

We the People

of the United States, in order to form a more perfect Union, establish domestic Tranquillity, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to our Posterity, do ordain and establish this Constitution for the United States of America.

Article 1

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, in each State shall have Qualifications requisite for Electors of the most numerous Branch of the State Legislation.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and not exempt from Tax, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have no less than one Representative, and the Senate shall be composed of not more than two for every State.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for a Term of six Years; and they shall have Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

When vacancies happen in the Senate, the State Legislatures shall fill the Warrants, as they shall direct, in such Manner as they shall by Law direct. The Number of Senators shall not exceed one for every State.

Section 4. The Senate shall have the sole Power of Impeachment.

Immediately after they shall be sworn in, they shall elect a Chief Justice, one or more Justices, and one or more Associates, who shall hold their Offices during good Behaviour; but the Chief Justice shall hold his Office until he shall attain to the Age of seventy Years, and then he shall continue to hold his Office until he shall be removed by the Senate.

Section 5. The Senate shall have the sole Power of trying all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. The Oath or Affirmation shall be administered by the Chief Justice, or in his Absence, by the Vice President, or when he shall be absent, by such other Member as they shall by Law direct. The Oath or Affirmation shall be administered by the Chief Justice, or in his Absence, by the Vice President, or when he shall be absent, by such other Member as they shall by Law direct.

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The Federalist Papers

Alexander Hamilton,
James Madison,
and
John Jay

EDITED AND WITH AN
INTRODUCTION BY
MICHAEL A. GENOVESE



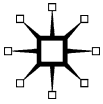
THE FEDERALIST PAPERS

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AND JOHN JAY

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*This book is dedicated to the men and women who stand up for
and defend the Constitution and the rule of law. For these
heroes, it is often a lonely, difficult battle,
but our Constitution faces severe threats and challenges,
and needs all the friends it can get.*

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PREFACE

There are many editions of the *Federalist Papers*. What distinguishes this edition from other fine volumes? After all, the Federalist Papers are the Federalist Papers, so what separates one volume from another is the Introduction.

Virtually all introductions to the Federalist Papers are written by historians and offer a historical perspective. This is important, even necessary, but is insufficient. To truly understand the Federalist Papers, one must grasp the *historical* and the *political*. After all, it is a political system that is being invented with the United States Constitution.

As a political scientist, who embraces the “American political development” approach to the study of my field, I recognize the importance of both the historical and political elements of the invention of the American system. In this introduction, I have tried to incorporate both the historically important background and context to the Constitution for which the Federalist Papers were written to defend, but also the important political context and implications embedded in the Constitution.

I am concerned with historical context but I am equally concerned with politics and power, constitutionalism and the rule of law, political philosophy and human nature, the law of politics and the politics of law. I want to show the reader what led to the Constitution, but also what is contained in the Constitution—the political institutions, the separation of powers, the arguments for a new federal or national government, the new “system” of government, and how all the pieces fit together.

Historians supply a very important piece to our puzzle of what the Constitution means. But political science also supplies key pieces, clues that allow the reader to understand more fully, more precisely what the framers intended, what the Constitution means, and how this new and innovative “system” of government was designed to work. The framers invented “a new science of politics.” That science is an intricate web of connections between separating power, sharing blended powers, republican electoral designs in a large or extended republic, with “rights” tacked on after formal ratification occurred, under a rule of law regime that set up a limited government with checks and balances under a Constitution. It was a complex and in some ways, contradictory system (as you will see, separating powers is in some ways in contradiction to checking powers). This new science was designed to create an equilibrium or balance of interests and factions that allowed—even encouraged—power to check power, and ambition to check ambition. The framers rejected direct democracy—the United States would, over time, evolve into a more democratic

state—and, also rejected one-man rule—they had just fought a revolution against the central authority of a king.

If they feared monarchy as well as the mob (democracy was sometimes referred to as mobocracy) they embraced republicanism. They also harbored some doubts about the capacity for self-government. Neither deep pessimists nor blind optimists about human nature, the framers attempted to provide a republican framework that would filter and moderate public passions, and would separate and check governmental authority. It was a mechanistic solution to a human problem.

The *Federalist Papers* remain the best and most authoritative explanation of the content and meanings, and interconnections of the United States Constitution. As such, they are an essential ingredient in any student's attempt to understand the genius—or the folly—of the framers of the Constitution.

For this edition, we have slightly modernized and made more consistent the text of the *Papers*. After all, they were written in a different age, and were penned by three different authors. We have retained the substance of the essays while only slightly altering the style.

This work was completed while at the Foundation for International Education in London in the fall of 2007, and I thank the fine staff and my colleagues at the Foundation for their assistance and support. I must also thank my outstanding Administrative Assistants at the Loyola Marymount University, Institute for Leadership Studies, Ms. Kristina Rioux and Mrs. Heather Brandi-Maurer. Not only are they excellent typists, but they also served as my “headache interceptor,” heading off problems and solving problems before they got to me. I owe them a great debt of thanks.

Finally, I owe my beautiful wife Gabriela more thanks than I could ever convey. I only wish my readers could find a spouse one-tenth as wonderful as mine—you would be most fortunate and happy. I am the luckiest man on earth.

INTRODUCTION

Michael A. Genovese

Writing in his diary entry dated July 4, 1776, King George III of England penned: “Nothing of importance this day.”¹ Nothing of importance? Hardly. July 4, 1776, of course, marks the founding of what became known as the United States of America. It was a monumental day, and a monumental event.

From Declaration to revolution, the colonists won their hard fought freedom, yet were less successful at instituting an effective government that protected their liberties. The first governing document, The Articles of Confederation, created a weak and ineffective central government. Thus, a new way of organizing power was needed.

The summer of 1787 was blisteringly hot in the city of Philadelphia, and the fifty-five delegates to the Constitutional Convention who met in Independence Hall (then known as the Pennsylvania State House) from May 25 to September 17 decided to keep the doors closed and the windows shut. Not surprisingly, this secrecy fed fears among the public that the delegates were conspiring to betray the revolution, and replace the old British monarchy with a new American monarchy. The Constitutional Convention was authorized only to amend the Articles of Confederation, but the delegates almost immediately overstepped their charge and scrapped the Articles, deciding to replace them with a wholly new system of government. It was a bold and risky step.

The delegates, representing twelve of the thirteen states (Rhode Island did not send delegates) met day after excruciatingly hot day, bargaining, compromising, arguing, making proposals and counter-proposals, and debating. Finally, with their work finished and the new Constitution ready for public examination, the doors opened to a waiting and anxious crowd. Just what, the crowd wondered, had the delegates produced? A democracy or a monarchy?

According to a diary entry of James McHenry, one of the signers of the Constitution, as the aged and infirm delegate Benjamin Franklin made his way out of the Hall, a Mrs. Powell of Philadelphia shouted to Franklin, “Well Doctor what have we got, a republic or a monarchy?” to which Franklin replied, “A republic, if you can keep it.”

“... if you can keep it.”

Neither a democracy nor a monarchy, the founders offered to the people, a Republican form of government. Upon leaving the Constitutional Convention, Benjamin Franklin placed full responsibility for the new government on the shoulders of the people. It was their government, *if they could keep it*. In these few

words can be found both the challenge and the hope, as well as the dilemma of the American system of government. It was left up to the people. No mere written document would suffice; no constitutional arrangement was enough; no exquisitely designed system would do the full job. If the experiment in constitutional government was to succeed, it required the willful and concerted acts of the people of the United States. The Constitution may have been a gift of the framers to the people, but it was a gift that required hard work, constant vigilance, and unceasing effort to keep the experiment in self-government afloat.

That was over two hundred years ago. Today, the United States is a far different country than Franklin and the framers could ever have imagined. The United States is the world's only superpower, with an abundance of power, hard and soft. It is more a democracy than the framers had desired.² It is more open, diverse, and complex.

Prelude to the Constitution

It is clear that the desire to establish a political democracy was not paramount in the minds of the early settlers of the Americas. They left a Europe of Kings and Queens, rife with religious conflict and persecution, a rigid economic caste system, and a distinct lack of political rights. Democracy—assumed today, as a self-evidently superior form of government—was not on the “radar screens” of the early settlers because they were largely unfamiliar with the practices, procedures, language, and structures of democracy.

However, it wasn't long before the practice of self-government evolved into a set of experiences and expectations that would lead to demands for political rights and added power for people to control their own destiny. Nascent forms of self-government emerged in the new world as early as 1607 with the Jamestown, Virginia settlement. Shortly thereafter the Pilgrims who landed in Plymouth in 1620 crafted a Mayflower Compact of rights and duties, a compact or social contract akin to an early constitutional order. As the colonies developed, constitutions with elected assemblies were established to engage the colonists in practices resembling a rudimentary form of political democracy.

But such early efforts at self-government could never lose sight of one essential fact: they lived under British rule and were subject to the will of a king. Over time, the tensions between an emerging and growing democratic temperament and the arbitrary power of the King led to open conflicts.

Initially, the colonist's goal was not to revolt against Britain but to become a full-fledged part of Britain, ending their colonial status with hopes of becoming fully enfranchised British subjects. But the British still held an impression of the early colonists as criminals, religious fanatics, debtors, ne'er-do-wells, and social outcasts. What may have been partially true at one time, 150 years earlier, no longer reflected the reality in the colonies. Yet, the British steadfastly, and unwisely, refused to recognize the claims of the colonists and over time pressures built up that would lead to a stark choice for the colonists: subjugation or revolution.³

In 1774, amid mounting pressure to break ties with Great Britain, the colonies established a Continental Congress. This Congress first met in Philadelphia from

September 5 to October 26; its goal was to *settle* the dispute with Britain, not separate from the motherland. The Congress passed resolutions aimed at gaining certain political and economic rights and presented these requests to the King.

But King George III stubbornly refused to grant the requests from the colonists. Thus, the colonies agreed to form another Congress but on April 19, 1775, before it met, fighting broke out at Lexington and Concord in Massachusetts between colonial Minutemen and British troops. It became known as “the shot heard ’round the world.” Eight Minutemen were killed. This further inflamed the passions of the colonists and put pressure on the Continental Congress to become bolder and more radical. When the new Continental Congress met on May 10, 1775, the delegates were more prone to revolution. George Washington was named commander of the fledging militia, and war seemed a distinct possibility.

In January of 1776, Thomas Paine, published the influential pamphlet *Common Sense*. In it, Paine made the case for independence. Using language accessible to the average citizen, Paine attacked the British monarchy and incited the colonists to separate: “Everything that is right, pleads for separation. The blood of the slain, the weeping voice of nature cries, ‘Tis time to part.’”⁴

Common Sense was an instant sensation, widely read and overwhelmingly embraced in the colonies. More than 120,000 copies of *Common Sense* were sold in the first three months of publication alone (the equivalent to more than 19 million today). Approximately one in every thirteen adult colonists owned a copy.

To Paine, the King was “the Royal Brute of Great Britain.” In America, Paine asserted, “The law is king.” Paine called on the colonies to declare their independence and establish a new government.

Last ditch efforts to repair the breach with Britain fell flat, and on July 2, 1776 the Continental Congress “Resolved that these United Colonies are, and, of right, ought to be free and independent states,” A committee was formed to draft a formal declaration of independence, and the 34-year-old Thomas Jefferson penned the first draft.

On July 4, 1776, Jefferson’s draft was presented to the Continental Congress for a vote. His draft was amended by the Continental Congress and approved. Jefferson’s declaration was a powerful statement of principle, high purpose, and revolutionary sentiment.

While the majority of the Declaration consists of an exhaustive list of grievances against the British King (Paine’s “Royal Brute”), the creed of the document can be found in its brief but powerful opening:

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with one another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed—That whenever any Form of Government becomes destructive of these ends, it is

the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its power in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these colonies; and such is now the necessity that constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

We hold these *truths* to be *self-evident*, that all men (and at that time they meant only white males, women and slaves were not part of their definition of “we, the people”) are *created equal*, that they are *endowed by the Creator* with certain *unalienable rights*, that among these are *Life, Liberty* and the *pursuit of Happiness*. That to secure these *rights, Governments are instituted* among Men, *deriving their just powers* from the *consent of the governed* (consent, not the will of the King)—That whenever any Form of Government becomes destructive of these ends, it is the *Right of the People* to *alter or to abolish it* (the people’s right of revolution), and to *institute new Government* . . .

Thus began a revolution by a tiny band of colonies against the most powerful military in the world; a war that most observers thought was doomed from the start. Amazingly, after six years of war, the British finally gave in, and the colonies won their independence. In an odd way, the easy work, a revolution against the most powerful nation in the world, was over. Now for the hard part: bringing to life and practice, the radical ideas on forming a government that had animated the American Revolution.

The Articles of Confederation

The initial effort to form a post revolutionary war government led the Second Continental Congress to write the *Articles of Confederation and Perpetual Union*. This document, the new nation’s first constitution (ratified in 1781) established a loose confederation of states where power was highly decentralized and the states retained virtually all authority. The new national government reflected anti-leadership sentiments, and a preference for government close to the people.

The federal government, such as it was, was based almost wholly in Congress. So suspicious of central leadership were these framers that there was *no executive officer* in the new government. And yet, even Congress had few powers. While the Congress could declare war and make peace and treaties, it could not levy taxes, regulate commerce, or raise an army. Plus, there was no federal court system. The states (individually, as each state maintained “sovereignty, freedom, and independence”) retained most of the key powers, and the federal government was left weak and

limited. This federal government was more a league of friendship than a true national government.

While small, decentralized, state-centered government seemed attractive at the time, it wasn't long before it became painfully clear that something was wrong. As a reaction against the centralized rule of King and strong arbitrary government, the Articles seemed to go too far in the other direction, creating too weak and impotent a government.

A sense of crisis⁵ pervaded the new nation as many Americans began to have doubts about whether self-government was possible. To further complicate matters, the nation's economy was barely functioning. Thousands of average citizens who fought in the revolution were losing their farms, as they were unable to pay their mortgages due to dire economic conditions.

In every state, mini-rebellions sprang up. Farmers, though winning a war against Britain, were in jeopardy of losing their land due to the ineffective new government. In 1786, Daniel Shays, a former captain during the revolutionary war, led a group of about two thousand farmers in a confrontation with the government of Massachusetts. Their goal was to close the courts thereby preventing foreclosure of their property. While the farmers drew sympathy from many, the propertied class saw these rebellions as a direct threat to their safety, wealth, and power.

Amid mounting pressure to strengthen the federal government, Virginia called for a meeting of the states in Annapolis in 1786. But only five states sent delegates to the Annapolis Convention and it soon disbanded, but not before urging Congress to authorize another convention for 1787. Congress did so and instructed the state delegations to meet in Philadelphia for "the sole and express purpose of revising the Articles of Confederation." They ended up doing a great deal more.

A New Constitution

The inventors of the United States Constitution met in Philadelphia in the hot summer of 1787. Seventy-four delegates were chosen by the states; however, only fifty-five attended the convention held in the State House (now Independence Hall) in the room where over a decade earlier, many of the same men met to sign the Declaration of Independence.

Noticeable for their absence were some of the strongest advocates for democracy: Thomas Paine, Thomas Jefferson (who was in Paris), John Adams (in England), and Patrick Henry (who refused to go, fuming, he "smelt a rat"). Every state but Rhode Island sent delegates. Those in attendance were among the most respected, wealthy and most influential in the states.

The problem the delegates faced was that the Articles of Confederation created too weak a central government. Under the Articles, the national government could not pay the war debt to foreign nations (especially France) or to U.S. citizens, could not regulate commerce nor create a stable national currency, could not levy taxes or establish a viable military (needed to protect national security, expand westward and, increasingly, to protect private property from threats of growing debtor revolts).

There developed a broad consensus that the federal government had to be strengthened but beyond that there was little agreement. The revolutionary war had

been fought by the average citizen who in general was committed to the democratic and egalitarian principles found in Thomas Paine's *Common Sense* and Jefferson's *Declaration of Independence*. But after the revolution, a "new" voice came to the political forefront: the propertied class. Essentially, they wanted a government to protect private property, develop an infrastructure to promote commerce, and—of course—to protect their political and economic interests. Most of the men at the Philadelphia convention were from and represented the goals of the propertied class. However, if financial motivations animated these men, patriotic and good government goals also moved them. These were not one-dimensional figures but complex, even paradoxical men, pulled by what was best, as well as basest, in human nature.

Unlike the average citizen of the time, the framers' goal was not to create a democracy but to establish order under a republican form of government. It is here we see the disparity held between the Myth of America and the reality begin to become evident. A conflict, perhaps inevitable, between the haves and the have nots became the cleavage that characterized much of their era, as both class and political differences led to conflict in the new nation.

How could the delegates to the Constitutional Convention establish a government that—in part—betrayed the principles of the revolution? After all, were they to establish a new monarchy in America, they knew that another revolution would almost surely follow; for waiting outside the convention were thousands of poor, armed, combat experienced *democrats* ready and willing to once again put their lives on the line.

So obsessed was the public with the growing fear that the delegates to the Constitutional Convention might be plotting to create an American monarchy that a rumor spread in the colonies that a "foreign prince" (Frederic, Duke of York, the second son of King George III was most often mentioned in this regard) was being brought over to be the new king. This rumor got so heated that the delegates felt compelled to lift the agreed-to veil of secrecy imposed on their proceedings and leak assurances to the *Philadelphia Journal*:

[August 22] We are informed that many letters have been written to the members of the Federal Convention from different quarters, respecting the reports idly circulating that it is intended to establish a monarchical government, to send for [Frederick] &c.—to which it had been uniformly answered, "though we cannot, affirmatively, tell you what we are doing, we can, negatively, tell you what we are not doing—we never once thought of a king."⁶

The framers faced a peculiar problem: how to establish order, protect property, and promote commerce, while giving "the people" enough say in the new government to make it acceptable to the democratic sentiments of the masses? It was a tough balancing act. The framers feared direct democracy as much as the people feared a renewed monarchy. Most of the delegates to the Constitutional Convention were suspicious of direct democracy (some called it mobocracy). While today, "democracy" is a revered term, in their day, the word still had largely negative connotations. Delegate Elbridge Gerry called it, "the worst of all political evils." And said, "the evils that we experience flow from the excess of democracy." Similarly,

Roger Sherman warned, “The people . . . should have as little to do as may be about the government.” William Livingston argued that “The people have ever been and ever will be unfit to retain the exercise of power in their own hands.” And delegate John Dickinson warned of what might happen if the poor had real political clout when he said that property qualifications be erected for voting because they are “a necessary defense against the dangerous influence of those multitudes without property and without principle, with which our country, like all others, will in time abound.”

But others, even if they were suspicious of direct democracy, recognized the political reality they were facing. George Mason warned the Convention, “Notwithstanding the oppression and injustice experiences among us from democracy, the genius of the people is in favor of it, and the genius of the people must be consulted.” James Madison agreed: “It seems indispensable that the mass of citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them.”

Did the Constitution betray the principles of 1776 or was it a continuation or evolution of these principles? While scholars differ, one thing is clear: the Constitution *was not* democratic. Yet, neither was it aristocratic. It was more a blend or balance of interests. And while some scholars see the “economic royalists” and monied elites getting their way, the overall consensus is that the framers evolved in their views, and ended up creating a republic, not a democracy.⁷

The popular myth is that the framers were committed to democracy and liberty and that they established a mass democracy “for the people.” The reality is not so rosy. The framers were pragmatists, some of whom had class interests they wished to pursue, but also with enough sense to know that compromise and a balancing of interests would be required. They sought a middle ground between democracy and monarchy. In effect three schools of thought began to emerge at this time. For the sake of simplicity, one can understand these distinct and divergent views by looking at the primary representative figures of the time.

Thomas Jefferson was the most compelling voice for democracy. Embracing an optimistic view of humankind, Jefferson promoted a small agrarian democracy close to and responsive to the people. Jefferson’s goal was democracy, a goal shared by many who would later call themselves “anti-federalists.”

Jefferson was opposed by Alexander Hamilton. With a more jaundiced view of humankind and its ability at self-government, Hamilton’s goal was to create a government that established order, one modeled on the British system. He sought a government strong enough to establish order out of chaos. His goal was *oligarchy* and his position, while shared by some of the framers, did not win the day at the convention.

In the middle of these two giants was James Madison. For Madison, the chief architect of the new Constitution, a government with too much power was a dangerous government. Seeing himself as a keen student of history, he believed that human nature drove men, and at this time, only men were allowed to enter the public arena, to pursue self-interest, and therefore a system of government designed to have “ambition checked by ambition” set within rather strict limits was the only hope to establish a stable government that granted the citizen some rights, yet did not

endanger liberty. Realizing that “enlightened statesmen” would not always guide the nation, Madison embraced a checks-and-balances system of separate but overlapping and shared powers. Madison’s goal was to have a government with controlled and limited powers is nowhere more evident than in his *Federalist 51*, “You must first enable the government to control the governed; and in the next place oblige it to control itself.”

Madison, like most of the founders, feared government in the hands of the people, but he also feared putting too much power in the hands of one man. Therefore, the Madisonian model called both for protections against mass democracy and limits on governmental power. This is not to say that the founders wanted a weak or ineffective government; had that been their goal, they could have kept the Articles of Confederation. But they did want a government that could not too easily act. The theory of government that the Madisonian design necessitates is one of consensus, coalition, and cooperation on the one hand, checks, vetoes, and balances on the other.

In effect, a rough balance was sought between *governmental power* and *individual liberty*. The government had to be strong enough to act but restrained enough not to threaten liberty. By separating powers, forcing institutions to share these powers, and limiting powers via the rule of law, the framers hoped both to allow power (ambition) to counter power and also to limit the opportunities for power to be abused. Since the people could not be trusted to govern, and since, as Madison wrote in *Federalist 10*, “Enlightened statesmen will not always be at the helm,” power, in order to be safely exercised, had to be fragmented and dispersed. Madison’s goal was to establish a *constitutional republic*. His cohorts would later become known as Federalists.

After a revolution fought against a government that was too strong, the new nation labored under a government that was seen as too weak. After a revolution to institute a democracy, the delegates at the Convention were decidedly not interested in establishing a pure democracy. The fear of mobocracy existed alongside a fear of monarchy. How then to form a new government amid such conflicting, and seemingly contradictory goals?

While the delegates were pulled in many different directions, there was general consensus on several things.

- There needed to be a stronger though limited central government.
- But not one so strong as to potentially jeopardize liberty.
- A government that was guided not by the whim of one person (monarchy) but the rule of law (a constitution).
- That protected states rights and power (federalism).
- And separated the executive, legislative, and judicial powers of the federal government so as to create a system of checks and balances so as not to lead to tyranny.
- Where the people had some say in who would guide the government but
- Where property and minority rights were protected.

As the framers began their discussions, held in strict secrecy, two competing plans emerged: the Virginia Plan (favored mostly by the large states) and the New Jersey Plan (favored by smaller states).

The Virginia Plan called for the creation of a stronger central government with a single executive, a judiciary (both appointed by the legislature), and a two-house (bi-cameral) legislature, with one house elected by the people, the other by the state legislatures. The national legislature would have the power to override state laws. The number of representatives would be determined by the amount of taxes paid by each state. Thus, under this plan the three largest states (Virginia, Pennsylvania, and Massachusetts) would comprise a majority in the legislature and power would be lodged in their hands.

The New Jersey Plan, an effort by the smaller states to defend their interests, called for a plural executive (so as to prevent one man from gaining too much power), and a strong single-house (unicameral) Congress in which each state got one vote. All members of Congress were to be chosen by the state legislatures.

The large and small states were pitched in a heated battle. Each had much to gain and much to lose. In the end, the “great compromise” was reached. The general structure of the Virginia Plan was maintained with a stronger central government, with the power to regulate commerce, tax, raise a military, conduct foreign policy, and set government policy. The “compromise” part involved the makeup of the national legislature. There would be, as the Virginia Plan called for, a two-house legislature but the size of the House of Representatives would be based on population (thus pleasing the large states) and a Senate would have two representatives per state regardless of the state population (pleasing the smaller states). Eligible males in the population would elect members of the House. The Senate would be selected by state legislatures.

This compromise balanced the interests of large and small states, and as the legislature was designed to be the key policy making institution, all sides came out with what they needed if not what they wanted. With the overall structure of the new government settled, the delegates got down to the more difficult task of assigning powers and responsibilities to each branch of the new government.

For a people fresh off a revolution against what they perceived as a repressive monarchical government, reconstructing a central government with significant powers would be no easy task. And while self-interest played a role in the transition from the weak Articles of Confederation to the establishment of a stronger federal authority, there were other influences that shaped the thinking of the framers.

The United States was invented in the midst of the Enlightenment or the Age of Reason. The framers embraced a view suggesting that humans were capable of exercising a form of reason. Such a view allowed them to take steps toward giving more power to average citizens, or towards a nascent form of democracy.

The writings of British philosopher John Locke (1632–1704) who promoted a form of popular sovereignty, and the works of French philosopher Baron de Montesquieu (1689–1755), who pioneered the development of a separation of powers model of government wherein tyranny could be thwarted by separating power into three functions: executive, legislative, and judicial, also had an impact on the framers. James Madison was also influenced by the scientific works of Sir Isaac Newton, whose revolutionary views transformed physics, and in part was applied by Madison to the world of politics. Employing the intellectual concepts of Newtonian equilibrium allowed Madison to develop a “new science of politics” based on reaching a balance of governmental powers.

While less well understood, the lessons the framers drew from the Native Americans also had an impact on the writing of the Constitution. While the framers looked across the Atlantic and saw kings governing hereditary monarchies, they looked up the road and could see a democratic, egalitarian government in action, the Iroquois Confederation. The union or confederation of six nations, organized along lines similar to the separation-of-powers system, was the model for Ben Franklin's 1754 Albany Plan of Union (the first known effort to pen a new constitution for the colonies), and was much studied by a number of framers.

On July 27, 1787, the drafting committee of the Constitutional Convention met at the Indian Queen Tavern in Philadelphia to agree on a draft of the new Constitution to submit to the entire convention. The committee chair, John Rutledge of South Carolina, opened the meeting by reading for them an English translation of the Iroquois' take on the founding of the Iroquois Confederacy. Rutledge's purpose was to underscore the importance to the new nation of a concept embedded in the rich tradition of the Iroquois Confederacy: "We" the people, from whence all power derives.⁸ Of course, this concept also has European roots, yet nowhere in the Old World was it being practiced. The neighbors of the Constitution's framers, however, had for decades been living under a Constitution that brought this concept to life, and one that had an impact on the delegates who met in Philadelphia in 1787.

The Structure of American Government

What type of government did the framers produce in Philadelphia? The chief mechanisms established to control as well as to empower the new government are as follows: (1) *Limited Government*, a reaction against the arbitrary, excessive powers of the king, and a protection of personal liberty; (2) *Rule of Law*, so that only on the basis of legal or constitutional grounds could the government legitimately act; (3) *Separation of Powers*, so that each of the three branches of government would have a defined sphere of powers; (4) *Checks and Balances*, so that each branch could limit or check the powers of the other branches; (5) under a *Written Constitution* as the supreme law of the land; (6) in a system of *Federalism*, dividing the power between the national and state governments; (7) under a *Republican* form of government, one representative not democratic; (8) that *fragmented power*, to better protect against governmental tyranny.

The constitutional structure of the government *disperses* or *fragments* power; with no single recognized, authoritative center. Power is fluid and floating; no one branch can easily or freely act without the consent (formal or tacit) of another branch. In this Madisonian designed system, power was made to counteract power, ambition to check ambition. This system was developed by delegates whose memories of tyranny and the arbitrary exercise of power by the king of England was fresh in their minds. It was a structure designed to encourage a consensus before the government could legitimately act. The structure of government established by the framers would not be a single leadership institution but several—three separate, semiautonomous institutions that shared power. In this, the forces of the status quo were given multiple veto opportunities; the forces of change were left at a distinct disadvantage.

While nowhere mentioned in the Constitution, “judicial review,” the power of the courts to be the “final word” on the meaning of the Constitution is implied within the text. This power was reinforced as the landmark case *Marbury v. Madison*.⁹

The framers intentionally created uncertainty regarding who would hold power in the United States. A complex system of cross-powers and checked powers created a constitutional mechanism that prohibits one branch from exercising too much power on its own. Opportunities to check power abound; opportunities to exercise power are quite limited. The fluidity and fragmentation of power creates a situation in which “the government” is controlled not by any single person or at one place or by one party but by different people in different places (if it exists at all) sometimes seeking different ends.¹⁰

After weeks of struggles, compromises, power plays and frustration, the long hot summer finally ended with agreement on a new Constitution. It was a relatively short document. This new Constitution contained seven articles. The First relates to the Legislature. In the Constitution, Congress is the first, and the most powerful branch of government. Nearly all the important powers belong to the Congress: the power to tax, declare war, make all legislation, regulate commerce, and others. On paper Congress is the most powerful of the three branches.

Article II created a presidency that appears to be more than a clerk, but less than a central leader. Compared to Congress, the president’s power is quite limited. Virtually all the president’s powers are shared by Congress. Anyone attempting to ascertain the dominant branch by reading the Constitution would not pick the presidency.

Article III deals with the Judiciary. While nowhere in the Constitution does it say that the Courts have the power to declare acts of Congress or a president unconstitutional (judicial review), it would not be long before the Courts grabbed that important power.¹¹

Article IV deals with relations between and among the states. Article V focuses on methods for amending the Constitution. Article VI deals with the supremacy of the Constitution and national laws over state laws. And Article VII spells out that the Constitution shall become the law of the land only after it is approved by nine states.

The Articles of Confederation established a brand of state supremacy. The Constitution challenged this; placing the federal governments *over* the states. By creating the “Supremacy Clause” (Article VI), the Constitution shifts governmental primacy from the state to the federal government.

That, in brief is the Constitution. And Americans love their Constitution. They will do practically anything for the Constitution—anything except read it. Where one might ask, is the Bill of Rights (that comes later)? Where, one may ask, are women, and minorities (much later)? And where is democracy (it evolved slowly)?

A close reading of the Constitution reveals that there is not much “democracy” in the original text. An Electoral College selected the president. The Senate was originally selected by state legislatures, and the Judiciary was appointed by the unelected president with the consent of the unelected Senate. Only the House of Representatives was elected by the people, and at that time, “the people” was quite narrowly understood to include white, male, property owners only.

While neither the Declaration of Independence nor the Constitution contain the word “democracy,” to a degree, the new government was founded on democratic principles and expectations. But if democracy means, in Abraham Lincoln’s apt phrase from the Gettysburg Address, government “of the people, by the people and for the people,” then the new government failed the democracy test. Instead the framers created a republican form of government, where the people (narrowly defined) would select representatives who would filter the views of the people through separate yet connected institutions of power.

Conceptually, the new Constitution is “of” the people—just read the opening of the Constitution: *We the People of the United States . . . establish this Constitution of the United States of America*. “By the people”? As already demonstrated, the new government was a republic, or representative form of government not a direct or participatory democracy with mass or universal involvement or suffrage. In fact, the Constitution excluded more people that it included in governing. “For the people”? It clearly wasn’t for women, or minorities, or propertyless white males. Recognizing this democratic shortfall, James Madison, in *Federalist 10*, wrote that, “Such democracies [as the Greek and Roman] . . . 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.” So much for democracy.

Democracies couldn’t govern, and didn’t last, warned Madison. And so, the framers chose a republican form of government where the voice of the people was filtered through representatives.

The Struggle for Ratification

Writing the Constitution was one thing, getting the requisite nine states to ratify the document, quite another. Immediately, opposition formed against the new Constitution. For the sake of understanding, if not pure historical accuracy, we can reduce the post-convention sentiments into two warring camps: The Federalists (such as Hamilton, Madison, and Washington who supported adoption of the Constitution) and the Anti-Federalists (such as George Mason, Elbridge Gerry, Patrick Henry, and Richard Henry Lee, who saw too strong a central state and too little democracy in the proposed Constitution).

A highly charged national debate ensued. Literally thousands of essays, editorials, and pamphlets argued the case for and against the newly proposed Constitution. State Conventions were convened, and the debate over ratification heated up.

The Anti-Federalists opposed the Constitution on several grounds: it did not adequately protect states rights, did not include enough democracy, the president, they feared, might become a King, and perhaps most importantly, it did not contain a Bill of Rights.

Numbered among the Anti-Federalists were some of the most forceful advocates of democracy, Patrick Henry of Virginia (who saw the Federalists as establishing a new “tyranny” writing that the new Constitution “squints toward monarchy”), George Mason also of Virginia, Luther Martin of Maryland, and John Lansing and Robert Yates of New York.

Essentially the Anti-Federalists were a very loose confederation of those who opposed adoption of the Constitution for a variety of reasons. Many saw the new Constitution as a betrayal of the revolution that undermined the democratic sentiments for which the war was fought. Others saw the Constitution creating a powerful central government that would jeopardize liberty. Still others feared that the president might become too powerful. Some saw the power of the states jeopardized. But the one issue that seemed to unite all opponents to the Constitution was the absence of a Bill of Rights.

The Writing of the Federalist Papers

Writing in support of the new Constitution were Alexander Hamilton, James Madison and John Jay who penned a series of short essays published in New York newspapers in 1787 and 1788. New York was one of the most important states, and if it rejected the new Constitution the experiment with a new government would likely fail—even if the required nine other states ratified. So the authors wrote a series of missives aimed at convincing—some would say propagandizing—the citizens of New York to pressure their delegates at the state convention to ratify the proposed Constitution.

If the newspaper pieces, known collectively as the *Federalist Papers* were the propaganda of their day, they today represent one of the finest expositions on the meaning of the Constitution ever written. At the time of publication these essays were printed anonymously and attributed to *Publius* (the Latin word for “public man” but more pointedly referring to Publius Valerius, the man credited with restoring the Roman Republic after the dictatorship of Tarquin).¹² Hamilton wrote fifty-one of the eighty-five essays (his dealt mostly with the structure of new government), Madison wrote twenty-nine (dealing primarily with the structure of the new government), and Jay wrote five (most of them dealing with foreign affairs).

Known today as the *Federalist Papers*, these essays comprise what generations of scholars regard as the most authoritative and finest explanation of the “true” meaning of the United States Constitution ever written. They are today the touchstone of constitutional meaning, and are regarded as one of the few truly classic American contributions to political thought.

In 1878, British Prime Minister William E. Gladstone wrote that the U.S. Constitution was “The most wonderful work ever struck off at a given time by the brain and purpose of man.”¹³ And in 1788, Thomas Jefferson, in a letter to James Madison called the *Federalist Papers*, “the best commentary on the principles of government which ever was written.” Madison himself, in 1825, called the *Federalist Papers*, “the most authentic exposition of the text of the Federal Constitution as understood by the body which prepared and the authority which accepted it.”¹⁴ John Stuart Mill called the *Federalist*, “the most instructive treatise we possess on federal government.” Alexis de Tocqueville, “an excellent book, which ought to be familiar to the statesmen of all countries.” Thus, if one wishes to truly understand the U.S. Constitution, the starting point—after reading the document itself—is the *Federalist Papers*.

As the first and most authoritative work on the Constitution, the *Federalist Papers* remain to this day, the “go to” source for scholars, judges, lawyers, and legal

authorities. All turn to the *Federalist Papers* in hope of gaining illumination on the intent of the framers and the meaning of the U.S. Constitution.

To argue one's case armed with a powerful quote from the *Federalist* can pack a powerful wallop, and end debates or start arguments. As one of the nation's "sacred texts," the *Federalist* is one triad in the trilogy of sacred American documents along with the Declaration of Independence and the Constitution itself. Its power, its legitimacy, its authority, and its authenticity make it the source of first choice in understanding the Constitution. Though written for the moment, as a defense of the new Constitution, it is now for the ages, and has passed to us as the most venerated source of the "true" meaning of the Constitution.

Alexander Hamilton was the prime force behind the writing of the *Federalist Papers*. While at the convention, Hamilton fought unsuccessfully for a much stronger central government, after the Convention approved the new Constitution he became its stalwart defenders. He wrote roughly two-thirds of the *Papers*. James Madison was perhaps more responsible than any of the other framers in cobbling together the bargains and compromises that led to the Convention agreeing on a new Constitution. And John Jay, the oldest of the three ended up contributing only a few essays due to illness.

Written with great speed, initially the authors produced on average two essays per week, later four per week. Hamilton and Madison were responsible for seventy-one entries in roughly six months. That amounts to writing approximately 1,000 words a day. In all, the eighty-five entries were completed in seven months from late 1787 to early 1788. In 1788 McLean's published them in book form.

The essays were written with a specific purpose and a specific audience in mind. Written for the delegates and citizens of the state of New York, they were designed to persuade New Yorkers to support the ratification of the new Constitution—a position much in doubt when the authors first penned their essays. Written as a political broadside in the heat of political battle, the *Federalist Papers* were a form of propaganda with a certain polemical quality to them. Due to the hurried natures of the writing of the papers, the *Federalist* is not a systematic, integrated treatise on republican government; rather it is a critique of the weaknesses of the Articles of Confederation, a defense of the new Constitution, an answer to Anti-Federalist critics of the Constitution, and an explanation of the benefits of this new government.

The authors began their labors in the fall of 1787, before any state had ratified the Constitution. The whirlwind of activity was of a pace that even the most casual observer would have gotten whip-lashed from the various twists and turns. By May, eight states had ratified. Only one more was required for acceptance.

But New York and Virginia were holdouts. Even if the needed nine states approved, without these two powerful states, the new nation would be doomed to failure. The stakes in New York could not have been higher.

On June 17, the delegates to the New York ratifying convention met in Poughkeepsie. Alexander Hamilton was one of the delegates. On June 21, New Hampshire became the ninth state to ratify the Constitution. Virginia soon followed, ratifying by an 89–79 vote margin. Eventually, in spite of several objections, the New York delegates voted to ratify the new Constitution by a 30–27 vote.