


highlight the fragility inherent in designing a constitution. And no wonder. The questions that challenged America's founders and that now confront the women and men charged with setting a future course for Europe do not have easy or obvious answers. Dr. Guenter Burghardt, head of the European Commission delegation to the United States, noted several parallels in a speech in Berlin on June 6, 2002. Today, he remarked, Europeans are asking the same kinds of questions that confronted the delegates at Philadelphia: "How can a balance be achieved in

the representation of large and small states? How much power should be conferred upon the federal level and what should be the jurisdiction of the EU today? What fundamental set of values underpins political unity? Is there a European equivalent to 'life, liberty and the pursuit of happiness'?"⁵ For now, the answers remain in doubt for a unified Europe. In spite of France and the Netherlands, fourteen countries have ratified the constitution. A new document may yet emerge, assembled from pieces of the failed effort. ★

The American experience is sure to shed light on the answers confronting Europe. In fact, the American experience may yet *presage* the European story, since Americans' first step toward unity resulted in failure and then an effort at redesign that ultimately proved successful. This chapter poses questions about the U.S. Constitution. How did it evolve? What form did it take? What values does it reflect? How can it be altered? Which model of democracy—majoritarian or pluralist—does it fit better? In these answers may lie hints of the formidable tasks facing the European Union.

IN OUR OWN WORDS

Listen to Jerry Goldman discuss the main points and themes of this chapter.

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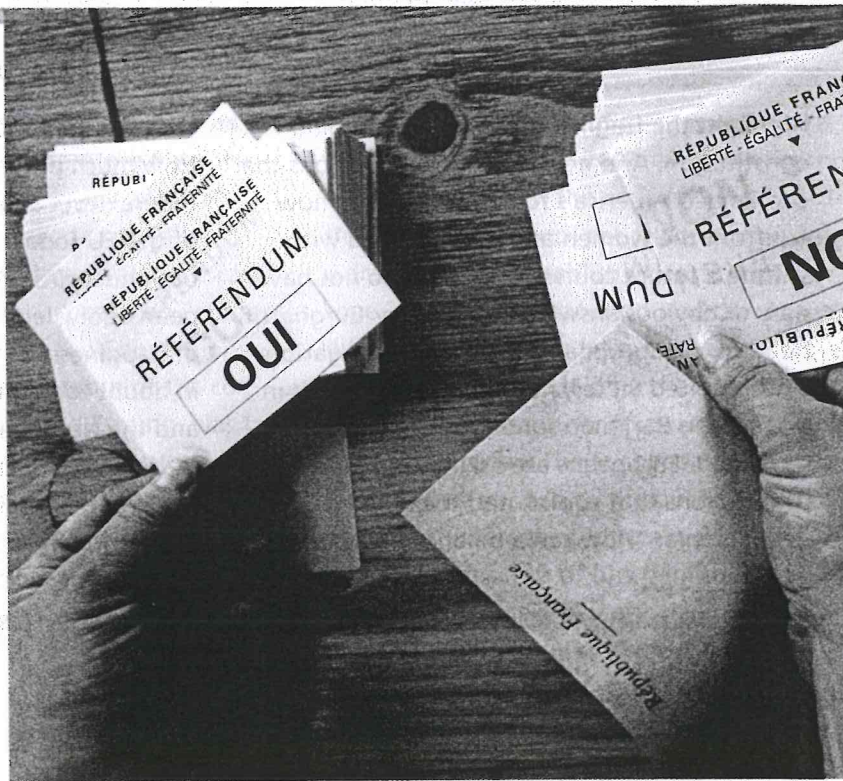
★ The Revolutionary Roots of the Constitution

The U.S. Constitution contains just 4,300 words. But those 4,300 words define the basic structure of our national government. (In contrast, the proposed European constitution was more than 60,000 words long.) A comprehensive document, the Constitution divides the national government into three branches, describes the powers of those branches and their connections, outlines the interaction between the government and the governed, and describes the relationship between the national government and the states. The Constitution makes itself the supreme law of the land and binds every government official to support it.

Most Americans revere the Constitution as political scripture. To charge that a political action is unconstitutional is akin to claiming that it is unholy. So the Constitution has taken on symbolic value that strengthens its authority as the basis of American government. Strong belief in the Constitution has led many politicians to abandon party for principle when constitutional issues are at stake. The power and symbolic value of the Constitution were forcefully

A Constitution for Europe: Oui ou Non?

A French voter picks up a “no” and “yes” ballot during the European constitution referendum inside a polling station. France—and the Netherlands—rejected the European Union’s first constitution in 2005, halting efforts to ensure the smooth running of the enlarged bloc.
(© Eric Gaillard/Reuters/Corbis)



demonstrated in the Watergate affair. (See the feature “Remembering Watergate and the Constitution.”)

The U.S. Constitution, written in 1787 for an agricultural society huddled along the coast of a wild new land, now guides the political life of a massive urban society in the postnuclear age. The stability of the Constitution—and of the political system it created—is all the more remarkable because the Constitution itself was rooted in revolution.

The U.S. Constitution was designed to prevent anarchy by forging a union of states. To understand the values embedded in the Constitution, we must understand its historical roots. They lie in colonial America, in the revolt against British rule, and in the failure of the Articles of Confederation that governed the new nation after the Revolution.

Freedom in Colonial America

Although they were British subjects, American colonists in the eighteenth century enjoyed a degree of freedom denied most other people in the world. In Europe, ancient customs and the relics of feudalism restricted private property, compelled support for established religions, and limited access to trades and professions. In America, landowners could control and transfer their property at will. In America, there were no compulsory payments to support an established church. In America, there was no ceiling on wages, as there was in most European countries, and no guilds of exclusive professional associations. In America, colonists enjoyed almost complete freedom of speech, press, and assembly.⁶

By 1763, Britain and the colonies had reached a compromise between imperial control and colonial self-government. America's foreign affairs and overseas trade were controlled by the king and Parliament, the British legislature; the rest was left to colonial rule. But the cost of administering the colonies was substantial. The colonists needed protection from the French and their American Indian allies during the Seven Years' War (1756–1763), which was an expensive undertaking. Because Americans benefited the most from that protection, their English countrymen argued, Americans should bear the cost.

The Road to Revolution

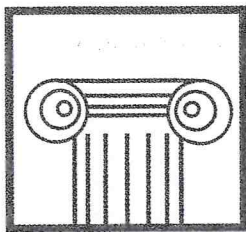
The British believed that taxing the colonies was the obvious way to meet the costs of administering the colonies. The colonists did not agree. They especially did not want to be taxed by a distant government in which they had no representation. Nevertheless, a series of taxes (including a tax on all printed matter) was imposed on the colonies by the Crown. In each instance, public opposition was widespread and immediate.

A group of citizens—merchants, lawyers, and prosperous traders—created an intercolonial association called the Sons of Liberty. This group destroyed taxed items (identified by special stamps) and forced the official stamp distributors to resign. In October 1765, residents of Charleston, South Carolina, celebrated the forced resignation of the colony's stamp distributor by displaying a British flag with the word *Liberty* sewn across it. (They were horrified when a few months later local slaves paraded through the streets calling for "Liberty!"⁷)

Women resisted the hated taxes by joining together in symbolic and practical displays of patriotism. A group of young women calling themselves the Daughters of Liberty met in public to spin homespun cloth and encourage the elimination of British cloth from colonial markets. They consumed American food and drank local herbal tea as symbols of their opposition.⁸

On the night of December 16, 1773, a group of colonists in Massachusetts reacted to a British duty on tea by organizing the Boston Tea Party. A mob boarded three ships and emptied 342 chests of that valuable substance into Boston Harbor. The act of defiance and destruction could not be ignored. "The die is now cast," wrote George III. "The Colonies must either submit or triumph."⁹ In an attempt to reassert British control over its recalcitrant colonists, Parliament passed the Coercive (or "Intolerable") Acts (1774). One act imposed a blockade on Boston until the tea was paid for; another gave royal governors the power to quarter British soldiers in private American homes. The taxation issue became secondary; more important was the conflict between British demands for order and American demands for liberty. The Virginia and Massachusetts assemblies summoned a continental congress, an assembly that would speak and act for the people of all the colonies.

All the colonies except Georgia sent representatives to the First Continental Congress, which met in Philadelphia in September 1774. The objective was to restore harmony between Great Britain and the American colonies. In an effort at unity, all colonies were given the same voting power—one vote each. A leader, called the president, was elected. (The terms *president* and *congress* in American government trace their origins to the First Continental Congress.) In October, the delegates adopted a statement of rights and principles; many of these later found their way into the Declaration of Independence and the



Remembering Watergate and the Constitution

The Watergate affair remains the most serious constitutional crisis since the Civil War. Yet today, two-thirds of Americans admit they don't know the basic facts.¹ It began when midnight burglars made a small mistake: they left a piece of tape over the latch they had tripped to enter the Watergate office and apartment complex in Washington, D.C. A security guard found their tampering and called the police, who surprised the burglars in the offices of the Democratic National Committee at 2:30 A.M. The arrests of the five men—four Cuban exiles and a former CIA agent—in the early hours of June 17, 1972, triggered a constitutional struggle that eventually involved the president of the United States, the Congress, and the Supreme Court.

The arrests took place a month before the 1972 Democratic National Convention. Investigative reporting by Carl Bernstein and Bob Woodward of the *Washington Post*, and a simultaneous criminal investigation by Assistant U.S. Attorney Earl J. Silbert and his staff, uncovered a link between the Watergate burglary and the forthcoming election.² The burglars were carrying the telephone number of another former CIA agent, who was working in the White House. At a news conference on June 22, President Richard Nixon said, "The White House has had no involvement whatsoever in this particular incident."³

At its convention in July, the Democratic Party nominated Senator George McGovern of South Dakota to oppose Nixon in the presidential election. McGovern tried to make the break-in at the Democratic headquarters a campaign issue, but the voters either did not understand or did not care. In November 1972, Richard

Nixon was reelected president of the United States, winning forty-nine of fifty states in one of the largest electoral landslides in American history. Only then did the Watergate story unfold completely.

Two months later, seven men answered in court for the break-in. They included the five burglars and two men closely connected with the president: E. Howard Hunt (a former CIA agent and White House consultant) and G. Gordon Liddy (counsel to the Committee to Re-Elect the President, or CREEP). Five, including Hunt, entered guilty pleas. Liddy and James McCord (one of the burglars) were convicted by a jury. The Senate launched its own investigation of the matter. It set up the Select Committee on Presidential Campaign Activities, chaired by a self-styled constitutional authority, Democratic senator Sam Ervin of North Carolina.

A stunned nation watched the televised proceedings and learned that the president had secretly tape-recorded all of his conversations in the White House. (Although presidents dating to Franklin Roosevelt had tape-recorded conversations in the White House, Nixon's system for recording was by far the most comprehensive.⁴) The Ervin committee asked for the tapes. Nixon refused to produce them, citing the separation of powers between the legislative and the executive branches and claiming that "executive privilege" allowed him to withhold information from Congress.

Nixon also resisted criminal subpoenas demanding the White House tapes. Ordered by a federal court to deliver specific tapes, Nixon proposed a compromise: he would release written summaries of the taped conversations. Archibald Cox, the special prosecutor appointed by the attor-

ney general to investigate Watergate and offenses arising from the 1972 presidential election, rejected the compromise. Nixon retaliated with the "Saturday night massacre," in which Attorney General Elliot L. Richardson and his deputy resigned, Cox was fired, and the special prosecutor's office was abolished.

The ensuing furor forced Nixon to appoint another special prosecutor, Leon Jaworski, who eventually brought indictments against Nixon's closest aides. Nixon himself was named as an unindicted co-conspirator. Both the special prosecutor and the defendants wanted the White House tapes, but Nixon continued to resist. Finally, on July 24, 1974, the Supreme Court ruled that the president had to hand over the tapes. At almost the same time, the House Judiciary Committee voted to recommend to the full House that Nixon be impeached for, or charged with, three offenses: violating his oath of office to faithfully uphold the laws, misusing and abusing executive authority and the resources of executive agencies, and defying congressional subpoenas.

The Judiciary Committee vote was decisive but far from unanimous. On August 5, however, the committee and the country finally learned the contents of the tapes released under the Supreme Court order. They revealed that Nixon had been aware of a cover-up on June 23, 1972, just six days after the break-in. He ordered the FBI, "Don't go any further in this case, period!"⁵ Now even the eleven Republican members of the House Judiciary Committee, who had opposed impeachment on the first vote, were ready to vote against Nixon.

Faced with the collapse of his support and likely impeachment by the full House, Nixon resigned the presidency on August 9, 1974. Vice President Gerald Ford stepped in. Ford had become the nation's first unelected vice president in 1973 when Nixon's original vice president, Spiro Agnew, resigned amid his own personal scandal. Ford then became the first unelected president of the United States. A month later, acting within his constitutional powers, Ford granted private citizen Richard Nixon an unconditional pardon for all crimes that he may have committed. Others were not

so fortunate. Three members of the Nixon cabinet (two attorneys general and a secretary of commerce) were convicted and sentenced for their crimes in the Watergate affair. Nixon's White House chief of staff, H. R. Haldeman, and his domestic affairs adviser, John Ehrlichman, were convicted of conspiracy, obstruction of justice, and perjury. Other officials were tried, and most were convicted, on related charges.⁶

The Watergate affair posed one of the most serious challenges to the constitutional order of modern American government. The incident ultimately developed into a struggle over the rule of law, between the president, on the one hand, and Congress and the courts, on the other. In the end, the constitutional principle separating power among the executive, legislative, and judicial branches prevented the president from controlling the Watergate investigation. The principle of checks and balances allowed Congress to threaten Nixon with impeachment. The belief that Nixon had violated the Constitution finally prompted members of his own party to support impeachment, leading the president to resign. In 1992, 70 percent of Americans still viewed Nixon's actions as having warranted his resignation.⁷ In some countries, an irregular change in government leadership provides an opportunity for a palace coup, an armed revolution, or a military dictatorship. But here, significantly, no political violence erupted after Nixon's resignation; in fact, none was expected. Constitutional order in the United States had been put to a test, and it passed with high honors.

1. ABC News Poll, June 17, 2002 (telephone interview of 1,004 participants).

2. Carl Bernstein and Bob Woodward, *All the President's Men* (New York: Warner, 1975); Stanley I. Kutler, *The Wars of Watergate* (New York: Knopf, 1990).

3. Bernstein and Woodward, *All the President's Men*, p. 30.

4. William Doyle, *Inside the Oval Office: The White House Tapes from FDR to Clinton* (New York: Kodansha International, 1999), p. 169.

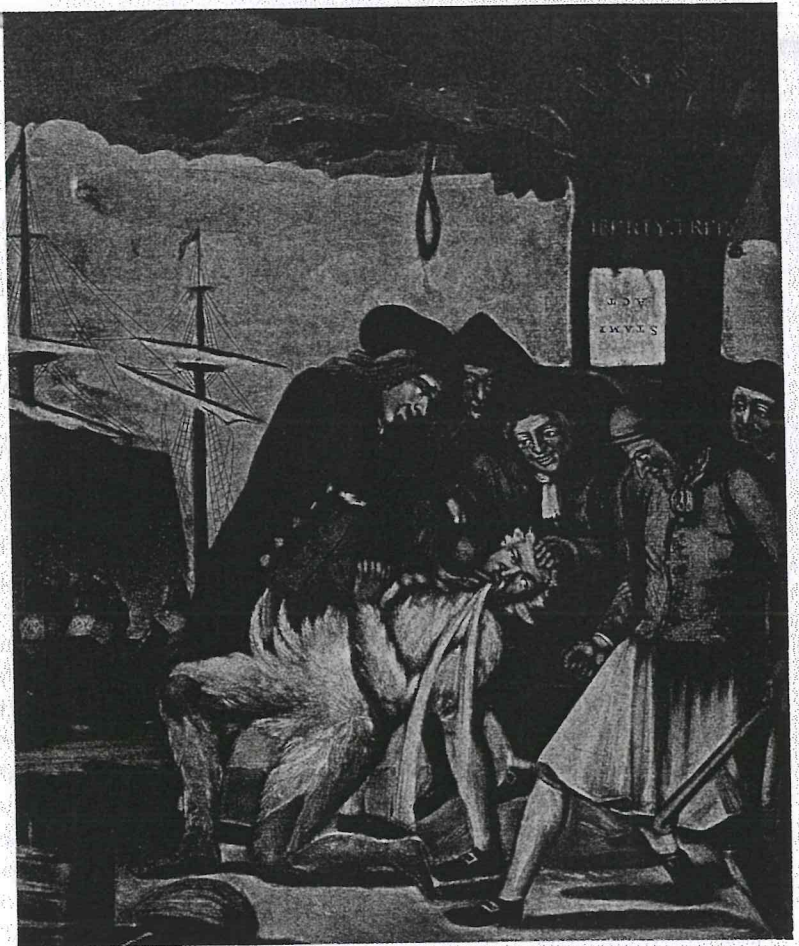
5. *The Encyclopedia of American Facts and Dates* (New York: Crowell, 1979), p. 946.

6. Richard B. Morris (ed.), *Encyclopedia of American History* (New York: Harper & Row, 1976), p. 544.

7. Gallup Organization, *Gallup Poll Monthly* (June 1992): 2-3.

Uniquely American Protest

Americans protested the Tea Act (1773) by holding the Boston Tea Party (*background, left*) and by using a unique form of painful punishment, tarring and feathering, on the tax collector (see "STAMP ACT" upside-down on the Liberty Tree). An early treatise on the subject offered the following instructions: "First, strip a person naked, then heat the tar until it is thin, and pour upon the naked flesh, or rub it over with a tar brush. After which, sprinkle decently upon the tar, whilst it is yet warm, as many feathers as will stick to it." (Courtesy of the John Carter Brown Library at Brown University)



Constitution. For example, the congress claimed a right "to life, liberty, and property" and a right "peaceably to assemble, consider of their grievances, and petition the king." Then the congress adjourned, planning to reconvene in May 1775.

Revolutionary Action

By early 1775, however, a movement that the colonists themselves were calling a revolution had already begun. Colonists in Massachusetts were fighting the British at Concord and Lexington. Delegates to the Second Continental Congress, meeting in May, faced a dilemma: Should they prepare for war, or should they try to reconcile with Britain? As conditions deteriorated, the Second Continental Congress remained in session to serve as the government of the colony-states.

On June 7, 1776, owing in large part to the powerful advocacy of John Adams of Massachusetts, a strong supporter of independence, the Virginia delegation called on the Continental Congress to resolve "that these United Colonies are, and of right ought to be, free and Independent States, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to

be, totally dissolved." This was a difficult decision. Independence meant disloyalty to Britain and war, death, and devastation. The congress debated but did not immediately adopt the resolution. A committee of five men was appointed to prepare a proclamation expressing the colonies' reasons for declaring independence.

The Declaration of Independence

Thomas Jefferson, a young farmer and lawyer from Virginia who was a member of the committee, became the "pen" to John Adams's "voice."¹⁰ Because Jefferson was erudite, a Virginian, and an extremely skilled writer, he drafted the proclamation. Jefferson's document, the **Declaration of Independence**, was modestly revised by the committee and then further edited by the congress. It remains a cherished statement of our heritage, expressing simply, clearly, and rationally the many arguments for separation from Great Britain.

The principles underlying the Declaration were rooted in the writings of the English philosopher John Locke and had been expressed many times by speakers in the congress and the colonial assemblies. Locke argued that people have God-given, or natural, rights that are inalienable—that is, they cannot be taken away by any government. According to Locke, all legitimate political authority exists to preserve these natural rights and is based on the consent of those who are governed. The idea of consent is derived from **social contract theory**, which states that the people agree to establish rulers for certain purposes, but they have the right to resist or remove rulers who violate those purposes.¹¹

Jefferson used similar arguments in the Declaration of Independence. (See the appendix.) Taking his cue from a draft of the Virginia Declaration of Rights,¹² Jefferson wrote,

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its power in such form, as to them shall seem most likely to effect their safety and happiness.

He went on to list the many deliberate acts of the king that had exceeded the legitimate role of government. The last item on Jefferson's original draft of the Declaration was the king's support of the slave trade. Although Jefferson did not condemn slavery, he denounced the king for enslaving a people, engaging in the slave trade, and proposing that the slaves be freed to be able to attack their masters. When South Carolina and Georgia, two states with an interest in continuing the wretched practice, objected, Jefferson and the committee dropped the offending paragraph. Finally, Jefferson declared that the colonies were "Free and Independent States," with no political connection to Great Britain.

The major premise of the Declaration of Independence is that the people have a right to revolt if they determine that their government is denying them their legitimate rights. The long list of the king's actions was evidence of such denial. So the people had the right to rebel, to form a new government.

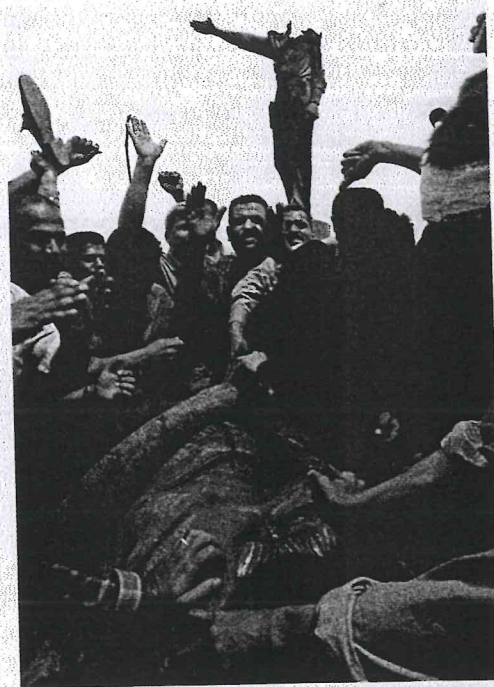
Declaration of Independence Drafted by Thomas Jefferson, the document that proclaimed the right of the colonies to separate from Great Britain.

social contract theory The belief that the people agree to set up rulers for certain purposes and thus have the right to resist or remove rulers who act against those purposes.



Toppling Tyrants: Then and Now

A gilded equestrian statue of George III (*left*) once stood at the tip of Manhattan. On July 9, 1776, citizens responded to the news of the Declaration of Independence by toppling the statue. It was melted down and converted into musket balls. In 2003—with a little help from American soldiers—Iraqi citizens (*right*) toppled a statue of their deposed leader, Saddam Hussein. (*left*: Lafayette College Art Collection; *right*: Patrick Robert/Sygma Collection/Corbis)



On July 2, 1776, the Second Continental Congress finally voted for independence. The vote was by state, and the motion carried 11–0. (Rhode Island was not present, and the New York delegation, lacking instructions, did not cast its yeas vote until July 15.) Two days later, on July 4, the Declaration of Independence was approved, with few changes. Several representatives insisted on removing language they thought would incite the colonists. In the end, even though Jefferson's compelling words were left almost exactly as he had written them, the adjustments tugged at the Virginian's personal insecurities. According to historian Joseph Ellis, while the congress debated various changes to the document, "Jefferson sat silently and sullenly, regarding each proposed revision as another defacement."¹³

By August, fifty-five revolutionaries had signed the Declaration of Independence, pledging "our lives, our fortunes and our sacred honor" in support of their rebellion against the world's most powerful nation. This was no empty pledge: an act of rebellion was treason. Had they lost the Revolutionary War, the signers would have faced a gruesome fate. The punishment for treason was hanging and drawing and quartering—the victim was first hanged until half-dead from strangulation, then disemboweled, and finally cut into four pieces while still alive. We celebrate the Fourth of July with fireworks and flag waving, parades, and picnics. We sometimes forget that the Revolution was a matter of life and death.

The war imposed an agonizing choice on colonial Catholics, who were treated with intolerance by the overwhelmingly Protestant population. No other religious group found the choice so difficult. Catholics could either join the revolutionaries, who were opposed to Catholicism, or remain loyal to England and risk new hostility and persecution. But Catholics were few in number,

perhaps twenty-five thousand at the time of independence (or 1 percent of the population). Anti-Catholic revolutionaries recognized that if Catholics opposed independence in Maryland and Pennsylvania, where their numbers were greatest, victory might be jeopardized. Furthermore, enlisting the support of Catholic France for the cause of independence would be difficult in the face of strong opposition from colonial Catholics. So the revolutionaries wooed Catholics to their cause.¹⁴

The War of Independence lasted far longer than anyone expected. It began in a moment of confusion, when a shot rang out as British soldiers approached the town of Lexington, Massachusetts, on April 19, 1775. The end came six and a half years later with Lord Cornwallis's surrender of his six-thousand-man army at Yorktown, Virginia, on October 19, 1781. It was a costly war: a greater percentage of the population died or was wounded during the Revolution than in any other U.S. conflict except the Civil War.¹⁵

With hindsight, of course, we can see that the British were engaged in an arduous and perhaps hopeless conflict. America was simply too vast to subdue without imposing total military rule. Britain also had to transport men and supplies over the enormous distance of the Atlantic Ocean. Also, the Americans' courtship of Britain's rivals, owing in large part to the indefatigable advocacy and diplomacy of John Adams,¹⁶ resulted in support from the French navy and several million dollars in Dutch loans that helped to bolster General Washington's Revolutionary forces. Finally, although the Americans had neither paid troops nor professional soldiers, they were fighting for a cause: the defense of their liberty. The British never understood the power of this fighting faith or, given the international support for the American cause, the totality of the forces arrayed against them.

★ From Revolution to Confederation

By declaring their independence from England, the colonists left themselves without any real central government. So the revolutionaries proclaimed the creation of a **republic**. Strictly speaking, a republic is a government without a monarch, but the term had come to mean a government based on the consent of the governed, whose power is exercised by representatives who are responsible to them. A republic need not be a democracy, and this was fine with the founders; at that time, democracy was associated with mob rule and instability (see Chapter 2). The revolutionaries were less concerned with determining who would control their new government than with limiting its powers. They had revolted in the name of liberty, and now they wanted a government with strictly defined powers. To make sure they got one, they meant to define its structure and powers in writing.

The Articles of Confederation

Barely a week after the Declaration of Independence was signed, the Second Continental Congress received a committee report entitled "Articles of Confederation and Perpetual Union." A **confederation** is a loose association of independent states that agree to cooperate on specified matters. In a confederation, the states retain their sovereignty, which means that each has supreme power within its borders. The central government is weak; it can only coordinate, not

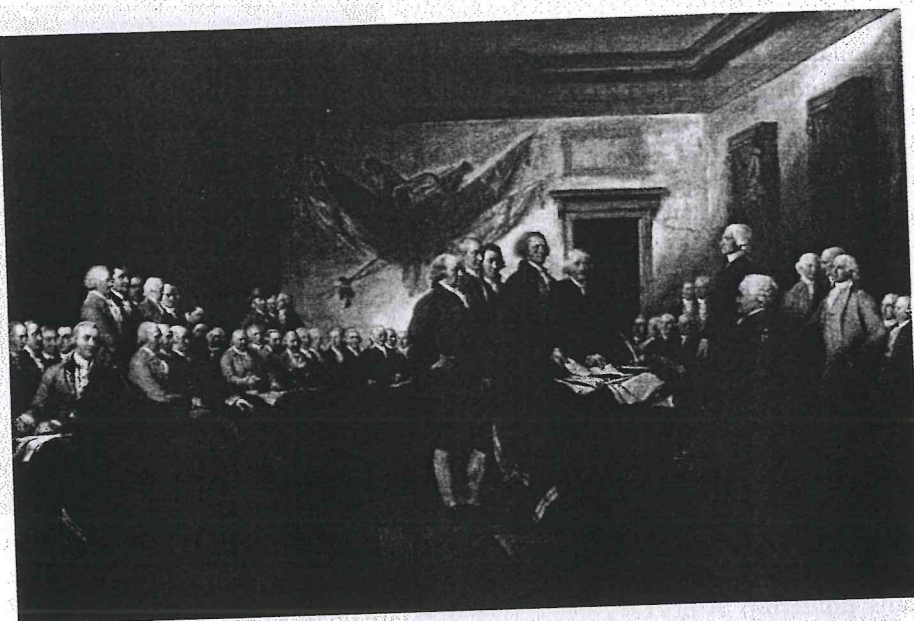
? Can you explain why . . . the War of Independence was one of the gravest conflicts in the United States?

republic A government without a monarch; a government rooted in the consent of the governed, whose power is exercised by elected representatives responsible to the governed.

confederation A loose association of independent states that agree to cooperate on specified matters.

Voting for Independence

The Second Continental Congress voted for independence on July 2, 1776. John Adams of Massachusetts viewed the day "as the most memorable epocha [significant event] in the history of America." In this painting by John Trumbull, the drafting committee presents the Declaration of Independence to the patriots who would later sign it. The committee, grouped in front of the desk, consisted of (from left to right) Adams, Roger Sherman (Connecticut), Robert Livingston (New York), Thomas Jefferson (Virginia), and Benjamin Franklin (Pennsylvania).
(© Francis G. Mayer/Corbis)



control, the actions of its sovereign states. Consequently, the individual states are strong.

The congress debated the **Articles of Confederation**, the compact among the thirteen original colonies that established the first government of the United States, for more than a year. The Articles were adopted by the Continental Congress on November 15, 1777, and finally took effect on March 1, 1781, following approval by all thirteen states. For more than three years, then, Americans had fought a revolution without an effective government. Raising money, troops, and supplies for the war had daunted and exhausted the leadership.

The Articles jealously guarded state sovereignty; their provisions clearly reflected the delegates' fears that a strong central government would resemble British rule. Article II, for example, stated, "Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled."

Under the Articles, each state, regardless of its size, had one vote in the congress. Votes on financing the war and other important issues required the consent of at least nine of the thirteen states. The common danger, Britain, had forced the young republic to function under the Articles, but this first effort at government was inadequate to the task. The delegates had succeeded in crafting a national government that was largely powerless.

The Articles failed for at least four reasons. First, they did not give the national government the power to tax. As a result, the congress had to plead for money from the states to pay for the war and carry on the affairs of the new nation. A government that cannot reliably raise revenue cannot expect to govern effectively. Second, the Articles made no provision for an independent leadership position to direct the government (the president was merely the presiding officer of the congress). The omission was deliberate—the colonists feared the reestablishment of a monarchy—but it left the nation without a leader. Third,

? Can you explain why . . . the Articles of Confederation made the states strong and the nation weak?

Articles of Confederation

The compact among the thirteen original states that established the first government of the United States.

the Articles did not allow the national government to regulate interstate and foreign commerce. (When John Adams proposed that the confederation enter into a commercial treaty with Britain after the war, he was asked, "Would you like one treaty or thirteen, Mr. Adams?")¹⁷ Finally, the Articles could not be amended without the unanimous agreement of the congress and the assent of all the state legislatures; thus, each state had the power to veto any changes to the confederation.

The goal of the delegates who drew up the Articles of Confederation was to retain power in the states. This was consistent with republicanism, which viewed the remote power of a national government as a danger to liberty. In this sense alone, the Articles were a grand success. They completely hobbled the infant government.

The Articles of Confederation are available on the



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Disorder Under the Confederation

Once the Revolution had ended and independence was a reality, it became clear that the national government had neither the economic nor the military power to function effectively. Freed from wartime austerity, Americans rushed to purchase goods from abroad. The national government's efforts to restrict foreign imports were blocked by exporting states, which feared retaliation from their foreign customers. Debt mounted and, for many, bankruptcy followed.

The problem was particularly severe in Massachusetts, where high interest rates and high state taxes were forcing farmers into bankruptcy. In 1786, Daniel Shays, a Revolutionary War veteran, marched on a western Massachusetts courthouse with fifteen hundred supporters armed with barrel staves and pitchforks: they wanted to close the courthouse to prevent the foreclosure of farms by creditors. Later, they attacked an arsenal. Called Shays's Rebellion, the revolt against the established order continued into 1787. Massachusetts appealed to the confederation for help. Horrified by the threat of domestic upheaval, the congress approved a \$530,000 requisition for the establishment of a national army. But the plan failed: every state except Virginia rejected the request for money. Finally, the governor of Massachusetts called out the militia and restored order.¹⁸

The rebellion demonstrated the impotence of the confederation and the urgent need to suppress insurrections and maintain domestic order. Proof to skeptics that Americans could not govern themselves, the rebellion alarmed all American leaders, with the exception of Jefferson. From Paris, where he was serving as American ambassador, he remarked, "A little rebellion now and then is a good thing; the tree of liberty must be refreshed from time to time with the blood of patriots and tyrants."¹⁹



From Confederation to Constitution

Orders, the original purpose of government, was breaking down under the Articles of Confederation. The "league of friendship" envisioned in the Articles was not enough to hold the nation together in peacetime.

Some states had taken halting steps toward encouraging a change in the national government. In 1785, Massachusetts asked the congress to revise the Articles of Confederation, but the congress took no action. In 1786, Virginia invited the states to attend a convention at Annapolis, Maryland, to explore

revisions aimed at improving commercial regulation. The meeting was both a failure and a success. Only five states sent delegates, but they seized the opportunity to call for another meeting—with a far broader mission—in Philadelphia the next year. That convention would be charged with devising “such further provisions as shall appear . . . necessary to render the constitution of the Federal Government adequate to the exigencies of the Union.” The congress later agreed to the convention but limited its mission to “the sole and express purpose of revising the Articles of Confederation.”²⁰

Shays’s Rebellion lent a sense of urgency to the task before the Philadelphia convention. The congress’s inability to confront the rebellion was evidence that a stronger national government was necessary to preserve order and property—to protect the states from internal as well as external dangers. “While the Declaration was directed against an excess of authority,” observed Supreme Court Justice Robert H. Jackson some 150 years later, “the Constitution [that followed the Articles of Confederation] was directed against anarchy.”²¹

Twelve of the thirteen states named seventy-four delegates to convene in Philadelphia, the most important city in America, in May 1787. (Rhode Island, derisively renamed “Rogue Island” by a Boston newspaper, was the one exception. The state legislature sulkily rejected participating because it feared a strong national government.) Fifty-five delegates eventually showed up at the statehouse in Philadelphia, but no more than thirty were present at any one time during that sweltering spring and summer. The framers were not demigods, but many historians believe that such an assembly will not be seen again. Highly educated, they typically were fluent in Latin and Greek. Products of the Enlightenment, they relied on classical liberalism for the Constitution’s philosophical underpinnings.

They were also veterans of the political intrigues of their states, and so were highly practical politicians who knew how to maneuver. Although well versed in ideas, they subscribed to the view expressed by one delegate that “experience must be our only guide, reason may mislead us.”²² Fearing for their fragile union, the delegates resolved to keep their proceedings secret.

The Constitutional Convention, at the time called the Federal Convention, officially opened on May 25. Within the first week, Edmund Randolph of Virginia had presented a long list of changes, suggested by fellow Virginian James Madison, that would replace the weak confederation of states with a powerful national government rather than revise it within its original framework. The delegates unanimously agreed to debate Randolph’s proposal, called the **Virginia Plan**. Almost immediately, then, they rejected the idea of amending the Articles of Confederation, working instead to create an entirely new constitution.

Virginia Plan A set of proposals for a new government, submitted to the Constitutional Convention of 1787; included separation of the government into three branches, division of the legislature into two houses, and proportional representation in the legislature.

legislative branch The law-making branch of government.

executive branch The law-enforcing branch of government.

judicial branch The law-interpreting branch of government.

The Virginia Plan

The Virginia Plan dominated the convention’s deliberations for the rest of the summer, making several important proposals for a strong central government:

- That the powers of the government be divided among three separate branches: a **legislative branch**, for making laws; an **executive branch**, for enforcing laws; and a **judicial branch**, for interpreting laws.
- That the legislature consist of two houses. The first would be chosen by the people, the second by the members of the first house from among candidates nominated by the state legislatures.

- That each state's representation in the legislature be in proportion to the taxes it paid to the national government or in proportion to its free population.
- That an executive, consisting of an unspecified number of people, be selected by the legislature and serve for a single term.
- That the national judiciary include one or more supreme courts and other, lower courts, with judges appointed for life by the legislature.
- That the executive and a number of national judges serve as a council of revision, to approve or veto (disapprove) legislative acts. Their veto could be overridden by a vote of both houses of the legislature.
- That the scope of powers of all three branches be far greater than that assigned the national government by the Articles of Confederation, and that the legislature be empowered to override state laws.

By proposing a powerful national legislature that could override state laws, the Virginia Plan clearly advocated a new form of government. It was to have a mixed structure, with more authority over the states and new authority over the people.

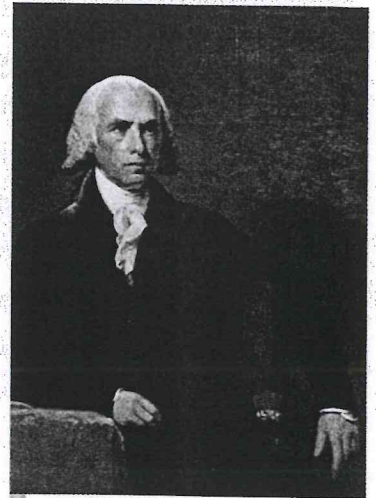
Madison was a monumental force in the ensuing debate on the proposals. He kept records of the proceedings that reveal his frequent and brilliant participation and give us insight into his thinking about freedom, order, and equality.

For example, his proposal that senators serve a nine-year term reveals his thinking about equality. Madison foresaw an increase "of those who will labor under all the hardships of life, and secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence."²³ Power, then, could flow into the hands of the numerous poor. The stability of the senate, however, with its nine-year terms and election by the state legislatures, would provide a barrier against the "sighs of the poor" for more equality. Although most delegates shared Madison's apprehension about equality, the nine-year term was voted down.

The Constitution that emerged from the convention bore only a partial resemblance to the document Madison wanted to create. He endorsed seventy-one specific proposals, but he ended up on the losing side on forty of them.²⁴ And the parts of the Virginia Plan that were ultimately included in the Constitution were not adopted without challenge. Conflicts revolved primarily around the basis for representation in the legislature, the method of choosing legislators, and the structure of the executive branch.

The New Jersey Plan

When in 1787 it appeared that much of the Virginia Plan would be approved by the big states, the small states united in opposition. They feared that if each state's representation in the new legislature was based only on the size of its population, the states with large populations would be able to dominate the new government and the needs and wishes of the small states would be ignored. William Paterson of New Jersey introduced an alternative set of resolutions, written to preserve the spirit of the Articles of Confederation by amending rather than replacing them. The **New Jersey Plan** included the following proposals:



James Madison, Father of the Constitution

Although he dismissed the accolade "Father of the Constitution," Madison deserved it more than anyone else. As do most fathers, he exercised a powerful influence in debates (and was on the losing side of more than half of them).

(© Bettmann/Corbis)

New Jersey Plan Submitted by the head of the New Jersey delegation to the Constitutional Convention of 1787, a set of nine resolutions that would have, in effect, preserved the Articles of Confederation by amending rather than replacing them.

- That a single-chamber legislature have the power to raise revenue and regulate commerce.
- That the states have equal representation in the legislature and choose its members.
- That a multiperson executive be elected by the legislature, with powers similar to those proposed under the Virginia Plan but without the right to veto legislation.
- That a supreme tribunal be created, with a limited jurisdiction. (There was no provision for a system of national courts.)
- That the acts of the legislature be binding on the states—that is, that they be regarded as “the supreme law of the respective states,” with the option of force to compel obedience.

The New Jersey Plan was defeated in the first major convention vote, 7–3. However, the small states had enough support to force a compromise on the issue of representation in the legislature. Table 3.1 compares the New Jersey Plan with the Virginia Plan.

The Great Compromise

The Virginia Plan provided for a two-chamber legislature, with representation in both chambers based on population. The idea of two chambers was never seriously challenged, but the idea of representation according to population stirred up heated and prolonged debate. The small states demanded equal representation for all states, but another vote rejected that concept for the House of Representatives. The debate continued. Finally, the Connecticut delegation moved that each state have an equal vote in the Senate. Still another poll showed that the delegations were equally divided on this proposal.

A committee was created to resolve the deadlock. It consisted of one delegate from each state, chosen by secret ballot. After working straight through the Independence Day recess, the committee reported reaching the **Great Compromise** (sometimes called the Connecticut Compromise). Representation in the House of Representatives would be apportioned according to the population of each state. Initially, there would be fifty-six members. Revenue-raising acts would originate in the House. Most important, the states would be represented equally in the Senate, with two senators each. Senators would be selected by their state legislatures, not directly by the people.

The delegates accepted the Great Compromise. The small states got their equal representation, the big states their proportional representation. The small states might dominate the Senate and the big states might control the House, but because all legislation had to be approved by both chambers, neither group would be able to dominate the other.

Great Compromise Submitted by the Connecticut delegation to the Constitutional Convention of 1787, and thus also known as the Connecticut Compromise, a plan calling for a bicameral legislature in which the House of Representatives would be apportioned according to population and the states would be represented equally in the Senate.

Compromise on the Presidency

Conflict replaced compromise when the delegates turned to the executive branch. They did agree on a one-person executive, a president, but they disagreed on how the executive would be selected and what the term of office would be. The delegates distrusted the people’s judgment; some feared that

TABLE 3.1 Major Differences Between the Virginia Plan and the New Jersey Plan

Characteristic	Virginia Plan	New Jersey Plan
Legislature	Two chambers	One chamber
Legislative power	Derived from the people	Derived from the states
Executive	Unspecified size	More than one person
Decision rule	Majority	Extraordinary majority
State laws	Legislature can override	National law is supreme
Executive removal	By Congress	By a majority of the states
Courts	National judiciary	No provision for national judiciary
Ratification	By the people	By the states

popular election of the president would arouse public passions. Consequently, the delegates rejected the idea. At the same time, representatives of the small states feared that election by the legislature would allow the big states to control the executive.

Once again, a committee composed of one member from each participating state was chosen to find a compromise. That committee fashioned the cumbersome presidential election system we still use today, the **electoral college**. (The Constitution does not use the expression *electoral college*.) Under this system, a group of electors would be chosen for the sole purpose of selecting the president and vice president. Each state legislature would choose a number of electors equal to the number of its representatives in Congress. Each elector would then vote for two people. The candidate with the most votes would become president, provided that the number of votes constituted a majority; the person with the next-greatest number of votes would become vice president. (The procedure was changed in 1804 by the Twelfth Amendment, which mandates separate votes for each office.) If no candidate won a majority, the House of Representatives would choose a president, with each state casting one vote.

The electoral college compromise eliminated the fear of a popular vote for president. At the same time, it satisfied the small states. If the electoral college failed to elect a president, which the delegates expected would happen, election by the House would give every state the same voice in the selection process. Finally, the delegates agreed that the president's term of office should be four years and that presidents should be eligible for reelection with no limit on the number of terms any individual president could serve.

The delegates also realized that removing a president from office would be a serious political matter. For that reason, they involved both of the other two branches of government in the process. The House alone was empowered to charge a president with "Treason, Bribery, or other high Crimes and Misdemeanors" (Article II, Section 4), by a majority vote. The Senate was given the sole power to try the president on the House's charges. It could convict, and thus remove, a president only by a two-thirds vote (an **extraordinary majority**, a majority greater than the minimum of 50 percent plus one). And the chief justice of the United States was required to preside over the Senate trial. In

electoral college A body of electors chosen by voters to cast ballots for president and vice president.

extraordinary majority A majority greater than the minimum of 50 percent plus one.

1998, the Congress considered whether President Bill Clinton's denial, under oath, of a sexual relationship with a White House intern, who later admitted their affair, fit the constitutional standard of impeachment for "high Crimes and Misdemeanors." Although the House of Representatives voted to impeach President Clinton, the Senate, in a trial presided over by Chief Justice William H. Rehnquist, did not convict him.

★ The Final Product

Once the delegates had resolved their major disagreements, they dispatched the remaining issues relatively quickly. A committee was then appointed to organize and write up the results of the proceedings. Twenty-three resolutions had been debated and approved by the convention; these were reorganized under seven articles in the draft constitution. The preamble, which was the last section to be drafted, begins with a phrase that would have been impossible to write when the convention opened. This single sentence contains four elements that form the foundation of the American political tradition:²⁵

- *It creates a people:* "We the people of the United States" was a dramatic departure from a loose confederation of states.
- *It explains the reason for the Constitution:* "in order to form a more perfect Union" was an indirect way of saying that the first effort, the Articles of Confederation, had been inadequate.
- *It articulates goals:* "[to] establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity"—in other words, the government exists to promote order and freedom.
- *It fashions a government:* "do ordain and establish this Constitution for the United States of America."

The Basic Principles

In creating the Constitution, the founders relied on four political principles—republicanism, federalism, separation of powers, and checks and balances—that together established a revolutionary new political order.

Republicanism is a form of government in which power resides in the people and is exercised by their elected representatives. The idea of republicanism may be traced to the Greek philosopher Aristotle (384–322 B.C.), who advocated a constitution that combined principles of both democratic and oligarchic government. The framers were determined to avoid aristocracy (rule by a hereditary class), monarchy (rule by one person), and direct democracy (rule by the people). A republic was both new and daring: no people had ever been governed by a republic on so vast a scale.

The framers themselves were far from sure that their government could be sustained. They had no model of republican government to follow; moreover, republican government was thought to be suitable only for small territories, where the interests of the public would be obvious and where the government would be within the reach of every citizen. After the convention ended, Benjamin Franklin was asked what sort of government the new nation would have. "A republic," the old man replied, "if you can keep it."

republicanism A form of government in which power resides in the people and is exercised by their elected representatives.