

Janda, et al.

The
Challenge
of Democracy
(2005).

Nonetheless, the eradication of slavery proceeded gradually in certain states. Opposition to slavery on moral or religious grounds was one reason. Economic forces, such as a shift in the North to agricultural production that was less labor intensive, were a contributing factor too. By 1787, Connecticut, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont had abolished slavery or provided for gradual emancipation. No southern states followed suit, although several enacted laws making it easier for masters to free their slaves. The slow but perceptible shift on the slavery issue in many states masked a volcanic force capable of destroying the Constitutional Convention and the Union.



Selling the Constitution

Nearly four months after the Constitutional Convention opened, the delegates convened for the last time, on September 17, 1787, to sign the final version of their handiwork. Because several delegates were unwilling to sign the document, the last paragraph was craftily worded to give the impression of unanimity: "Done in Convention by the Unanimous Consent of the States present." Before it could take effect, the Constitution had to be ratified by a minimum of nine state conventions. The support of key states was crucial. In Pennsylvania, however, the legislature was slow to convene a ratifying convention. Pro-Constitution forces became so frustrated at this dawdling that they broke into a local boardinghouse and hauled two errant legislators through the streets to the statehouse so the assembly could schedule the convention.

The proponents of the new charter, who wanted a strong national government, called themselves Federalists. The opponents of the Constitution were quickly dubbed Antifederalists. They claimed, however, to be the true federalists because they wanted to protect the states from the tyranny of a strong national government. Elbridge Gerry, a vocal Antifederalist, called his opponents "rats" (because they favored ratification) and maintained that he was an "antirat."³² Such is the Alice-in-Wonderland character of political discourse. Whatever they were called, the viewpoints of these two groups formed the bases of the first American political parties, and several enduring debates that politicians have wrestled with as they have attempted to balance the tradeoffs between freedom, order, and equality.

The *Federalist Papers*

The press of the day became a battlefield of words, filled with extravagant praise or vituperative condemnation of the proposed constitution. Beginning in October 1787, an exceptional series of eighty-five newspaper articles defending the Constitution appeared under the title *The Federalist: A Commentary on the Constitution of the United States*. The essays bore the pen name Publius (for a Roman emperor and defender of the Republic, Publius Valerius, who was later known as Publicola); they were written primarily by James Madison and Alexander Hamilton, with some assistance from John Jay. Reprinted extensively during the ratification battle, the *Federalist* papers remain the best single commentary we have on the meaning of the Constitution and the political theory it embodies.

Not to be outdone, the Antifederalists offered their own intellectual basis for rejecting the Constitution. In several essays, the most influential published under the pseudonyms Brutus and Federal Farmer, the Antifederalists attacked the centralization of power in a strong national government, claiming it would obliterate the states, violate the social contract of the Declaration of Independence, and destroy liberty in the process. They defended the status quo, maintaining that the Articles of Confederation established true federal principles.³³

Of all the *Federalist* papers, the most magnificent and most frequently cited is *Federalist* No. 10, written by James Madison (see the appendix). He argued that the proposed constitution was designed “to break and control the violence of faction.” “By a faction,” Madison wrote, “I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.” No one has improved upon Madison’s lucid and compelling argument, and it remains the touchstone on the problem of factions to this day.

What Madison called factions are today called interest groups or even political parties. According to Madison, “The most common and durable source of factions has been the various and unequal distribution of property.” Madison was concerned not with reducing inequalities of wealth (which he took for granted) but with controlling the seemingly inevitable conflict that stems from them. The Constitution, he argued, was well constructed for this purpose.

Through the mechanism of representation, wrote Madison, the Constitution would prevent a “tyranny of the majority” (mob rule). The people would not control the government directly but indirectly through their elected representatives. And those representatives would have the intelligence and the understanding to serve the larger interests of the nation. Moreover, the federal system would require that majorities form first within each state and then organize for effective action at the national level. This and the vastness of the country would make it unlikely that a majority would form that would “invade the rights of other citizens.”

The purpose of *Federalist* No. 10 was to demonstrate that the proposed government was not likely to be dominated by any faction. Contrary to conventional wisdom, Madison argued, the key to mending the evils of factions is to have a large republic—the larger, the better. The more diverse the society, the less likely it is that an unjust majority can form. Madison certainly had no intention of creating a majoritarian democracy; his view of popular government was much more consistent with the model of pluralist democracy discussed in Chapter 2.

Madison pressed his argument from a different angle in *Federalist* No. 51 (see the appendix). Asserting that “ambition must be made to counteract ambition,” he argued that the separation of powers and checks and balances would control efforts at tyranny from any source. If power is distributed equally among the three branches, he argued, each branch will have the capacity to counteract the others. In Madison’s words, “usurpations are guarded against by a division of the government into distinct and separate departments.” Because legislative power tends to predominate in republican governments, legislative authority is divided between the Senate and the House of Representatives, which have different methods of election and terms of office. Additional protection arises from federalism, which divides power “between

Can you explain why . . . having many factions reduces the danger of factions?

two distinct governments”—national and state—and subdivides “the portion allotted to each . . . among distinct and separate departments.” Madison called this arrangement of power, divided as it was across and within levels of government, a “compound republic.”

The Antifederalists wanted additional separation of powers and additional checks and balances, which they maintained would eliminate the threat of tyranny entirely. The Federalists believed that such protections would make decisive national action virtually impossible. But to ensure ratification, they agreed to a compromise.

A Concession: The Bill of Rights

Can you explain why . . . some of the nation's founders thought that adding a bill of rights to the Constitution might actually limit individual rights?

Despite the eloquence of the *Federalist* papers, many prominent citizens, including Thomas Jefferson, were unhappy that the Constitution did not list basic civil liberties—the individual freedoms guaranteed to citizens. The omission of a bill of rights was the chief obstacle to the adoption of the Constitution by the states. (Seven of the eleven state constitutions that were written in the first five years of independence included such a list.) The colonists had just rebelled against the British government to preserve their basic freedoms. Why did the proposed Constitution not spell out those freedoms?

The answer was rooted in logic, not politics. Because the national government was limited to those powers that were granted to it and because no power was granted to abridge the people's liberties, a list of guaranteed freedoms was not necessary. In *Federalist* No. 84, Hamilton went even further, arguing that the addition of a bill of rights would be dangerous. To deny the exercise of a nonexistent power might lead to the exercise of a power that is not specifically denied. For example, to declare that the national government shall make no law abridging free speech might suggest that the national government could prohibit activities in unspecified areas (such as divorce), which are the states' domain. Because it is not possible to list all prohibited powers, wrote Hamilton, any attempt to provide a partial list would make the unlisted areas vulnerable to government abuse.

But logic was no match for fear. Many states agreed to ratify the Constitution only after George Washington suggested adding a list of guarantees through the amendment process. Well in excess of one hundred amendments were proposed by the states. These were eventually narrowed to twelve, which were approved by Congress and sent to the states. Ten became part of the Constitution in 1791, after securing the approval of the required three-fourths of the states. Collectively, the ten amendments are known as the **Bill of Rights**. They restrain the national government from tampering with fundamental rights and civil liberties and emphasize the limited character of the national government's power (see Table 3.2).

Ratification

The Constitution officially took effect upon its ratification by the ninth state, New Hampshire, on June 21, 1788. However, the success of the new government was not ensured until July 1788, by which time the Constitution was ratified by the key states of Virginia and New York after lengthy debate.

~~The reflection and deliberation that attended the creation and ratification of the Constitution signaled to the world that a new government could be~~

Bill of Rights The first ten amendments to the Constitution. They prevent the national government from tampering with fundamental rights and civil liberties, and emphasize the limited character of national power.

TABLE 3.2 The Bill of Rights

The first ten amendments to the Constitution are known as the Bill of Rights. The following is a list of those amendments, grouped conceptually. For the actual order and wording of the Bill of Rights, see the appendix.

Guarantees	Amendment
Guarantees for Participation in the Political Process	
No government abridgement of speech or press; no government abridgement of peaceable assembly; no government abridgement of petitioning government for redress.	1
Guarantees Respecting Personal Beliefs	
No government establishment of religion; no government prohibition of free religious exercise.	1
Guarantees of Personal Privacy	
Owner's consent necessary to quarter troops in private homes in peacetime; quartering during war must be lawful.	3
Government cannot engage in unreasonable searches and seizures; warrants to search and seize require probable cause.	4
No compulsion to testify against oneself in criminal cases.	5
Guarantees Against Government's Overreaching	
Serious crimes require a grand jury indictment; no repeated prosecution for the same offense; no loss of life, liberty, or property without due process; no taking of property for public use without just compensation.	5
Criminal defendants will have a speedy public trial by impartial local jury; defendants are informed of accusation; defendants may confront witnesses against them; defendants may use judicial process to obtain favorable witnesses; defendants may have legal assistance for their defense.	6
Civil lawsuits can be tried by juries if controversy exceeds \$20; in jury trials, fact-finding is a jury function.	7
No excessive bail; no excessive fines; no cruel and unusual punishment.	8
Other Guarantees	
The people have the right to bear arms.	2
No government trespass on unspecified fundamental rights.	9
The states or the people retain all powers not delegated to the national government or denied to the states.	10