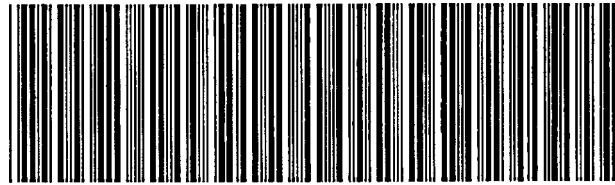


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*** CONSTITUTION ***

EDITED BY

Neil L. York

BRIGHAM YOUNG UNIVERSITY

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Introduction

In his 1987 presidential address to the Organization of American Historians, Leon Litwack warned against being swept up in Bicentennial hoopla.¹ For too many, he feared, celebration of the “founding” would provide an excuse for parades and parties rather than a time for introspection and reevaluation; the Constitution, after all, is venerated by most Americans as “holy writ”—a fundamental testament of national ideals.² That it has become a source of great pride and is somehow inseparable from an American sense of political self should not be surprising. By attaching such significance to it we are following the lead of Aristotle, who declared that the forming of a constitution is the most important step in organizing a political society. Nevertheless, Aristotle was not always clear in explaining what he meant by constitution. He ambiguously described a constitution as “the arrangement of the inhabitants of a state” as well as “the arrangement of power in a state”; he spoke, confusingly, of a constitution as being synonymous with government and yet greater than government because it was concerned first and foremost with the definition of citizenship.³

Americans escaped some of the ambiguities of Aristotle’s constitution when writing their own “Constitution”—a document of ink on parchment, a tangible embodiment of Aristotle’s more abstract notion. Yet Americans can wander off into their own ambiguities and inconsistencies when interpreting their Constitution, especially when they conflate that Constitution with constitutionalism and the age-old attempt to define rights under law. It should be remembered that the Constitution of 1787 followed a long line of earlier constitutions. Colonial Americans had claimed “constitutional” rights derived from their charters; before 1776 they repeatedly attempted to establish and secure liberties they

believed were protected under the unwritten English constitution. State constitution-making during the Revolutionary era and adoption of the Articles of Confederation preserved the connection to that tradition even as Americans struck out on their own. So, too, did the Declaration of Independence by marking (at least symbolically) the emergence of a distinct people committed to the promotion of freedom and rights. The Framers of the Constitution understood this even if many contemporary Americans do not. Indeed, for some Americans of the current generation the Constitution of 1787 has been their only “true” constitution. There was no other before it and nothing could ever take its place.

Present preferences aside, in 1787 there were men of good conscience and wide political experience who objected to the new frame of government that came out of the Philadelphia Convention. They continued to support the Articles of Confederation as the best “constitution” for the nation, and they opposed the “consolidated” government that the Constitution would bring with it. Gone, they argued, would be the federalism they trusted in, destroyed along with the revolutionary principles of 1776. Although they lost the debate and the Articles were cast aside, objections to the Constitution and desires to modify or move beyond it did not end with their defeat.

Christian zealots and statesmen such as Thomas Jefferson fretted over the silence of the Constitution on the subject of religion, but for very different reasons. Jefferson worried because the Constitution did not expressly guarantee complete freedom of religion, where everyone had the right to believe and worship—or disbelieve and shun church; zealots were anxious because the Constitution did not ban atheists or infidels from holding high office. James Madison wanted to prevent the overextension of national power under a constitution that he helped draft. Even so, because he wanted to insure that future generations of virtuous men would be trained to lead the people, as president he echoed George Washington in calling for a university funded and erected by the national government. Madison, then, joined Jefferson and other leaders who were obliged to define and redefine the limits of government as they put the Constitution into practice.

What, for example, came first, state or national citizenship? The Constitution was all but silent on this question, skirting the very issue that Aristotle had contended constitutions were ex-

pected to define. During the Philadelphia Convention William Samuel Johnson had observed that the “controversy must be endless whilst Gentlemen differ in the grounds of their arguments,” dividing between “those on one side considering the States as districts of people composing one political society” and “those on the other considering them as so many political societies.”⁴ Civil war four generations later was a bloody reminder of the cost of leaving such questions unanswered. It likewise showed that the Constitution was morally ambiguous because it sanctioned the existence of slavery, reflecting the Founders’ choice of “the slaveholders right to property” over “the slaves right to liberty.”⁵ Reconstruction brought an end to slavery and thereby, through amendment, freed the Constitution from its “covenant with death,”⁶ but the full blessings of citizenship were not extended immediately to emancipated slaves—or to Indians or women and others kept on the fringe of public life. Critics of the Constitution conclude that for this and other reasons the Constitution has been, as one put it, a “huge flop.”⁷

The past Bicentennial year saw the Iran-Contra hearings, which caused a few—not many, but a few—to ask if the Constitution is working at all. During that same year Archibald Cox completed his book on the Supreme Court and the Constitution. Despite his having been fired as a special prosecutor in the notorious “Saturday Night Massacre” of October 1973, or perhaps because of the way that the larger Watergate crisis was resolved less than a year later, Cox concluded that the Constitution “serves us well.”⁸ That, by and large, seems to be the opinion of most Americans.

Their general popularity notwithstanding, the Constitution and the men who made it are not easy to explain; historians who have made the attempt often (and quite naturally) disagree over what the Founders intended to do as well as over what they ended up doing. Although the Bicentennial of the Constitution did not (and could not) bring a scholarly consensus, those who study the “founding” reached a wider national audience.

Beginning in 1985 and continuing for the next two years, Brigham Young University sponsored a series of lectures on the Constitution.⁹ The participants in the 1987 program delivered addresses drawn from the essays printed here. One additional essay was written later just for this volume, bringing the total to

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six. All of the authors long pondered the issues before they accepted the Founders' "standing invitation" to review once again the handiwork of the Philadelphia Convention.¹⁰ As students of a bygone era they could do no more; as scholars seeking to improve our understanding they could do no less.

NEIL L. YORK
March 1988

Notes

1. Leon Litwack, "Trouble in Mind: The Bicentennial and the Afro-American Experience," *Journal of American History* 74 (1987): 313–37.
2. James Oliver Robertson, *American Myth, American Reality* (New York: Hill and Wang, 1980), 65–69.
3. Richard McKeon, ed., *The Basic Works of Aristotle* (New York: Random House, 1941), in "Politics," bk. 3, chap. 1, pp. 1176, 1178; bk. 3, chap. 7, p. 1185; bk. 4, chap. 1, p. 1206. "Constitution" is often used as the translation for the Greek *politeia*; the terms are not perfectly interchangeable, just as our modern notions about the relationship of law to society differ from those of the Greeks.
4. As taken from Max Farrand, ed., *The Records of the Federal Convention of 1787*, rev. ed., 4 vols. (New Haven: Yale University Press, 1937), 1:461; Johnson's words as recorded by Madison.
5. Morton White, *Philosophy, The Federalist, and the Constitution* (New York: Oxford University Press, 1987), 221–22.
6. William Lloyd Garrison characterized the Constitution as a "covenant with death." See Paul Finkelman, *An Imperfect Union* (Chapel Hill: University of North Carolina Press, 1981); and Finkelman, "Slavery and the Constitutional Convention: Making a Covenant With Death," in Richard Beeman et al., eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill: University of North Carolina Press, 1987), 188–225.
7. Ferdinand Lundberg, *Cracks in the Constitution* (Secaucus, N.J.: Lyle Stuart, 1980), 42.
8. Archibald Cox, *The Court and the Constitution* (Boston: Houghton Mifflin, 1987), 26.
9. The papers for these programs have been published in Gary C. Bryner and Noel B. Reynolds, eds., *Constitutionalism and Rights* (Provo, Utah: Brigham Young University, 1987); and Gary C. Bryner and Dennis L. Thompson, eds., *The Constitution and the Regulation of Society* (Provo, Utah: Brigham Young University, 1988).
10. Philip Kurland and Ralph Lerner, eds., *The Founders' Constitution*, 5 vols. (Chicago: University of Chicago Press, 1987), 1:xiii, noted that the Founders, by their extensive correspondence and record keeping, in effect left a "standing invitation" for later generations to examine what they had done.

The July 1987 issue of *The William and Mary Quarterly* focused on the Constitution and included a "Forum" on Gordon S. Wood's *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina Press, 1969). The twelve essayists in this forum, distinguished scholars all, concurred that Wood's study deserves its reputation as a "modern classic"—a "tour de force," as one put it. In a sense Wood had answered his own call, made three years before the book was published, for intellectual history that went beyond the mere explication of ideas, a new approach that dug beneath the surface to expose the underlying political culture. For his efforts he received the Bancroft and John H. Dunning book prizes.

Wood's book was a revised version of his 1964 doctoral dissertation, written under Bernard Bailyn at Harvard University. Born in nearby Concord, Massachusetts, in 1933, Wood did his undergraduate work at Tufts University. He was a postdoctoral fellow at the Institute of Early American History and Culture in Williamsburg, Virginia, and taught at Harvard and the University of Michigan before taking his post as professor of history at Brown University. In 1982–83 he was Pitt Professor of American History at Cambridge University.

It would be impossible for Professor Wood to summarize in a brief essay the six hundred carefully crafted pages of *The Creation of the American Republic*. He has, however, extracted one major theme for discussion here—namely, he contends that the Framers of the Constitution broadened the old idea of popular sovereignty to a new conception of the people and constituent power. They made the people the arbiters of political legitimacy and yet, at the same time, they hoped that government would be led by a virtuous elite. Through all of this they were only partially aware that they had created a "new science of politics."

I

THE POLITICAL IDEOLOGY OF THE FOUNDERS



Gordon S. Wood

Political ideology—that's not the way we usually describe the thought of the Founders. Political philosophy, political theory, or political ideas perhaps, but not "ideology." The term smacks too much of deception, of superstructure, of rationalization, of a covering of some sort, of ideas being used to mask some deeper-lying social interests.

Yet "political ideology" was the term suggested to me by the editor of these essays, and I think it is an appropriate term for a historian to use. For political thought studied historically is always ideology, always rooted in specific social circumstances. Historians by trade are interested in the particular sources of ideas in particular times and places. They want to know why specific individuals spoke and wrote as they did. But ideas do not have to remain ideology, do not have to remain rooted in specific circumstances of time and place. What particular individuals spoke and wrote can transcend those individuals' intentions, interests, and desires and become part of the public culture, become something larger and grander than its sources. That is certainly what happened with the political ideology of the Founders.

Many of the great constitutional principles celebrated during these Bicentennial occasions—separation of powers, federalism, checks and balances, judicial review, popular sovereignty—were

not clearly in the minds of the Framers in the summer of 1787 when they set about the business of forming a new national government. Americans had used several of these terms—such as separation of powers, balanced government, or popular sovereignty—earlier in 1776 when they formed their revolutionary state constitutions; but the terms then did not have the meanings they would later acquire as a consequence of the making of the federal Constitution of 1787. The truth is that many of our most cherished principles of constitutionalism associated with the founding of the national government were created, so to speak, inadvertently. They were the products not of closet philosophizing but of contentious political polemics. The Framers were not ivory-tower academics working out their political theories in the quiet of a study (though some of them, like James Madison, tried to do just that). They were political leaders, with constituencies and interests to protect and promote, and they were caught up in perhaps the greatest crisis of their crisis-filled lives. Thus they were usually compelled to think, as it were, on their feet, in the heat and urgency of debate.

They were not scholars, at least not in any modern sense of the term; they were not demigods; they were not even geniuses; but they were thoughtful, articulate, often well-read men who usually thought of their audience as men like themselves, which is the major reason the learned quality of their thinking has not generally been duplicated by later American political leaders. Democracy and equality are good things, but they did not come cheap. One of the prices we Americans have had to pay for them was a change in the character of our political rhetoric from that high level common to the Revolutionary era.

The changes were occurring even as the Framers debated the Constitution. The members of the Philadelphia Convention went to extraordinary lengths to keep their proceedings secret in order to protect the delegates' freedom of expression. The result was a degree of candor and boldness by the delegates in discussing sensitive issues like aristocracy and popular power that is notably missing from the debates in the various state ratifying conventions held several months later. Since the ratifying conventions were open to the press, the difference in tone and character of the respective debates reveals just what a broader, more democratic public could mean for the intellectual life of American politics.

Broadening and deepening the audience for political rhetoric

may have meant a certain loss of candor and perhaps in time a lessening of intellectual quality, but at the moment in 1787–88 it was the cause of the Founders' creativity and originality. Precisely because the Framers had to explain and justify the new Constitution to a broader and more democratic public than had ever existed in America before, they were forced to put their thoughts in forms palatable to this new public. They had to reconcile their new Constitution with democracy—to find, as James Madison put it, “a republican remedy for the diseases most incident to republican government.”¹ In the end this democratic pressure, this need to persuade a growing and skeptical public of the popular character of the new government, made all the difference. It was the source of the Founders' intellectual achievement.

Reconciling the new Constitution with popular principles was not easy. There is little doubt that on its face the Constitution violated much of the conventional popular thinking of late eighteenth-century America. It was a very radical proposal, more radical than we today can properly appreciate. We today are too used to a strong national government to understand how unexpected, how remarkable in 1787 the Constitution was. In place of the Articles of Confederation, a league or alliance of independent states, it created a strong unitary national government that operated directly on individuals. No one in 1776 had predicted or had wanted such a strong government. Such national power was then beyond anyone's wildest dreams. The colonists in the British empire had experienced enough abuses from far-removed governmental power to make them deeply fearful of creating another distant and powerful government. And had not the best minds of the eighteenth century, including Montesquieu, repeatedly told them that a large continental-size republic was a theoretical impossibility?

Something momentous happened in the decade following 1776 to change American thinking so dramatically. We are apt to think, as many historians have, that it was the accumulated deficiencies of the Articles of Confederation that lay behind the move for a new national Constitution. It is true that there were national problems of taxation, of commerce, of credit, of foreign policy that made many leaders increasingly disgusted with what they called the “imbecility” of the Confederation. By 1787 nearly everyone, even those who would later oppose the Constitution,

expected something to be done to strengthen the Articles of Confederation. "It is on all hands acknowledged," declared a Massachusetts opponent of the Constitution, "that the federal government is not adequate to the purpose of the Union."² Many Americans shared a deeply felt vision of the United States as a single nation and wanted a firmer union. But many of them also knew that the principal weaknesses of the Confederation and the strengthening of union could be solved without totally scrapping the Articles of Confederation and creating a radically powerful national government, the like of which had not been even conceived of ten years earlier.

The widespread concern both for the inadequacies of the Confederation and the nationhood of the United States was important: it gave the Framers of the Constitution their initial opportunity and advantage. It accounts for the remarkably casual acceptance of the May 1787 meeting in Philadelphia by many later opponents of the Constitution, and in the end it may account for the eventual reluctant acceptance of the Constitution by many of these same opponents. But the weaknesses of the Confederation and the dream of nationhood, however keenly felt, cannot ultimately explain the nature of the Constitution proposed by the Philadelphia Convention, not to mention the extraordinary Virginia Plan which was the Convention's working model.

The fact of the matter is that the Convention went far beyond what most people expected, went far beyond the charge given it by the Confederation Congress in February 1787—to meet "for the sole and express purpose of revising the Articles of Confederation."³ Instead the Convention ignored the Articles of Confederation and created in its place a totally different and unexpectedly powerful national government.

It did so because the men there were worried about more than just the problems of the Confederation: they were worried about the problems of the states as well. Indeed, it was the oppressive behavior of the state legislatures that was uppermost in the minds of most of the Framers. The state legislatures were the most democratic and most representative lawmaking bodies in the world. They were the true testing ground of the Americans' revolutionary experiment in popular government. And therefore failure in these democratic state legislatures was no simple practical matter; it struck at the heart of what the Revolution was

about. For abuses by popularly elected legislatures, said James Madison, brought "into question the fundamental principle of republican government, that the majority who rule in such governments are the safest guardians both of public good and private rights."⁴

In 1776 the Revolutionaries had placed great confidence in the ability of the state legislatures to promote the public good and protect the people's liberties. After all, had not the various colonial legislatures been the great bulwarks of defense against the power of the royal governors? In their revolutionary state constitutions written in 1776–77 Americans had increased the size of their state legislatures, made them more equally representative of the people than the colonial assemblies had been, and granted enormous power to them. But in the years after 1776 these state legislatures did not live up to the initial expectations of many of America's leaders. The Revolution unleashed acquisitive and factional economic interests that no one had quite realized existed in American society; and in the decade after Independence these partial factional interests demanded and got protection and satisfaction from state legislatures that were now elected annually (an innovation for most) by the broadest electorates in the world. Everywhere in the states electioneering and the open competition for office increased, as new petty, uneducated entrepreneurs like Abraham Yates, a part-time lawyer and shoemaker of Albany, and William Findley, a Scots-Irish ex-weaver of western Pennsylvania, used popular electoral appeals to vault into political leadership in the state legislatures.

No one saw more clearly what was happening than did James Madison. In the winter of 1786–87 he put his ideas together in a working paper that he called "vices of the political system of the United States." It formed the basis of many of his ideas expressed during the debate over the Constitution. In this paper he concentrated on the deficiencies of the state legislatures. These legislatures were swallowing up the powers of the other branches of the state governments and were passing multitudes of special-interest legislation—stay laws, paper money bills, and other debtor relief laws—in violation of the rights of creditors and other minorities. There were more laws passed than people could keep up with, in fact, said Madison, more laws in the decade since independence than in the previous century of colonial history.

Madison's disgust with the oppressive vagaries of state lawmaking did not come from reading all those bundles of books that Jefferson was sending him from Paris. He learned about the vices of state legislative politics firsthand—as a member of the Virginia Assembly between 1784 and 1787.

Madison had some notable legislative achievements during these years, particularly Jefferson's bill for religious freedom. But generally his experience as a legislator was not a happy one. It was not what he had expected from republicanism and popular government. Really for the first time he found out what democracy in America might mean. Many of his fellow legislators were not like him or Jefferson. They had never been to William and Mary, let alone Princeton. They were narrow-minded and parochial and were bent on serving some "particular interest." They had little comprehension of the collective good—not even that of Virginia, never mind that of the United States. They did not even seem to understand the legislative process. They postponed taxes, subverted debts owed to the subjects of Great Britain, and passed, defeated, and repassed bills in the most haphazard manner. Madison found himself having to make legislative deals and trade-offs, agreeing to bad laws for fear of getting worse ones, or giving up good bills "rather than pay such a price" as his opponents wanted. Many of the legislators pandered to the public, especially to its "itch for paper money," and were always trying to appear popular. This appealing to the people as the ultimate arbiter had none of the beneficial effects good republicans had expected. A bill having to do with court reform was, for example, "to be printed for consideration of the public"; but "instead of calling for the sanction of the wise and virtuous," this appeal to the people, Madison feared, would only "be a signal to interested men to redouble their efforts to get into the Legislature." Democracy was no solution to the problem; democracy was the problem.⁵

What the Virginia legislature was doing in the 1780s does not strike us today as all that unusual or alarming, and we can scarcely muster much sympathy for Madison's complaints. He only described what we now take for granted and what we have become very used to—good old popular American politics with all its horsetrading and pork barreling. We are not surprised or upset when representatives say they have to look after their constituents' interests. We are used to our politicians running scared

and being worried about their particular districts. That is what American democratic politics is about.

However disillusioned Madison was with this democratic politics—this incessant scrambling for interests, this continual pandering to voters—he knew now that it was an ineradicable part of American social reality. People had interests: that is all there was to it. Because they wanted to protect their interests, they divided into political factions. The causes of faction were, quite simply, “sown in the nature of man.”⁶ It was utopian to expect most people to put aside these interests for the sake of some nebulous public good. And it would be a denial of liberty to try to eliminate them. Yet Madison hoped that the new federal Constitution would somehow be able to solve this problem of American democratic politics and transcend the problem of self-interested and tyrannical majorities. “It may be asked,” he said, “how private rights will be more secure under the guardianship of the General Government than under the state governments, since they are both founded on the republican principle which refers the ultimate decision to the will of the majority.”⁷ What, in other words, was really different about the new national government from the state governments that would keep it from succumbing to the same popular pressures from special-interest majorities as were besetting the state governments in the 1780s?

What would be different, Madison and the other Federalists hoped, would be the character of the persons holding office in the new national government. What they wanted in office were more men who possessed “the most attractive merit and the most diffusive and established characters”; gentlemen who were well known, liberally educated, cosmopolitan, and virtuous; gentlemen who were capable of “disinterested” judgment.⁸

“Disinterested” was a common term men like Madison invoked. They meant by it not what today we often mean—uninterested or unconcerned—but rather impartial and unbiased by personal advantage. A “disinterested” person was not someone who had no interests or did not care about them but rather someone who did not allow his concern for his private interests to affect his judgment. Ideally a public official was to be a “disinterested and dispassionate umpire,” someone who was most capable of transcending his own private interests and those of others and of deciding what was in the public interest of the whole community.⁹

Who were most likely to be such disinterested and dispassionate umpires, men capable of standing above the various contending interests of the society? The Federalists thought that such leaders were most apt to come from the ranks of gentlemen. "Gentleman" was a term of great significance for the eighteenth century, one that we today have almost totally lost. Then it was ideally confined to a tiny proportion of the society, to men with sufficient independence, wealth, and leisure that they did not have to work or exert themselves in the mean and sordid business of making money in the marketplace. This vision of a leisured aristocracy being the best source of political leadership went back to classical antiquity, to Aristotle and Cicero. In the eighteenth-century English-speaking world the ideal seemed best embodied in the English landed gentry, who lived off rents from their tenants. To Adam Smith these rents were what gave the English landed aristocracy its unique qualifications to be disinterested public leaders. Their income from rents, said Smith, "costs them neither labour nor care, but comes to them as it were, of its own accord, and independent of any plan or project of their own." Therefore these landed gentry, "being attached to no particular occupation themselves, have leisure and inclination to examine the occupations of other people." They were best equipped to be disinterested and dispassionate umpires, which may help explain why the English landed aristocracy maintained its political dominance in Great Britain as long as it did.¹⁰

In America there was no ready equivalent of this English landed aristocracy. Wealthy southern slaveholding gentry obviously came closest to this English ideal, but their income scarcely came without exertion and their slaves were hardly comparable to English tenants. The southern planters, despite their strenuous efforts to hide the fact, were deeply involved in the vicissitudes and dependencies of the international marketing of staple crops. In the north, leisured, independent gentry were even harder to find. Merchants, no matter how wealthy, were tainted by their participation in trade. Therefore, those merchants who wanted to become public leaders usually had to abandon their businesses and ennoble themselves in order to gain full acceptance as public leaders. John Hancock, George Clymer, Henry Laurens, Elbridge Gerry, and eventually even Robert Morris all shed their merchant

businesses during the Revolution in hopes of convincing people of their capacity for disinterestedness.

Mechanics or artisans who worked with their hands were disqualified for high public office by definition; they were not even gentlemen. The big question was whether or not members of the professions, such as lawyers, were capable of disinterested service. Alexander Hamilton argued strongly in *The Federalist* that, unlike merchants, mechanics, or farmers, "the learned professions . . . truly form no distinct interest in society"; thus they "will feel a neutrality to the rivalships between the different branches of industry" and will be most likely to be "an impartial arbiter" between the diverse interests of a marketplace society.¹¹ Others, however, were not so sure; and the argument over the potential disinterestedness of the professions continued well into the nineteenth century, and in a different form even into our own time.

However unsentimental and realistic Madison was about the interested nature of man and the prevalence of clashing interests in society, he still clung to the ancient classical ideal of disinterested leadership. He still hoped against hope that in the new federal system it might be possible amid all the competing private and factional interests for a few enlightened men of education and liberal sentiments to gain office and act in a disinterested manner.

How was this to be done? By elevating and enlarging the arena of politics. Raising important governmental decision making to the national level would expand the electorate for each official and at the same time would reduce the number of those elected. This elevated government and expanded electorate would then act as a kind of filter, refining the kind of men who would become national leaders. In a larger arena with a smaller number of representatives, only the most notable, the most educated, the most disinterested were likely to gain political office. If the people of North Carolina, for example, could select only five men to the federal Congress in contrast to the 232 they elected to their state assembly, they were more apt in the case of the few national representatives to ignore obscure ordinary men with "factious tempers" and "local prejudices" and elect those gentry with "the most attractive merit and the most diffusive and established characters."¹² We have only to compare the small number of sixty-five

representatives who sat in the first national Congress with the thousand or more representatives in the state legislatures in order to understand what this narrowing and refining process of the Federalists might mean. As one Georgia Federalist put it, in the new national government "none will be distinguished with places of trust but those who possess superior talents and accomplishments."¹³ The Federalists' political ideology rested on a particular insight into the sociology of American politics.

No wonder, then, that the opponents of the Constitution—the Antifederalists—charged that the new national government was rushing Americans into aristocracy. They saw at once the social implications of this elevated federal government where presumably only "high-toned" and "great men" would hold office. This Constitution, they said, was designed to "raise the fortunes and respectability of the well-born few, and oppress the plebians." The Antifederalists opposed the new government for precisely the same social reasons that the Federalists favored it.¹⁴

Yet the Federalists knew that in the growing egalitarian atmosphere of America they could no longer openly defend aristocracy, even a natural aristocracy. They anticipated the Antifederalists' objections. "When this plan goes forth," John Dickinson warned the Philadelphia Convention, "it will be attacked by popular leaders, aristocracy will be the watchword; the Shibboleth among its adversaries." Precisely because the Antifederalists, as Alexander Hamilton observed in the New York ratifying convention, did talk "so often of an aristocracy," the Federalists were continually compelled to play down or disguise the social expectations and implications of the Constitution.¹⁵ They felt the need to say over and over how popular and democratic the new system was. Much of *The Federalist*, for example, was devoted to demonstrating just how "strictly republican" the Constitution was. Of the six "particulars" that "Publius," in *Federalist* No. 1, said he intended to discuss, the fourth, "The conformity of the proposed Constitution to the true principles of republican government," took up forty-eight of the eighty-five essays.¹⁶

In the various state ratifying conventions the Federalists went out of their way to stress their commitment to popular government. "The supporters of the Constitution," declared John Marshall in the Virginia Convention, "claim the title of being firm friends of the liberty and the rights of mankind." The Federalists,

he said, were the real protectors of the people; they "idolize democracy." Far from being supporters of aristocracy, the Federalists admired the Constitution precisely because they "think it a well-regulated democracy."¹⁷

Under the polemical pressure placed on them by the opponents of the Constitution, the Federalists were compelled to think freshly and to create something more than they intended. Their political thinking soon came to transcend its purposes. By being forced to debate and answer the objections of the Antifederalists, the Federalists were led into developing arguments and positions that they otherwise might not have made. The result was the most creative and significant moment of theorizing about politics in our nation's history. Simply because they forced this debate and the creative achievements that followed from it, the Antifederalists deserve to be numbered among the Founders.

To the Antifederalists the Constitution created a republic of continental size that violated the principles of the best political thinking of the day. Montesquieu among others had warned that a republic, precisely because it rested on the consent of the people, had to be small in size and homogeneous in character. If it were too big, composed of too many different groups and interests, it would be torn apart by factionalism and clashes among these opposing interests. It was impossible for a single government to comprehend both Georgia and Massachusetts. The very idea of a single republic "on an average one thousand miles in length, and eight hundred in breadth, and containing six million of white inhabitants all reduced to the same standard of morals, of habits, and of laws, is," said the Antifederalists, "in itself an absurdity, and contrary to the whole experience of mankind."¹⁸

These were the old-fashioned theories of 1776, wrote Madison with a decade's experience behind him. Americans, he said, used to think that the people composing a republic "enjoy not only an equality of political rights, but that they have all precisely the same interests and the same feelings in every respect." Such a republic had to be small in size in order to maintain this similarity of feelings and interests. It was assumed in such a small republic that "the interest of the majority would be that of the minority also; the decisions could only turn on mere opinion concerning the good of the whole of which the major voice would be the safest criterion; and within a small sphere this voice could

be most easily collected and the public affairs most accurately managed." Now, however, to Madison and other disillusioned Federalists, this assumption about republicanism seemed "altogether fictitious." No society, no matter how small, "ever did or can consist of so homogeneous a mass of citizens." All "civilized societies" were made up of "various and unavoidable" distinctions: rich and poor, creditors and debtors, farmers and manufacturers, merchants and bankers, and so on.¹⁹

In a small republic it was sometimes possible for one of these competing interests or factions to gain majority control of a legislature and become oppressive. This problem of tyrannical majority factions was the cause of the crisis of republicanism in the 1780s. "To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government," wrote Madison, was "the great object to which our inquiries are directed."²⁰

Madison and other Federalists solved the problem by turning the conventional assumptions about the size of republics on their head. Instead of trying to keep the republics small and homogeneous, Madison seized on and ingeniously developed David Hume's radical suggestion that a republican government operated better in a large territory than in a small one. The republic, said Madison, had to be so enlarged, "without departing from the elective basis of it," that "the propensity in small republics to rash measures and the facility of forming and executing them" would be stifled. In a large republican society "the people are broken into so many interests and parties, that a common sentiment is less likely to be felt, and the requisite concert less likely to be formed, by a majority of the whole."²¹ Madison and the other Federalists, in other words, accepted the reality of diverse competing partial interests in American politics and were quite willing to allow them free play.

But Madison was not a modern-day pluralist. He did not expect the new federal government to be neutralized into inactivity by the competition of these numerous diverse interests. Nor did he see public policy or the common good emerging naturally from the give-and-take of these clashing interests. He did not expect the new national government to be an integrator and harmonizer of the different interests in the society; instead he expected it to be a "disinterested and dispassionate umpire in

disputes between different passions and interests in the State."²² And it would do so because the men holding office in the new central government would by their fewness of numbers be more apt to be disinterested gentry who were not involved in the interest-mongering of the marketplace.

The new central government would combine the best of monarchy and republicanism. In monarchies the king was sufficiently neutral toward his subjects but often he sacrificed their happiness for his personal avarice or ambition. In small republics the government had no selfish will of its own, but it was never sufficiently neutral toward the various interests of the society. What the new extended republic would do, said Madison, was combine the good qualities of each. The new government would be "sufficiently neutral between the different interests and factions, to controul one part of the Society from invading the rights of another, and at the same time sufficiently controuled itself, from setting up an interest adverse to that of the whole society."²³

In other words, Madison was willing to allow ordinary people to pursue their partial selfish interests in the expectation that they would be so diverse and clashing that they would rarely be able to combine into tyrannical majorities. This competitive situation would then allow those with "enlarged" and "liberal" outlooks to dominate government and promote the common good. It seemingly had worked that way in American religion, which was a common analogy for Madison. The multiplicity of religious sects in America prevented any from dominating the state and permitted the enlightened reason of philosophes like Jefferson and himself to shape public policy and church-state relations. "In a free government," wrote Madison in *The Federalist*, "the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects."²⁴

This was one way in which Antifederalist arguments forced the Federalists to think freshly about politics and republican government. But as important and innovative as Madison's notion of an enlarged and elevated republic was, it did not match in originality and power, in sheer intellectual creativity, what the Federalists did with the idea of the sovereignty of the people.

The Antifederalists compelled the investigation of sovereignty by charging that the Constitution created what they called a

consolidation, an eventual weakening if not destruction of the separate state governments. "The question turns," declared Patrick Henry at the opening of the Virginia ratifying convention, "on that poor little thing—the expression, *We, the people*, instead of the states, of America." "States," said Henry, "are the characteristics and soul of a confederation. If the states be not the agents of this compact, it must be one great consolidated, national government, of the people of all the states." Other Antifederalists agreed. "Instead of being thirteen republics, under a federal head," wrote the "Federal Farmer," the Constitution "is clearly designed to make us one consolidated government." The separate states would sooner or later succumb to the centralizing authority of the new national government.²⁵

What gave power to these Antifederalist arguments that the proposed national government would inevitably end in a consolidation was the conventional eighteenth-century British theory of sovereignty. This was the notion expressed over and over during the debate between Britain and the colonies in the 1760s and 1770s—that in every state there had to be one final, indivisible, and incontestable lawmaking authority to which all other authorities must be ultimately subordinate. When Britain claimed that this supreme lawmaking authority lay in Parliament and the colonies in 1774 said that it lay in their separate colonial legislatures, the issue that would break the empire was drawn. The doctrine of sovereignty was the most important conception of politics in the eighteenth-century Anglo-American world, and it dominated the polemics of the entire Revolutionary generation from the moment in the 1760s when it was first raised through the adoption of the federal Constitution of 1787.

So when the Antifederalists in 1787–88 declared that there could be but one supreme legislative power in every state, they were invoking the logic of the best political science of the day. "I never heard of two supreme co-ordinate powers in one and the same country before," said Antifederalist William Grayson of Virginia, "I cannot conceive how it can happen." It was impossible, wrote Robert Yates of New York, that "the powers in the state constitution and those in the general government can exist and operate together." The logic of sovereignty demanded that either the state legislatures or the national Congress must pre-

dominate. There could be no compromise: "It is either a federal or a consolidated government, there being no medium as to kind."²⁶

And the Antifederalists had no doubt that the federal government under the proposed Constitution, with its great sweeping power and its "supreme law of the land" authority, "must eventually annihilate the independent sovereignty of the several states." How long, the Antifederalists asked, would the people "retain their confidence for two thousand representatives who shall meet once in a year to make laws for regulating the height of your fences and the repairing of your roads?" Once the Constitution was established, "the state governments, without object or authority, will soon dwindle into insignificance, and be despised by the people themselves."²⁷ This conclusion was dictated, the Antifederalists said, by the logic of the doctrine of sovereignty.

The Antifederalists had a formidable argument. And the Federalists were hard put to deal with it. Some devout nationalists were willing to concede the Antifederalists' fears of the logic of sovereignty, but most Federalists, more politically sensitive, were aware that the American people would not accept the swallowing up of the states. After all, those who had been at the Philadelphia Convention had seen even strong nationalists like William Paterson of New Jersey balk at the extreme consolidation expressed in the Virginia Plan. Federalists realized that they would have to answer the Antifederalist charges that sovereignty—final, incontestable lawmaking power—would inevitably pass to the national government or lose the argument and with it the Constitution.

At first the Federalists tried to evade, refine, or deny the concept of sovereignty. They attempted to delineate "joint jurisdictions" and "coequal sovereignties" and to work out some way of sharing sovereignty between the national and state governments. But such efforts were doomed to fail. The idea that there must be in every state one supreme final lawmaking power was too firmly entrenched in eighteenth-century thinking to be denied or avoided.²⁸

In the end it was left to James Wilson in the Pennsylvania ratifying convention to find the best answer to the Antifederalist arguments. More boldly and originally than anyone else, Wilson developed the position that became the basis of all Federalist thinking; indeed, it eventually became the basis of all thinking about

American government. Wilson challenged the Antifederalist case for the logic of sovereignty not by attempting to divide sovereignty or to deny it altogether, but by locating that power "from which there is no appeal, and which is therefore called absolute, supreme and uncontrollable"²⁹ only in the people at large. It seems a simple solution, but it was not, and its implications were enormous.

Sovereignty exists, conceded Wilson, but it cannot be located in either the federal government or the state legislatures; "it *resides* in the PEOPLE, as the fountain of government." The people never give up this sovereignty; it always stays with them. "They can delegate it in such proportions, to such bodies, on such terms, and under such limitations, as they think proper." Thus the people give some of their power to the institutions of the national government, some to the various state governments, and some at other extraordinary times to constitutional conventions for the specific purpose of making or amending constitutions. But unlike the British people in relation to their Parliament, the American people never surrender to any political institution or even to all political institutions together their full and final sovereign power. Always they retain their rights and their ultimate authority. Wilson was not saying, as men had for ages, that all governmental power was *derived* from the people. Instead he was saying that all government was only a temporary and limited agency of the people—out, so to speak, on a short-term, always recallable, loan. This was the principle underlying the new system, Wilson told the delegates in the Pennsylvania ratifying convention, and unless we grasp it, we shall never be able to understand how the people "may take from the subordinate governments powers with which they have hitherto trusted them, and place those powers in the general government."³⁰

Although no Federalist seized and wielded this principle of the sovereignty of the people with more authority than Wilson, other Federalists in the ratification debates were inevitably pressured by persistent Antifederalist references to consolidation into invoking the same principle. Indeed, once Madison, Hamilton, and other Federalists saw the political and intellectual advantages of locating sovereignty in the people as a whole, they could scarcely restrain their excitement. Now they had a ready-made justification both for the Philadelphia Convention's bypassing the Confederation Congress and for the reliance on special state conventions

in place of the state legislatures as instruments of ratification. Only by conceiving of sovereignty literally remaining with the people could the Federalists explain the emerging idea of federalism, where, contrary to the prevailing thought of the eighteenth century, both the state and national legislatures were equally representative of the people at the same time, "both possessed of our equal confidence—both chosen in the same manner, and equally responsible to us."³¹

Thinking about government and political power would never again be the same. Suddenly the Federalists saw all the fumbling efforts of Americans since the Revolution to create constitutions and governments in a new and clearer light. All the diverse and hitherto unrelated institutions and procedures that Americans had fashioned since 1776 now fell into place and were made into a meaningful whole. The Federalists now realized that government in America was different from government anywhere else in the world. It was not something that belonged to a king, a consul, a duke, a ruler, or any group of rulers whatsoever. For Americans there could be no preexisting rights of government adhering in anyone, no prerogative powers that the people had to bargain with and try to limit. In America, the Federalists concluded in wonderment at their own audacity, there no longer existed the age-old, seemingly permanent, distinction between rulers and ruled. Almost at a stroke the Federalists created the theoretical basis for all modern democracy.

With all sovereignty resting with the people the Federalists now saw that a constitution in America could no longer be regarded as it still was in England, as a contract or agreement between two hostile parties, between rulers and people. In America a constitution was not a charter of liberty granted by power but a charter of power granted by liberty. For Americans Magna Carta and the 1688 Bill of Rights were not constitutions at all. They "did not," wrote Thomas Paine, "create and give powers to Government in the manner a constitution does."³² In America the people created constitutions and governments. They temporarily granted some of their power to their governmental agents, and these agents were now diverse and many. No longer were the people represented exclusively in the houses of representatives. All parts of America's governments—senates, governors, Congress, the president, yes, even judges at both the national and

state level, could now intelligibly be described as the limited agents of the people. Government was simply the aggregation of the people's parcelled-out power, and all parts and all levels of this aggregate government were in some sense equally representative of the people.

There is no minimizing the significance of the Federalists' intellectual achievement hammered out in the heat of the struggle over the Constitution. It created a new realistic appreciation of the behavior of social groups and interests in politics and laid the basis for all subsequent American thinking about politics. Of course some Americans continued to talk about government and politics in traditional terms, in terms of compacts between rulers and ruled, in terms of embodying and balancing social estates in institutions of government. And the logic of the new Federalist thinking was not drawn out all at once. Indeed, we have had to wait nearly two centuries for some of the implications of the Federalist thinking to be fully realized. For example, only in the 1960s in its reapportionment decisions did the Supreme Court finally decide that the various state senates were as much agents of the people as the lower houses of representatives and thus electable only on the principle of "one person, one vote."

Still, despite the persistence of some traditional thinking well into the nineteenth century and some lingering relics of older assumptions even into our own time, what impresses about the intellectual achievement of 1787-88 is the rapidity with which it swept through the American mind and changed forever the discussion of American politics. Separation of powers, checks and balances, constitutions, limited government, all almost at once took on their modern meanings. With all governmental institutions being regarded as the people's limited agencies, the older identification of liberty as participation in government with liberty as the rights of individuals was broken. And the modern distinction between what has been called positive and negative liberty was born. In America it now became virtually impossible to think of liberty except as the rights of individuals standing against the government.

Like all ideologies these ideas born in the polemics over the Constitution quickly transcended the particular intentions of their creators. The Federalists, or the best of them, always tried to make theoretical sense of what they said and they always acted as

if their audience was more than just those of their own time and place. Thus, despite the haste and urgency with which they often spoke and wrote, the monumental significance of their intellectual achievement was almost immediately grasped. And because these Federalist ideas were so popularly based and embodied what Americans had been groping toward from the beginning of their history, they were easily adopted and expanded by others with quite different interests and aims at stake. Indeed, in time they contributed to the destruction of the very classical aristocratic world of disinterested leisured gentry leadership the Federalists had sought to maintain. What began as Federalist political polemics ended as American political theory. It was theory of an importance unequalled in our history. That is why we Americans continue to regard the Federalists as something other than ordinary political statesmen. They are truly our "Founders."

Notes

1. *Federalist* 10:84.
2. Herbert J. Storing, ed., *The Complete Anti-Federalist*, 7 vols. (Chicago: University of Chicago Press, 1981), 1:28. See *Federalist* 15:107 for Hamilton's discussion of "the imbecility" of the Confederation government.
3. Max Farrand, ed., *The Records of the Federal Convention of 1787*, rev. ed., 4 vols. (New Haven: Yale University Press, 1966), 3:14 [hereafter referred to as Farrand, *Records*].
4. James Madison to Thomas Jefferson, October 17, 1788, Julian Boyd, ed., *The Papers of Thomas Jefferson*, 20 vols. (Princeton: Princeton University Press, 1950-55), 14:19.
5. Madison to George Washington, December 24, 1786, Robert A. Rutland et al., eds., *The Papers of James Madison*, 14 vols. (Chicago: University of Chicago Press, 1975), 9:225. On Madison's experience in the Virginia Assembly, see Gordon S. Wood, "Interests and Disinterestedness in the Making of the Constitution," in Richard Beeman et al., eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill: University of North Carolina Press, 1987), 73-75.
6. *Federalist* 10:79.
7. Madison to Jefferson, October 24, 1787, Boyd, *Papers of Thomas Jefferson*, 12:276.
8. *Federalist* 10:83.
9. Madison to Washington, April 16, 1787, Rutland et al., *Papers of James Madison*, 9:384.
10. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. Ernest Rhys, 2 vols. (London: J. M. Dent; New York: E. P. Dutton, 1910), vol. 2, bk. 5, chap. 1, pt. 3, art. 2, "Of the Expense of the Institutions for the Education of Youth," p. 249, and vol. 1, bk. 1, chap. 11, "Conclusion of the Chapter," p. 230.
11. *Federalist* 35:215, 216.
12. *Ibid.*, 10:82, 83.
13. Storing, *Complete Anti-Federalist*, 1:51.
14. *Providence Gazette*, January 5, 1788.
15. Farrand, *Records*, 2:278; Jonathan Elliot, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, 2d ed., 5 vols. (Philadelphia: J. B. Lippincott, 1901), 2:256 [hereafter referred to as Elliot, *Debates*].
16. *Federalist* 39:240; 1:36.
17. Elliot, *Debates*, 3:222.
18. "Agrippa" Letters, in Paul L. Ford, ed., *Essays on the Constitution of the United States* (Brooklyn, N.Y.: Historical Printing Club, 1892), 64-65.

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19. *Federalist* 10. See Madison to Jefferson, October 14, 1787, Boyd, *Papers of Thomas Jefferson*, 12:277-78; Farrand, *Records*, 1:214.
20. *Federalist* 10:80.
21. Farrand, *Records*, 2:204; Madison to Jefferson, October 24, 1787, Boyd, *Papers of Thomas Jefferson*, 12:277-78; *Federalist* 10. See Douglass Adair, "That Politics May Be Reduced to a Science": David Hume, James Madison, and the Tenth *Federalist*," *Huntington Library Quarterly* 20 (1956-57): 343-60.
22. Madison to Washington, April 16, 1787, Rutland et al., *Papers of James Madison*, 9:384.
23. Madison, "Vices of the Political System of the United States," in *ibid.*, 9:357.
24. *Federalist* 51:324.
25. Elliot, *Debates*, 3:44; Letters from a Federal Farmer, in Paul L. Ford, ed., *Pamphlets on the Constitution of the United States* (Brooklyn, N.Y.: Historical Printing Club, 1888), 282.
26. Elliot, *Debates*, 3:281; [Robert Yates] "Sidney, I." June 13, 1788, in Paul L. Ford, ed., *Essays on the Constitution of the United States* (Brooklyn, N.Y.: Historical Printing Club, 1892), 304; Philadelphia, *Independent Gazetteer*, April 15, 1788, in John B. McMaster and Frederick D. Stone, eds., *Pennsylvania and the Federal Constitution 1787-88* (Lancaster, Pa.: Inquirer Printing and Publishing, 1888), 535.
27. Elliot, *Debates*, 2:312-13.
28. James Madison, in *ibid.*, 3:381.
29. McMaster and Stone, *Pennsylvania and the Federal Constitution*, 229.
30. James Wilson, December 4, 1787, Pennsylvania Convention Debate, in *ibid.*, 316, 302.
31. Elliot, *Debates*, 3:301.
32. Thomas Paine, *The Rights of Man*, in Philip S. Foner, ed., *The Life and Writings of Thomas Paine* (New York: Citadel Press, 1945), 382.

Peter S. Onuf was born in 1946, in New Haven, Connecticut. Now a professor of history at Southern Methodist University, he has also taught at the University of California at San Diego, Columbia University, and Worcester Polytechnic Institute. He went to Johns Hopkins University, where he received his A.B. (1967) and Ph.D. (1973). His doctoral dissertation, written under Jack P. Greene, was revised and published as *The Origins of the Federal Republic* (Philadelphia: University of Pennsylvania Press, 1983). Here Onuf argues that jurisdictional controversies within and among states in the 1770s and early 1780s helped shape American notions about federalism and union. As states attempted to define their sovereignty as well as that of the new nation, some leaders advocated a stronger central government to control what they saw as dangerously divisive state and sectional differences. Onuf's emphasis on the mix of interest and ideology in Revolutionary America is likewise reflected in numerous articles and in his recent history of the Northwest Ordinance, *Statehood and Union* (Bloomington: Indiana University Press, 1987).

Professor Onuf has shown that the desire to expand and the competition between states over what should be done with western lands in part determined the course of national politics. Regional differences as well as state rivalries within the same region therefore figure prominently in his arguments. In the following pages he discusses the ideas of those in the 1780s who not only felt that the Articles of Confederation were inadequate, but who also believed that the nation would be better off if it split into several separate republics. Such thinking, he contends, was a logical, intermediate step between the ideas about nationhood and sovereignty embodied in the Articles of Confederation and what would come with the Constitution. Champions of the Constitution countered with their appeal to "enlightened self-interest."

II

CONSTITUTIONAL POLITICS: STATES, SECTIONS, AND THE NATIONAL INTEREST



Peter S. Onuf

Ideally the federal Constitution would create “a more perfect Union.” But was a stronger central government compatible with the “Union” most Americans cherished? Federalists insisted that the union was more than a league of distinct, sovereign states, dedicated simply to collective security. As long as the states continued to control the central government, the union would remain radically imperfect and all efforts to amend the Articles of Confederation were bound to fail. Under the existing, “imbecilic” system, they argued, the true national interest could never be effectively promoted—or even recognized.

But proponents of constitutional reform had to overcome formidable obstacles. It was easy enough for them to demonstrate the defects of the Confederation Congress; it was much more difficult to redefine “union” in a way that would rationalize the new regime’s redistribution of power. Federalists had to persuade skeptical voters that a transcendent national interest really existed, while reassuring them that the price of a more “energetic” government would not be the loss of individual liberties or states’ rights.