have combined into parties to win elections and enact programs that reflect their ideals and interests.

Yet the early leaders of the American republic deplored parties as divisive and likely to be corrupt and self-serving. They made no provision for them in their new frame of government. But parties soon appeared. They coalesced around a cluster of issues, domestic and foreign, that would divide the young nation.

At home the most urgent concerns of the new government led by President George Washington were the financial problems that had beset its predecessor: the lack of revenue, the unpaid government debts, the disarray in the nation's currency, and America's financial reputation abroad. The man Washington placed in charge of the nation's finances was Alexander Hamilton, the New York lawyer who had helped get the Constitution adopted in his home state, even though it was too weak for his tastes. As secretary of the Treasury, Hamilton would push a program of federal taxes, debt refunding, a protective tariff, and a national bank designed to transform the economic base of American society.

The new republic was also forced to reorder its relations with other nations. The United States faced problems with Spain over the navigation of the Mississippi and with Britain over Indian relations, unpaid debts, exclusion of Americans from traditional trade routes, and continued military occupation of American territory in the West.

Even more tangled were America's associations with France, which after 1789 experienced the shattering political, social, and ideological upheaval known as the French Revolution. Franco-American relations would become

