

The Confederation and the Constitution, 1776–1790

Should the states reject this excellent Constitution, the probability is that an opportunity will never again offer to make another in peace—the next will be drawn in blood.

George Washington, on signing the Constitution, 1787

Prologue: The nation's first written constitution—the Articles of Confederation (in force 1781–1789)—provided a toothless central government. Disorders inevitably erupted, notably in Massachusetts, though they were exaggerated by those who hoped to substitute a potent federal government. Such pressures eventually bore fruit in the new Constitution framed in Philadelphia during the humid summer of 1787. A century and a quarter later, Charles A. Beard advanced the sensational thesis that propertied men had foisted the Constitution upon the less privileged classes. He underscored the fact that many of the fifty-five framers owned depreciated government securities that would rise in value with the establishment of a powerful central regime. But recent scholarship has indicated Beard overemphasized economic motivation. The crucial struggle was between the big states, which had reluctantly accepted an equal vote in the Senate, and the small states, which rather promptly approved the Constitution. Several of the stronger and more self-sufficient commonwealths, notably Virginia and New York, were among the last to ratify.

A. The Shock of Shays's Rebellion

1. Daniel Gray Explains the Shaysites' Grievances (1786)

When debt-ridden farmers in Massachusetts failed in 1786 to persuade the state legislature to issue cheap paper money and take measures to halt farm foreclosures, violence erupted. One of the Shaysites, Daniel Gray, issued the following statement of

¹George Richards Minot, ed., *History of the Insurrection in Massachusetts in 1786 and of the Rebellion Consequent Thereon* (Worcester, Mass.: Isaiah Thomas, 1788), as reprinted by Da Capo Press, 1971, pp. 83–84.

the farmers' grievances. What was their principal complaint? Were they justified in taking up arms?

An Address to the People of the several towns in the county of Hampshire, now at arms.

GENTLEMEN,

We have thought proper to inform you of some of the principal causes of the late risings of the people, and also of their present movement, viz.

1st. The present expensive mode of collecting debts, which, by reason of the great scarcity of cash, will of necessity fill our goals with unhappy debtors, and thereby a reputable body of people rendered incapable of being serviceable either to themselves or the community.

2d. The monies raised by impost and excise being appropriated to discharge the interest of governmental securities, and not the foreign debt, when these securities are not subject to taxation.

3d. A suspension of the writ of *Habeas corpus*, by which those persons who have stepped forth to assert and maintain the rights of the people, are liable to be taken and conveyed even to the most distant part of the Commonwealth, and thereby subjected to an unjust punishment.

4th. The unlimited power granted to Justices of the Peace and Sheriffs, Deputy Sheriffs, and Constables, by the Riot Act, indemnifying them to the prosecution thereof; when perhaps, wholly actuated from a principle of revenge, hatred and envy.

Furthermore, Be assured, that this body, now at arms, despise the idea of being instigated by British emissaries, which is so strenuously propagated by the enemies of our liberties: And also wish the most proper and speedy measures may be taken, to discharge both our foreign and domestic debt.

Per Order,

Daniel Gray, *Chairman of the Committee, for the above purpose.*

2. George Washington Expresses Alarm (1786)

The retired war hero Washington, struggling to repair his damaged fortunes at Mount Vernon, was alarmed by the inability of the Congress under the Articles of Confederation to collect taxes and regulate interstate commerce. The states, racked by the depression of 1784–1788, seemed to be going their thirteen separate ways. The worthy farmers of western Massachusetts were especially hard hit, burdened as they were with inequitable and delinquent taxes, mortgage foreclosures, and the prospect of imprisonment for debt. Hundreds of them, under the Revolutionary captain Daniel Shays, formed armed mobs in an effort to close the courts and to force the issuance of paper money. "Good God!" burst out Washington on hearing of these dis-

²J. C. Fitzpatrick, ed., *Writings of George Washington* (Washington, D.C.: U.S. Government Printing Office, 1938), vol. 28, pp. 502–503 (August 1, 1786).

orders; "who, besides a Tory, could have foreseen, or a Briton have predicted them?" He wrote despairingly as follows to John Jay, the prominent New York statesman and diplomat. What single fear seems to disturb Washington most, and why?

Your sentiments, that our affairs are drawing rapidly to a crisis, accord with my own. What the event will be is also beyond the reach of my foresight. We have errors to correct; we have probably had too good an opinion of human nature in forming our Confederation. Experience has taught us that men will not adopt, and carry into execution, measures the best calculated for their own good, without the intervention of coercive power. I do not conceive we can exist long as a nation without lodging, somewhere, a power which will pervade the whole Union in as energetic a manner as the authority of the state governments extends over the several states.

To be fearful of investing Congress, constituted as that body is, with ample authorities for national purposes, appears to me the very climax of popular absurdity and madness. Could Congress exert them for the detriment of the people without injuring themselves in an equal or greater proportion? Are not their interests inseparably connected with those of their constituents? By the rotation of appointments [annual elections], must they not mingle frequently with the mass of citizens? . . .

What then is to be done? Things cannot go on in the same train forever. It is much to be feared, as you observe, that the better kind of people, being disgusted with these circumstances, will have their minds prepared for any revolution whatever. We are apt to run from one extreme to another. To anticipate and prevent disastrous contingencies would be the part of wisdom and patriotism.

What astonishing changes a few years are capable of producing! I am told that even respectable characters speak of a monarchical form of government without horror. From thinking proceeds speaking; thence to acting is often but a single step. But how irrevocable and tremendous! What a triumph for our enemies to verify their predictions! What a triumph for the advocates of despotism to find that we are incapable of governing ourselves, and that systems founded on the basis of equal liberty are merely ideal and fallacious. Would to God that wise measures may be taken in time to avert the consequences we have but too much reason to apprehend.

3. Thomas Jefferson Favors Rebellion (1787)

Thomas Jefferson was the successor to Dr. Benjamin Franklin as American minister to France, 1785 to 1789. ("I do not replace him, sir: I am only his successor," he remarked with both wit and modesty.) As an ultraliberal and a specialist in revolution, this author of the Declaration of Independence wrote as follows about Shays's Rebellion to his Virginia neighbor, James Madison. The complete crushing of the uprising had not yet occurred. What did Jefferson regard as the most important cause of the disturbance, and what was most extreme about his judgment?

. . . I am impatient to learn your sentiments on the late troubles in the Eastern [New England] states. So far as I have yet seen, they do not appear to threaten

³P. L. Ford, ed., *Writings of Thomas Jefferson* (New York: G. P. Putnam's Sons, 1894), vol. 4, pp. 361–363.

serious consequences. Those states have suffered by the stoppage of the channels of their commerce, which have not yet found other issues. This must render money scarce, and make the people uneasy. This uneasiness has produced acts absolutely unjustifiable; but I hope they will provoke no severities from their governments. A consciousness of those in power that their administration of the public affairs has been honest may perhaps produce too great a degree of indignation; and those characters wherein fear predominates over hope may apprehend too much from these instances of irregularity. They may conclude too hastily that nature has formed man insusceptible of any other government but that of force, a conclusion not founded in truth, nor experience. . . .

Even this evil is productive of good. It prevents the degeneracy of government, and nourishes a general attention to the public affairs. I hold it that a little rebellion now and then is a good thing, and as necessary in the political world as storms in the physical. Unsuccessful rebellions indeed generally establish the encroachments on the rights of the people which have produced them. An observation of this truth should render honest republican governors so mild in their punishment of rebellions as not to discourage them too much. It is a medicine necessary for the sound health of government.

B. Clashes in the Philadelphia Convention

1. The Debate on Representation in Congress (1787)

After Shays's Rebellion collapsed, pressures for a stronger central government mounted. Finally, in the summer of 1787, delegates from twelve states met in Philadelphia to strengthen the Articles of Confederation—actually to frame a new constitution. The most complete record of the debates was kept by James Madison of Virginia, the youthful “Father of the Constitution.” A portion of his notes follows. The reader must be warned that two of the speakers, Elbridge Gerry of Massachusetts and George Mason of Virginia, not only refused to sign the Constitution but fought against its adoption. Do these debates show the Framing Fathers to be truly democratic? What were the most impressive arguments for and against popular election of representatives? Which side was right?

Resolution 4, first clause: “that the members of the first branch [House of Representatives] of the national legislature ought to be elected by the people of the several states” (being taken up),

Mr. Sherman [of Connecticut] opposed the election by the people, insisting that it ought to be by the state legislatures. The people, he said, immediately should have as little to do as may be about the government. They want [lack] information and are constantly liable to be misled.

Mr. Gerry [of Massachusetts]. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots.

¹Max Farrand, ed., *The Records of the Federal Convention of 1787* (New Haven: Yale University Press, 1911), vol. 1, pp. 48–50 (May 31, 1787).

In Massachusetts, it has been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute. . . . He had, he said, been too republican heretofore: he was still, however, republican, but had been taught by experience the danger of the leveling spirit.

Mr. Mason [of Virginia] argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the government. It was, so to speak, to be our House of Commons. It ought to know and sympathize with every part of the community, and ought therefore to be taken not only from different parts of the whole republic, but also from different districts of the larger members of it, which had in several instances, particularly in Virginia, different interests and views arising from difference of produce, of habits, etc., etc.

He admitted that we had been too democratic but was afraid we should incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. . . .

Mr. Wilson [of Pennsylvania] contended strenuously for drawing the most numerous branch of the legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican government this confidence was peculiarly essential. He also thought it wrong to increase the weight of the state legislatures by making them the electors of the national legislature. All interference between the general and local governments should be obviated as much as possible. On examination it would be found that the opposition of states to federal measures had proceeded much more from the officers of the states than from the people at large.

Mr. Madison [of Virginia] considered the popular election of one branch of the national legislature as essential to every plan of free government. . . . He thought, too, that the great fabric to be raised would be more stable and durable if it should rest on the solid foundation of the people themselves than if it should stand merely on the pillars of the legislatures. . . .

On the question for an election of the first branch of the national legislature by the people: Massachusetts, aye; Connecticut, divided; New York, aye; New Jersey, no; Pennsylvania, aye; Delaware, divided; Virginia, aye; North Carolina, aye; South Carolina, no; Georgia, aye. (Ayes—6; noes—2; divided—2.)

2. *The Argument over Slave Importations (1787)*

The issue of slavery provoked spirited debate at Philadelphia. Should the black slave count as a whole person or as no person at all in apportioning representation in Congress? The compromise: a slave would count as three-fifths of a person. Should the further importation of slaves be shut off or allowed to continue forever? The compromise: Congress could not touch slave importation for twenty years (a concession to the South), but Congress by a simple majority rather than by a two-thirds vote could pass laws to control shipping (a concession to the commercial North). As this

⁴Max Farrand, ed., *The Records of the Federal Convention of 1787* (New Haven: Yale University Press, 1911), vol. 2, pp. 364–365, 369–372.

portion of the debate opens, according to James Madison, delegate Luther Martin of Maryland, a man of well-known liberal tendencies, is endeavoring to amend a draft article stipulating that slave importation was not to be prohibited or taxed. What were the arguments for nonimportation and those for continued importation? What might have happened if the convention had voted to stop all slave importations at once?

[August 21.] *Mr. L. Martin* [of Maryland] proposed to vary article 7, sect. 4 so as to allow a prohibition or tax on the importation of slaves. First, as five slaves are to be counted as three freemen in the apportionment of representatives, such a clause would leave an encouragement to this traffic. Second, slaves [through danger of insurrection] weakened one part of the Union, which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. Third, it was inconsistent with the principles of the Revolution, and dishonorable to the American character, to have such a feature in the Constitution.

Mr. Rutledge [of South Carolina] did not see how the importation of slaves could be encouraged by this section [as now phrased]. He was not apprehensive of insurrections, and would readily exempt the other states from the obligation to protect the Southern against them. Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is whether the Southern states shall or shall not be parties to the Union. If the Northern states consult their interest, they will not oppose the increase of slaves, which will increase the commodities of which they will become the carriers.

Mr. Ellsworth [of Connecticut] was for leaving the clause as it stands. Let every state import what it pleases. The morality or wisdom of slavery are considerations belonging to the states themselves. What enriches a part enriches the whole, and the states are the best judges of their particular interest. The old Confederation had not meddled with this point; and he did not see any greater necessity for bringing it within the policy of the new one.

Mr. [Charles] Pinckney [of South Carolina]. South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of Congress, that state has expressly and watchfully excepted that of meddling with the importation of Negroes. If the states be all left at liberty on this subject, South Carolina may perhaps, by degrees, do of herself what is wished, as Virginia and Maryland already have done. . . .

Mr. Sherman [of Connecticut] was for leaving the clause as it stands. He disapproved of the slave trade; yet, as the states were now possessed of the right to import slaves, as the public good did not require it to be taken from them, and as it was expedient to have as few objections as possible to the proposed scheme of government, he thought it best to leave the matter as we find it. He observed that the abolition of slavery seemed to be going on in the United States, and that the good sense of the several states would probably by degrees complete it. . . .

Col. Mason [of Virginia]. This infernal traffic originated in the avarice of British merchants. The British government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing states alone, but the whole Union. . . . Maryland and Virginia, he said, had already prohibited the importation of slaves expressly. North Carolina had done the same in substance. All

this would be in vain if South Carolina and Georgia be at liberty to import. The Western people are already calling out for slaves for their new lands, and will fill that country with slaves, if they can be got through South Carolina and Georgia. Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the immigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities. He lamented that some of our Eastern [New England] brethren had, from a lust of gain, embarked in this nefarious traffic. . . . He held it essential, in every point of view, that the general government should have power to prevent the increase of slavery.

Mr. Ellsworth [of Connecticut], as he had never owned a slave, could not judge of the effects of slavery on character. He said, however, that if it was to be considered in a moral light, we ought to go further, and free those already in the country. As slaves also multiply so fast in Virginia and Maryland that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no further than is urged, we shall be unjust towards South Carolina and Georgia. Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery, in time, will not be a speck in our country. . . .

Gen. [Charles C.] Pinckney [of South Carolina] declared it to be his firm opinion that if himself and all his colleagues were to sign the Constitution, and use their personal influence, it would be of no avail towards obtaining the assent of their constituents [to a slave trade prohibition]. South Carolina and Georgia cannot do without slaves. As to Virginia, she will gain by stopping the importations. Her slaves will rise in value, and she has more than she wants. It would be unequal to require South Carolina and Georgia to confederate on such unequal terms. . . . He contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; the more consumption also; and the more of this, the more of revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports; but should consider a rejection of the clause as an exclusion of South Carolina from the Union.

[The final compromise, as written into the Constitution, permitted Congress to levy a maximum duty of ten dollars a head on each slave imported. In 1808, the earliest date permitted by the framers, Congress ended all legal importation of slaves.]

3. *Singing for the Constitution (1787)*

When the results of the Philadelphia convention were promulgated, popular passions for and against the new Constitution were aroused. In the pro-Constitution song below, what seems most to have shaped opinion favorable to the Constitution?

⁴*Publications of the Colonial Society of Massachusetts*. Vol. 8, *Transactions, 1902–1904* (Boston: Colonial Society of Massachusetts, 1906), pp. 273–275.

The Grand Constitution: A New Federal Song

To the 'Tune of—"Our Freedom we've won, &c."

From scenes of affliction—Columbia opprest—
Of credit expiring—and commerce distrest,
Of nothing to do—and of nothing to pay—
From such dismal scenes let us hasten away.

*Our Freedom we've won and the Prize let's maintain,
Our Hearts are all right,
Unite, Boys, Unite,
And our EMPIRE in glory shall ever remain.*

The *Muses* no longer the cypress shall wear.
For we turn our glad eyes to a prospect more fair:
The *Soldier* return'd to his small cultur'd farm,
Enjoys the reward of his conquering arm,
Our Freedom, &c.

Our trade and our commerce shall reach far and wide,
And riches and honour flow in with each tide,
Kamschatka and *China* with wonder shall stare,
That the *Federal stripes* shou'd wave gracefully there.
Our Freedom, &c.

With gratitude let us acknowledge the worth,
Of what the *Convention* has call'd into birth,
And the Continent wisely confirm what is done
By *Franklin* the Sage, and by brave *Washington*.
Our Freedom, &c.

The wise *Constitution* let's truly revere,
It points out the course for our *Empire* to steer,
For Oceans of bliss, do they hoist the broad sail,
And *Peace* is the current, and *Plenty* the gale.
Our Freedom, &c.

With gratitude fill'd—let the great *Commonweal*
Pass round the full glass to *Republican* zeal—
From ruin—their judgment and wisdom well aim'd,
Our *Liberties, Laws*, and our *Credit* reclaim'd.
Our Freedom, &c.

Here *Plenty* and *Order*, and *Freedom* shall dwell,
And your *Shayses** and *Dayses*† won't dare to rebel—
Independence and culture shall graciously smile,
And the *Husbandman* reap the full fruit of his toil.
Our Freedom, &c.

That these are the blessings *Columbia* knows—
The blessings the *Fed'ral Convention* bestows;

*Daniel Shays, the leader of Shays's Rebellion, 1786–1787.

†Luke Day, a leader of the insurgents in Shays's Rebellion.

O! then let the *People* confirm what is done
By *Franklin* the Sage, and by brave *Washington*.

Our Freedom we've won, and the prize let's maintain,
By Jove we'll Unite,
Approve and Unite—
And buzza for Convention again and again.

C. First Reactions to the Constitution

I. A Philadelphia Editor Is Expectant (1787)

A curious public had little inkling of what was going on in the Philadelphia convention. The delegates, who were sworn to secrecy, deliberated behind closed doors guarded by soldiers. But the general expectation was that a stronger government would emerge, designed to subdue disorders and bring the headstrong states to heel. The following Philadelphia editorial fairly glows with optimism. Which one of the anticipated arguments against the Constitution seems most formidable? Why could the Shaysites be compared to the Tories?

The year 1776 is celebrated (says a correspondent) for a revolution in favor of Liberty. The year 1787, it is expected, will be celebrated with equal joy for a revolution in favor of Government. The impatience with which all classes of people (a few officers of government only excepted) wait to receive the new federal constitution can only be equalled by their zealous determination to support it.

Every state (adds our correspondent) has its Shays, who either with their pens—or tongues—or offices—are endeavoring to effect what Shays attempted in vain with his sword. In one of the states, this demagogue tries to persuade the people that it is dangerous to increase the powers of Congress. In another, he denies the authority of the Convention to redress our national grievances. In a third, he whispers distrust, saying the states will not adopt the new frame of government. In a fourth, he says the state constitutions, and the officers who act under them, are of divine right, and can be altered by no human power—and of course considers all attempts to restore order and government in the United States as a “laughable” thing. In the fifth, he opposes a general confederacy, and urges the division of the states into three smaller confederacies, that he may the more easily place himself at the head of one of them.

The spirit and wickedness of Shays is in each of these principles and measures. Let Americans be wise. Toryism and Shayism are nearly allied. They both lead to slavery, poverty, and misery.

We hear that the Convention propose to adjourn next week, after laying America under such obligations to them for their long, painful, and disinterested labors to establish her liberty upon a permanent basis as no time will ever cancel.

¹*Pennsylvania Gazette*, September 5, 1787.

2. Alexander Hamilton Scans the Future (1787)

Alexander Hamilton of New York, though only thirty-two, was probably the most brilliant and eloquent member of the Philadelphia assemblage. But his great contribution was in engineering the call for the convention and in campaigning for the Constitution. At Philadelphia, he was outvoted by his two antifederalist colleagues from New York, and his own federalist and centralist views were too extreme for the other delegates. His superlative five-hour oratorical effort championed a plan that, among other things, would have had the president and the senators holding office during good behavior, and the state governors appointed by the federal government. The scheme received one vote—his own. Hamilton evidently prepared the following memorandum shortly after the Constitution was drafted. Why would the rich be favorable to the new instrument? Why would the poor and the states' righters be unfavorable?

The new Constitution has in favor of its success these circumstances: A very great weight of influence of the persons who framed it, particularly in the universal popularity of General Washington. The good will of the commercial interest throughout the states, which will give all its efforts to the establishment of a government capable of regulating, protecting, and extending the commerce of the Union. The good will of most men of property in the several states, who wish a government of the Union able to protect them against domestic violence and the depredations which the democratic spirit is apt to make on property, and who are besides anxious for the respectability of the nation. The hopes of the creditors of the United States, that a general government, possessing the means of doing it, will pay the debt of the Union. A strong belief in the people at large of the insufficiency of the present Confederation to preserve the existence of the Union, and of the necessity of the Union to their safety and prosperity. Of course, a strong desire of a change, and a predisposition to receive well the propositions of the convention.

Against its success is to be put: The dissent of two or three important men in the convention, who will think their characters pledged to defeat the plan. The influence of many *inconsiderable* men in possession of considerable offices under the state governments, who will fear a diminution of their consequence, power, and emolument by the establishment of the general government, and who can hope for nothing there. The influence of some *considerable* men in office, possessed of talents and popularity, who, partly from the same motives, and partly from a desire of *playing a part* in a convulsion for their own aggrandizement, will oppose the quiet adoption of the new government. (Some considerable men out of office, from motives of ambition, may be disposed to act the same part.)

Add to these causes: The disinclination of the people to taxes, and of course to a strong government. The opposition of all men much in debt, who will not wish to see a government established, one object of which is to restrain the means of cheating creditors. The democratical jealousy of the people, which may be alarmed

²H. C. Lodge, ed., *The Works of Alexander Hamilton* (Boston and New York: Houghton, Mifflin and Company, 1904), vol. 1, pp. 420–423.

at the appearance of institutions that may seem calculated to place the power of the community in few hands, and to raise a few individuals to stations of great pre-eminence. And the influence of some foreign powers, who, from different motives, will not wish to see an energetic government established throughout the states.

In this view of the subject, it is difficult to form any judgment whether the plan will be adopted or rejected. It must be essentially matter of conjecture. The present appearances and all other circumstances considered, the probability seems to be on the side of its adoption. But the causes operating against its adoption are powerful, and there will be nothing astonishing in the contrary.

If it do not finally obtain, it is probable the discussion of the question will beget such struggles, animosities, and heats in the community that this circumstance, conspiring with the real necessity of an essential change in our present situation, will produce civil war. . . .

A reunion with Great Britain, from universal disgust at a state of commotion, is not impossible, though not much to be feared. The most plausible shape of such a business would be the establishment of a son of the present monarch [George III] in the supreme government of this country, with a family compact.

If the government be adopted, it is probable General Washington will be the President of the United States. This will ensure a wise choice of men to administer the government, and a good administration. A good administration will conciliate the confidence and affection of the people, and perhaps enable the government to acquire more consistency than the proposed Constitution seems to promise for so great a country. . . .

3. George Mason Is Critical (1787)

George Mason, a wealthy Virginia planter who owned five thousand acres, had played a leading role in the Revolutionary movement. A self-taught constitutional lawyer of high repute, a dedicated advocate of states' rights, and an undying foe of slavery, he was one of the five most frequent speakers at the Philadelphia convention. Shocked by the whittling down of states' rights, he finally refused to sign the Constitution and fought it bitterly in Virginia. His chief grievance was the compromise by which the South conceded a simple majority vote in Congress on navigation laws in return for twenty more years of African slave trade, of which he disapproved anyhow. He set forth his objections in the following influential pamphlet. Which of his criticisms relate to states' rights? which to the rights of the South? Which seem overdrawn in the light of subsequent events?

There is no Declaration [Bill] of Rights, and the laws of the general government being paramount to the laws and constitution of the several states, the declarations of rights in the separate states are no security. . . .

³Kate M. Rowland, *The Life of George Mason* (New York and London: G. P. Putnam's Sons, 1892), vol. 2, pp. 387–390.

The Judiciary of the United States 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.

The President of the United States has no Constitutional Council, a thing unknown in any safe and regular government. He will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites; or he will become a tool to the Senate—or a council of state will grow out of the principal officers of the great departments; the worst and most dangerous of all ingredients for such a council in a free country. From this fatal defect has arisen the improper power of the Senate in the appointment of public officers, and the alarming dependence and connection between that branch of the legislature and the Supreme Executive.

Hence also sprung that unnecessary officer, the Vice-President, who, for want of other employment, is made president of the Senate, thereby dangerously blending the executive and legislative powers, besides always giving to some one of the states an unnecessary and unjust pre-eminence over the others. . . .

By declaring all treaties supreme laws of the land, the Executive and the Senate have, in many cases, an exclusive power of legislation; which might have been avoided by proper distinctions with respect to treaties, and requiring the assent of the House of Representatives, where it could be done with safety.

By requiring only a majority [of Congress] 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, may be ruined. For such rigid and premature regulations may be made as will enable the merchants of the Northern and Eastern states not only to demand an exorbitant freight, but to monopolize the purchase of the commodities at their own price, for many years, to the great injury of the landed interest and impoverishment of the people. And the danger is the greater as the gain on one side will be in proportion to the loss on the other. Whereas requiring two-thirds of the members present in both Houses would have produced mutual moderation, promoted the general interest, and removed an insuperable objection to the adoption of this government.

Under their own construction of the general clause [Article I, Section VIII, para. 18], at the end of the enumerated powers, the Congress may grant monopolies in trade and commerce, constitute new crimes, inflict unusual and severe punishments, and extend their powers as far as they shall think proper; so that the state legislatures have no security for the powers now presumed to remain to them, or the people for their rights.

There is no declaration of any kind for preserving the liberty of the press, or the trial by jury in civil causes [cases]; nor against the danger of standing armies in time of peace. . . .

This government will set out a moderate aristocracy; it is at present impossible to foresee whether it will, in its operation, produce a monarchy or a corrupt, tyrannical aristocracy. It will most probably vibrate some years between the two, and then terminate in the one or the other.

4. Jefferson Is Unenthusiastic (1787)

Thomas Jefferson, the American minister in Paris, learned of the Philadelphia convention with some misgivings. While recognizing the need for a stronger central government, especially in foreign affairs, he regarded the Confederation as a "wonderfully perfect instrument," considering the times. A comparison of the United States government with the governments of continental Europe, he declared, "is like a comparison of heaven and hell. England, like the earth, may be allowed to take the intermediate station." He evidently believed that some judicious patchwork would provide the needed bolstering. Upon receiving a copy of the new Constitution, he was troubled by some of its features, particularly by the absence of a Bill of Rights. Why, in the following letter to the prominent New York jurist William Smith, did he belittle reports of anarchy? Why did he condone periodic rebellions?

I do not know whether it is to yourself or Mr. [John] Adams I am to give my thanks for the copy of the new Constitution. . . . There are very good articles in it; and very bad. I do not know which preponderate. What we have lately read in the history of Holland . . . would have sufficed to set me against a chief magistrate eligible for a long duration, if I had ever been disposed towards one. And what we have always read of the elections of Polish kings should have forever excluded the idea of one continuable for life.

Wonderful is the effect of impudent and persevering lying. The British ministry have so long hired their gazetteers to repeat, and model into every form, lies about our being in anarchy, that the world has at length believed them, the English nation has believed them, the ministers themselves have come to believe them, and what is more wonderful, we have believed them ourselves.

Yet where does this anarchy exist? Where did it ever exist, except in the single instance of [Shays's Rebellion in] Massachusetts? And can history produce an instance of rebellion so honorably conducted? I say nothing of its motives. They were founded in ignorance, not wickedness.

God forbid we should ever be twenty years without such a rebellion. The people cannot be all, and always, well informed. The part which is wrong will be discontented, in proportion to the importance of the facts they misconceive. If they remain quiet under such misconceptions, it is a lethargy, the forerunner of death to the public liberty.

We have had thirteen states independent for eleven years. There has been one rebellion. That comes to one rebellion in a century and a half for each state. What country before ever existed a century and a half without a rebellion? And what country can preserve its liberties if its rulers are not warned from time to time that their people preserve the spirit of resistance? Let them take arms. The remedy is to set them right as to facts, pardon, and pacify them.

What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure. Our convention has been too much impressed by the insurrection of

¹P. L. Ford, ed., *The Writings of Thomas Jefferson* (New York: G. P. Putnam's Sons, 1894), vol. 4, pp. 466–467 (November 13, 1787).

Massachusetts; and on the spur of the moment they are setting up a kite [hawk] to keep the henyard in order.

I hope in God this article [perpetual reeligibility of the president] will be rectified before the Constitution is accepted.

D. The Ratification Debate in Massachusetts

1. A Delegate Fears for the Little People (1788)

When the crucial Massachusetts ratifying convention met, it first mustered a majority against the Constitution. As Hamilton had predicted, the propertied and commercial elements favored it; the debtors (including many Shaysites), small farmers, and states' rights people generally fought it. The following outburst by Amos Singleary, one of the small-fry group, who had never attended school, is typical of much of the debate in the state conventions. Did he fear taxation without representation or merely taxation in itself? To what extent did he anticipate the thesis of Charles A. Beard regarding the self-seeking economic motives of the propertied Founding Fathers?

We contended with Great Britain—some said for a three-penny duty on tea; but it was not that. It was because they claimed a right to tax us and bind us in all cases whatever. And does not this Constitution do the same? Does it not take away all we have—all our property? Does it not lay *all* taxes, duties, imposts, and excises? And what more have we to give?

They tell us Congress won't lay dry [direct] taxes upon us, but collect all the money they want by impost [import duties]. I say, there has always been a difficulty about impost. . . . They won't be able to raise money enough by impost, and then they will lay it on the land and take all we have got.

These lawyers, and men of learning, and moneyed men, that talk so finely and gloss over matters so smoothly, to make us poor illiterate people swallow down the pill, expect to get into Congress themselves. They expect to be the managers of this Constitution, and get all the power and all the money into their own hands. And then they will swallow up all of us little folks, like the great Leviathan, Mr. President; yes, just as the whale swallowed up Jonah. This is what I am afraid of. . . .

2. A Storekeeper Blasts Standing Armies (1788)

Samuel Nasson, a saddler and later a storekeeper, expressed a common fear in the Massachusetts ratifying convention. Why was this unmoneyed Massachusetts man so deeply concerned about an army?

¹Jonathan Elliot, *The Debates . . . on the Adoption of the Federal Constitution* (Philadelphia: J. B. Lippincott, 1836), vol. 2, pp. 101–102.

²Jonathan Elliot, *The Debates . . . on the Adoption of the Federal Constitution* (1836), vol. 2, pp. 136–137.

The eighth section, Mr. President, provides that Congress shall have power to lay and collect taxes, duties, imposts, excise, etc. We may, sir, be poor; we may not be able to pay these taxes, etc. We must have a little meal, and a little meat, whereon to live, and save a little for a rainy day. But what follows? Let us see. To raise and support armies. Here, sir, comes the key to unlock this cabinet; here is the means by which you will be made to pay taxes! But will ye, my countrymen, submit to this?

Suffer me, sir, to say a few words on the fatal effects of standing armies, that bane of republican governments. A standing army! Was it not with this that Caesar passed the Rubicon and laid prostrate the liberties of his country? By this have seven eighths of the once free nations of the globe been brought into bondage! Time would fail me, were I to attempt to recapitulate the havoc made in the world by standing armies. . . .

Sir, had I a voice like Jove, I would proclaim it throughout the world; and had I an arm like Jove, I would hurl from the globe those villains that would dare attempt to establish in our country a standing army. I wish, sir, that the gentlemen of Boston would bring to their minds the fatal evening of the 5th of March, 1770, when by standing troops they lost five of their fellow townsmen [in the Boston Massacre]. I will ask them, What price can atone for their lives? What money can make satisfaction for the loss? . . .

What occasion have we for standing armies? We fear no foe. If one should come upon us, we have a militia, which is our bulwark. . . . Therefore, sir, I am utterly opposed to a standing army in time of peace. . . .

3. *A Farmer Favors the Constitution (1788)*

The Massachusetts convention finally ratified the Constitution by the narrow margin of 187 to 168 votes. But the majority did not fall into line until Samuel Adams, an experienced subverter of strong governments, reluctantly threw his weight behind the document, and not until the members agreed to recommend nine fear-quieting amendments (the Bill of Rights). Not all farmers opposed ratification, as this earthy convention speech of Jonathan Smith attests. How convincingly did he make his points that mob rule is tyranny, that anarchy begets despotism, and that the moneyed class was not thinking solely of its narrowly selfish interests?

Mr. President, I am a plain man, and get my living by the plough. I am not used to speak in public, but I beg your leave to say a few words to my brother plough-joggers in this house.

I have lived in a part of the country where I have known the worth of good government by the want of it. There was a black cloud [Shays's Rebellion] that rose in the east last winter, and spread over the west. . . . It brought on a state of anarchy and that led to tyranny. I say, it brought anarchy. People that used to live peaceably, and were before good neighbors, got distracted, and took up arms against government. . . . People, I say, took up arms, and then, if you went to speak to them, you had the musket of death presented to your breast. They would rob you of your property, threaten to burn your houses; oblige you to be on your guard night and

³Jonathan Elliot, *The Debates . . . on the Adoption of the Federal Constitution* (1836), vol. 2, pp. 102–104.

day. Alarms spread from town to town; families were broken up; the tender mother would cry, O my son is among them! . . .

Our distress was so great that we should have been glad to snatch at anything that looked like a government. Had any person that was able to protect us come and set up his standard, we should all have flocked to it, even if it had been a monarch, and that monarch might have proved a tyrant. So that you see that anarchy leads to tyranny; and better have one tyrant than so many at once.

Now, Mr. President, when I saw this Constitution, I found that it was a cure for these disorders. It was just such a thing as we wanted. I got a copy of it and read it over and over. I had been a member of the convention to form our own state constitution, and had learnt something of the checks and balances of power; and I found them all here. I did not go to any lawyer, to ask his opinion—we have no lawyer in our town, and do well enough without. I formed my own opinion, and was pleased with this Constitution. . . .

But I don't think the worse of the Constitution because lawyers, and men of learning, and moneyed men are fond of it. I don't suspect that they want to get into Congress and abuse their power. I am not of such a jealous make. They that are honest men themselves are not apt to suspect other people. . . .

Brother farmers, let us suppose a case, now. Suppose you had a farm of 50 acres, and your title was disputed, and there was a farm of 5,000 acres joined to you that belonged to a man of learning, and his title was involved in the same difficulty. Would you not be glad to have him for your friend, rather than to stand alone in the dispute?

Well, the case is the same—these lawyers, these moneyed men, these men of learning, are all embarked in the same cause with us, and we must all swim or sink together. And shall we throw the Constitution overboard because it does not please us alike? Suppose two or three of you had been at the pains to break up a piece of rough land, and sow it with wheat—would you let it lie waste because you could not agree what sort of a fence to make? Would it not be better to put up a fence that did not please everyone's fancy, rather than not fence it at all, or keep disputing about it until the wild beasts came in and devoured it?

Some gentlemen say, don't be in a hurry; take time to consider; and don't take a leap in the dark. I say, take things in time—gather fruit when it is ripe. There is a time to sow, and a time to reap. We sowed our seed when we sent men to the federal convention. Now is the harvest; now is the time to reap the fruit of our labor. And if we won't do it now, I am afraid we never shall have another opportunity.

E. *The Ratification Debate in New York*

1. *An Antifederalist Demands Deliberation (1787)*

Last-ditch opposition to the Constitution formed in New York under the states' rights banner of George Clinton, the first governor and so-called Father of New York State. The strategic location of New York City, he saw clearly, promised commercial ascen-

¹New York *Journal and Weekly Register*, November 8, 1787.

dancy, and he did not welcome the restraints of a powerful federal government. His views were evidently shared by this anonymous contributor to a New York newspaper. What were the strongest arguments against a hasty and uncritical acceptance of the Constitution? Could some of this reasoning be applied to present-day political affairs? What was the basis of this writer's optimism?

I have read with a degree of attention several publications which have lately appeared in favor of the new Constitution; and as far as I am able to discern, the arguments (if they can be so termed) of most weight which are urged in its favor may be reduced to the two following:

1st. That the men who formed it were wise and experienced; that they were an illustrious band of patriots and had the happiness of their country at heart; that they were four months deliberating on the subject; and therefore it must be a perfect system.

2nd. That if the system be not received, this country will be without any government, and, of consequence, will be reduced to a state of anarchy and confusion, and involved in bloodshed and carnage; and in the end a government will be imposed upon us, not the result of reason and reflection, but of force and usurpation. . . .

With respect to the first, it will be readily perceived that it precludes all investigation of the merits of the proposed Constitution, and leads to an adoption of the plan without enquiring whether it be good or bad. For if we are to infer the perfection of this system from the characters and abilities of the men who formed it, we may as well determine to accept it without any enquiry as with. A number of persons in this as well as the other states have upon this principle determined to submit to it without even reading or knowing its contents. . . .

In answer to the second argument, I deny that we are in immediate danger of anarchy and commotions. Nothing but the passions of wicked and ambitious men will put us in the least danger on this head. Those who are anxious to precipitate a measure will always tell us that the present is the critical moment; now is the time, the crisis is arrived, and the present minute must be seized. Tyrants have always made use of this plea; and nothing in our circumstances can justify it.

The country is in profound peace, and we are not threatened by invasion from any quarter. The governments of the respective states are in the full exercise of their powers; and the lives, the liberty, and property of individuals are protected. All present exigencies are answered by them.

It is true, the regulation of trade and a competent provision for the payment of the interest of the public debt is wanting; but no immediate commotion will rise from these. Time may be taken for calm discussion and deliberate conclusions.

Individuals are just recovering from the losses and embarrassments sustained by the late war. Industry and frugality are taking their station and banishing from the community idleness and prodigality. Individuals are lessening their private debts, and several millions of the public debt is discharged by the sale of Western territory.

There is no reason, therefore, why we should precipitately and rashly adopt a system which is imperfect or insecure. We may securely deliberate and propose amendments and alterations. I know it is said we cannot change for the worse; but

if we act the part of wise men, we shall take care that we change for the better. It will be labor lost if, after all our pains, we are in no better circumstances than we were before.

If any tumults arise, they will be justly chargeable on those artful and ambitious men who are determined to cram this government down the throats of the people before they have time deliberately to examine it.

2. James Madison Defends the New Constitution (1787)

To promote ratification of the new Constitution in New York, Alexander Hamilton, James Madison, and John Jay teamed up to write a series of newspaper articles under the name "Publius." These articles, eighty-five in all, are known together as The Federalist and have become justly famous not only as high-class propaganda but as probably the most brilliant commentary ever written on the principles underlying the Constitution. Possibly the single most famous paper was No. 10, written by James Madison. Madison ingeniously refuted the prevailing wisdom of the day that democracy was possible only in a small state. In the following excerpt from Federalist No. 10, how does Madison justify the new central government envisioned in the Constitution? In particular, how does he handle the problem of "factions"?

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. 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. . . .

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 a 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.

²H. C. Lodge, ed., *The Federalist* (New York: G. P. Putnam's Sons, 1895), pp. 61–66.

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. . . . The latent causes of faction are thus sown in the nature of man . . .

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. . . .

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 results 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. . . .

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 faction is enjoyed by a large over a small republic—is enjoyed by the Union over the States composing it. Does this 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.

Publius

Thought Provokers

1. Considering the conflicting testimony regarding conditions of anarchy under the Articles of Confederation, what conclusions may be safely drawn about the true state of affairs? To what extent may Daniel Shays be regarded as one of the indirect Founding Fathers? Was his "rebellion" justified? Would Jefferson today be permitted to express publicly his views on rebellion?
2. In what sense was the Constitution a democratic document, and in what sense a conservative one? What did democracy mean to the Founding Fathers?
3. What groups seem to have been the strongest supporters of the Constitution? the strongest foes? Why? What probably would have happened in the short run and in the long run if the Constitution had failed of ratification?
4. What is meant by "enlightened self-interest" in public affairs? Were the Founding Fathers motivated by it rather than by "pocketbook patriotism"?
5. Was *The Federalist* really propaganda in the same sense as the Declaration of Independence and Paine's *Common Sense*?