

Part VI: Two Hundred Years of Constitutional Change

The organization, wealth, and persuasiveness of the Federalists ultimately enabled them to win ratification for the Constitution.

The Federalists directed an effective campaign to gain the support of the American public. Their message was conveyed mostly through newspapers and pamphlets. The most famous example of Federalist writing consist-

ed of eighty-five essays aimed at voters in New York, a key state in the ratification contest. Today known as *The Federalist Papers*, the articles were written by Alexander Hamilton, James Madison, and John Jay under the pen name "Publius."

The Federalist Papers carefully explained the features of the proposed Constitution and responded forcefully to the many objections that had been raised. The Anti-Federalists, while initially outnumbering the Federalists, lacked the unity and financial resources of their opponents.

Ratification of the Constitution

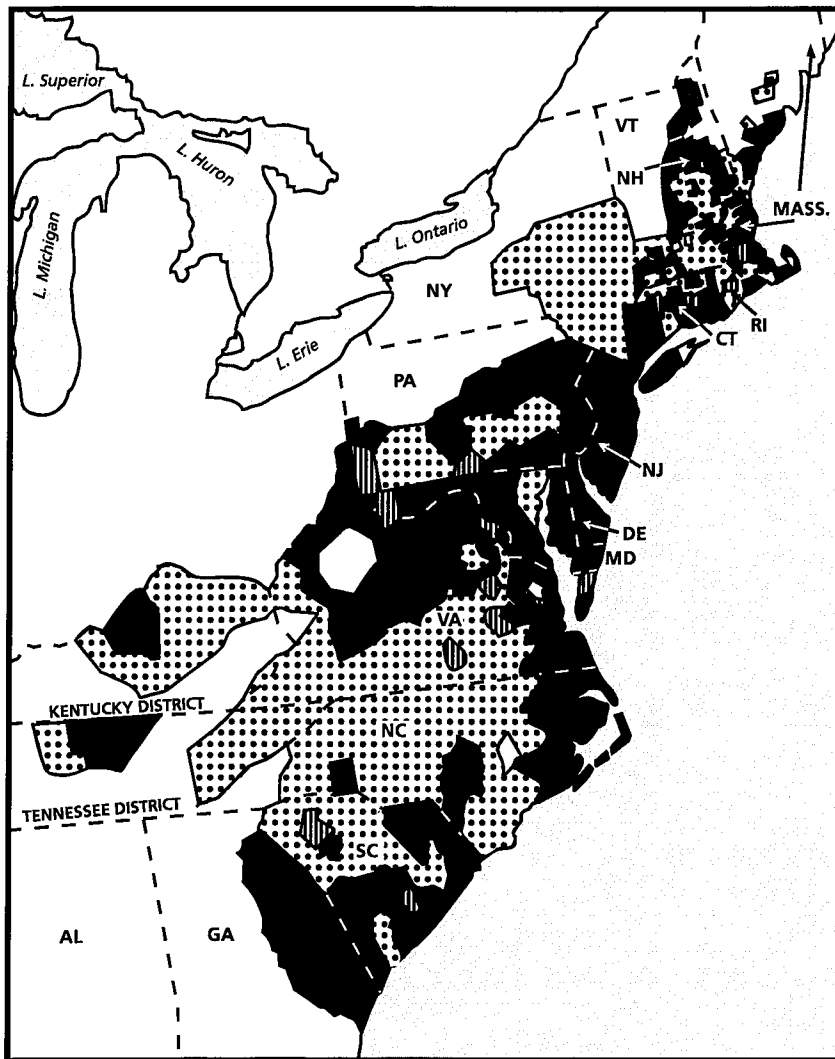
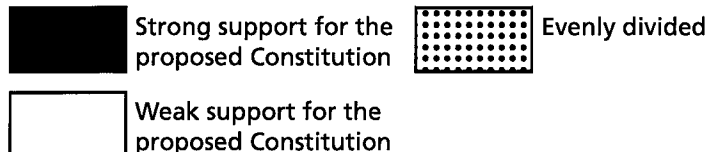


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The Rocky Road to Ratification

Delaware: Delaware was the first state to ratify the Constitution. On December 7, 1787, Delaware's convention unanimously approved the document.

Pennsylvania: Pennsylvania's convention followed five days later with a 46-23 vote in favor of ratification. The lopsided margin in Pennsylvania concealed a bitter fight. The Federalists, who controlled the Pennsylvania state legislature, called for quick elections to choose the delegates to the state-ratifying convention. The Anti-Federalists protested by walking out of the legislature, thus bringing the assembly to a halt because of the lack of a quorum. A Federalist mob dragged two of the absent members into

The Ninth PILLAR erected !

"The Ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution, between the States so ratifying the same." Art. vii.

INCIPIENT MAGNI PROCEDERE MENSES.



Courtesy of the Library of Congress.

A cartoonist's view of the ratification process, published in July 1788. Note that the artists expects Virginia to vote for ratification.

the legislature to achieve a quorum, and a vote was immediately held to allow elections to go forward. Federalist delegates, backed by well-organized campaigns, won a solid majority of the seats to the ratifying convention.

New Jersey, Georgia, and Connecticut: Over the next month, the Federalist cause gained momentum. New Jersey ratified the proposed Constitution unanimously on December 18. Two weeks later, Georgia gave its unanimous approval. Connecticut voted for ratification, 128 to 40, on January 9, 1788.

Massachusetts: In Massachusetts the Federalists ran into a roadblock. Anti-Federalist forces held a majority in the Massachusetts ratifying convention that convened in early January 1788. After four weeks of intense debate, the groups struck a compromise. Delegates added several amendments, or additional provisions, to the proposed Constitution that addressed the primary objections of the Anti-Federalists. Even with the amendments, the Constitution was ratified by a slim margin—187 to 168.

Massachusetts delegates were sharply divided along geographic lines. Delegates from the eastern part of the state, where merchants, lawyers, and investors dominated politics, voted for ratification, 111 to 31. In contrast, delegates from central and western Massachu-

setts—home to most of the small farmers who supported Shays's Rebellion—rejected the Constitution by a 76-137 margin.

Maryland & South Carolina: The proposed Constitution enjoyed a warmer reception in Maryland and South Carolina. On April 28, 1788, the Maryland convention voted for ratification, 63 to 11. In South Carolina, the Constitution passed by a 149-73 vote on May 23.

New Hampshire: When the New Hampshire convention met in February 1788, the Anti-Federalists enjoyed a clear majority. However, a small group of them joined with the Federalists to support a resolution to postpone the convention for four months. During the period of adjournment, the Federalists mounted an energetic campaign to win over public opinion. When the convention reconvened, many of the delegates had shifted their positions. On June 21, the proposed Constitution passed by a 57-47 margin. New Hampshire was the ninth state to approve ratification, technically putting the Constitution into effect.

Virginia and New York: The large states of Virginia and New York had yet to cast their votes. In both states, the prospects for ratification were uncertain.

Virginia was home to many of the Consti-

tution's ablest defenders, among them James Madison, an author of *The Federalist Papers*. At the same time, the opposition was led by some of the young republic's most respected public figures, including George Mason, Richard Henry Lee, and Patrick Henry. Ultimately, the active involvement of George Washington in the Federalist cause tipped the balance in favor of ratification.

Virginia voted 89 to 79 in favor of ratification on June 25, 1788. As was the case in several states, the state's easterners strongly supported the Constitution, while most delegates from the western frontier rejected it. The Virginia convention also joined Massachusetts, South Carolina, and New Hampshire in proposing a series of amendments to the Constitution.

As in Virginia, the Anti-Federalists in New York were well-positioned. Governor George Clinton had opposed the idea of a new Constitution from the outset. Moreover, two of New York's three delegates to the Philadelphia convention had walked out once the gathering went beyond its instructions to revise the Articles of Confederation.

When the New York convention met in June 1788, the Anti-Federalists claimed a two-thirds majority. They adopted a lengthy list of amendments to the proposed Constitution (actually longer than the Constitution itself) and voted to call a second constitutional convention among the thirteen states. The Federalists countered by promoting their case in local newspapers and eventually chipped away at

The Bill of Rights Approved by Congress in 1789

Amendment (not ratified)

After the first enumeration [census] required by the first article of the Constitution, there shall be one Representative for every thirty thousand persons, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

Amendment (not ratified until 1992)

No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.

Amendment One (ratified)

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 Two (ratified)

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 Three (ratified)

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 Four (ratified)

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches 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.

the opposition to the Constitution. When the vote was held July 26, 1788, the Constitution was ratified, 30 to 27, with the list of amendments attached.

Rhode Island and North Carolina: Rhode Island and North Carolina were the final holdouts. Neither state ratified the Constitution until the new national government began functioning. Although Anti-Federalists held a clear majority in both states, they recognized the futility of blocking ratification. In November 1789, North Carolina voted for ratification, 194 to 77. In Rhode Island, the Constitution was approved, 34 to 32, in May 1790.

In the country as a whole, support for the Federalist cause remained weak even after the Constitution took effect. In the end, the new

national government gained legitimacy among the American public because of its effectiveness in dealing with the problems that had arisen under the Articles of Confederation. George Washington's election to the presidency by the electoral college in 1789 elevated the prestige of the national government. No individual was more important to the Constitution's success. Washington's leadership would prompt later generations of historians to call him the "indispensable man" and the "father of his country."

The Constitution in Motion

The Constitution of today is very different from the document that was ratified in 1788. The differences, however, have less to

Amendment Five (ratified)

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

Amendment Six (ratified)

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 Seven (ratified)

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 Eight (ratified)

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

Amendment Nine (ratified)

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

Amendment Ten (ratified)

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.

do with revisions in the text than with shifts in interpreting the Constitution's meaning. The concrete changes can be found in the constitutional amendments—the first ten of which are known as the Bill of Rights. More important has been the impact of the Civil War and Supreme Court decisions in reshaping the constitutional system.

Why was the Bill of Rights attached to the Constitution?

When the first Congress elected under the new Constitution convened in April 1789, one of the chief items of business was the consideration of constitutional amendments proposed by the state ratifying conventions. Most of the amendments fell into two categories. One group focused on altering the structure of the new national government. The other group was designed to protect individual rights not mentioned in the new Constitution.

Ironically, the movement to develop a national bill of rights was spearheaded in Congress by a staunch Federalist, James Madison. At the Philadelphia convention, Madison had vigorously opposed the addition of a bill of rights. In *The Federalist Papers*, he had argued that such guarantees were not necessary. At the Virginia ratifying convention, however, Madison realized that the absence of a bill of rights was undermining support for the Constitution. Meanwhile, Thomas Jefferson was writing Madison from Paris to urge him to accept the need for clearly defining the rights of America's citizens.

In June 1789, Congressmen Madison introduced twelve amendments that addressed both individual rights and structural changes in government. Madison drew from a wide range of amendments generated by the state ratifying conventions. The Massachusetts convention, for example, had written an amendment that set clear limitations on the national government. The proposal addressed the primary concern of the Anti-Federalists regarding the balance of power under the Constitution.

“That it be explicitly declared that all powers not expressly delegated by the aforesaid Constitution are reserved to the several states, to be by them exercised.”

—Massachusetts ratifying convention

An amendment crafted by Madison adopted the language of the Massachusetts convention, but dropped the word “expressly.” Madison felt that including “expressly” would allow Anti-Federalists to place tight restrictions on the power of the national government.

Madison's amendments were further modified in Congress. The Senate refused to accept an amendment protecting individual rights from violations by the states. The other significant revision was Congress' decision to remove a preamble which summarized the introduction to the Declaration of Independence.

“All power is originally vested in, and consequently derived from the people. That government is instituted, and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety. That the people have an indubitable, unalienable, and indefeasible right to reform or change their government, whenever it be found adverse or inadequate to the purposes of its institution.”

—James Madison, proposed preamble to the Bill of Rights

The House of Representatives and the Senate approved Madison's twelve amendments by the necessary two-thirds majority and in September 1789 sent them to the states for ratification. By December 1791, all but the first two amendments had been ratified by the required three-quarters majority—eleven states—and the Bill of Rights went into effect. (The three remaining states—Massachusetts,

Connecticut, and Georgia—did not ratify the Bill of Rights until 1939.)

What were some proposed amendments that failed?

During the more than two hundred years since the Bill of Rights was adopted, only seventeen new amendments have been added to the Constitution. (In fact, the number of lasting changes has been fifteen. The Eighteenth Amendment, which outlawed the manufacture and sale of liquor, was repealed by the Twenty-first Amendment.) The most recent revision was made in 1992, when the second amendment proposed by Madison was finally ratified. The 27th amendment prohibits a law changing the salaries of Congressional representatives from taking effect until after the next Congressional elections.

Six amendments have been passed by the required two-thirds majority in Congress only to fail to be ratified by three-quarters of the states. The first failed amendment was part of the original package of twelve submitted to the states in 1789. It would have changed the formula determining representation in the House of Representatives.

The other five amendments that did not clear the ratification hurdle give us an insight into the political controversies of our nation's past. In 1810, the states rejected an amendment put forward by Congress that would have stripped Americans of their citizenship after they accepted an honor or title from a foreign monarch.

For the next five decades, no additional amendments were approved by Congress. On the eve of the Civil War, however, Con-

Proposed and Rejected Amendments

“If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.”

—Proposed Thirteenth Amendment (1810)

“No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any state, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said state.”

—Proposed Thirteenth Amendment (1861)

“Congress shall have the power to limit, regulate, and prohibit the labor of persons under 18 years of age.”

—Proposed Twentieth Amendment, section 1 (1924)

“Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”

—Proposed Twenty-seventh Amendment, section 1 (1972)

“For purposes of representation in the Congress, election of the President and Vice President, and Article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.”

—Proposed Twenty-seventh Amendment, section 1 (1978)

gress made a last attempt to head off conflict between the North and the South. The amendment passed in early 1861 would have barred the national, or federal, government from abolishing slavery at the state level.

The outbreak of the Civil War blocked consideration of the amendment. After the fighting ended, a new Thirteenth Amendment was passed by Congress. Ratified in December 1865, the Thirteenth Amendment that entered the Constitution abolished slavery.

Concern about the impact of the Industrial Revolution on America's children drove Congress to approve an amendment in 1924 that gave the federal government the authority to regulate child labor. Ratification of the amendment stalled well short of adoption. Nonetheless, labor organizers continued to press for action and eventually achieved most of their goals through Congressional legislation.

One of America's fiercest debates on constitutional issues was sparked by Congress's approval in 1972 of the Equal Rights Amendment (ERA). The ERA would have made equality between the sexes a constitutional right. Although Congress extended the deadline for ratification from seven years to ten years, the ERA fell three states short of ratification. As in the case of the failed amendment on child labor, the aims of the ERA have been largely achieved through legislation on the federal and state levels. In practice, the proposed amendment has become part of the Constitution.

Finally, in 1978 Congress approved an amendment which would have placed the District of Columbia on equal footing with the fifty states in terms of representation in Congress.

Today, movements to amend the Constitution continue to be felt in Congress. In 1995, for example, an amendment that would have required the federal government to maintain a balanced budget missed approval by a handful of votes.

Compared to the constitutions of other nations, the U.S. Constitution stands out as

a model of stability. It is the oldest written Constitution still in effect and has undergone remarkably few changes by international standards. Since the adoption of the U.S. Constitution, France has been ruled under five distinct constitutions. In countries without a strong democratic tradition, constitutions are regularly suspended or radically altered.

How did a constitutional question provide the spark for the Civil War?

Perhaps the most important constitutional question was settled neither by amendment nor by Supreme Court decision, but by the Civil War. From the perspective of today, we often view the Civil War as a struggle over slavery. In constitutional terms, however, the war was fought over states' rights.

The delegates of the state conventions that approved the Constitution recognized that their states would have to give up some of their power of self-government. How much authority they retained, however, was not clearly defined.

Over the next seven decades, the issue of states' rights revolved largely around two questions. First, did the states have the right to "nullify," or reject, laws made by the national government that were judged to be unconstitutional? Second, did the states have the right to secede from the union?

Defenders of states' rights answered "yes" to both questions. Their philosophy was supported by the "compact theory of the Constitution." The compact theory drew on the assertion by John Locke that the citizenry had the right to revolt against an unjust government. Locke's argument was central to the Declaration of Independence. On the opposite side of the issue were champions of the "contract theory". The contract theory was grounded on the belief that in joining the union the states had forever given up the right to claim independence or to completely disregard the national government.

Secession is usually linked to the southern states of the Confederacy, but in fact the possibility was first seriously raised by lead-

ers in New England during the War of 1812. Responding to the unpopularity of the conflict, delegates from the region debated the wisdom of secession at a convention in Connecticut in 1815. The end of the fighting eventually quieted talk of secession. Ultimately, the contract theory prevailed over the compact theory as a result of the Civil War. No widespread secession movement has since emerged.

How do Supreme Court decisions change the Constitution?

The rulings of the Supreme Court have been another source of constitutional change. The Supreme Court does not have the authority to alter the text of the Constitution. Rather, the nation's leading judges are engaged in reinterpreting the Constitution's meaning in light of new circumstances and conditions.

In 1787, the framers of the Constitution themselves recognized that the document they produced had not settled many issues. Moreover, they could not have foreseen the challenges that would be posed by the technological advances, economic shifts, and other profound changes that our society has experienced.

With the case of *Marbury vs. Madison* in 1803, the Supreme Court clearly established its authority to rule on the constitutionality of laws and to interpret the meaning of the Constitution. The extent of the high court's power has been a subject of heated controversy. At one extreme are those who favor a strict, narrow "construction," or interpretation, of the Constitution. They argue that the Supreme Court should be bound by what the framers of the Constitution specifically intended in 1787. At the other extreme are those who support a broad, loose interpretation. They insist that the Constitution is a living document that must change as the nation develops.

Until around 1950, most of the Supreme Court's pivotal rulings focused on defining the power of the federal government. At the center of many of the high court's decisions was the "necessary and proper" clause of Article I of the Constitution. Known as the "elastic"

clause, it allowed the federal government to pass laws in areas not specifically mentioned in the Constitution. Beginning in 1819, the Supreme Court has generally interpreted the "necessary and proper" clause broadly. The federal government's efforts to establish a national banking system, impose a military draft, regulate the safety of consumer products, and extend its authority in many other sectors has been widely accepted by the judicial branch.

Since about 1950, the Supreme Court has increasingly turned its attention to issues of individual rights. Amendments one through six, eight, and fourteen were especially critical to the high court's rulings. Again, the Supreme Court has tended toward a broad interpretation of the Constitution. Rather than dwelling on the philosophy of the framers, the justices have generally applied contemporary values in deciding how the rights of individuals should be balanced against the interests of the larger society.

The Judgment of History

Until the twentieth century, American historians avoided a critical examination of the drafting and ratification of the Constitution. The document itself was treated with much the same reverence as the Bible or other sacred writings. Historians gave similar praise to the men responsible for framing the Constitution and leading the ratification campaign.

All of that changed in 1913 with the publication of *An Economic Interpretation of the Constitution of the United States* by Charles Beard. Earlier scholars had noted the economic factors connected to the development of the Constitution. Beard, however, went much further. He saw economic interests as the main element motivating the framers.

How did Charles Beard's book stir controversy among historians?

Beard looked primarily at the economic backgrounds of the framers. He put aside the notion that the framers had no personal interests at stake in 1787. On the contrary, Beard held that they were largely united in the con-

viction that the national government should take stronger measures to protect property rights and promptly repay its debts.

“[The Constitution] was an economic document drawn with superb skill by men whose property interests were immediately at stake; and as such it appealed directly and unerringly to identical interests in the country at large.... The Constitution was not created by “the whole people” as the jurists have said...it was the work of a consolidated group whose interests knew no state boundaries and were truly national in their scope.”

—Charles Beard

Beard found that many of the framers were leading creditors and had been active in trying to revise the Articles of Confederation to protect their financial interests. According to Beard, they lobbied Congress to call the Philadelphia convention of 1787 after their attempts to amend the articles had failed.

Beard’s work stunned and shocked many of America’s historians. The book was a direct challenge to over a century of scholarship. Moreover, it threatened the view Americans

held of their past and their government. Within academic circles, supporters and critics of Beard soon appeared. *An Economic Interpretation of the Constitution of the United States* became the object of intense debate and scrutiny.

Later research in fact cast doubt on some of Beard’s data. Historians offered new interpretations and rejected some of Beard’s primary conclusions. Nonetheless, Beard’s work has stood the test of time. Historians today studying the development of the Constitution recognize the importance of the economic motives that Beard first explored.

Not surprisingly, the controversy surrounding *An Economic Interpretation of the Constitution of the United States* was not confined to the scholarly community. Beard’s views influenced the larger public debate about the roots of our nation’s political system and the strength of our democratic institutions.

Beard’s work reminded Americans that history is very much part of the present. The framers of the Constitution are in a sense our ancestors, and their story is our story. The manner in which the history of America’s early years is told affects how we see our nation’s past and ourselves.