

EXPLORING THE FOUNDATION OF THE AMERICAN SPIRIT

# CONSTITUTION

Volume 7/No. 1



Great American Documents



# CONSTITUTION

Volume 7/No. 1

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Center of a stained glass window on the grand staircase in the House of Representatives, U.S. Capitol building. The window is 59 inches in diameter and adorned with the shield, eagle, flags and motto of the United States. During the 19th century, congressional membership soared as new states joined the Union. In 1850 work was begun to enlarge the building. The window, created in 1859-60, was one of many lavish decorative features included in the renovation.

*Courtesy the Architect of the Capitol*



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Maryland Historical Society, Baltimore. Painting by Charles Willson Peale, c. 1781.

**Triumphant at Yorktown, Washington is flanked by Lafayette (left) and French commander Comte de Rochambeau.**

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## Preamble

A letter from the Chairman and the President of the Foundation  
for the U.S. Constitution

One day in the winter of 1987 in the small offices of the Foundation for the U.S. Constitution, a discussion of priorities led to an intriguing idea.

Established a year earlier by President Ronald Reagan, the Foundation had a clear mandate and a specific responsibility: to fund and seek funding for educational projects that would further understanding of the Constitution, and to generate among Americans, especially the young, an awareness and appreciation of that document. Throughout the Constitution's bicentennial year, our attention had centered largely on celebratory events. What seemed lacking was an ongoing program to communicate just how much this remarkable document has steered the course of our nation and daily affects the society in which we live.

With that in mind, our simple, albeit ambitious, idea was to concentrate our efforts on a single endeavor: a magazine whose theme would be the Constitution and its prevailing influence on our lives and history. Far from a narrow purview, this was an opportunity to explore more than 200 years of events and issues, struggles and achievements that are rooted in—or are outgrowths of—our Constitution. Handsomely illustrated, scholarly but lively, this would be a magazine of discovery and enlightenment designed to instill within readers a fresh regard for country and for freedom.

And so CONSTITUTION was born. The first issue was published in the

fall of 1988 and distributed widely and on a complimentary basis to educators—especially secondary-school teachers of American history and social studies—and to lawyers, judges and elected officials. That the magazine would fill a need was never in doubt; that it would be so well received was a welcome surprise and confirmation that we had a vehicle to help us accomplish our goals.

For the past seven years a small, dedicated staff has fulfilled the magazine's initial promise. But with this special supplement the publication of CONSTITUTION comes to an end. We are grateful to the many friends and corporate benefactors whose help enabled us to sustain the production and distribution of the magazine for so long. Our thanks also go to our Editorial and Advisory boards, who lent their expertise and ideas. All of us are glad to know that CONSTITUTION will live on in 40,000 schools and libraries across the United States.

This supplement contains the original text of the Constitution and many of the great American documents that shaped, amended or influenced it, as well as a master index to all the issues of CONSTITUTION. The Foundation will make the complete collection of CONSTITUTION and the supplement available in a boxed set to encourage donations of this outstanding resource to school systems throughout the country.

We prize the letters we have received from readers responding to news of the magazine's closing. Jus-

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The "recorder" (center) dominates the National Archives' south pediment.

tice Sandra Day O'Connor wrote, "The issues of CONSTITUTION have been uniformly interesting and valuable. You should be proud...."; from Justice Ruth Bader Ginsburg: "Cheers to you for a job well done"; and from the distinguished historian Walter La Feber: "It is by all odds the best produced, most readable, and most interesting history journal I know." *Village Voice* columnist Nat Hentoff phoned to tell us it was the most valuable magazine he'd ever seen, and a member of the Research Division at the Library of Congress wrote, "What a delight it has been to receive these well-written, well-researched and expertly illustrated articles. When this magazine goes, there will

be no substitute for it." Said William Simon, former Secretary of the Treasury: "It is a magnificent magazine, and one of those rare publications that has accomplished something in the way of promoting the common good. I am delighted to have a full collection, which I will treasure."

Educators have sent us more than a thousand comments over the years letting us know what a wonderful magazine and teaching tool CONSTITUTION is.

If they will miss it, so shall we.

The Constitution is no mere relic of our past, but a living testament to our ability to better our society. Not a day goes by without constitutional issues and questions being raised,

examined and debated. If the Constitution seems to be a set of dispassionate rules and laws and rights, there are, between its lines, ideas and ideals we as a people are passionate about. Making clear the forces and issues at work, placing them in historical perspective and examining the intentions of the Constitution's framers is something we wish we could continue to do.

On a monument at the National Archives in Washington, D.C., where the Constitution is housed, are engraved the words THE PAST IS PROLOGUE. As old as this document becomes, it will remain the touchstone for our individual liberties and the framework for rendering the will of the people. This charter is also a promise, and therefore eternally new. It is for each generation to discover the Constitution's greatness and protect its principles. We believe that the best way to protect the Constitution is to understand it and the best way to honor it is to learn more about it.

Although the magazine is closing, there remains for us the satisfaction of having created a wealth of material in support of a noble idea born more than 200 years ago—that we the people determine our government, our freedoms and our destiny.

*Dwayne O. Andreas*

Dwayne O. Andreas  
Chairman

*John A. Meyers*

John A. Meyers  
President

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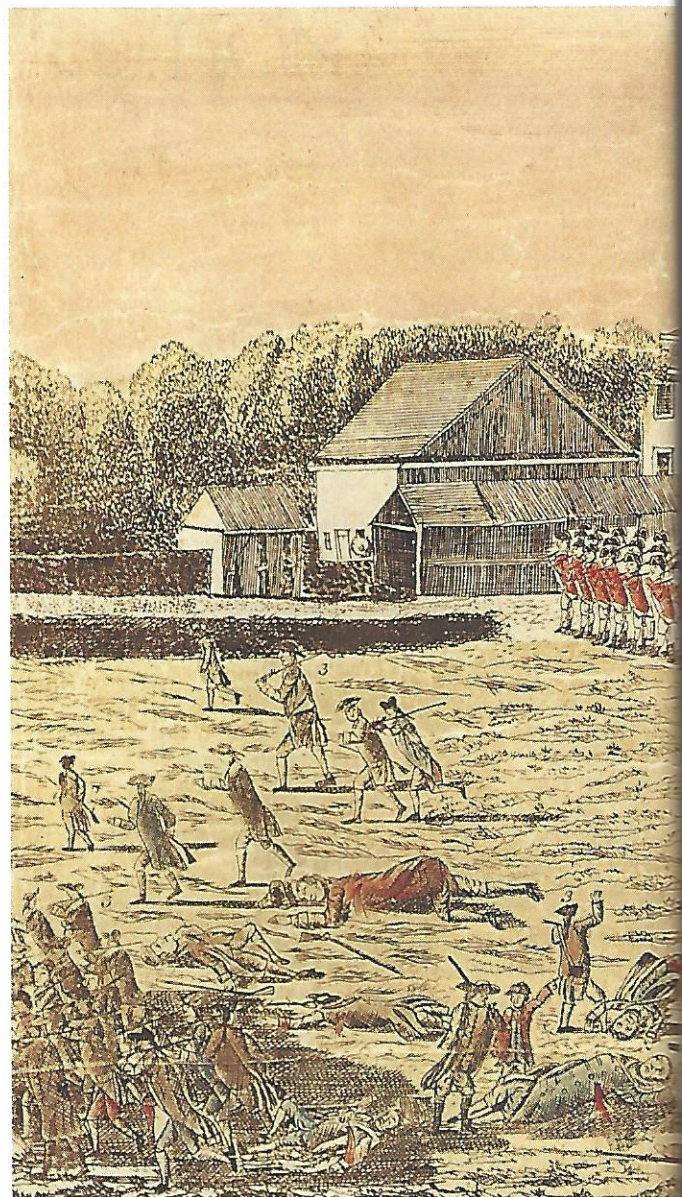


# A Tradition Born of Strife

While breaking away from England, Americans launched a revolution of another sort.

by Jack N. Rakove

*The Constitution is more than the four parchment pages that repose in the National Archives. That document is only the skeleton for a much larger body of institutions, customs and other documents (such as those reprinted in this issue) that form the American constitutional tradition. As the following article shows, a distinctively American constitutional tradition began when the colonies first started to consider themselves independent states.*



April 1775: Colonial forces (at left) struggle valiantly

Traditions, by nature conservative, may sometimes have revolutionary origins. So it is with America's constitutional tradition. It was shaped not only by the decade of controversy that carried Americans to independence, but also—and more importantly—by the process of writing a series of innovative governing documents for the states and observing their effectiveness over the decade that followed.

For much of the 18th century, the American colonies and Great Britain had shared a constitutional tradition, though each emphasized different aspects. England, of course, had no single written constitutional document; its "constitution" was the totality of its governing laws and customs. The British held that the Glorious Revolution of 1688–89, which limited the King's authority over Parliament and confirmed that he was bound by constitutional principles, had also made Parliament the supreme source of law within the British Empire. But during the Stamp Act





The Connecticut Historical Society, Hartford, Connecticut. Engraving by Anna Doolittle [1775]

**hold off the British at Lexington. Within a year of the battle, several of the colonies had written new constitutions.**

crisis of 1765, when Parliament took the position that it had the power to legislate for America “in all cases whatsoever,” a grave and prophetic constitutional dispute erupted between the two countries.

In the American view, the Glorious Revolution restrained all arbitrary power, Parliament’s as well as the King’s. Americans were seeking for their own legislative assemblies the same rights and privileges that Parliament had secured for itself—including the exclusive power to enact laws and taxes for the people whom these bodies represented. That right rested on an ancient and hallowed constitutional principle: that law was binding only when enacted through popular consent.

Each crisis that followed the Stamp Act brought Britain’s and the colonies’ views of their rights and obligations toward each other into greater conflict. In Massachusetts in 1768, for example, the colony’s General Court denied Parliament’s authority to impose the Townshend

duties. Britain’s movement of troops into Boston that year was denounced as an occupation by a standing army. It begat the Boston Massacre in 1770. After the 1773 Tea Party, Parliament closed Boston’s port, restructured the General Court, forbade town meetings without the governor’s consent and decreed that Americans might be taken to England to stand trial. These actions brought on the convocation of the First Continental Congress and, eventually, the open hostilities at Lexington and Concord.

In the aftermath of these events, Americans were forced to think creatively about constitutionalism. Legal government collapsed in nearly every colony. Governors and officials acting under royal commission could hardly allow the colonial assemblies to enact laws mobilizing arms and men to defy Parliament and the King; colonists, on the other hand, had to reconsider their allegiance to a crown that made war on them. In the traditional view, government meant a contract under which





**By warring on them, said the colonists, George III had breached the trust on which their allegiance depended.**

subjects pledged fealty in exchange for the King's protection. Many Americans thus felt they were now absolved of any obligation to George III.

These colonists concluded that war and the collapse of lawful government had placed them in something like the state of nature described by the philosophers Thomas Hobbes and John Locke. It was impossible simply to restore the old colonial government: the judges, councillors and governors who ran it had resigned or fled. Government itself must be reconstituted. Americans had to replace elements of the monarchy under which they'd lived with new institutions appropriate to a republican people.

But how does one reconstitute government? Obviously a new executive must replace the old imperial governors, but the enterprise did not stop there. In the months preceding and after the Declaration of Independence, then, 11 of the 13 colonies decided to write constitutions that would bring their citizens out of the state of nature and give them the benefits of government by consent. These constitutions were revolutionary not only because of the circumstances that gave them birth, but also because the process of writing them enabled Americans to break from the constitutional tradition inherited from England. No

longer did the colonists think of a constitution as a set of norms and customs descended from a distant past, or use the word to describe the current practices of a government. Americans gave the concept an entirely new meaning. As they now defined it, *constitution* referred to a single document that specified the nature and powers of the government, written and adopted at a specific moment in time. A later innovation would give the document revolutionary authority: It would be adopted under conditions establishing it as the supreme and fundamental law of the land, limiting government and unalterable by it.

In reconstituting government through written constitutions, the colonists did not consider how to distinguish an act establishing government from statutes or ordinary legislative acts. Although several states had held new elections so that the drafters of these constitutions could come with fresh authority from their citizenry, some observers—notably in Massachusetts—began to think that more might be needed.

In the often contentious Bay State, the legislature's efforts to draft a constitution under its own authority sparked a popular revolt that led to a critical constitutional breakthrough. For a constitution to become supreme law, a number of communities insisted, two conditions had to be met. First, the document had to be drafted by a body appointed for that purpose alone; and second, the proposed constitution then had to be submitted to the people for approval. It took the citizens of Massachusetts four years to reach agreement on these points, but when they adopted the constitution of 1780 on this basis, they had discovered a principle that would be of critical importance to the framers of the federal Constitution.

The precise legal authority of the other state constitutions was in doubt. These constitutions and their accompanying declarations of rights were more than statutes but less than supreme, fundamental law. To a modern reader, these declarations of rights are strange but exciting documents. They are not merely compendiums of legally enforceable rights; they also include broad statements on the first principles of government, the moral obligations and political rights of citizens and the importance of freedom of the press and religious conscience, as well as rules relating to specific issues such as search-and-seizure and compensation for property taken for public use. But rather than compel government to follow their dictates, these statements typically said that such rights "ought to" (not "shall") be respected.

But it is one thing to declare rights and another to set them beyond the reach of politics. To observers like Thomas Jefferson and James Madison, the experience of the states after 1776 offered a continuing lesson in the



errors of the “compilers”—as Madison called them—of the first constitutions. Two errors were critical. First, the defective procedures used to adopt those constitutions prevented the documents from becoming fundamental law, unalterable by later legislatures. And second, the real danger to balanced government that a well-constructed constitution should guard against came from the people’s own legislative representatives. As Jefferson observed in his *Notes on the State of Virginia* (1785), “An elective despotism was not the government we fought for.”

Madison kept these problems in mind as he worked to bring about the Constitutional Convention of 1787. The Articles of Confederation, America’s first governing document, had often been denounced as an “imbecility” because of its want of power. Its single-chambered Congress had no authority to legislate or tax in its own right; instead it proposed measures that the state legislatures were expected to carry out. The failure of the states to do so had convinced Madison and others that the national government had to be given the authority to enact, execute and



The Metropolitan Museum of Art. Gift of Mrs. Russell Sage, 1909. 110.125.103. Copyright © 1979. The Metropolitan Museum of Art. [detail]

Although Americans started the fight, Paul Revere’s report of the 1770 Boston Massacre blamed British troops, which he claimed had been brought “to awe and controul the legislative...Power...and to quell a Spirit of Liberty.”



adjudicate law in its own right, without relying on the intermediary authority of the states.

Had the framers simply wished to give the existing Congress a few modest additional powers, the convention could have wrapped up its business in a fortnight or so and headed home. But many of them realized that the Union must be reconstituted as a government in the full sense of the term, and with this insight they embarked on a more ambitious and difficult project. Now they could

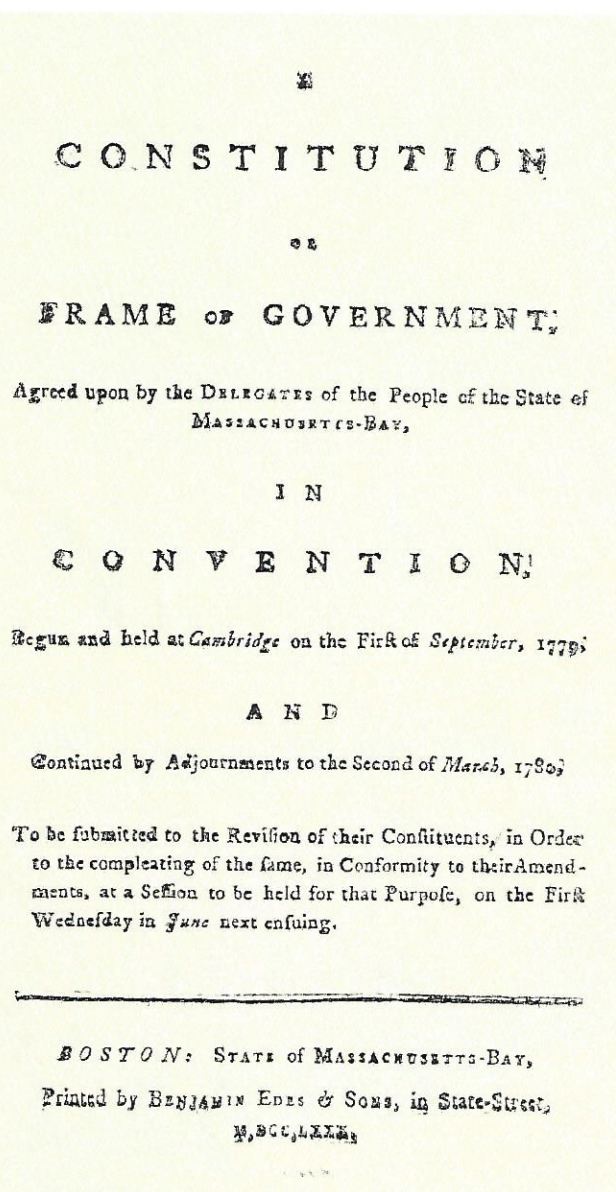
ask what a well-constructed republican government should look like. And in answering this question, they drew time and again on the past decade of constitutional experience within the states. There were many sources for the framers' ideas of government—from the writers of classical antiquity to the luminaries of the European Enlightenment—but the lessons that mattered most were those they had learned on native ground.

The framers were expected to present the results of the convention's work to the Confederation Congress, which presumably would submit the Constitution to the states for approval. Under the Articles of Confederation, all 13 legislatures had to accept any amendments; but one of those states, Rhode Island, had not even sent a delegation to Philadelphia. Nor were the framers at all confident that the other 12 states, as net losers of power, would comply with so radical a restructuring of the Union and sanction the Constitution.

Obviously, the rule of unanimity had to go. But even if the Constitution won approval, how was its supremacy over state constitutions to be confirmed? Now Madison, James Wilson and other nationalists invoked the Massachusetts discovery, which became a guiding rule of American constitutionalism. They asked Congress to suggest that the state legislatures lay the proposed Constitution before special, popularly elected ratification conventions. Approval by these conventions would establish grounds for making the Constitution the supreme and fundamental law of the land. Ratification by the people would create a Constitution superior in authority to the constitutions and laws of the states, and would give the federal government a persuasive argument for countermanning state measures that ran contrary to national law. Popular ratification would also convey this benefit within the national government. Each of the three federal branches—particularly the weaker executive and the judiciary—would have a rationale for opposing the “encroachments” of the others, especially Congress's.

The possibility, however, that a powerful national government would run roughshod over the states alarmed anti-Federalists, who opposed the Constitution. One of the most vociferous, Maryland Attorney General Luther Martin, left the convention early to organize opposition to the new government. In his view, and those of many states' rights advocates since, no national constitution can abridge the immutable sovereignty of the Union's original members—the states. This tension between national supremacy and state sovereignty has been a continuing part of America's constitutional tradition. It dominated constitutional discourse for much of the 19th century, and has

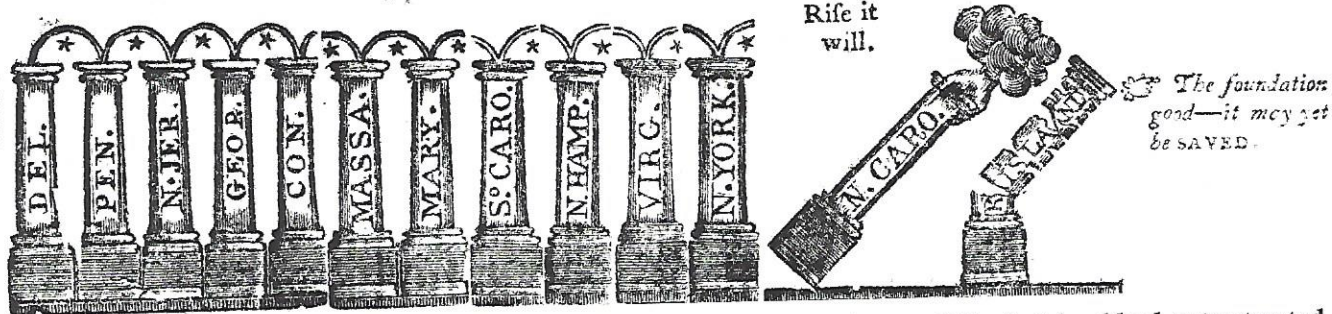
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The people of Massachusetts broke new ground by insisting that they approve the “Frame of Government.”



*REDEUNT SATURNIA REGNA.*  
*On the erection of the Eleventh PILLAR of the great Na-*  
*tional DOME, we beg leave most sincerely to felicitate "OUR DEAR COUNTRY."*



**Ratification by New York inspired this editorial comment. North Carolina and Rhode Island had not yet voted.**

been revived periodically in the 20th, most recently in the wake of the 1994 congressional elections.

George Mason of Virginia, a delegate to the convention who would refuse to sign the Constitution, opposed it for other reasons. High on his list of objections was his colleagues' refusal to add a declaration of rights such as the one he had drafted for Virginia in 1776. Their failure to do so is often regarded as a political error—and perhaps it was. But the omission also reflected the reexamination of constitutionalism that was going on. Before 1787, a bill of rights recognized those rights existing from time immemorial that had become part of the social contract, a pact formed in some mythic past when people first agreed to live in society. But Americans were writing real compacts of government, and this process raised disturbing questions: Must rights be explicitly stated in these new constitutions to retain their authority? Or would fundamental rights remain intact whether stated or not?

Anti-Federalists had a plain answer to these questions: adopt a bill of rights no matter what. But Federalists were less certain. Suppose you wrote a bill of rights, Madison asked, and failed to enumerate all rights worth protecting? Would those unenumerated rights lose influence? Or suppose you used an ambiguous or watered-down text to secure adoption of an unpopular right. Wouldn't you risk weakening the authority of that right?

Despite these concerns, Madison conceded that a bill of rights should be added to the Constitution—more to allay the fears of moderate anti-Federalists than because he believed it important in itself. In 1789, at the first session of the new Congress, he persuaded his colleagues to propose 12 amendments; of these, the 10 we know as the Bill of Rights were ratified by the states. For more than

a century afterward, the seeming irrelevance of these amendments suggested that Madison's doubts about their utility were well founded. Only early in the 20th century did the courts begin to interpret parts of the Bill of Rights to protect individual rights and liberties from abuse by both state and national governments. In the past 50 years, the interpretation and reinterpretation of the Bill of Rights and its great descendant, the 14th Amendment, have generated many of the serious controversies of law and politics that have shaped the American constitutional tradition.

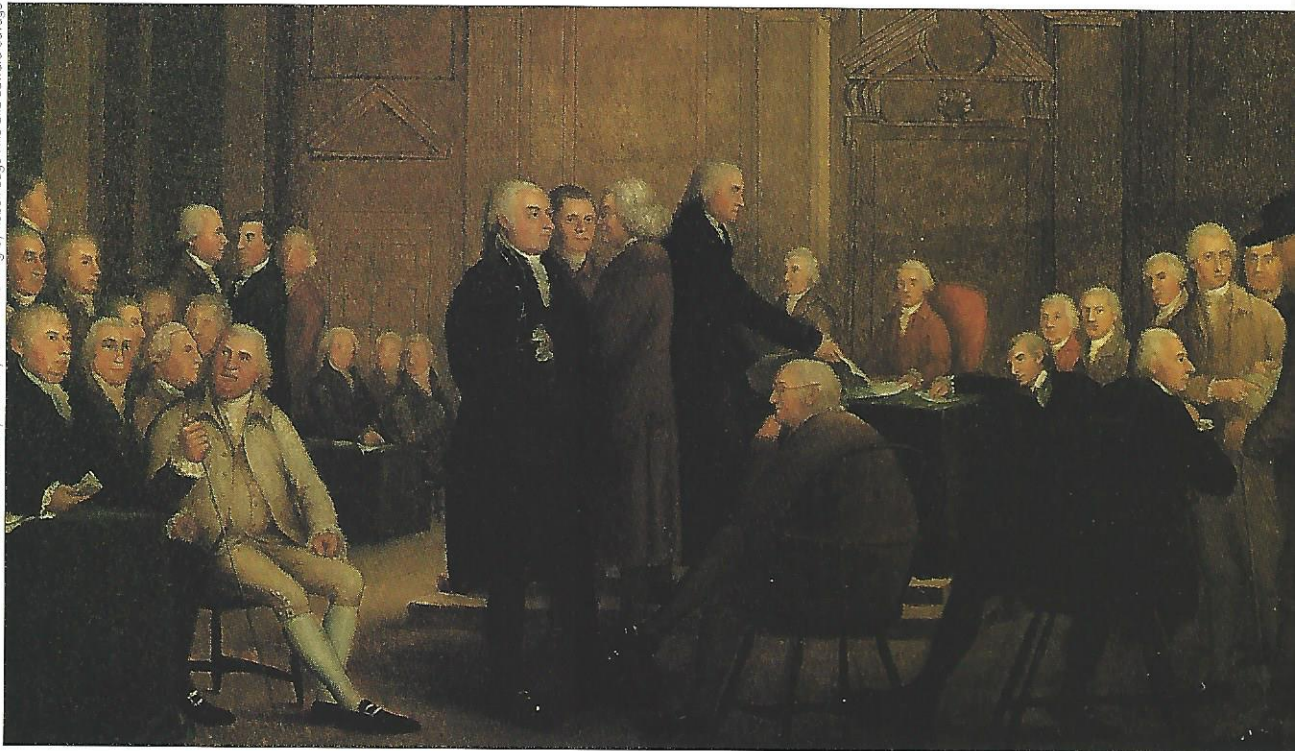
Despite two centuries of debate, urgent political or legal questions repeatedly call the meaning of one or another constitutional provision into doubt. That the Constitution can be continually enlarged and invigorated in this way tells us something important. When Americans began writing constitutions, they did not foresee that these texts—especially the national charter—would acquire such profound authority. Constitutionalism was an experiment; even its greatest adherents—men like Madison, Jefferson and Alexander Hamilton—brooded about its likely success. Both Madison and Hamilton were privately skeptical whether the federal Constitution would last, and Jefferson mused that constitutions should be replaced every generation. Each would be surprised by how deep a hold the Constitution has acquired and retained over our political culture. Revolutionary in its origins, the American constitutional tradition may have grown more conservative in its workings—yet what is most striking about it is its vitality. □

*Jack N. Rakove is a professor of history at Stanford University. His Original Meanings: Politics and Ideas in the Making of the Constitution will be published next year.*



# The Root of American Nationhood

The Historical Society of Pennsylvania. Painting by Robert Edge Pine and Edward Savage



As the Continental Congress prepares to vote, a pensive Benjamin Franklin (seated at center) awaits the outcome.

In Congress on June 7, 1776, acting on instructions from Virginia, Richard Henry Lee proposed “that these United Colonies are, and of right ought to be, free and independent States.” After nearly 14 months of warfare, public sentiment was moving in favor of this resolution, but several delegations remained reluctant. On June 11 Congress voted to postpone a decision until July 1, but appointed a committee of five to draft a declaration. At the urging of John Adams, who had led the Continental Congress through much of the previous two years, the committee delegated the work to its chairman, Thomas Jefferson, whom Adams knew to be a gifted writer. Jefferson’s draft, with a few small changes suggested by Adams and Benjamin Franklin, was presented on June 28 to Congress; the declaration was tabled while the delegates considered Lee’s resolution. After voting for independence on July 2, the delegates turned their attention to the draft. They made minor changes and—to Jefferson’s dismay—deleted a significant passage condemning the King for fostering the slave trade and shortened a lengthy paragraph censuring the people of Great Britain for their failure to arrest their government’s designs.

Decades later, jealous of the fame Jefferson had won by authoring the Declaration, Adams complained that

“there is not an idea in it, but what has been hackneyed in Congress for two years before,” that “the substance of it was all contained in the Declaration of Rights of the first Continental Congress, approved on October 14, 1774. Jefferson’s response was apt. He did not, he told James Madison, “consider it any part of my charge to invent new ideas.” The object, he explained to Lee, was “not to find out new principles, or new arguments ... but to place before mankind the common sense of the subject, in terms so plain and firm as to command their assent, and to justify ourselves in the independent stand we are compelled to take. Neither aiming at originality of principle or sentiment, nor yet copied from any particular and previous writing, it was intended to be an expression of the American mind.” Jefferson may well have consulted John Locke’s *Second Treatise on Government* or the Declaration of 1774 as he began the drafting. The famous second paragraph, naming “the pursuit of happiness” among the fundamental human rights, echoes George Mason’s Virginia Declaration of Rights, completed a month before. While the Declaration’s political theory does indeed reflect the thinking of English and American Whigs in the 18th century, Jefferson’s eloquent expression of the nation’s mind was a lasting contribution.

—Lance G. Banning, *University of Kentucky*



## The Declaration of Independence

**IN CONGRESS, July 4, 1776.**

**The unanimous Declaration  
of the thirteen united States of America,**

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

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it; and to institute new Government, laying its foundation on such principles and organizing its 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 shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all hav-

ing in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws for immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent



hither swarms of Officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For calling off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us of many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the Lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us,

and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do.

And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

*Resolved, That copies of the Declaration be sent to the several assemblies, conventions, and committees, of councils of safety, and to the several commanding officers of the continental troops; that it be proclaimed in each of the united States, at the head of the army.*



To Jefferson's dismay, this passage of the Declaration condemning the slave trade was removed because of the objections of delegates from the South.

He has incited treasonable insurrections of our fellow citizens, with the allurements of forfeiture & confiscation of our property. <sup>he has incited them to insurrection, & to become the executioners of their friends & neighbors</sup> he has waged cruel war against human nature itself, violating its most sacred rights of life & liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of infidel powers, is the warfare of the Christian king of Great Britain, determined to keep open a market where MEN should be bought & sold: he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce; and that this assemblage of horrors might want no fact of distinguished die, he is now exciting those very people to rise in arms against us, and to purchase that liberty of which he has deprived them, by murdering the people upon whom he also obtruded them: thus paying off former crimes committed against the liberties of one people, with crimes which he urges them to commit against the lives of another.



Johns Hopkins University Art Collection, Easton, Pennsylvania. Painting by William Verelstede.

On July 9, 1776, joyous citizens of New York City, responding to news of the Declaration, pull down the statue of George III that had stood for years at the tip of Manhattan. It was melted down and converted into musket balls.



## Crafting Bills of Rights

In 1776 British colonial governments collapsed, and the American colonists struggled to devise replacements that would be both legitimate and independent of British authority. These struggles produced an array of state constitutions that provided rich precedents for the framers of the federal Constitution.

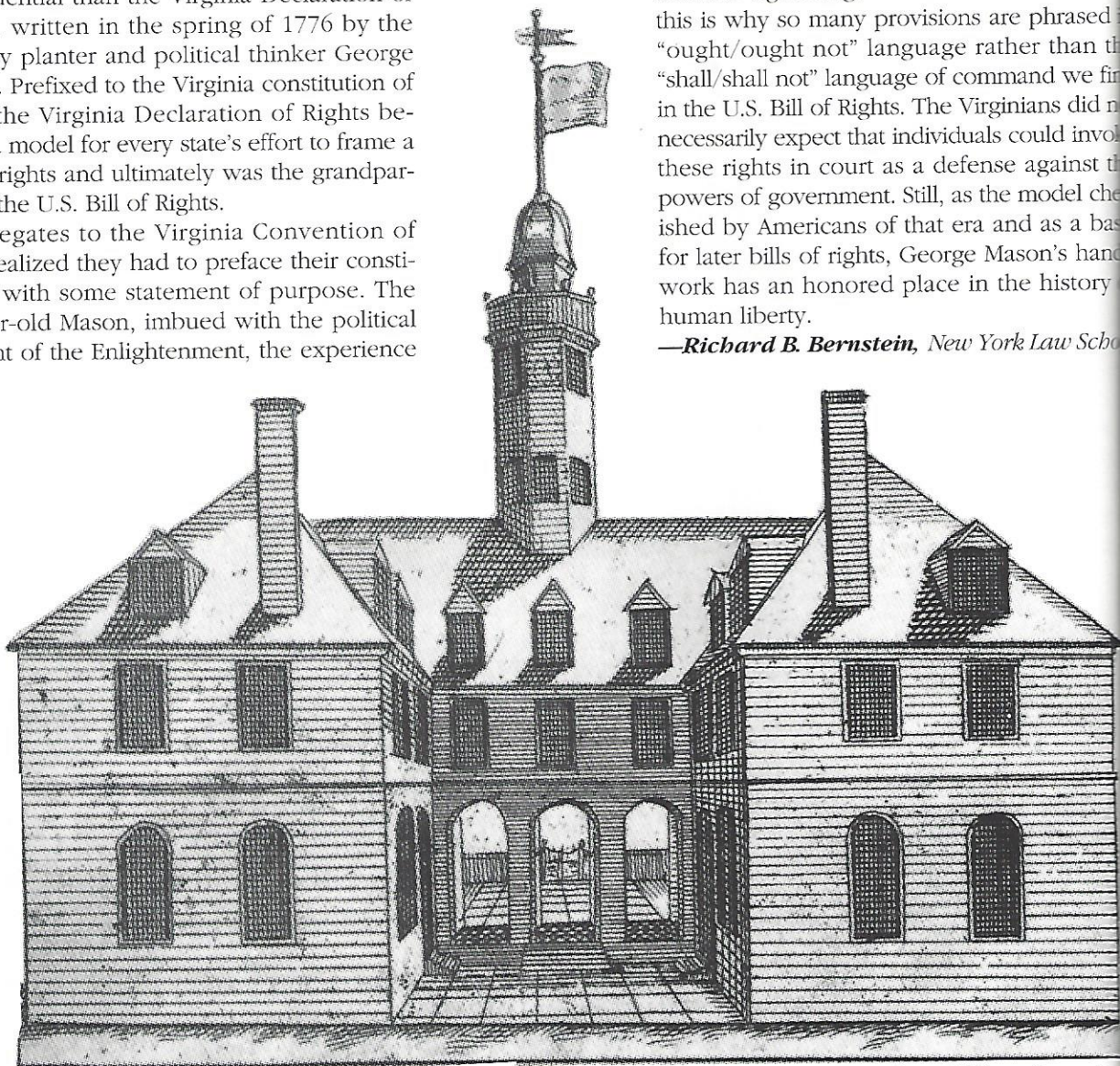
Of all these documents—including such landmarks as the New York constitution of 1777 and the Massachusetts constitution of 1780—none was more original or influential than the Virginia Declaration of Rights, written in the spring of 1776 by the wealthy planter and political thinker George Mason. Prefixed to the Virginia constitution of 1776, the Virginia Declaration of Rights became a model for every state's effort to frame a bill of rights and ultimately was the grandparent of the U.S. Bill of Rights.

Delegates to the Virginia Convention of 1776 realized they had to preface their constitution with some statement of purpose. The 51-year-old Mason, imbued with the political thought of the Enlightenment, the experience

of Virginia politics and the decade-long controversy with Britain over colonists' rights, penned an eloquent document that he hoped would provide a standard by which Virginians would evaluate their leaders.

The Virginia Declaration of Rights was the first enumeration of rights to be part of a constitutional framework; yet we should not read it as if it were a listing of rights as we understand them today. "Rights" included not just individual rights safeguarded from government intrusion but "right things" and standards of conduct. This is why so many provisions are phrased in "ought/ought not" language rather than the "shall/shall not" language of command we find in the U.S. Bill of Rights. The Virginians did not necessarily expect that individuals could invoke these rights in court as a defense against the powers of government. Still, as the model cherished by Americans of that era and as a basis for later bills of rights, George Mason's handiwork has an honored place in the history of human liberty.

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



In the spring of 1776, delegates to the Virginia Convention met in the capitol at Williamsburg to draw up a state constitution. They adopted George Mason's Declaration of Rights as its preface.



## The Virginia Declaration of Rights

**June 12, 1776**

*A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free convention; which rights do pertain to them and their posterity, as the basis and foundation of government.*

1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.
2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.
3. That government is or ought to be instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable and indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal.
4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of publick services; which, not being descendible, neither ought the offices of magistrate, legislator or judge to be hereditary.
5. That the legislative and executive powers of the state should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members to be again eligible or ineligible, as the laws shall direct.
6. That elections of members to serve as representatives of the people in assembly, ought to be free; and that all men having sufficient evidence of permanent common interest with, and attachment to the community, have the right of suffrage, and cannot be taxed or deprived of their property for publick uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented for the public good.
7. That all power of suspending laws, or the execution of laws, by any authority without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.
8. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favour, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.
9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.
11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.
12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotick governments.
13. That a well-regulated militia, composed of the body of the people trained to arms, is the proper, natural and safe defence of a free state; that standing armies in time of peace should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.
14. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of the government of Virginia, ought to be erected or established within the limits thereof.
15. That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.
16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other. □







## America's First Government

The Articles of Confederation represent the first effort of the rebelling British North American colonies to unite as a governing and governed body. They provided legitimacy to the Continental Congress, which had declared independence and begun a war of independence against Great Britain. Moreover, the history of the ratification presents a nice microcosm of the issues of federal and local power that have enlivened American politics for more than two centuries.

The Articles were first drafted and debated in 1776, but contention among the states broke out immediately. The most vexing problem dealt with future territorial expansion. Maryland, a small colony with exact western borders, refused to ratify the articles until states like Virginia and North and South Carolina, with generous sea-to-sea boundaries, and New York, with extensive lands gained by Indian treaties, yielded their unoccupied western lands to the Confederation. If Americans were to settle in these lands, Maryland delegates argued, it would be because all of the rebellious colonies, fighting together, had wrested the area from Great Britain. Hence the western lands should be used to create a national domain. The six so-called landless states held firm on this point. Virginia delegates, led by Thomas Jefferson, took the lead in negotiating a compromise. Believing that it would be Maryland land speculators, already organized into companies, who would benefit if Virginia gave up its sea-to-sea boundary, he proposed that all prior claims be extinguished so that the western lands would be a true national domain opened to settlement by ordinary Americans.

It took many years to resolve this issue as well as differences over how much power to give to the Continental

Congress. Remarkably, the Articles were not ratified until seven months before the decisive victory of the Americans over the British at Yorktown; thus, independence had largely been won and the war financed and fought through the states' informal recognition of the Continental Congress.

The Articles, as ratified in 1781, created more of a diplomatic body than a direct government. They recognized that each state was to retain its "sovereignty, freedom and independence," and provided for one vote for each state delegation regardless of the state's population. Requisitions for funds rather than levied taxes were to finance joint efforts, and any change in the Articles required unanimous approval. An expression of many Americans' strong attachment to local rule, the limited political power accorded to Congress appeared less tenable once the Treaty of Paris in 1783 removed the urgency of fighting a common enemy.

Considering the statesmanlike compromise over the issue of western land claims in 1781, it is fitting that the greatest piece of legislation under the Articles of Confederation was the Northwest Ordinance of 1787, which provided for the creation of future states, the exclusion of slavery in the Northwest territories and orderly procedures for surveying and selling land in public domain. New states, according to this ordinance, were to be organized politically as quickly as population permitted, and each state was to come into the union "on an equal footing with the original states in all respects whatsoever." Thus did the Continental Congress in its last meetings signal American devotion to the principle of self-government.

—Joyce Appleby, *University of California, Los Angeles*

**The Articles of Confederation were engrossed on parchment sheets stitched together to form a scroll.**



## The Articles of Confederation

TO ALL TO WHOM these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and Seventy seven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the Words following, viz. "Articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia."

**Article I.** The Stile of this confederacy shall be "The United States of America."

**Article II.** Each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

**Article III.** The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade or any other pretence whatever.

**Article IV.** The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from Justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the Owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any state, on the property of the united states, or either of them.

If any Person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from

Justice, and be found in any of the united states, he shall upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of the states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

**Article V.** For the more convenient management of the general interests of the united states, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the Monday in November, in every year, with a power reserved to each state, to recall its delegates, or any of them at any time within the year, and to send others in their stead, for the remainder of the Year.

No state shall be represented in Congress by less than two, nor by more than seven Members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the united states, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the united states, in Congress assembled, each state shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any Court, or place of Congress, and the members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

**Article VI.** No state without the Consent of the united states in congress assembled, shall send any embassy or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, prince or state; nor shall any person holding any office of profit or trust under the united states, or any of them, accept any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall any member of the united states in congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the united states in congress assembled, specifying accurately the purposes for which the same shall be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may



terfere with any stipulations in treaties, entered into by the united states in congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the united states in congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the united states, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the united states in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the united states in congress assembled can be consulted: nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the united states in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the united states in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the united states in congress assembled shall determine otherwise.

**Article VII.** When land-forces are raised by any state of the common defence, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

**Article VIII.** All charges of war, and all other expences that shall be incurred for the common defence or general welfare, and allowed by the united states in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any Person, as such land and the buildings and improvements thereon shall be estimated according

to such mode as the united states in congress assembled, shall from time to time direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the united states in congress assembled.

**Article IX.** The united states in congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of and species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the united states shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts.

The united states in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, congress shall name three persons out of each of the united states, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as congress shall direct, shall in the presence of congress be drawn out by lot, and the per-