CHAPTER SIX

THE CONSTITUTION AND THE NEW REPUBLIC

Framing a New Government
Adoption and Adaptation
Federalists and Republicans
Establishing National Sovereignty
The Downfall of the Federalists

By the late 1780s, many Americans had grown dissatisfied with the Confederation. It was, they believed, ridden with factions, unable to deal effectively with economic problems, and frighteningly powerless in the face of Shays's Rebellion. A decade earlier, Americans had deliberately avoided creating a strong national government. Now they reconsidered. In 1787, the nation produced a new constitution and a much more powerful government with three independent branches. Yet the adoption of the Constitution did not complete the creation of the republic. For, while most Americans came to agree that the Constitution was a nearly perfect document, they often disagreed on what that document meant.

FRAMING A NEW GOVERNMENT

The Confederation Congress had become so unpopular and ineffectual by the mid-1780s that it began to lead an almost wraithlike existence. In 1783, its members timidly withdrew from Philadelphia to escape army veterans demanding their back pay. They took refuge for a while in

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Princeton, New Jersey, then moved on to Annapolis, and in 1785 settled in New York. Delegates were often scarce. Only with great difficulty could Congress produce a quorum to ratify the treaty with Great Britain ending the Revolutionary War.

Advocates of Reform

In the 1780s, some of the wealthiest and most powerful groups in the population began to clamor for a stronger national government. By 1786, such demands had grown so intense that even defenders of the existing system reluctantly agreed that the government needed strengthening at its weakest point—its lack of power to tax.

The most resourceful advocate of a stronger national government was Alexander Hamilton, the illegitimate son of a Scottish merchant in the West Indies, who had become a successful New York lawyer. Hamilton now called for a national convention to overhaul the Articles of Confederation. He found an important ally in James Madison of Virginia, who persuaded the Virginia legislature to convene an interstate conference on commercial questions. Only five states sent delegates to the meeting, which took place at Annapolis, Maryland, in 1786; but the conference approved a proposal drafted by Hamilton for a convention of special delegates from all the states to meet in Philadelphia the next year.

At first there seemed little reason to believe the Philadelphia convention would attract any more delegates than had the Annapolis meeting. Then, early in 1787, the news of Shays's Rebellion spread throughout the nation, alarming many previously apathetic leaders, including George Washington, who promptly made plans to travel to Philadelphia for the Constitutional Convention. His support gave the meeting wide credibility.

A Divided Convention

Fifty-five men, representing all the states except Rhode Island, attended one or more sessions of the convention that sat in the Philadelphia State House from May to September 1787. These "Founding Fathers," as they became known much later, were relatively young (the average age was forty-four) and well educated by the standards of their time. Most were wealthy property owners, and many feared what one of them called the "turbulence and follies" of democracy. Yet all retained the Revolutionary suspicion of concentrated power.

The convention unanimously chose Washington to preside over its sessions and then closed its business to the public and the press. It then ruled that each state delegation would have a single vote and that major decisions would require not unanimity, as they did in Congress, but a simple majority. A needed a stronger

Virginia, the prepared delegations. Madison (thirty-six) a new "national" the convention from the debate by published, consisting. Even that brief d the Confederation reform that the was le Plan. It called for states would be re of the upper houses of representatives have no members. The proposal of the smaller states, offered an alterna
simple majority. Almost all the delegates agreed that the United States needed a stronger central government. But there agreement ended.

Virginia, the most populous state, sent a well-prepared delegation to Philadelphia led by James Madison (thirty-six years old), who had devised in some detail a plan for a new "national" government. The Virginia Plan shaped the agenda of the convention from the moment Edmund Randolph of Virginia opened the debate by proposing that "a national government ought to be established, consisting of a supreme Legislative, Executive, and Judiciary." Even that brief description outlined a government very different from the Confederation. But the delegates were so committed to fundamental reform that they approved the resolution after only brief debate.

There was less agreement about the details of Madison's Virginia Plan. It called for a national legislature of two houses. In the lower house, states would be represented in proportion to their population. Members of the upper house were to be elected by the lower house under no rigid system of representation; thus some of the smaller states might at times have no members at all in the upper house.

The proposal aroused immediate opposition among delegates from the smaller states. William Paterson of New Jersey offered an alternative (the New Jersey Plan) that
would have retained the essence of the existing system with its one-house legislature in which all states had equal representation, but which would have given Congress expanded powers to tax and to regulate commerce. The convention rejected Paterson’s proposal, but supporters of the Virginia Plan now realized they would have to make concessions to the small states. They agreed to permit members of the upper house (what became the Senate) to be elected by the state legislatures.

Many questions remained unresolved. Among the most important was the question of slavery. There was no serious discussion of abolishing slavery during the convention. But other issues were debated heatedly. Would slaves be counted as part of the population in determining representation in Congress? Or would they be considered property, not entitled to representation? Delegates from the states with large slave populations wanted to have it both ways. They argued that slaves should be considered persons in determining representation but as property if the new government levied taxes on the states on the basis of population. Representatives from states where slavery had disappeared or was expected soon to disappear argued that slaves should be included in calculating taxation but not representation.

**Compromise**

The delegates argued for weeks. By the end of June, as both temperatures and tempers rose to uncomfortable heights, the convention seemed in danger of collapsing. But the delegates refused to give up. Finally, on July 2, the convention created a “grand committee,” chaired by Franklin and with one delegate from each state, which produced a proposal that became the basis of the “Great Compromise.” It called for a two-house legislature. In the lower house, the states would be represented on the basis of population; each slave would be counted as three-fifths of a free person in determining the basis for both representation and direct taxation. In the upper house, the states would be represented equally with two members apiece. On July 16, 1787, the convention voted to accept the compromise.

In the next few weeks, the convention agreed to another important compromise. To placate southern delegates, who feared the new government would interfere with slavery, the convention agreed to bar the new government from stopping the slave trade for twenty years.

Some significant issues remained unaddressed. The Constitution provided no definition of citizenship. Nor did it resolve the status of the Indian tribes. Most important to many Americans was the absence of a list of individual rights, which would restrain the powers of the national government. Madison opposed the idea, arguing that specifying rights that were reserved to the people would, in effect, limit those rights. Others, however, feared that without such protections the national government might abuse its new authority.

Many people contributed to the most important problems had devised the Virginia Plan and helped resolve two of sovereignty and the question of representation.

How could a nation of sovereign states cooperate? Where did ultimate sovereignty reside? Would the new government or the states be the ultimate source of authority? The Constitution and the 1787 state constitutions were the result of a compromise between those who favored a strong national government and those who favored strong state governments.

In addition to solving these problems, the convention produced a distinctive federal government. Drawing from the ideas of Montesquieu, most Americans believed that to avoid tyranny was to keep government limited and each branch controlled by the people.

Madison, however, realized that a large republic could not have a single government with a single center of power. He supported the federal structure that gave to the central government the power to pass laws and to have sovereignty, but left to the states the power to pass local laws. This was the “federal” system that the United States would emerge with in the United States. In England, the idea of a federal system did not emerge. Madison’s view of the nature of a federal government, with the federal government controlling the states, and most of the founders did not believe that a nation did
The Constitution of 1787

Many people contributed to the creation of the American Constitution, but the most important person in the process was James Madison. Madison had devised the Virginia Plan, and he did most of the drafting of the Constitution itself. Madison's most important achievement, however, was in helping resolve two important philosophical questions: the question of sovereignty and the question of limiting power.

How could a national government exercise sovereignty concurrently with state governments?

Where did ultimate sovereignty lie? The answer, Madison and his contemporaries decided, was that all power, at all levels of government, flowed ultimately from the people. Thus neither the federal government nor the state governments were truly sovereign. All of them derived their authority from below. The resolution of the problem of sovereignty made possible one of the distinctive features of the Constitution—its "federalism" or division of powers between the national and state governments. The Constitution and the government it created were to be the "supreme law" of the land. At the same time, however, the Constitution left important powers in the hands of the states.

In addition to solving the question of sovereignty, the Constitution produced a distinctive solution to the problem of concentrated authority. Drawing from the ideas of the French philosopher Baron de Montesquieu, most Americans had long believed that the best way to avoid tyranny was to keep government close to the people. A large nation would breed corruption and despotism because distant rulers could not be controlled by the people.

Madison, however, helped break the grip of these assumptions by arguing that a large republic would be less, not more, likely to produce tyranny because no single group would ever be able to dominate it. The idea of many centers of power "checking each other" and preventing any single, despotic authority from emerging also helped shape the internal structure of the federal government. The Constitution's most distinctive feature was its "separation of powers" within the government, its creation of "checks and balances" among the legislative, executive, and judicial branches. The forces within the government would constantly compete with one another. Congress would have two chambers, each checking the other, since both would have to agree before any law could be passed. The president would have the power to veto acts of Congress. The federal courts would be protected from both the executive and the legislature, because judges would serve for life.

The "federal" structure of the government was designed to protect the United States from the kind of despotism that Americans believed had emerged in England. But it was also designed to protect the nation from another kind of despotism: the tyranny of the people. Shays's Rebellion, most of the founders believed, had been only one example of what could happen if a nation did not defend itself against the unchecked exercise of...
popular will. Thus in the new government, only the members of the House of Representatives would be elected directly by the people. Senators would be chosen by state legislators. The president would be chosen by an electoral college. Federal judges would be appointed by the president and confirmed by the Senate. On September 17, 1787, thirty-nine delegates signed the Constitution.

ADOPTION AND ADAPTATION

The delegates at Philadelphia had greatly exceeded their instructions from Congress and the states. Instead of making simple revisions in the Articles of Confederation, they had produced a plan for a completely different form of government. They feared that the Constitution would not be ratified under the rules of the Articles of Confederation, which required unanimous approval by the state legislatures. So the convention changed the rules, proposing that the new government come into being when nine of the thirteen states ratified the Constitution and recommending that state conventions, not state legislatures, be called to ratify it.

Federalists and Antifederalists

The Congress in New York accepted the convention’s work and submitted it to the states for approval. All the state legislatures except Rhode Island elected delegates to ratifying conventions, most of which began meeting in early 1788. Even before the ratifying conventions convened, however, a great national debate on the new Constitution had begun.

Supporters of the Constitution had a number of advantages. Better organized than their opponents, they seized an appealing label for themselves: “Federalists”—a term that opponents of centralization had once used to describe themselves—thus implying that they were less committed to a “nationalist” government than in fact they were. In addition, the Federalists had the support of not only the two most eminent men in America, Franklin and Washington, but also the ablest political philosophers of their time: Alexander Hamilton, James Madison, and John Jay. Under the joint pseudonym “Publius,” these three men wrote a series of essays, widely published in newspapers throughout the nation, explaining the meaning and virtues of the Constitution. The essays were later gathered together and published as a book. They are known today as The Federalist Papers.

The Federalists called their critics “Antifederalists,” suggesting that their rivals had nothing to offer except opposition. But the Antifederalists too, led by such distinguished Revolutionary leaders as Patrick Henry and Samuel Adams, had serious and intelligent arguments. They were, they believed, the defenders of the true principles of the Revolution. They believed that the Constitution would increase taxes, weaken the states,
wield dictatorial powers, favor the "well-born" over the common people, and abolish individual liberty. But their biggest complaint was that the Constitution lacked a bill of rights. Only by enumerating the natural rights of the people, they argued, could there be any certainty that those rights would be protected.

Despite the efforts of the Antifederalists, ratification proceeded quickly during the winter of 1787-1788. The Delaware convention, the first to act, ratified the Constitution unanimously, as did New Jersey and Georgia. And
in June 1788, New Hampshire, the critical ninth state, ratified the document. It was now theoretically possible for the Constitution to go into effect. A new government could not hope to succeed, however, without Virginia and New York, whose conventions remained closely divided. But by the end of June, first Virginia and then New York consented to the Constitution by narrow margins—on the assumption that a bill of rights would be added in the form of amendments to the Constitution. North Carolina’s convention adjourned without taking action, waiting to see what happened to the amendments. Rhode Island did not even consider ratification.

Completing the Structure

The first elections under the Constitution were held in the early months of 1789. There was never any doubt about who would be the first president. George Washington had presided at the Constitutional Convention, and many who had favored ratification did so only because they expected him to preside over the new government as well. Washington received the votes of all the presidential electors. (John Adams, a leading Federalist, became vice president.) After a few years of residence at Mount Vernon, Virginia, marked by elaborate celebrations along the way, Washington was inaugurated in New York on April 30, 1789.

The first Congress served in many ways as a continuation of the Constitutional Convention. Its most important task was drafting a bill of rights. By early 1789, even Madison had come to agree that some sort of bill of rights would be essential to legitimize the new government in the eyes of its opponents. On September 25, 1789, Congress approved twelve amendments, ten of which were ratified by the states by the end of 1791. These first ten amendments to the Constitution comprise what we know as the Bill of Rights. Nine of them placed limitations on the new government by forbidding it to infringe on certain fundamental rights: freedom of religion, speech, and the press; immunity from arbitrary arrest; trial by jury; and others.

On the subject of federal courts, the Constitution said only: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." It was left to Congress to determine the number of Supreme Court judges to be appointed and the kinds of lower courts to be organized. In the Judiciary Act of 1789, Congress provided for a Supreme Court of six members and a system of lower district courts and courts of appeal. It also gave the Supreme Court the power to make the final decision in cases involving the constitutionality of state laws.

The Constitution referred indirectly to executive departments but did not specify which ones or how many there should be. The first Congress created three such departments—state, treasury, and war—and also established the offices of the attorney general and postmaster general. To