

sons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without shewing reasons, which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no state shall be deprived of territory for the benefit of the united states.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the congress of the united states, be finally determined as near as maybe in the same manner as is before prescribed for deciding disputes respecting territorial jurisdictions between different states.

The united states in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the united states—regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated—establishing and regulating post-offices from one state to another, throughout all of the united states, and exacting such postage on the pa-

pers passing thro' the same as may be requisite to defray the expences of the said office—appointing all officers of the land forces, in the service of the united states, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the united states—making rules for the government and regulation of the said land and naval forces and directing their operations.

The united states in congress assembled shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "A Committee of the States," and to consist of one delegate from each state, and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the united states under their direction—to appoint one or more of their number to preside, provided that no person be allowed to serve in the office of president more than once in any term of three years; to ascertain the necessary sums of Money to be raised for the service of the united states, and to appropriate and apply the same for defraying the public expences—to borrow money, to emit bills on the credit of the united states, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expence of the united states, and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the united states in congress assembled: But if the united states in congress assembled shall, on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise a number of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the united states in congress assembled.

The united states in congress assembled shall nev-

engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expences necessary for the defence and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled.

The congress of the united states shall have power to adjourn to any time within the year, and to any place within the united states, so that no period of adjournment be for a longer duration than the space of six Months, and shall publish the Journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the Journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request shall be furnished with a transcript of the said Journal, except such parts as are above excepted, to lay before the Legislatures of the several states.

Article X. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the united states in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the united states assembled is requisite.

Article XI. Canada acceding to this confederation, and joining in the measures of the united states, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

Article XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of congress, before the assembling of the united states, in pursuance of the present confederation, shall be deemed and considered as a charge against the united states, for payment and satisfaction whereof the said united states, and the public faith are hereby solemnly pledged.

Article XIII. Every state shall abide by the determina-

tions of the united states in congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state.

AND WHEREAS it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. KNOW YE that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, full and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the united states in congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual.

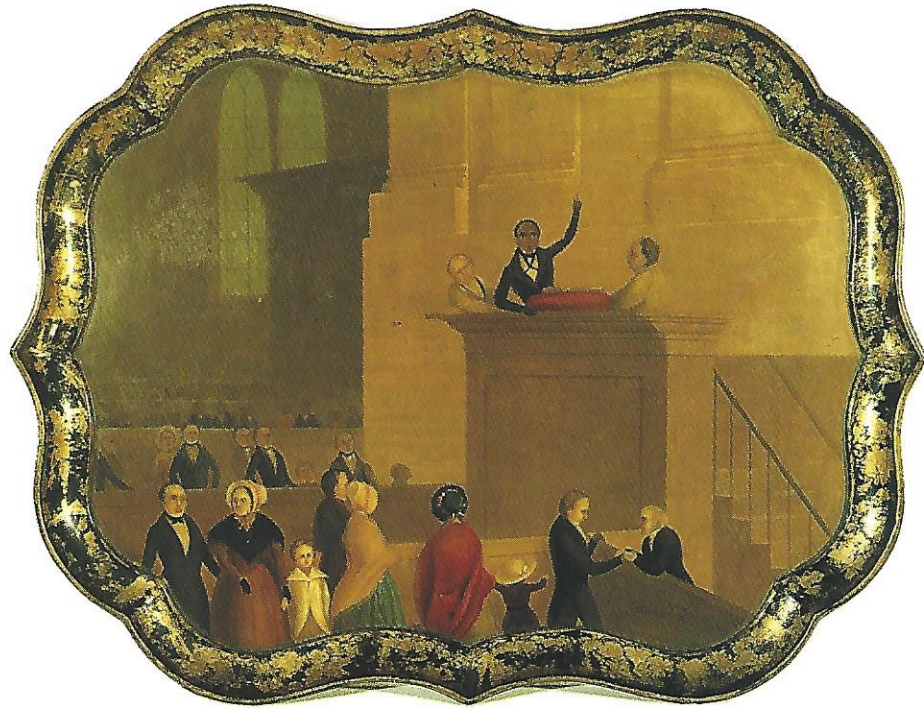
In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the state of Pennsylvania the ninth Day of July in the Year of our Lord one Thousand seven Hundred and Seventy-eight, and in the third year of the independence of America. □



A 1787 engraving lampooned the confusion and dissension that racked the U.S. during the Confederation period.

The Connecticut Historical Society, Hartford, Connecticut. Engraved by Amos Doxlie

Protecting Freedom of Belief



Museum of Art, Rhode Island School of Design Gift of Miss Lucy T. Aldrich

Lemuel Haynes, a black 18th century preacher, exhorts his congregation.

Thomas Jefferson drafted his bill of religious freedom in 1777 at the inception of a decade-long struggle he once called “the severest contest” in which he had ever engaged. The Anglican Church had been established in Virginia’s infancy. It was the official church; dissenters, although generally tolerated, were taxed for its support and suffered numerous pains and penalties. The Revolutionary principles of liberty, equality and self-government, together with soaring numbers of dissenters—Baptists, Presbyterians, Methodists—challenged this state of affairs. Jefferson proposed a new order of religious life based upon the twin principles of freedom of religious conscience and separation of church and state.

Prodded by Jefferson, the Virginia Assembly began to dismantle the establishment piecemeal at its first session in the fall of 1776. It soon became apparent, however, that disestablishment was but half the battle. Virginians who feared the consequences of a state without religion and of churches without public support rallied behind a plan to tax all citizens for the maintenance of all Christian ministers. Always before in history, an “establishment of religion” meant support of a single state church. Now, with this proposed measure, it assumed new meaning: the civil support of Christianity without preference as to church or sect. Jefferson drafted his great bill to close off

this development. After the Revolutionary War, when he was U.S. Minister to France, his friend James Madison introduced the bill in the Assembly and, in 1785, drafted his “Memorial and Remonstrance Against Religious Assessments” to rally backing for its passage. The statute was enacted virtually without change at the next session.

The Virginia Statute for Religious Freedom is in three parts: the preamble, an eloquent manifesto of the sanctity of the human mind and spirit; the enacting clause, which barred state intervention and secured full freedom of religious conscience; and a final paragraph admonishing future legislatures that any change in this statute would be a violation of natural right.

The statute became the cornerstone of the unique American tradition of religious freedom and separation of church and state, serving as a model for other states old and new. Its principles entered into the U.S. Constitution by way of the First Amendment—mainly Madison’s work. Jefferson, after he became President, put a gloss on the amendment’s “establishment” clause by declaring that he had erected “a wall of separation between church and state.” As Supreme Court Justice Wiley Rutledge wrote in 1947: “The great instruments of the Virginia struggle...became warp and woof of our constitutional tradition.”

—**Merrill D. Peterson**, *University of Virginia, Emeritus*

The Virginia Statute for Religious Freedom

An Act for establishing Religious Freedom.

I. WHEREAS Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right, that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for

its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.

II. *Be it enacted by the General Assembly*, that no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.

III. And though we well know that this assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies, constituted with powers equal to our own, and that therefore to declare this act to be irrevocable would be of no effect in law; yet as we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall hereafter be passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right. □



In 1800, Lutheran church members hark to their pastor as the sexton (lower left) chases away an intruder.

An End to Colonialism

Adopted by the Confederation Congress on July 13, 1787, the Northwest Ordinance established a system for governing and developing the territory that the states had ceded to Congress and guaranteed new states admission to the Union "on an equal footing." The republican alternative to a colonial regime in the West, the ordinance was crucial in transforming the sluggish Confederation into a dynamic and expanding federal republic.

It was no coincidence that as the framers drafted the new federal Constitution in Philadelphia, congressmen in New York concluded deliberations on western policy. The two documents complement each other, together offering a solution to the constitutional crises of the 1780s, many of which concerned the West. Unregulated settlements abounded, depriving the impoverished Confederation of revenue from land sales; defiant settlers claimed land illegally, provoked the Indians, set up their own states and threatened to ally themselves with neighboring imperial powers. Many feared that unless effective government was quickly established and ties between the western settlements and the East strengthened, war would be renewed and America's independence lost. The Northwest Ordinance, providing order and government, helped secure the Union as well as the West.

In 1784, a committee headed by Thomas Jefferson developed procedures for forming new states. In the territor-

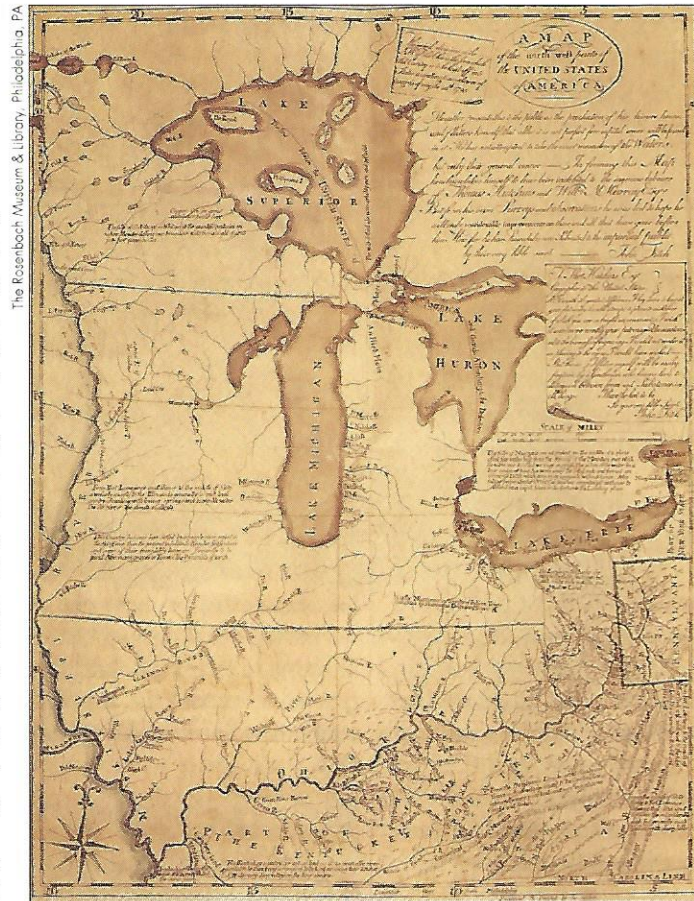
ial ordinance of 1784, predecessor of the Northwest Ordinance, Congress affirmed its commitment to new-state equality. The Northwest Ordinance set out a framework of temporary territorial government that would give gradually to self-government. The first of the ordinance's two major sections establishes the machinery of government; the second, six "forever...unaltered" articles of compact, includes the first federal bill of rights, the guarantee of new-state equality; the proposed boundaries of the territory to be divided into five new states; and a ban on slavery.

But political equality and self-government were not enough to keep the West in the Union. With

"easy communication," wrote Washington, the Westerners "will become a distinct people from us." Only trade fostered by a system of new roads, canals and river improvements built and maintained by an energetic national government—would create a durable bond. Thus the second step in securing the West and the Union was a constitution providing for a strong centralized government.

By 1836, when the Wisconsin Territory was organized, Congress had revised the ordinance so often that little remained of its original provisions. To subsequent generations, the principle of state equality seemed self-evident that its origin in the ordinance—and the document's crucial role in America's development—slipped gradually from public memory.

—Peter S. Onuf, University of Virginia



John Fitch, a speculator, based this map of the Northwest Territory on his company's surveys in the early 1780s.

The Northwest Ordinance

July 13, 1787

**AN ORDINANCE for the GOVERNMENT of the TERRITORY
of the UNITED STATES North-West of the RIVER OHIO.**

BE IT ORDAINED by the United States in Congress assembled, That the said territory, for the purposes of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient....

Be it ordained by the authority aforesaid, That there shall be appointed from time to time by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in 1,000 acres of land, while in the exercise of his office.

There shall be appointed from time to time by Congress, a secretary, whose commission shall continue in force for four years unless sooner revoked; he shall reside in the district, and have a freehold estate therein in 500 acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings, every six months, to the Secretary of Congress: There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in 500 acres of land while in the exercise of their offices, and their commissions shall continue in force during good behavior.

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time: which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved of by Congress; but afterwards the Legislature shall have authority to alter them as they shall think fit.

The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civ-

il officers in each county or township, as he shall find necessary for the preservation of the peace and good order in the same: After the general assembly shall be organized, the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject however to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships to represent them in the general assembly: *Provided*, That, for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which, the number and proportion of representatives shall be regulated by the legislature: *Provided*, That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee simple, two hundred acres of land within the same: *Provided*, also, That a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly or legislature shall consist of the

governor, legislative council, and a house of representatives. The Legislative Council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum: and the members of the Council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the Governor shall appoint a time and place for them to meet together; and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and, whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when, in his opinion, it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the president of congress, and all other officers before the Governor. As soon as a legislature shall be formed in the district, the council and house assembled in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating but not of voting during this temporary government.

And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, con-

stitutions, and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of States, and permanent government therein; and for their admission to a share in the federal union on an equal footing with the original States, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared by the authorities aforesaid, That the following articles shall be considered as articles of compact between the original States and people and States in the said territory and forever remain unalterable, unless by common consent, to wit:

ART. 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ART. 2. The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*; of the trial by jury; of a proportionate representation of people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

ART. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. 4. The said territory, and the States which may be formed therein, shall forever remain a part of this Con-

eracy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and, in no case, shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ART. 5. There shall be formed in the said territory, not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: The western State in the said territory, shall be bounded by the Mississippi, the Ohio, and Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due North, to the territorial line between the United States and Canada; and, by the said territorial line, to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line, drawn due north from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however*, and it is further understood and declared, that the boundaries of these three States shall be subject so far to

be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of lake Michigan. And, whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided*, the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ART. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: *Provided, always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23rd of April 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void. □



Federalists foresaw a network of canals and roads that would tie the West's economic interests to the East's.



The Constitutional Convention met in Philadelphia's State House, seen here in 1799.

The Mainspring of American Public Life

Often celebrated for its capacity to endure, the Constitution of the United States is nonetheless a product of its times. When it was ratified in 1789 it represented the first example of a nation committing itself to the principles of republican political theory. Three fundamental assumptions of 18th-century republicanism are embedded in its text: that in an enlightened society the legal rights and obligations of the citizenry should be written down; that humankind is inherently self-interested and prone to "factions," so that governmental power must be divided and multiple branches of government created as checks on one another; and that individuals possess certain inalienable rights against the state, and an important function of government is to secure such rights.

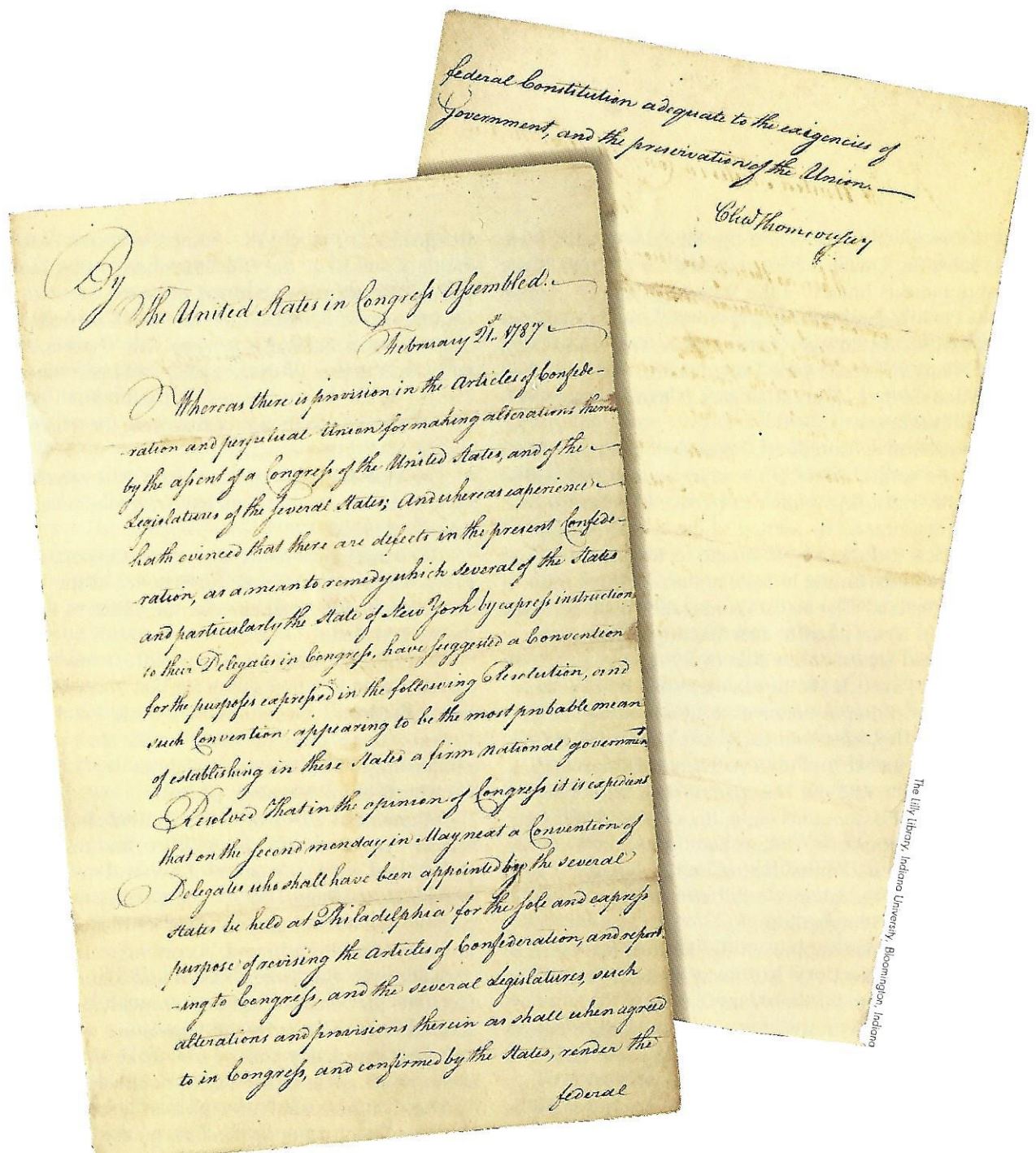
The republican concept of checks and balances is scattered throughout the bulk of the Constitution, in provisions establishing power-sharing between the states and the national government, a bicameral legislature and the executive and judicial branches, and the principle of indirect representative government (the President being chosen by electors from the states, and members of Congress representing citizens from various localities). In contrast, the first 10 amendments to the Constitution codify the principle of "inalienable" rights against the state by enumerating those rights.

The creation and adoption of the Constitution were open to charges of usurpation. The framers had two man-

dates—that of the 1786 Annapolis Convention, which called for a new convention "to devise such further provisions as shall appear...necessary to render the constitution of the federal government adequate to the exigencies of the Union," and that of the Confederation Congress, which authorized the Constitutional Convention to propose amendments to the Articles of Confederation. Instead, the convention produced an entirely new government, and it was to be approved not by the legislature of the 13 states, as provided for in the Articles, but by the people of each state, in specially elected state ratifying conventions (packed, in some instances, with supporters of the new government).

The stability of the Constitution's fundamental provisions has frequently been remarked upon, but one must bear in mind that many of the Constitution's critical concepts (commerce, due process, equal protection, property, free speech) are open-ended, capable of being given particularistic meanings at various times. Over the years the Constitution has proved difficult to amend formally—only 27 amendments have appeared since its framing—but comparatively easy to "amend" informally, with its central concepts expanding to accommodate changing ideological perspectives and social conditions. The American Constitution remains one of the world's inspired governing documents.

—G. Edward White, *University of Virginia School of Law*



In February 1787, the Confederation Congress authorized a convention in Philadelphia "on the second Monday in May next" to revise the Articles of Confederation.

The Constitution of the United States

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I.

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

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the Peo-

ple of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

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 respective 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 excluding Indians not taxed, three fifths of all other Persons.* The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, 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 at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof,** for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by

* "Representatives ... other Persons." Changed regarding representation by the 14th Amendment; changed regarding taxation by the 16th Amendment

** "chosen by the Legislature thereof," changed by the 17th Amendment

Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be elected by the Electors in the same Manner as the President, but shall have no Vote, unless the Electors be equally divided.

The Senate shall chuse their other Officers, and a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside. No Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday of December,** unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its members for disorderly Behavior,

* "and if Vacancies ... Vacancies." Changed by the 17th Amendment

** "be ... December," changed by the 20th Amendment

with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States shall be a Member of either House during his Continuance in Office.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sunday excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as

if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be

employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;

—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.*

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress,

accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II.

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, shall be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors.

* "No Capitation....taken." Changed by the 16th Amendment

of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President.* But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Persons except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.**

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my

Ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of Treason, Bribery, or other high Crimes and Misdemeanors.

Article III.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior

* "The Electors ... Vice President." Changed by the 12th Amendment

** "In Case ... elected." Changed by the 25th Amendment

Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and of foreign States, Citizens or Subjects.*

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records

and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up, on Claim of the Party to whom such Service or Labour may be due.*

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor shall any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislature of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and against domestic Violence, on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the

* "between a State ... Subjects." Addressed by the 11th Amendment

* "No Person ... due." Changed by the 13th Amendment

One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

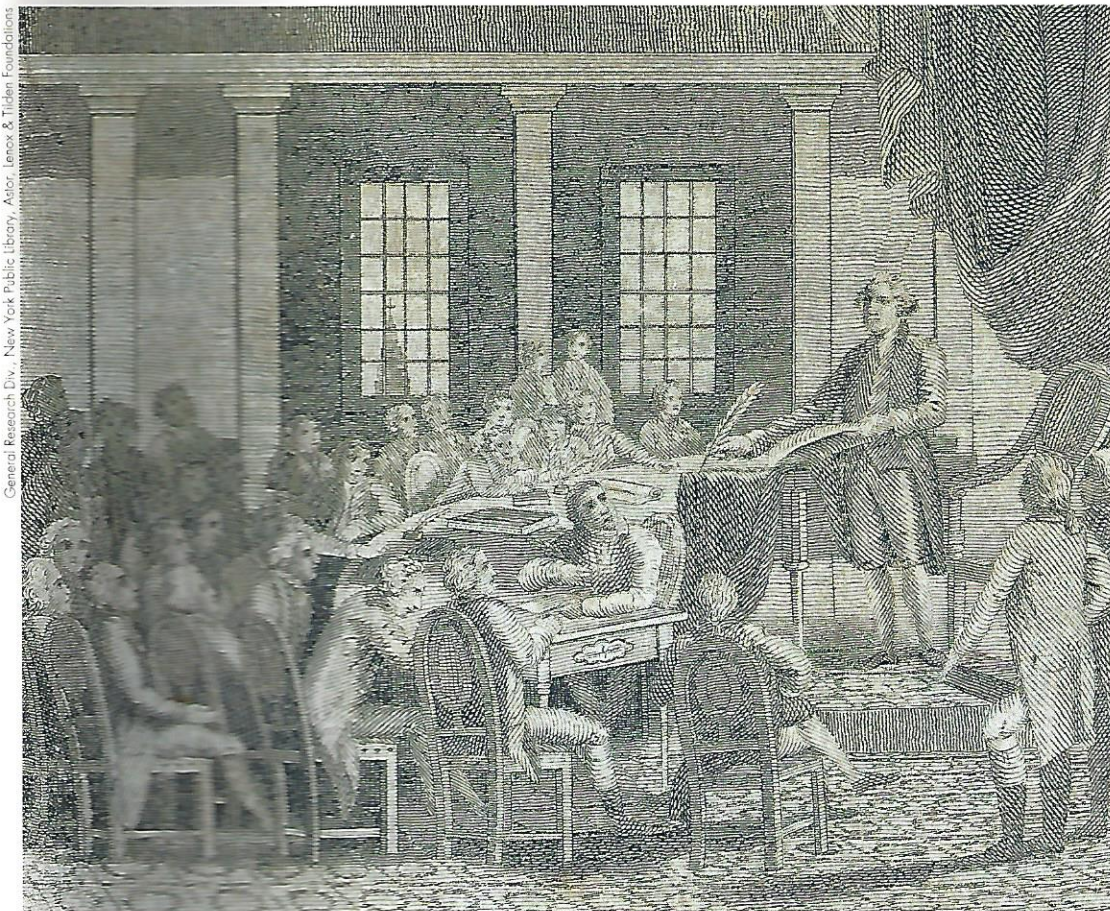
The Senators and Representatives before mentioned,

and the Members of the several State Legislatures, and all executive and judicial Officers; both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

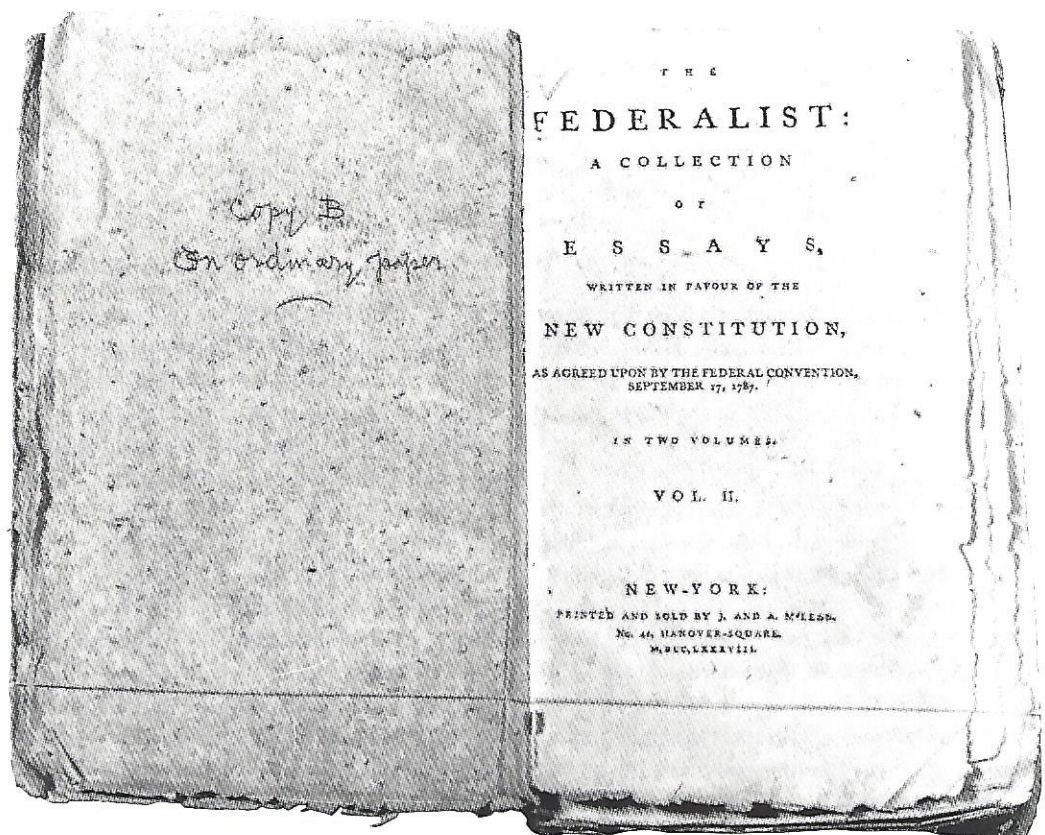
Article VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our Names. □



This engraving, illustrating an 1823 history of the United States, shows the delegates deliberating in the summer of 1787. George Washington, the presiding officer, stands at right.



A tattered original of the *Federalist* essays, which argued for a restructured government.

Defending the Constitution

In 1787-88, as Americans debated whether to ratify or reject the Constitution, they launched a continuing argument over interpreting the document. Perhaps the greatest product of the controversy over ratification is the *Federalist*, which focuses not only on the Constitution, but also on enduring challenges of constitution-making and constitutional government.

Alexander Hamilton, the brilliant New York lawyer and politician who devised the *Federalist*, enlisted two longtime allies, the diplomat and jurist John Jay of New York and the Virginia politician and philosopher James Madison. Together, they wrote a series of 85 newspaper essays under the pen name Publius, taken from Plutarch's life of the man who restored Rome's republican government. The *Federalist* started as a debater's handbook in the ratification controversy, but it soon became something more: the first authoritative commentary on the Constitution.

The *Federalist* incorporates many tensions and contradictions. First, the authors simultaneously take the high and low roads of political argument; in *Federalist* No. 1, for example, Hamilton invokes the challenge of "establishing good government from reflection and

choice"—but also charges that anti-Federalists would break up the Union. Second, the authors make no distinction between theory and practice. For them, the most serious practical political arguments have theoretical consequences, and the most abstract political reasoning has direct and immediate relevance to real-world problems facing the American people.

The *Federalist* is probably America's greatest contribution to political thought, and repays serious and continuing study. Hamilton's opening essay gives a capacious introduction to the series as a whole and exemplifies the collection's powerful and moving prose. Readers who take up the *Federalist* on their own might devote special attention to Madison's analysis of the problems of federalism (No. 10), Hamilton's arraignment of the Confederation (No. 15), Madison's explanations of federalism (Nos. 39-41), checks and balances and separation of powers (Nos. 47-51) and Hamilton's defenses of executive power (Nos. 68-77) and judicial review (Nos. 78-83).

In writing the *Federalist*, Hamilton, Madison and Jay established an extraordinary standard for constitutional argument—one that has stood for more than two centuries.

—Richard B. Bernstein, *New York Law School*

The Federalist No. 1

From the *Independent Journal*, October 27, 1787.

Vigor of Government

Is Essential to the Security of Liberty

To the People of the State of New-York.

After an unequivocal experience of the inefficacy of the subsisting Fœderal Government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences, nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire, in many respects, the most interesting in the world. It has been frequently remarked, that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force. If there be any truth in the remark, the crisis, at which we are arrived, may with propriety be regarded as the æra in which that decision is to be made; and a wrong election of the part we shall act, may, in this view, deserve to be considered as the general misfortune of mankind.

This idea will add the inducements of philanthropy to those of patriotism to heighten the sollicitude, which all considerate and good men must feel for the event. Happy will it be if our choice should be decided by a judicious estimate of our true interests, unperplexed and unbiassed by considerations not connected with the public good. But this is a thing more ardently to be wished, than seriously to be expected. The plan offered to our deliberations, affects too many particular interests, innovates upon too many local institutions, not to involve in its discussion a variety of objects foreign to its merits, and of views, passions and prejudices little favourable to the discovery of truth.

Among the most formidable of the obstacles which the new Constitution will have to encounter, may readily be distinguished the obvious interest of a certain class of men in every State to resist all changes which may hazard a diminution of the power, emolument and consequence of the offices they hold under the State-establishments—and the perverted ambition of another class of men, who will either hope to aggrandise themselves by the confusions of their country, or will flatter themselves with fairer prospects of elevation from the subdivision of the empire into several partial confederacies, than from its union under one government.

It is not, however, my design to dwell upon observations of this nature. I am well aware that it would be disingenuous to resolve indiscriminately the opposition of any set of men (merely because their situations might subject them to

suspicion) into interested or ambitious views: Candour will oblige us to admit, that even such men may be actuated by upright intentions; and it cannot be doubted, that much of the opposition which has made its appearance, or may hereafter make its appearance, will spring from sources, blameless at least, if not respectable, the honest errors of minds led astray by preconceived jealousies and fears. So numerous indeed and so powerful are the causes, which serve to give a false bias to the judgment, that we upon many occasions, see wise and good men on the wrong as well as on the right side of questions, of the first magnitude to society. This circumstance, if duly attended to, would furnish a lesson of moderation to those, who are ever so much persuaded of their being in the right, in any controversy. And a further reason for caution, in this respect, might be drawn from the reflection, that we are not always sure, that those who advocate the truth are influenced by purer principles than their antagonists. Ambition, avarice, personal animosity, party opposition, and many other motives, not more laudable than these, are apt to operate as well upon those who support as upon those who oppose the right side of a question. Were there not even these inducements to moderation, nothing could be more illjudged than that intolerant spirit, which has, at all times, characterised political parties. For, in politics as in religion, it is equally absurd to aim at making proselytes by fire and sword. Heresies in either can rarely be cured by persecution.

And yet however just these sentiments will be allowed to be, we have already sufficient indications, that it will happen in this as in all former cases of great national discussion. A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude, that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts by the loudness of their declamations, and by the bitterness of their invectives. An enlightened zeal for the energy and efficiency of government will be stigmatised, as the off-spring of a temper fond of despotic power and hostile to the principles of liberty. An overscrupulous jealousy of danger to the rights of the people, which is more commonly the fault of the head than of the heart, will be represented as mere pretence and artifice; the bait for popularity at the expence of public good. It will be forgotten, on the one hand, that jealousy is the usual concomitant of violent love, and that the noble enthusiasm of liberty is too apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten, that the vigour of government is essential to the security of liberty; that, in the contemplation of a sound and well informed judgment, their interest can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people, than under the forbidding appearance of

zeal for the firmness and efficiency of government. History will teach us, that the former has been found a much more certain road to the introduction of despotism, than the latter, and that of those men who have overturned the liberties of republics the greatest number have begun their career, by paying an obsequious court to the people, commencing Demagogues and ending Tyrants.

In the course of the preceeding observations I have had an eye, my Fellow Citizens, to putting you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare by any impressions other than those which may result from the evidence of truth. You will, no doubt, at the same time, have collected from the general scope of them that they proceed from a source not unfriendly to the new Constitution. Yes, my Countrymen, I own to you, that, after having given it an attentive consideration, I am clearly of opinion, it is your interest to adopt it. I am convinced, that this is the safest course for your liberty, your dignity, and your happiness. I affect not reserves, which I do not feel. I will not amuse you with an appearance of deliberation, when I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity. I shall not however multiply professions on this head. My motives must remain in the depositary of my own breast: My arguments will be open to all, and may be judged of by all. They shall at least be offered in a spirit, which will not disgrace the cause of truth.

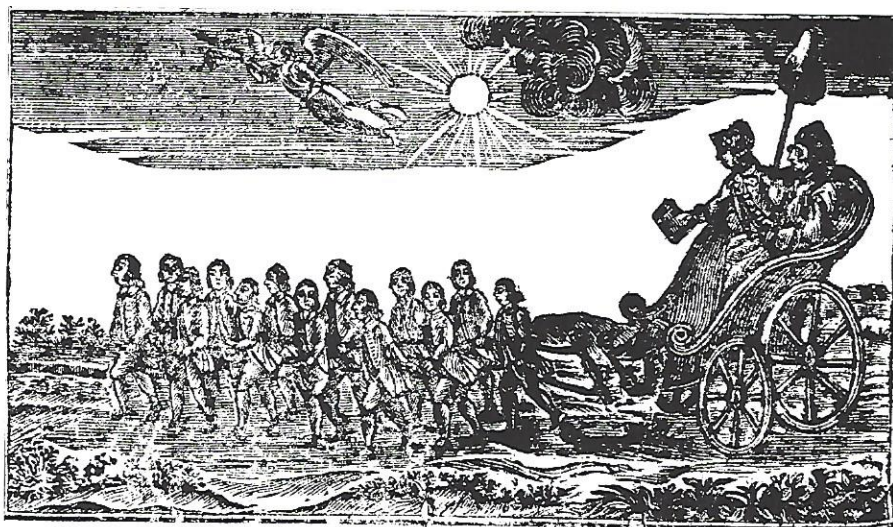
I propose in a series of papers to discuss the following interesting particulars—The utility of the UNION to your political prosperity—The insufficiency of the present Con-

federation to preserve that Union—The necessity of a government at least equally energetic with the one proposed to the attainment of this object—The conformity of the proposed Constitution to the true principles of republican government—Its analogy to your own state constitution—and lastly, The additional security, which its adoption will afford to the preservation of that species of government, to liberty and to property.

In the progress of this discussion I shall endeavour to give a satisfactory answer to all the objections which shall have made their appearance that may seem to have a claim to your attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION, a point, no doubt, deeply engraved on the hearts of the great body of the people in every state, and one, which it may be imagined has no adversaries. But the fact is, that we already hear whispered in the private circles of those who oppose the new constitution, that the Thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole. This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance an open avowal of it. For nothing can be more evident than that those who are able to take an enlarged view of the subject, than the alternative of an adoption of the new Constitution or a dismemberment of the Union. It will therefore be our use to begin by examining the advantages of that Union, and the certain evils and the probable dangers, to which each State will be exposed from its dissolution. This shall accordingly constitute the subject of my next address.

—PUBLIUS



This 1788 engraving portrays the 13 states hauling a federal chariot, driven by Washington and Franklin, toward the goal of ratification.

George Mason Faults the “More Perfect Union”

At the Federal Convention of 1787, the Virginia planter and statesman George Mason supported the creation of a strong central government. However, when the Committee of Style presented the Constitution's final draft on September 12, Mason was appalled by the excessive powers it granted that government. He and others proposed that their colleagues adopt a declaration of rights that would “give great quiet to the people” and could be quickly assembled from state declarations. Mason had spoken the language of rights in opposition to British imperial policy and written the Virginia Declaration of Rights in 1776, which became a model for other states. After the convention rejected this proposal unanimously, Mason drafted a list of objections to the Constitution. He was discouraged from presenting them, and on September 17, in very ill temper, he refused to sign the document.

Mason's objections were circulated widely in manuscript and print and prompted substantive Federalist replies, perhaps more than those of any other anti-Federalist writer. Federalists understood that Mason considered “the want of a Bill of Rights as a fatal objection” and responded specifically to that issue by contending that Congress lacked the power to imperil the people's rights and liberties.

In the Virginia ratifying convention of June 1788, Mason stressed the vast power of the central government vis-à-vis the people and the states, as well as the role of representa-

tion and the separation of powers. But first and foremost, he demanded a bill of rights to protect the “great rights of human nature” endangered by the powers (some of them implied) of the “consolidated Government” that the Constitution created. “Unless there were a Bill of Rights,” he argued, “implication might swallow up our rights.”

Mason also criticized the “extensive Judicial authority,” another evidence of consolidation that, he declared, would eventually destroy the state judiciaries and laws. To protect the states, he recommended a clause that was eventually to become the 10th Amendment. He also sought to increase the number of members in the House of Representatives—to keep it from becoming an “Aristocratic idol” (government of the “well born”)—and insisted that representatives be encouraged “to mix with the people” to develop “a fellow-feeling” with them.

Mason believed that rotation in office was “essential to the preservation of a Republican Government” and that the President's re-eligibility would produce an elective monarchy. He

feared that the President and the Senate would “scheme and plot against the people” to create an aristocracy. The convention recommended that 40 amendments (including a declaration of rights) be added to the ratified Constitution; but Mason, who had insisted that the Constitution be amended before it was ratified, still voted against it.

—Gaspere J. Saladino, *University of Wisconsin-Madison*



Painting by Dominic W. Boudet, 1811

Virginia Museum of Fine Arts, Richmond, VA. Gift of David K. E. Bruce

Mason assailed the lack of a bill of rights.

Objections to the Proposed Constitution

George Mason to George Washington
Gunston Hall, 7 October

...I take the Liberty to enclose You my Objections to the new Constitution of Government; which a little Moderation & Temper, in the latter End of the Convention, might have removed. I am however most decidedly of Opinion, that it ought to be submitted to a Convention chosen by the People, for that special Purpose; and shou'd any Attempt be made to prevent the calling such a Convention here, such a Measure shall have every Opposition in my Power to give it—You will readily observe, that my Objections are not numerous (the greater Part of the inclosed paper containing Reasonings upon the probable Effects of the exceptionable Parts) tho' in my Mind, some of them are capital ones.

There is no Declaration of Rights; and the Laws of the general Government being paramount to the Laws & Constitutions of the several States, the Declarations of Rights in the separate States are no Security. Nor are the People secured even in the Enjoyment of the Benefits of the common-Law; (which stands here upon no other Foundation than it's having been adopted by the respective Acts forming the Constitutions of the several States.—)

In the House of Representatives there is not the Substance, but the Shadow only of Representation; which can never produce proper Information in the Legislature, or inspire Confidence in the People: the Laws will therefore be generally made by Men little concern'd in, and unacquainted with their Effects & Consequences.—*

The Senate have the Power of altering all Money-Bills, and of originating Appropriations of Money, & the Sallerys of the Officers of their own Appointment in Conjunction with the President of the United States; altho' they are not the Representatives of the People, or amenable to them.—

These with their other great Powers (vizt. their Power in the Appointment of Ambassadors & all public Officers, in making Treaties, & in trying all Impeachments) their Influence upon & Connection with the supreme Executive from these Causes, their Duration of Office, and their being a constant existing Body almost continually sitting, join'd with their being one compleat Branch of the Legislature, will destroy any Balance in the Government, and enable them to accomplish what Usurpations they please upon the Rights & Liberties of the People.—

* This Objection has been in some Degree lessened by an Amendment, often before refused, and at last made by an Erasure, after the Engrossment upon Parchment, of the word forty, and inserting thirty, in the 3d. Clause of the 2d. Section of the 1st Article.

The Judiciary of the United States is so constructed, as to absorb & destroy the Judiciarys of the several States; thereby rendering Law as tedious intricate expensive, and Justice as unattainable, by a great Part of the Community, as in England, and enabling the Rich to oppress & ruin the Poor.—

The President of the United States has no constitutional Council (a thing unknown in any safe & regular Government) he will therefore be unsupported by proper Information & Advice; and will generally be directed by Minions & Favourites—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 & most dangerous of all Ingredients for such a Council, in any Country; for they may be induced to join in any dangerous or oppressive Measures, to shelter themselves & prevent an Inquiry into their own Misconduct in Office, whereas had a constitutional Council been formed (as was proposed) of six Members; vizt. two from the Eastern States, two from the Middle, and two from the Southern States, to be appointed by Vote of the States in the House of Representatives, with the same Duration & Rotation of Office as the Senate, the Executive wou'd always have had safe proper Information & Advice, the President of such a Council might have acted as Vice President of the United States, pro tempore, upon any Vacancy or Disability of the chief Magistrate; and long continued Sessions of the Senate wou'd in a great Measure have been prevented.

From this fatal Defect of a constitutional Council has arisen the improper Power of the Senate, in the Appointment of public Officers, and the alarming Dependence & Connection between that Branch of the Legislature, & the supreme Executive.—Hence also sprung that unnecessary & dangerous Officer the Vice President; who for want of other Employment, is made President of the Senate, thereby dangerously blending the executive & legislative Powers; besides always giving to some one of the States an unnecessary & unjust Pre-eminence over the others.—

The President of the United States has the unrestrained Power of granting Pardons for Treason; which may sometimes be exercised to screen from Punishment the Criminal, whom he had secretly instigated to commit the Crime, & thereby prevent a Discovery of his own Guilt.

By declaring all Treaties supreme Laws of the Land, the Executive & 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 to make all Commercial & Navigation Laws, the five Southern States (whose Produce & Circumstances are totally different from the

the eight Northern & Eastern States) will be ruined; for such rigid & premature Regulations may be made as will enable the Merchants of the Northern & 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, & 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 the Government.—

Under their own Construction of the general Clause at the End of the enumerated Powers, the Congress may grant Monopolies in Trade & Commerce, constitute new Crimes, inflict unusual & severe Punishments, and extend their Power 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, the Tryal by jury in civil Causes; nor against the Danger of standing Armies in time of Peace.

The State Legislatures are restrained from laying Export-Duties on their own Produce.—

The general Legislature is restrained from prohibiting the further Importation of Slaves for twenty odd Years; tho' such Importations render the United States weaker, more vulnerable, and less capable of Defence.—

Both the general Legislature & the State Legislatures are expressly prohibited making ex post facto Laws; tho' there never was or can be a Legislature but must & will make such Laws, when Necessity & the public Safety require them; which will hereafter be a Breach of all the Constitutions in the Union, and afford Precedents for other Innovations.—

This Government will commence in a moderate Aristocracy; it is at present impossible to foresee whether it will, in it's Operation, produce a Monarchy, or a corrupt oppressive Aristocracy; it will most probably vibrate some years between the two, and then terminate in the one or the other.— □

Dear Sir

Puch? June 20.

On the question today for previous assent -
 -matters, the votes stood 89 aye - 80 noes - on the final question
 -the ratification passed 89 aye - 79 noes. Subsequently amendments
 -would attend the rat; but are yet to be settled. The
 -temper of the assembly will be better known tomorrow. The proposed
 -aye have done without flaw or pretext for it; and there
 is no doubt that acquiescence if not cordiality will be mani-
 fested by the unscrupulous party. Two of the leaders however
 betray the effect of the disappointment, as far as it is marked
 in their countenances.

In haste &c
 J. Madison

The Lilly Library, Indiana University, Bloomington, Indiana

Despite Mason's objections, Virginia voted for ratification, a victory James Madison reports in a letter to George Washington.



In Samuel Jennings' 1792 painting, Liberty offers learning to freed slaves.

Luther Martin's Antislavery Argument

Luther Martin, a graduate of the College of New Jersey—as Princeton University was then called—settled in Somerset County, Maryland, as a lawyer. He established his public reputation as Attorney General of Maryland, a post he held for 31 years. His contemporaries knew him as a hard-drinking, doctrinaire republican; his personal life was plagued by tragedy. At the Philadelphia Convention Martin consistently and vociferously opposed strong national government, which he was certain would destroy the rights of the states and of private citizens. He led a determined opposition to proportional legislative representation, but was a party to the crucial compromise guaranteeing state equality in the Senate as well as one concerning congressional regulation of interstate commerce. Disgusted by another compromise adopted to satisfy the demands of Southern slave states and Northern business interests, Martin left the convention in early September to lead the fight against ratification. He summarized his arguments against adoption of the Constitution in his lengthy report to the Maryland House of Delegates, which was published as “The Genuine Information.”

Martin's arguments in favor of an immediate national prohibition of the importation of slaves seem strangely at odds with his fiercely held views on states' rights and with his ownership of slaves. This disparity, however, reflects the complex, even contradictory, meaning of the Revolution to different groups of Americans. Wartime rhetoric had employed slavery as a metaphor for the effects of British

policies on the colonies. The stirring calls for “equality” and “liberty” inspired the Revolutionary generation in the struggle for independence and guided their efforts to build new social and political structures. Inevitably the new discourse raised questions about the legitimacy of slavery in a republic. While free white Americans debated the limits of equality, enslaved black ones struggled to extend those limits. In the North, slaves sued for freedom in the courts, making the unprecedented claim that the natural rights of liberty and equality extended to them. In the South, Revolutionary discourse and the chaos of war precipitated the largestodus of slaves in the history of North America. Tens of thousands chose to interpret British proclamations offering freedom to “enemy Negroes” as a general emancipation. The result was their continuous and massive flight, which turned the Revolution into a war about slavery, if not slavery.

These varied understandings of political and constitutional principles produced a complex set of regional responses. Gradual emancipation occurred throughout the North, albeit with restraints on the civil and political rights of blacks. Despite the liberalization of manumission laws, slavery remained entrenched in the South except in Maryland, a small state with no hinterland into which to expand staple-crop agriculture. Martin's statements help sort out the diverging interests of Americans as they debated the new nation's social and political future.

—Sylvia R. Frey, *Tulane University*

“The Genuine Information,” SECTION VIII

From the *Maryland Gazette* (Baltimore), January 22, 1788.

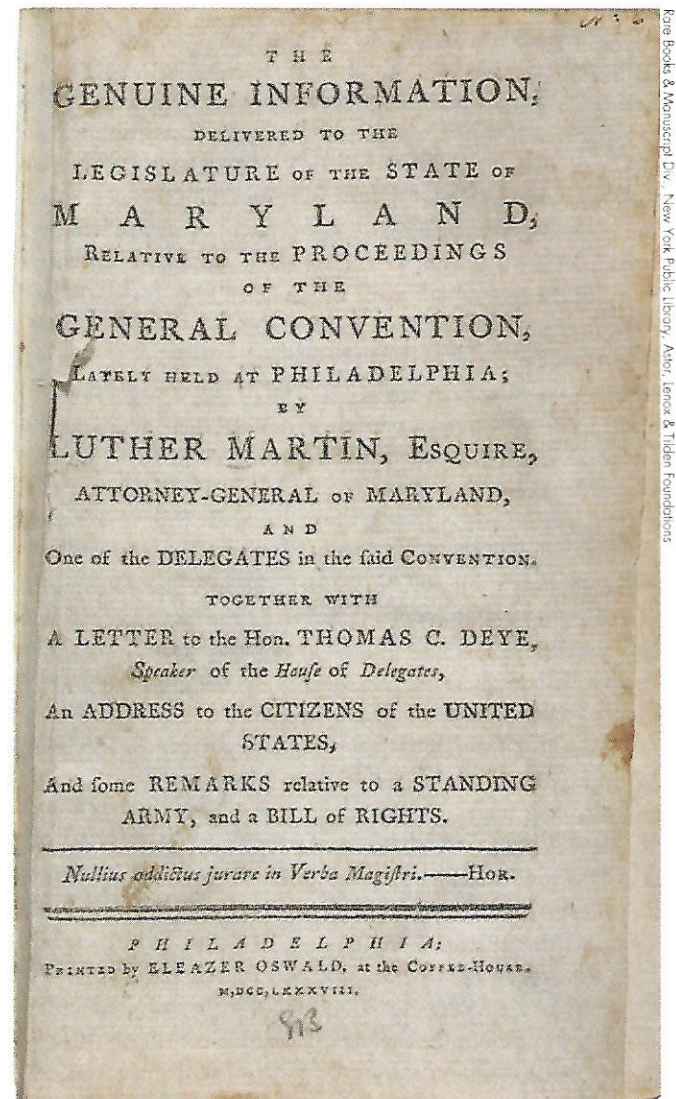
MR. MARTIN'S *Information to the House of Assembly, continued.*

It was urged that by this system, we were giving the general government full and absolute power to regulate commerce, under which general power it would have a right to *restrain*, or *totally prohibit* the *slave trade*—it must appear to the world absurd and disgraceful to the last degree, that we should *except* from the exercise of that power, the only *branch of commerce*, which is *unjustifiable in its nature*, and *contrary to the rights of mankind*—That on the contrary, we ought *rather to prohibit expressly* in our *constitution*, the *further importation of slaves*; and to *authorize* the general government from time to time, to make such regulations as should be thought most advantageous for the *gradual abolition of slavery*, and the *emancipation of the slaves* which are already in the States.

That *slavery* is *inconsistent* with the genius of *republicanism*, and has a tendency to *destroy* those *principles* on which it is *supported*, as it *lessens the sense* of the *equal rights of mankind*, and habituates us to *tyranny* and *oppression*.—It was further urged, that by this system of government, every State is to be protected both from *foreign invasion* and from *domestic insurrections*; that from this consideration, it was of the *utmost importance* it should have a *power* to restrain the importation of slaves, since in *proportion* as the number of slaves were increased in any State, in the same proportion the State is *weakened* and *exposed* to foreign invasion, or domestic insurrection, and *by so much the less* will it be able to protect itself against *either*; and therefore will by so much the more, want aid from, and be a burthen to, the union.—It was further said, that as in this system we were giving the general government a power under the idea of national character, or national interest, to regulate even our *weights* and *measures*, and have prohibited all possibility of *emitting paper money*, and *passing instalment laws, etc.*—It must appear still more extraordinary, that we should prohibit the government from interfering with the slave trade, than which *nothing* could so *materially affect* both our *national honour* and *interest*.—These reasons influenced me both on the committee and in convention, most decidedly to oppose and vote against the clause, as it now makes a part of the system.

You will perceive, Sir, not only that the general government is prohibited from interfering in the slave trade before the year eighteen hundred and eight, but that there is no provision in the constitution that it shall *afterwards* be prohibited, nor any security that such prohibition will ever take place—and I think there is great reason to believe that if the importation of slaves is permitted until the year eighteen hundred and eight, it will not be prohibited

afterwards.—At *this time* we do not generally hold this commerce in so great abhorrence as we have done.—When our own liberties were at stake, we *warmly* felt for the *common rights of men*—The danger being thought to be past, which threatened ourselves, we are daily growing *more insensible* to those rights—In those States who have restrained or prohibited the importation of slaves, it is only done by legislative acts which may be repealed.—When those States find that they must in their *national character* and *connection* suffer in the *disgrace*, and share in the *inconveniences* attendant upon that detestable and iniquitous traffic, they may be desirous also to share in the *benefits* arising from it, and the odium attending it will be greatly effaced by the sanction which is given to it in the general government.... □



Martin's report to Maryland legislators was serialized in the press in six states and published as a pamphlet.

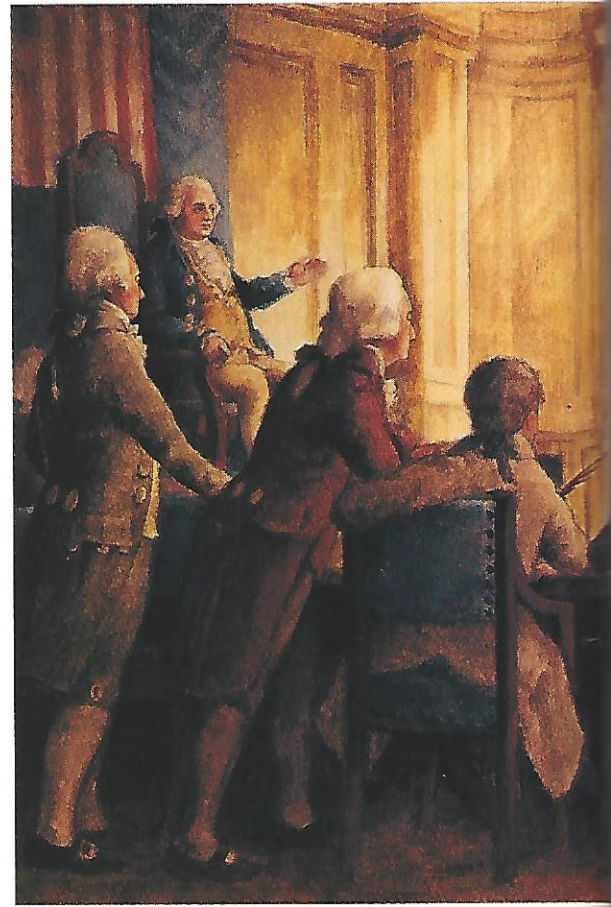
“To Secure These Rights”

While the Constitution describes what government can do and how it may do it, the Bill of Rights describes what government must not do. In general, a bill of rights is a fundamental statement of principles governing the relations between citizens and the state.

Long before independence from England was contemplated, it was commonly accepted in the American colonies that rights originated in natural law, that persons were born with them and that, as was later stated in the Declaration of Independence, “...to secure these rights, Governments are instituted among Men....”

Rights enumerated in colonial charters and statutes of government had given the colonies nearly two centuries of experience with written guarantees of rights before they became a nation. Virginia’s 1606 charter declared that the colonists “shall have and enjoy all Liberties, Franchises and Immunities as if they had been abiding and born, within this our Realm of England.” The different charters protected different kinds of rights. Rhode Island guaranteed complete free exercise of religion, for example; while Massachusetts, less tolerant in religious matters, protected a variety of others. Its 1641 Body of Liberties assured free speech and assembly in all public places, equal protection of the laws, just compensation for private property taken for public use, and rights to bail, jury trial in civil and criminal cases and a speedy trial. It banned double jeopardy and cruel and excessive punishments. The rights enumerated in William Penn’s 1682 Frame of Government of Pennsylvania were declared to be unalterable and to limit government power absolutely. Altogether, the freedoms these documents protected surpassed any enjoyed in “our Realm of England.”

When the new state assemblies began to draft constitutions in 1776, most included a bill of rights. After the Constitution was submitted to the states in 1787, several of the ratifying conventions approved on the condition that it be amended to include a bill of rights. James Madison reviewed the scores of amendments proposed and reduced the number to 17—almost all of them taken from the state bills of rights. A committee pared these to 12, and Madison wrestled them through a Congress interested in matters more pressing than these “trifling things.” In contrast to such comments was his prescient statement



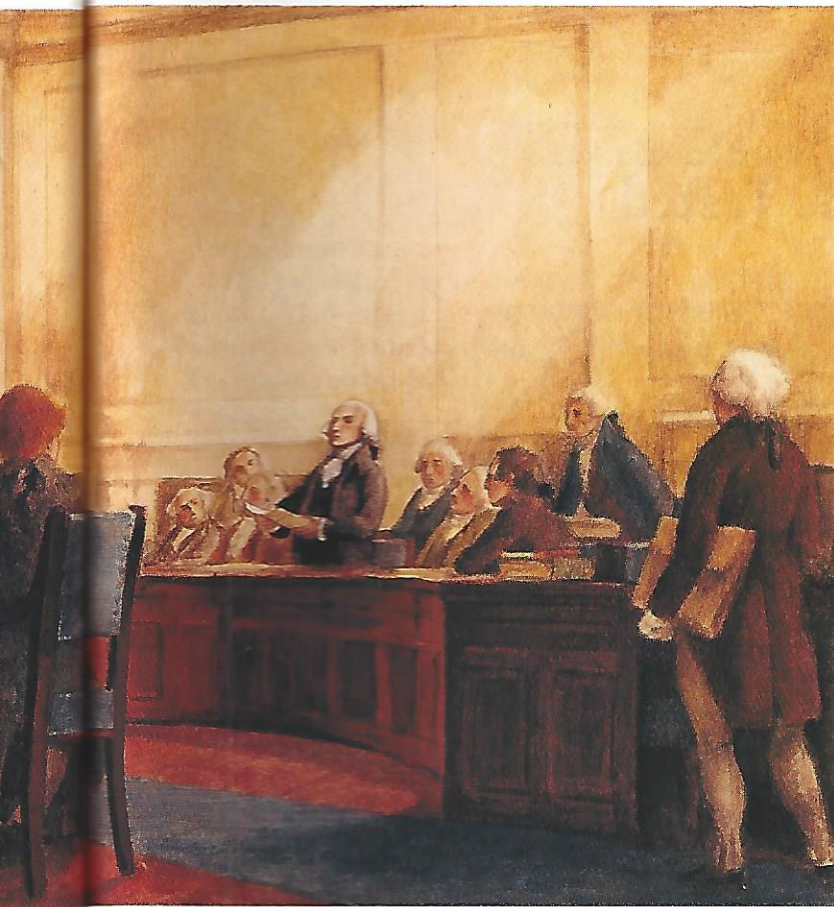
During heated debate in the House, James Madison

that once accepted, “independent tribunals of justice consider themselves in a peculiar manner the guard of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution....”

By the end of 1791, the states had ratified the amendments we know as the Bill of Rights. North Carolina and Rhode Island, neither of which joined the original government because it lacked a bill of rights, now ratified both the Constitution and the 10 amendments.

Originally, the Bill of Rights guarded against incursions by the federal government. Ratification of the 13th Amendment in 1868 lay the theoretical groundwork for citizens to call on the Bill to protect their rights from state violation as well. The first significant case suggesting that this could be done, however, did not occur until 1908. Since then appeals to the Bill of Rights have become a major source of litigation—with First Amendment cases outstripping all others—and these 10 amendments have become the core of every American’s freedoms.

—W.B. Allen, *Michigan State University*



Robert R. Van Nieuwenhuysen

nter of table, right) justifies the bill of rights he sponsored.

The Bill of Rights

ARTICLES in Addition to, and Amendment of, the Constitution of the United States of America, Proposed by Congress, and Ratified by the Several States, Pursuant to the Fifth Article of the Original Constitution.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search-

es and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the assistance of counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

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

Amendment IX

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

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Proposed by Congress September 25, 1789; ratification completed December 15, 1791; declared March 1, 1792. □

Article V Is Tested

The 11th and 12th Amendments exemplify two major purposes of the amending process. The 11th Amendment illustrates how Congress and the states can use the amending process, described in Article V of the Constitution, to overturn a decision of the Supreme Court; the 12th Amendment shows how valuable a tool the amending process is for correcting defects in the Constitution and accommodating it to new circumstances.

The 11th is the only amendment to change the Constitution's provisions for the federal judiciary. In the ratification controversy of 1787-88, most of the Constitution's supporters promised that no state could be sued in federal court by a citizen of another state or a foreign nation. But in the 1793 case of *Chisholm v. Georgia*, the Court permitted Alexander Chisholm of South Carolina, executor of the estate of his friend Robert Farquhar, to sue Georgia to recover a debt it owed the dead man for supplies he had sold the state during the Revolution. State governments were aghast: if Chisholm could maintain his lawsuit, former Loyalists could sue to recover lands the states had confiscated during the Revolution, throwing land markets throughout the nation into turmoil and potentially bankrupting state governments. The states demanded an

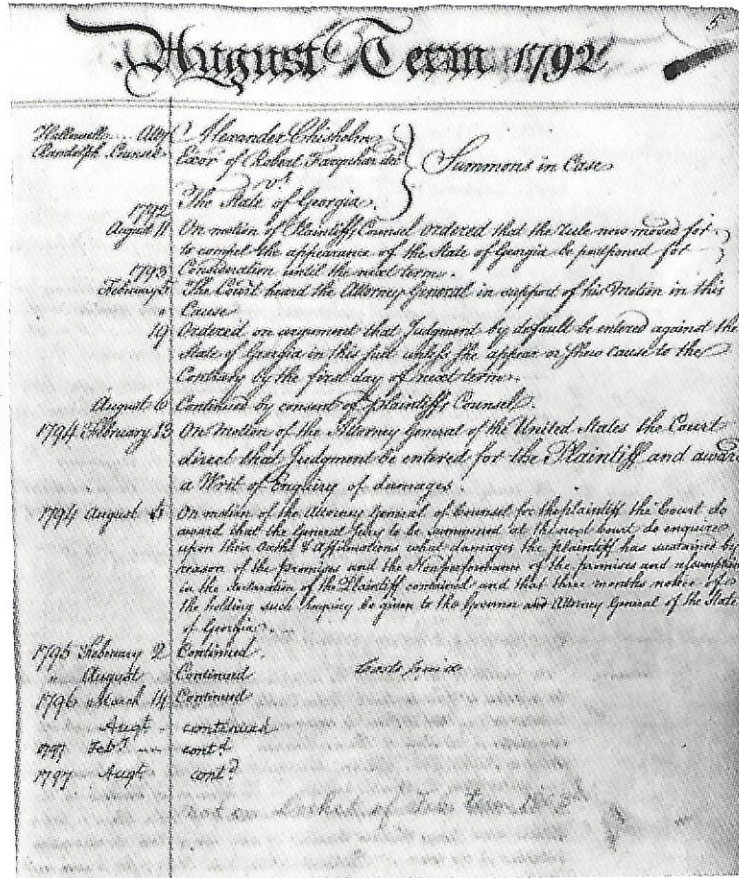
amendment overturning *Chisholm*, and Congress speedily complied. The amendment was one reason Chief Justice John Marshall wrote the opinion in *Chisholm* signed from the Court in 1795 to accept the governorship of New York.

The 12th Amendment responded to the rise of national political parties. Under the original design of the electoral college, a person receiving the highest number of electoral votes would become President; the runner-up would become Vice President.

But the 1796 election gave to Federalist President John Adams, as his Vice President, the defeated Republican presidential candidate, Thomas Jefferson. Moreover, in the 1800 election the Republican candidates, Jefferson and Aaron Burr, defeated the Federalist candidates, Adams and Charles C. Pinckney, but received equal numbers of electoral votes. It took the House 36 ballots to resolve the deadlock in favor of Jefferson. To avoid future electoral nightmares, the 12th Amendment separates the contests for President and Vice President; in effect it recognizes political parties and national party tickets in presidential elections as part of the constitutional system.

—Richard B. Bernstein, *New York Law School*

Manuscript Docket Book, Supreme Court of the U.S., The National Archives



Supreme Court docket entries concerning *Chisholm v. Georgia*, the case that precipitated the creation of the 11th Amendment.

The Eleventh and Twelfth Amendments

Amendment XI.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Proposed by Congress March 4, 1794; ratification completed February 7, 1795; declared January 8, 1798.

Amendment XII.

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the

highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.*—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Proposed by Congress December 9, 1803; ratification completed June 15 and declared September 25, 1804. □

* "And if...President.—" Changed by the 20th Amendment



This banner celebrated Thomas Jefferson's 1800 election, decided after 36 ballots in the House of Representatives.



This 19th-century engraving depicts the narrow compass of women's lives, centered on hearth and home.

Women Begin the Struggle for Human Rights

The Declaration of Rights and Sentiments expressed the will of a group of reformers to change the political, economic and domestic position of American women. It was intended—in the words of its chief author, Elizabeth Cady Stanton—to prepare the nation “for the inauguration of a rebellion.” In form and tone Stanton fashioned her statement in imitation of the Declaration of Independence, for she believed that the natural-rights philosophy of the Revolutionary era could be harnessed to inspire radical change.

In comparing the nation's wrongs against its female citizens to the wrongs committed by George III against the colonists, Stanton reminded Americans of a political tradition that honored natural rights—rights that she insisted extended to women as well as to men—and the radicalism of their forebears, who had not hesitated to destroy social forms that were no longer suitable. Her implicit references to the leaders of the Revolutionary generation and an explicit reference to the 18th-century legal giant William Blackstone were attempts to legitimize demands she knew would be seen as extreme. To encourage a dialogue, she turned to a document enshrined in the hearts of the people.

Stanton read the declaration at the first women's rights convention, held in Seneca Falls, New York, on July 19–20,

1848, which she and other reformers had called to attract supporters and to apprise the public of their position. The changes sought by Stanton, Lucretia Mott and the abolitionist Frederick Douglass—the most notable of the reformers present—addressed many concerns. Mott, a Quaker minister and abolitionist interested in economic and domestic issues, feared Stanton's demand for suffrage would undermine their more acceptable reforms. Stanton believed that only by winning the vote could women gain the social rights Mott advocated. Both kinds of concerns appear in the final declaration. Ironically, many of Mott's goals—such as fair divorce and child-custody laws, equal pay for equal work and access to professions—have been the most difficult for women to achieve.

These 19th-century reformers would probably have supported an amendment guaranteeing equal rights for women, but in 1848 their vision did not extend so far. They focused more narrowly, working state by state for suffrage laws guaranteeing women's property rights and changes in social attitudes concerning women's proper place. It was not until 1923 that the Woman's Party articulated the goal of equality in its proposed equal-rights amendment. The amendment went down to defeat in 1982.

—Marylynn Salmon

The Declaration of Rights and Sentiments

1. Declaration of Sentiments

When, in the course of human events, it becomes necessary for one portion of the family of man to assume among the people of the earth a position different from that which they have hitherto occupied, but one 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 that impel them to such a course.

We hold these truths to be self-evident: that all men and women are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted, deriving their just powers from the consent of the governed. Whenever any form of government becomes destructive of these ends, it is the right of those who suffer from it to refuse allegiance to it, and to insist upon the institution of a new government, laying its foundation on such principles, and organizing its powers 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 were 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 duty to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of the women under this government, and such is now the necessity which constrains them to demand the equal station to which they are entitled.

The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her. To prove this, let facts be submitted to a candid world.

He has never permitted her to exercise her inalienable right to the elective franchise.

He has compelled her to submit to laws, in the formation of which she had no voice.

He has withheld from her rights which are given to the ignorant and degraded men—both natives and foreigners.

Having deprived her of this first right of a citizen, the elective franchise, thereby leaving her without representation in the halls of legislation, he has oppressed her on all sides.

He has made her, if married, in the eye of the law, civilly dead.

He has taken from her all right in property, even to the wages she earns.

He has made her, morally, an irresponsible being, as she can commit many crimes with impunity, provided they be done in the presence of her husband. In the covenant of marriage, she is compelled to promise obedience to her husband, he becoming, to all intents and purposes, her master—the law giving him power to deprive her of her liberty, and to administer chastisement.

He has so framed the laws of divorce, as to what shall be the proper causes, and in case of separation, to whom the guardianship of the children shall be given, as to be wholly regardless of the happiness of women—the law, in all cases, going upon a false supposition of the supremacy of man, and giving all power into his hands.

After depriving her of all rights as a married woman, if single, and the owner of property, he has taxed her to support a government which recognizes her only when her property can be made profitable to it.

He has monopolized nearly all the profitable employments, and from those she is permitted to follow, she receives but a scanty remuneration. He closes against her all the avenues to wealth and distinction which he considers most honorable to himself. As a teacher of theology, medicine, or law, she is not known.

He has denied her the facilities for obtaining a thorough education, all colleges being closed against her.

He allows her in Church, as well as State, but a subordinate position, claiming Apostolic authority for her exclusion from the ministry, and, with some exceptions, from any public participation in the affairs of the Church.

He has created a false public sentiment by giving to the world a different code of morals for men and women, by which moral delinquencies which exclude women from society, are not only tolerated, but deemed of little account in man.

He has usurped the prerogative of Jehovah himself, claiming it as his right to assign for her a sphere of action, when that belongs to her conscience and to her God.

He has endeavored, in every way that he could, to

destroy her confidence in her own powers, to lessen her self-respect and to make her willing to lead a dependent and abject life.

Now, in view of this entire disfranchisement of one-half the people of this country, their social and religious degradation—in view of the unjust laws above mentioned, and because women do feel themselves aggrieved, oppressed, and fraudulently deprived of their most sacred rights, we insist that they have immediate admission to all the rights and privileges which belong to them as citizens of the United States.

In entering upon the great work before us, we anticipate no small amount of misconception, misrepresentation, and ridicule; but we shall use every instrumentality within our power to effect our object. We shall employ agents, circulate tracts, petition the State and National legislatures, and endeavor to enlist the pulpit and the press in our behalf. We hope this Convention will be followed by a series of Conventions embracing every part of the country.

2. Resolutions

Whereas, The great precept of nature is conceded to be, that "man shall pursue his own true and substantial happiness." Blackstone in his *Commentaries* remarks, that this law of Nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries and at all times; no human laws are of any validity if contrary to this, and such of them as are valid, derive all their force, and all their validity, and all their authority, mediately and immediately, from this original; therefore,

Resolved, That all laws which prevent woman from occupying such a station in society as her conscience shall dictate, or which place her in a position inferior to that of man, are contrary to the great precept of nature, and therefore of no force or authority.

Resolved, That woman is man's equal—was intended to be so by the Creator, and the highest good of the race demands that she should be recognized as such.

Resolved, That the women of this country ought to be enlightened in regard to the laws under which they live, that they may no longer publish their degradation by declaring themselves satisfied with their present position, nor their ignorance, by asserting that they have all the rights they want.

Resolved, That inasmuch as man, while claiming for

himself intellectual superiority, does accord to woman moral superiority, it is pre-eminently his duty to encourage her to speak and teach, as she has an opportunity, in all religious assemblies.

Resolved, That the same amount of virtue, delicacy, and refinement of behavior that is required of woman in the social state, should also be required of man, and the same transgressions should be visited with equal severity on both man and woman.

Resolved, That the objection of indelicacy and impropriety, which is so often brought against woman when she addresses a public audience, comes with a very ill-grace from those who encourage, by their attendance, her appearance on the stage, in the concert, or in feats of the circus.

Resolved, That woman has too long rested satisfied in the circumscribed limits which corrupt customs and a perverted application of the Scriptures have marked out for her, and that it is time she should move in the enlarged sphere which her great Creator has assigned her.

Resolved, That it is the duty of the women of this country to secure to themselves their sacred right to the elective franchise.

Resolved, That the equality of human rights results necessarily from the fact of the identity of the race in capabilities and responsibilities.

Resolved, That the speedy success of our cause depends upon the zealous and untiring efforts of both men and women, for the overthrow of the monopoly of the pulpit, and for the securing to women an equal participation with men in the various trades, professions, and commerce.

Resolved, therefore, That, being invested by the creator with the same capabilities, and the same consciousness of responsibility for their exercise, it is demonstrably the right and duty of woman, equally with man, to promote every righteous cause by every righteous means; and especially in regard to the great subjects of morals and religion, it is self-evidently her right to participate with her brother in teaching them, both in private and in public, by writing and by speaking, by any instrumentalities proper to be used, and in any assemblies proper to be held; and this being a self-evident truth growing out of the divinely implanted principles of human nature, any custom or authority adverse to it, whether modern or wearing the hoary sanction of antiquity, is to be regarded as a self-evident falsehood, and at war with mankind. □

"Of the People, by the People, for the People"

After the battle of Gettysburg (July 1-3, 1863), a lawyer in the village, David Wills, decided that Union soldiers killed there deserved something more than hasty battlefield burials in unmarked graves. He persuaded the governors of Northern states to create a military cemetery. They asked America's foremost orator, Edward Everett, to deliver the dedication address on November 19. Almost as an afterthought (this was, after all, an enterprise of the states) they invited President Abraham Lincoln to offer "a few appropriate remarks" on the occasion.

Lincoln accepted, intending to use the opportunity to define the meaning and purpose of this war in which so many soldiers had given "the last full measure of devotion." His 272-word address, which took two minutes to deliver, was the culmination of long reflection and much thought. He drafted most of it in the White House and put the finishing touches on it at David Wills' home, where he stayed the night before the ceremony.

Both in casualties and significance, Gettysburg was the greatest battle of the Civil War, reversing an apparent tide of Confederate victory. Such a victory would have split the United States in two, establishing a precedent for future se-

cessions that might have swept the great experiment of 1776 into the dustbin of history. The destruction of the world's largest democratic republic would have confirmed the belief of European aristocrats and monarchists that republics were doomed to ignominious collapse. Government of, by and for the people would have ended up a laughingstock.

Instead, Union triumph at Gettysburg revived hope that this self-governing nation would not only survive but receive "a new birth of freedom." The republic founded in 1776 on promises of liberty and equality had become the world's largest slaveholding country. This "monstrous injustice of slavery," Lincoln had said in 1854, "deprives our republican example of its just influence in the world." But no more. Six months before Gettysburg, Lincoln had issued the Emancipation Proclamation. The North now fought for a new birth of freedom.

The day after the dedication, Edward Everett wrote Lincoln: "I should be glad, if I could flatter myself, that I came as near to the central idea of the occasion, in two hours, as you did in two minutes." Posterity has confirmed Everett's opinion.

—James M. McPherson, *Princeton University*

Address delivered at the dedication of the Cemetery at Gettysburg.

Our score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field, as a final resting place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we can not dedicate—we can not consecrate—we can not hallow—this ground. The brave men, living and dead, who struggled here, have

consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth. □



Abandoned by their owners, South Carolina slaves, some wearing cast-off uniforms, cultivate sweet potatoes.

The Reconstruction Amendments

Invoking his powers as Commander-in-Chief to seize property used to wage war against the United States, Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863, declaring slaves in enemy states "thenceforward, and forever free." As a war measure the Proclamation's legal authority would cease with the end of the war; the legal institution of slavery would still exist. Thus Lincoln pledged to secure a constitutional amendment to abolish slavery, and won reelection in 1864 on a platform containing that pledge. The Senate had passed the 13th Amendment in April 1864, but the administration could not obtain House approval until January 1865. By December the required three-fourths of the states (including the ex-Confederate states, for which ratification of the Reconstruction amendments was a condition of restoration to the Union) had ratified the amendment. The institution that had divided the republic and caused a great war was no more.

Yet much else was unresolved. How were the freed people's rights of citizenship to be defined? In the *Dred Scott* decision (1857), the Supreme Court had ruled that even free blacks were not citizens of the United States. What was the status of the Confederate debt? What were

the political rights of ex-Confederate leaders? How were former Confederate states to regain representation in Congress? In December 1865 Congress created a Joint Committee on Reconstruction to resolve these questions. Six months of discussion produced the 14th Amendment.

Section 1 of the amendment defines for the first time who may be a citizen. It puts U.S. citizenship before state citizenship, confirming the idea that Americans were citizens of the nation first and their state second. Two other clauses, the due process clause and the equal protection clause, anchored liberty and equality in the Constitution. This change eventually so invigorated and expanded the reach of the Bill of Rights that the 14th Amendment has come to be called America's Second Bill of Rights.

Section 2, a clumsy effort to induce Southern states to enfranchise freedmen, failed. A new amendment establishing voting rights was needed. In 1869 congressional Republicans overcame fears of a backlash from white voters against black enfranchisement and passed the 15th Amendment. After 1880 the 14th and 15th Amendments were honored in the breach for three-quarters of a century. They began to be enforced in the 1950s.

—James M. McPherson, Princeton University

The Thirteenth through Fifteenth Amendments

Amendment XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

Proposed by Congress January 31, 1865; ratification completed December 6 and declared December 18, 1865.

Amendment XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in rebellion or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in sup-

pressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

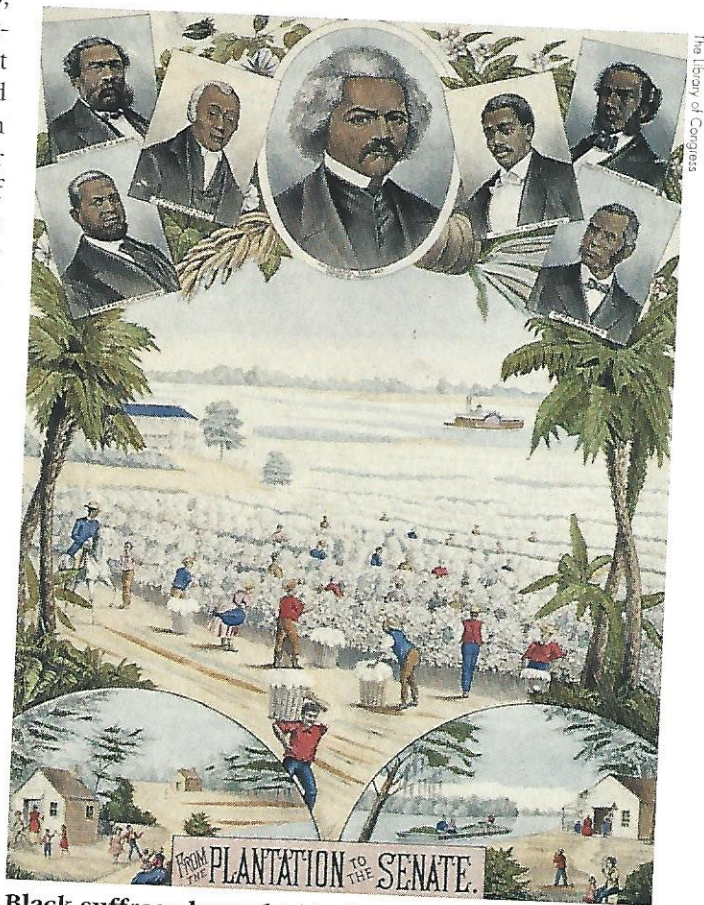
Proposed by Congress June 13, 1866; ratification completed July 9 and declared July 28, 1868.

Amendment XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

Proposed by Congress February 26, 1869; ratification completed February 3 and declared March 30, 1870. □



Black suffrage brought black representation, as this poster featuring Frederick Douglass (center) celebrates.

ale inhabitants ... twenty-one years of age," see 19th and 26th Amendments

The Progressive Amendments

The amendments adopted between 1913 and 1933 are associated with the Progressive movement, which comprised liberals from both parties. Progressives sought to stem abuse of power; thus, they fought against child labor and for economic reforms such as antitrust legislation, pure food and drug laws and regulation of utilities, and for political reforms such as the secret ballot and the referendum.

The connection between the Progressives' goals and several amendments of the period is obvious—direct election of senators formerly appointed by the state legislatures (17th), female suffrage (19th) and the federal income tax (16th) all aim at a more egalitarian distribution of political and economic power. A bit of digging reveals the political goals served by the other amendments. Prohibition (18th) pitted Progressives against liquor manufacturers, depicted as alcohol pushers who, in the lust for profit, enticed citizens to drink, leaving them so ruined that they let corrupt party bosses run the country. Judged a failure within 14 years, the 18th Amendment was repealed by the

21st, the only amendment ever to have met such a fate.

The 20th Amendment was proposed in 1932 by Senator George Norris of Nebraska, a leading G.O.P. Progressive. Before that time, a new Congress took office in March and did not begin work until December; members defeated in November legislated for four more months. The 20th Amendment—allowing Congress to begin work on January 3, two months after the election—brought government power closer to the voters.

The Progressive amendments were adopted in dramatically different ways. The suffrage amendment was the culmination of more than 70 years of struggle marked by protests, parades, jailings and hunger strikes; by contrast, the 20th became part of the Constitution speedily and without controversy. Ratification of the 16th, designed to reverse a Supreme Court decision, was an unpleasant surprise for some backers—they had introduced it to stall passage of a statutory income tax. Thus, the politics of the amending process are as varied as American politics.

—*Leslie Friedman Goldstein, University of Delaware*



Suffragists in 1920 celebrate the ratification of the 19th Amendment, which assured women's right to vote. It was the culmination of an unremitting, decades-long struggle that was waged on both the national and local levels.

The Sixteenth through Twenty-First Amendments

Amendment XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Proposed by Congress July 12, 1909; ratification completed February 3 and declared February 25, 1913.

Amendment XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Proposed by Congress May 13, 1912; ratification completed April 8 and declared May 31, 1913.

Amendment XVIII

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.*

Proposed by Congress December 18, 1917; ratification completed January 16 and declared January 29, 1919.

Amendment XVIII ... Congress." Repealed by the 21st Amendment

STITUTION

Amendment XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Proposed by Congress June 4, 1919; ratification completed August 18 and declared August 26, 1920.

Amendment XX

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SEC. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SEC. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SEC. 4. The Congress may by law provide for the case of the death of any of the persons for whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SEC. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SEC. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Proposed by Congress March 2, 1932; ratification completed January 23 and declared February 6, 1933.

Amendment XXI

SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

SEC. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Proposed by Congress February 20, 1933; ratification completed and declared December 5, 1933. □

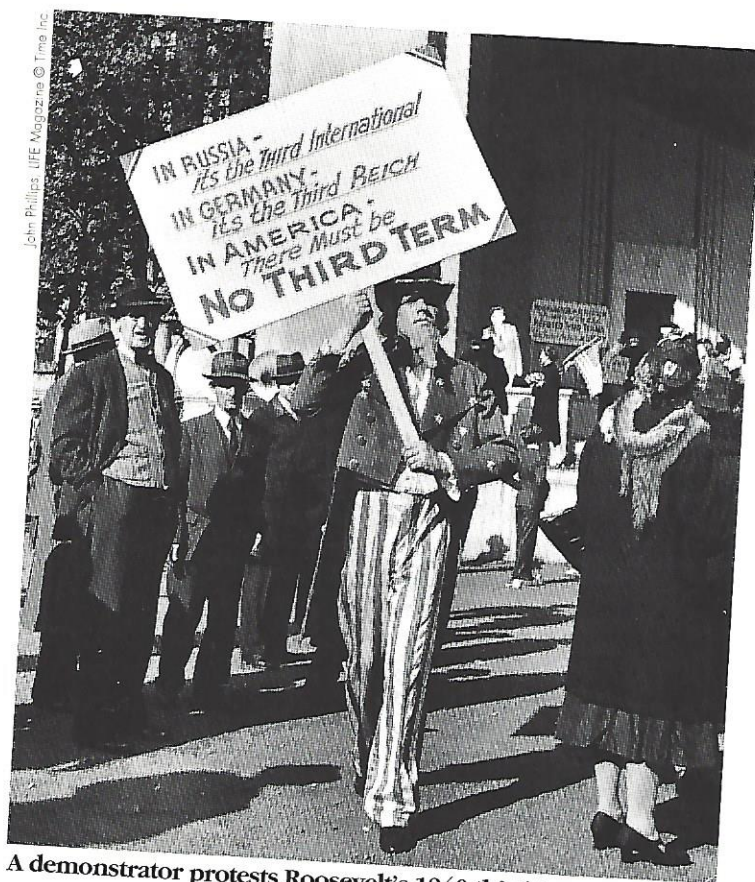


In a 1913 cartoon, the American people paddle into calm waters after the rough passage of the 16th Amendment.

UPI/Bettmann



Enforcing Prohibition in 1926, Internal Revenue agents in Chicago empty kegs of illegal beer into Lake Michigan.



A demonstrator protests Roosevelt's 1940 third-term candidacy.

The Modern Amendments

Constitutional amendments in the post-World War II era have flowed naturally from social change. Nowhere is this clearer than in the emphasis in the final six amendments on openness, accountability and popular participation in government. The 22nd Amendment, proposed in 1947 and ratified in 1951, enshrined the principle of presidential rotation in office, a doctrine with roots in the era of the American Revolution. Similar themes of accountability and openness informed the 25th Amendment, adopted in 1967. That amendment came in the wake of crises over presidential succession and disability created by the illnesses of Presidents Dwight D. Eisenhower and Lyndon B. Johnson and the 1963 assassination of John F. Kennedy. These matters were critical during the Cold War, when national security demanded an answer to the question of who had authority to pull the nuclear trigger. The 23rd and 24th Amendments, adopted in 1961 and 1971 respectively, also tapped currents of democracy and accountability. The 23rd granted District of Columbia residents—then numbering over 750,000—a measure of self-governance by enabling them to vote in presidential elections. The 24th Amendment, fueled by the civil rights movement, eradicated the last vestiges of a once powerful pro-American political principle that required a voter to

demonstrate financial independence. The poll-tax amendment originally applied only to federal elections, but in *Harper v. Virginia State Board of Elections*, the Supreme Court outlawed poll taxes in state elections as well. Similar social pressures shaped the 26th Amendment, which lowered the voting age to 18. In the 1960s, opponents of the Vietnam War had argued that it was unfair to deny soldiers fighting and dying in the jungles of Southeast Asia a voice in choosing the leaders who sent them into battle. The 26th Amendment was adopted in 1971.

The 27th Amendment, which prohibits a sitting Congress from raising its salaries, was proposed in 1789 as part of the Bill of Rights. It failed to win ratification, but since it contained no provision—as modern amendments do—limiting the time allowed for ratification (usually seven years), it stayed before state legislatures for more than two centuries. Public anger in the 1980s and early '90s about congressional scandals revived interest in the amendment. Although some scholars have argued that it took too long to ratify and is therefore unconstitutional, there is little chance, given conflicting Supreme Court opinions on the matter and public suspicion of government, that the 27th amendment will be challenged.

—Kermit L. Hall, Ohio State University