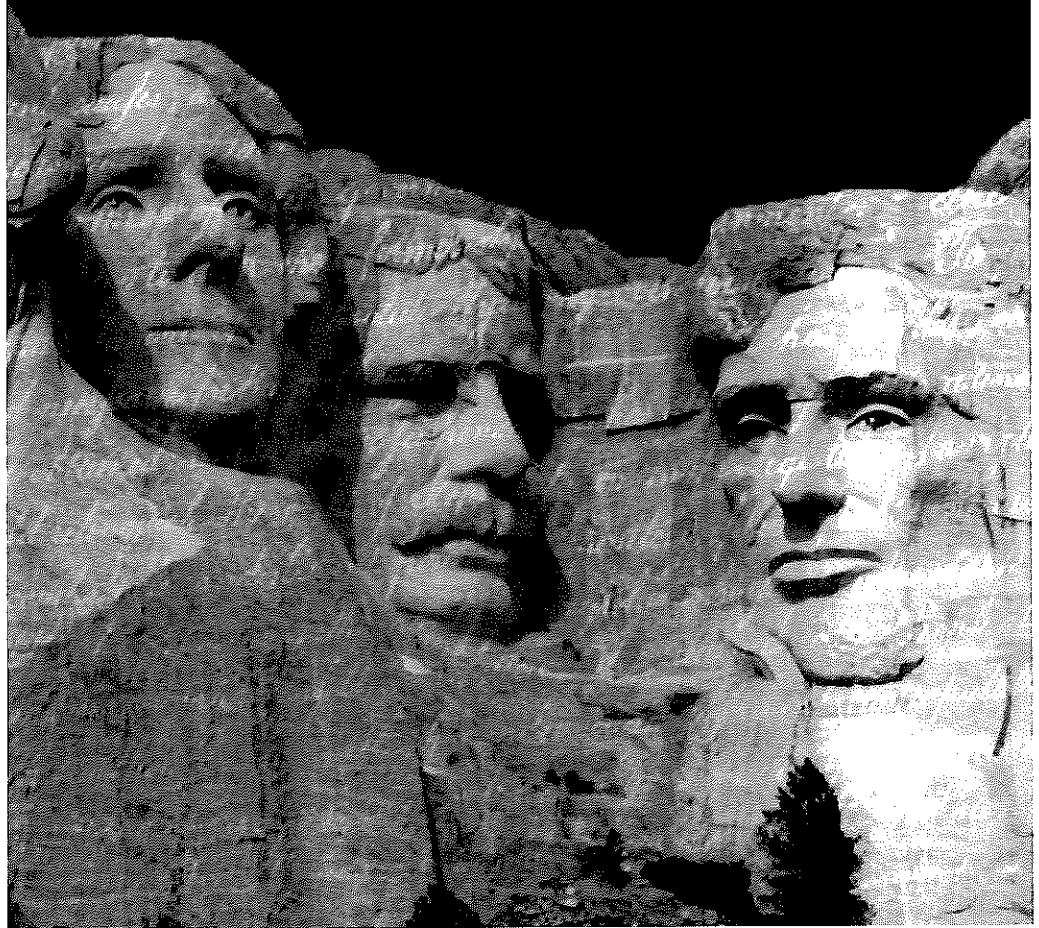


1483

History to the Civil War

Community College



huddled quickly and devised a counterproposal—known as the New Jersey Plan—that reaffirmed the confederation's principle of giving each state an equal vote in the national government. Battle lines were drawn, and much of the summer would be devoted to working out a compromise, under which states would have equal votes in an aristocratic upper house (called the Senate), where members would sit for long terms and would not have to stand for direct election by the people, while representation in the lower house would be proportional to population. This compromise was necessary to the convention's success, but in many ways it was a predictable outcome once the Virginia Plan had called for two legislative chambers and introduced the concept of proportional representation.

Several members of the first two delegations to show up were instrumental in developing and proposing the Virginia Plan, but one of its major architects was James Madison (from the state that gave the plan its name). Madison had led the original call for the Philadelphia convention, and his theories of national politics would shape the convention's ultimate recommendations. Madison's innovation was to argue that it was possible for a republican government to thrive in a diverse society spread over a large geographical expanse. Rejecting the traditional republican suspicion that central governments were prone to oppress local communities, Madison argued that a national legislature was more likely to act impartially because it would be forced to balance the interests of numerous competing factions and less liable to conspire against the rights of minorities. When delegates from New Jersey and Connecticut complained that Virginia's proposals would benefit the biggest states, Madison responded that populous states like Massachusetts, Pennsylvania, and Virginia were unlikely to have many interests in common or to be able to act in concert.

TALKING ABOUT SLAVERY

The crucial shift toward proportional representation signaled a decisive break from the kind of nation envisioned in the Articles of Confederation. It also forced delegates to confront the explosive issue of how each state's population would be counted. As Madison pointed out in defense of the Virginia Plan, the major political fault line in the United States was not between big states and small ones, but between northern and southern states. The division arose "principally from the effects of their having or not having slaves." The North did in fact have slaves in 1787, but the numbers were small enough to create a clear conflict between the two regions. When it came to apportioning representation in the lower house, Southerners wanted their population counts to include enslaved African Americans, while Northerners, not surprisingly, advocated counting only free persons.

Delegates ultimately settled on the infamous three-fifths clause, which credited states for 60 percent of their slave populations. This formula was not a novel suggestion; it had been introduced four years earlier (by none other than Madison) when the Continental Congress was considering how to as-

sess each state's financial burden. For tax purposes, of course, Northerners wanted the free and the enslaved to count equally, whereas Southerners took the opposite view. Delegates to the Philadelphia convention revived Madison's three-to-five ratio in 1787 as a way of calculating both political representation and tax assessment, but most of them understood that Congress was highly unlikely to engage in any direct taxation. The significance of the three-fifths clause is often misunderstood. It was neither an ingenious solution nor an expression of the mathematics of white racism, but rather a familiar fraction for splitting a crucial political difference. From the perspective of the enslaved, the insult lay less in being counted as only three-fifths of a person than in being counted at all. Disenfranchised slaves had no interest in enhancing the political power of the states in which they were held as property. Ultimately, the Constitution's three-fifths clause would provide a political bonus to slaveholders that would artificially amplify their voice in Congress and in presidential elections right up to the Civil War.

The immediate effect of the three-fifths proposal at the convention was to provoke one of the first national conversations about the legitimacy of human bondage. By 1787, the moral consensus that had supported African slavery in the New World since the early years of European colonization had begun to fray in the North. And while southerners, especially those from South Carolina, had repeatedly warned that any attempt to strip slaveholders of their chattel would instantly dissolve the national confederation, the dynamics of a face-to-face meeting with secret deliberations produced some frank discussion across a growing moral divide. Delegates from the South spoke openly and anxiously about the need for protection against the possibility that Congress would use its powers of taxation to abolish slavery—and threatened on multiple occasions to leave the convention. Several delegates, mostly from the North, took the occasion to denounce slavery, which was, in the words of Pennsylvania delegate Gouverneur Morris, a "nefarious institution" that defied "the most sacred laws of humanity." Regional disagreements over slavery could not be cast simply as North versus South. Delegates from Virginia, where slave populations reproduced themselves naturally and slaveholders were no longer importing human beings from Africa or the West Indies, were willing to join New Englanders in criticizing the international slave trade, and Northerners from small states proved amenable to allying with small slaveholding states on that issue to thwart parts of the Virginia Plan. But these tense and testy discussions supported Madison's observation that slavery mattered more than size as an obstacle to redesigning the national government.

The ultimate resolutions of the slavery debate reflected the discomfort many delegates brought to the subject. Nowhere in the final version of the U.S. Constitution would the words *slave* or *slavery* appear, even though the document contains key provisions intended to protect the interests of slaveholders. The Constitution banned federal interference with the slave trade for twenty years and prohibited state and local governments

from impeding the return of fugitive slaves from other states. It also granted slave-rich states extra congressional representation based on their enslaved population—all without ever uttering the crucial word.

WRITING THE CONSTITUTION

By September 8, almost three and a half months after they began their work, delegates had arrived at a set of proposals for a completely new national government, one with enhanced powers and greater insulation from democratic influences. Many important features of the original Virginia Plan, including a bicameral legislature and a three-branch government, survived the long summer of caucusing and negotiation, but the power of the individual states was preserved in some important ways. Both the Senate and the presidency, an executive office chosen by a special gathering of prominent citizens (called an electoral college), recognized the significance of states as fundamental units in the political order. State governments would have some control over their senators and presidential electors, and senators and electors would represent entire states rather than constituencies within those states. Still, the complex system of checks and balances proposed for the new national constitution entailed something much less like a league of states and more like a central government.

The last remaining item on the convention's agenda was to produce a written text that would describe and define the powers of the new government. Five delegates—Madison, Alexander Hamilton (New York), William Samuel Johnson (Connecticut), Rufus King (Massachusetts), and Gouverneur Morris (Pennsylvania)—formed the Committee on Style, which, like the five-man committee that drafted the text of the Declaration of Independence a decade earlier, was charged with choosing the right words to express the intentions of the larger convention. The committee, largely under the leadership of Morris, set about presenting, in crisp and economic language, the various agreements that had been reached over the summer, turning twenty-three different provisions into seven main categories. This work was obviously more than just stylistic and editorial. How the Constitution was organized and the precise language it included would have far-reaching implications. And Morris's preamble, which identified both the authority of the document (the people, not the states) and its goals (forming a more perfect union, securing the blessings of liberty), assigned a specific overriding meaning to the text that a different introduction might not have claimed.

The precise wording of the text made a difference, and Gouverneur Morris could be said to have authored the Constitution in much the same way that Jefferson is credited with the authoring the Declaration (see *Singular Lives: Gouverneur Morris, Ghost Writer*). But few people (then or now) would identify Morris as the father of the American Constitution, nor is it common to think of the Constitution as having an author at all. (James Madison is widely but misleadingly regarded as the

"father" or the architect of the Constitution, because he famously and vigorously defended its plan of government, but not exactly as an author.) This is because the Constitution makes no claim to personal authority, speaking instead on behalf of an abstract "people." Whereas the Declaration was a pledge of personal honor and commitment on the part of specific individuals who were describing current events in urgent language, the Constitution speaks in a more impersonal voice. Though both documents were signed, signatures meant something very different in the case of the Constitution. Thirteen of the original fifty-five delegates had left the convention before the final vote on September 17, and three others opposed the plan, so Benjamin Franklin moved that the Constitution be passed by "unanimous consent of the States present." The men who signed the Constitution were not using personal signatures to authorize the words it contained (as one signs a letter); they were simply attesting to the fact that the state delegations had voted in favor of the document. The words of the Constitution claimed to come directly from "the people"—not from the signers as individual speakers. All of this helps to explain why the Constitution is essentially a printed rather than a written or performed text. Every printed copy of the Constitution has the same significance and authority.

RATIFICATION

The preamble to the Constitution speaks confidently on behalf of "the people of the United States" and their desires, but of course the people had not yet spoken. The blueprint for a new government, which was first presented to the public on September 19, 1787, in a special issue of the *Pennsylvania Packet* newspaper, had been designed by a small and sequestered group of men, less than three-quarters of whom actually voted for final approval. The document did not even bear the official stamp of the existing Congress, which simply passed it along to the states without endorsement. Much work was needed to turn the text hammered out in Philadelphia into the supreme law of the land.

To take effect, the proposed Constitution (according to its own terms) would have to be approved by special ratification conventions in nine states, something supporters recognized would be a challenge. Almost immediately after the Philadelphia meeting adjourned, advocates of ratification, calling themselves Federalists, began organizing conventions in states where success seemed likely. Before the new year, Delaware, New Jersey, and Pennsylvania all ratified. The more interesting and important strategy of the Federalists was to refuse to allow any room in the ratification process for states to give in, propose amendments, express reservations, or vote on particular articles. All the states could do was accept or reject the published Constitution as it was written. This move was designed to prevent the chaos of having to renegotiate new promises or resubmit amended versions of the text to additional rounds of conventions. It was also consistent with the idea that the Constitution (which was going to set the rules of government, as opposed to being an act of government) should

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SINGULAR LIVES

Gouverneur Morris, Ghost Writer

Lawyers, politicians, and scholars speak of the “framers” of the Constitution, frequently appealing to their ideas and intentions in order to figure out the text’s meaning. But who exactly framed the document is open to debate. One place to start is with the man who likely contributed most of the language that became the supreme law of the land in the United States.

Though his face appears on no currency and no state capitals bear his name, Gouverneur Morris (his first name was French but was pronounced *governor* or *gover-NEER* in America) left as powerful an imprint on the new nation as any of the more famous founders. Born into the ruling elites of colonial New York in 1752, Morris joined the revolutionary cause and served briefly as a member of the Continental Congress during the war. But his shining moment came a decade later, after he was elected by the legislature in Pennsylvania (his home since 1778) to represent the state at the Constitutional Convention. Just thirty-five years old, Morris spoke more times at the convention than any other delegate, even though he missed an entire month of the deliberations while attending to private business back home.

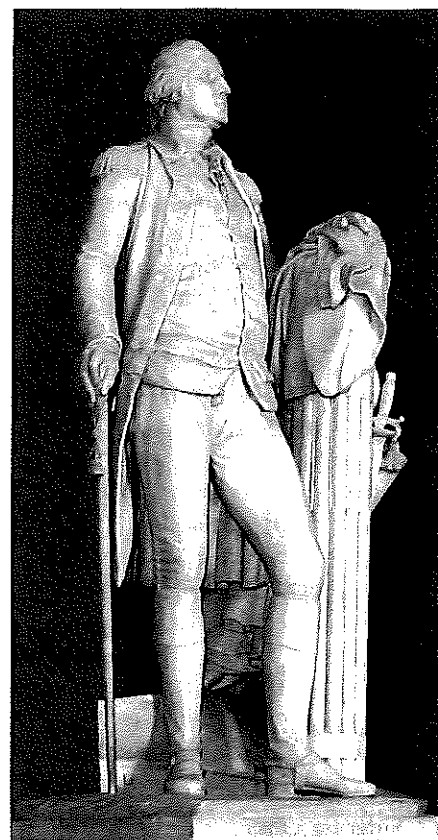
Morris was an eloquent and provocative speaker, and many of his contributions shaped the Philadelphia debates. But he was even more effective as a writer and became an obvious choice to serve on the committee that drafted the Constitution. According to other participants, it was Morris who pared the resolutions and compromises produced on the convention floor into the finished product’s compact and straightforward articles, which have become the focus of intense scrutiny and debate in American politics ever since. And it was Morris who penned the preamble, which remains the most famous part of the original document.

Morris played no role in the ratification campaign and took no position in the new government. He spent most of the rest of the century in Europe, making money, following the French Revolution as U.S. minister to France, and attending to his busy personal life. Morris would return to the United States in 1798 to make two other

great contributions to American history. In 1807, he was appointed by New York State to a commission charged with mapping the future growth of New York City. Three years later the same legislature named him chair of New York’s Canal Commission, which recommended building a canal from the Hudson River to the Great Lakes. With less fanfare than the Constitutional Convention, these two commissions would revolutionize market relations in the United States, turn New York into the nation’s commercial capital, and utterly transform the city’s landscape. One commission designed the grid plan for Manhattan (see Chapter 8); the other created the Erie Canal (see Chapter 10).

Morris died in 1816, before the canal was built and before the gridded streets of New York were graded and settled. But he had reason to be optimistic about these projects. He was less sanguine about his other creation, the Constitution. Late in life, under different political circumstances, Morris came to rue the three-fifths clause and the power it gave to southern states. Privately he advocated a breakup of the union.

Morris’s disenchantment with the Constitution he had written is a useful reminder of how hard it is to generalize about the framers. The fifty-five men who haggled in secret over the Constitution were very different from one another. And the man who came up with the words a nation would live by was hardly typical of the gathering. He was far more skeptical than most of his colleagues about the benefits of democracy and did not trust ordinary people to set government policy. He championed a strong presidency in the face of delegates who were more comfortable with legislative authority. He was also far more committed to the rights of minorities. He loved cities and dreaded western expansion. Like Thomas Jefferson (with whom he shared little else), he did not believe in an active god and was not a regular churchgoer. And more than most others at the convention, he bitterly opposed slavery on moral grounds. What Gouverneur Morris meant by “a more perfect union” undoubtedly differed from what Madison would have meant by those



Founding Father Figure. While completing his famous sculpture of George Washington in full military dress, French sculptor Jean-Antoine Houdon used Gouverneur Morris, living in Paris at the time, as a body double. As in the Constitution he drafted, Morris’s special role in the creation of this national icon is concealed from public view.

same words. But Morris had simply come up with the phrase. Neither he nor any of the other delegates could determine its meaning.

Think About It

1. In what respects was Morris an atypical member of the Constitutional Convention?
2. If Morris composed the text of the Constitution, does that make him its author?
3. What possible similarities does the Constitution share with Morris’s two other famous accomplishments?

Mercy Otis Warren (1728–1814), Antifederalist.

Warren, a playwright and historian from Massachusetts, worried that the United States covered too vast a territory to be governed by a single legislature. Although women did not ordinarily vote and never held political office, elite women shaped public discourse about government affairs both in print and in polite conversation.

behalf of the people, rather than on behalf of state assemblies or elected representatives. If individual states or politicians proposed amendments, it would be clear that the text did not express the words of “the people.” Instead the ratification process presented states with a text written in the name of the people, and it was up to voters to claim the text retroactively or disavow having uttered it.

During the first several months of 1788, ratification battles blazed in several key states. Georgia, which favored a strong National government to protect its border with Spanish Florida, was an easy sell. Connecticut followed soon after, and Maryland and South Carolina also offered hospitable soil for Federalists. But larger states, especially Virginia, Massachusetts, and New York, posed more formidable challenges. **Antifederalists** were strong in those states and raised powerful objections to the proposed Constitution on grounds that it would create an oppressive central government that would trample on the rights for which the Revolution had been fought. A major theme in much Antifederalist rhetoric was long-distance communication. How could a government covering such a vast territory genuinely represent distant constituents and respect local customs and opinions? This concern was especially powerful among backcountry voters, who lived far from the centers of information exchange.

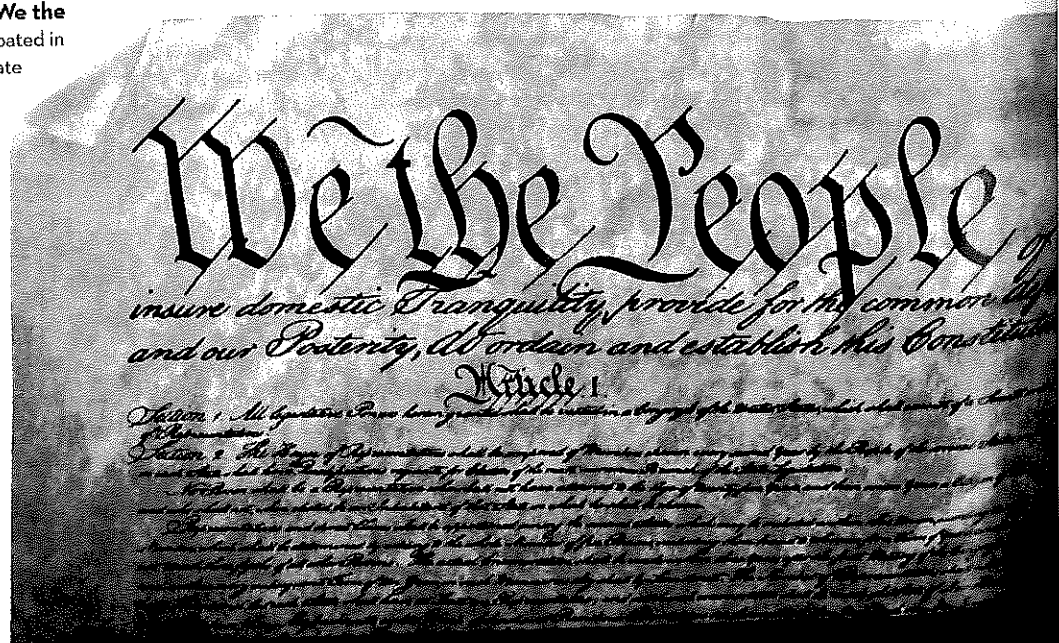
The Preamble to the Constitution: We the People?

About 160,000 voters participated in the selection of representatives to the state conventions that debated ratification. Perhaps one hundred thousand of those people voted, however indirectly, to accept this Constitution as the new supreme law of the land. By many measures this was a remarkable democratic achievement, but the number of people who in any sense framed the Constitution falls far shy of the almost three million souls who composed U.S. society at the time. Speaking as the people, those Americans who participated in the creation of this document had to make claims on behalf of a diverse and dispersed population.



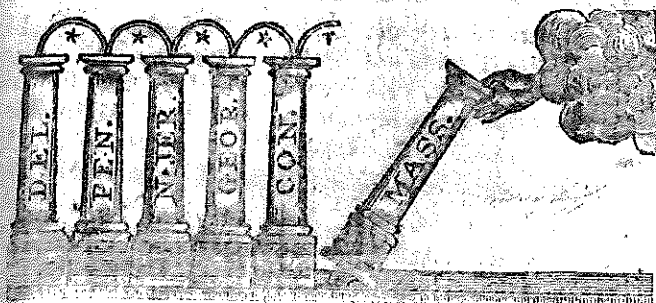
Federalists, on the other hand, were strong in cities and towns nearer the seaboard, and capitalized on their strong support among printers, who were optimistic about a geographically expansive political culture in which citizens took an interest in distant developments and read newspapers. Arguments in favor of ratification dominated the press, most famously in New York City, where Madison, Hamilton, and John Jay collaborated on a series of eighty-five newspaper pieces published between October 1787 and August 1788. The first thirty-six pieces of *The Federalist* appeared together in book form that March, and the rest comprised a second volume published two months later, before eight of the essays had ever come out in the newspaper. Though they formed but a small part of the larger print debate

over ratification, the essays' three authors eloquently defended the proposed Constitution and, more significantly, offered what future generations would come to regard as the most reliable exposition of its political philosophy. The central theme of this philosophy was the idea that the Constitution represented a system of **checks and balances**, which would protect the new nation against oppression and corruption. Checks and balances referred not only to the division of the government into three branches with separate powers and different domains, but also to the competition of heterogeneous forces, interests, and regions that the Federalist authors believed would prevent any one faction or social group from obtaining excessive power. In this way, its most influential supporters argued, the proposed Constitution would protect the new republic from too much democracy, too much aristocracy, and too much of anything else.



The CENTINEL

States—like the gen'rous vine supported live,
The strength they gain is from th' embrace they give
THE FEDERAL PILLARS.



UNITED THEY STAND—DIVIDED FALL.

A vessel arrived at Cape Ann, after a short passage from Georgia, confirms the classic maxim.

Building the Federal Edifice. Pro-ratification cartoons like this one from the Massachusetts Centinel emphasized the structural interdependence of the different states. Propped up by some supernatural hand, Massachusetts adds its pillar to the new government.

Arguments about ratification were not limited to the press. Both proponents and opponents took to public space in rallies, celebrations, bonfires, and other symbolic expressions of support for their positions. In Carlisle, Pennsylvania, for example, Federalists assembled to fire a cannon to salute the Constitution, but they were met by a larger party of Antifederalists, who beat them up, burned an almanac in which the Constitution was printed, and set fire to the cannon itself. Whereas Antifederalists gathered to express the consensus of a local community, Federalists were especially interested in parades and processions that claimed to speak for more abstract collectivities, like the new nation itself. Federalist street theater projected images of unity and wholeness and often used the ritual of the thirteen toasts. Once New Hampshire became the surprise ninth state to ratify, putting the Constitution into effect, Federalists tried to put pressure on Virginia and New York by offering only nine toasts.

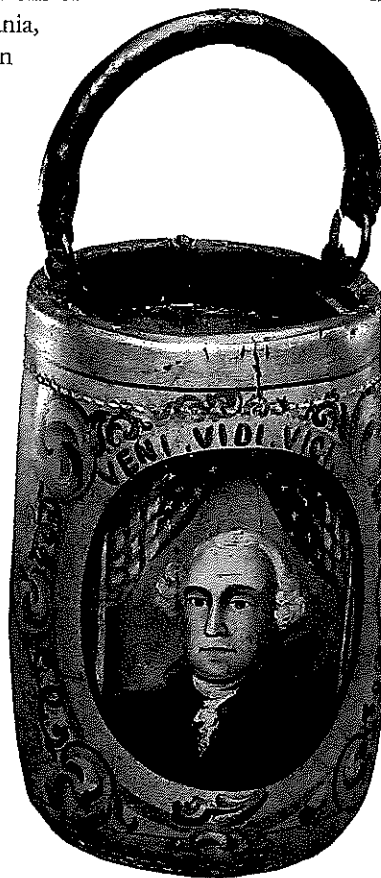
Both Virginia (in June) and New York (in July) ratified the Constitution by extraordinarily close margins. In both cases, the promise of subsequent amendments to protect the rights of minorities and individuals helped sway opponents to support ratification. Federalists had refused to amend the text prior to the ratification process (since it would have unraveled the fiction

that the Constitution was a founding document that preceded the political actions of the states), but once it was in place, the Constitution's leading advocates in Congress joined critics in supporting a **Bill of Rights**, which contains most of what Americans still regard as the essence of the original Constitution: freedom of speech, assembly, and arms-bearing, as well as freedom from state-established religion, unwarranted searches, self-incrimination, or cruel punishments. The Bill of Rights won congressional approval in September 1789 and by the end of 1791 met the requisite approval of three-fourths of the states. During that two-year period, North Carolina and Rhode Island also ratified the original Constitution, making good on the earlier boast of the delegates in Philadelphia. The Constitution had now been approved by the unanimous consent of the states.

The original U.S. Constitution, despite numerous defects, would wield enormous influence on the development of law and politics both at home and abroad. It did not establish democracy (most Americans remained legally disenfranchised long after ratification), it did not espouse universal human rights (slavery was fully constitutional), and it did not even guarantee basic freedoms of speech, press, assembly, and religion. Even the subsequently adopted Bill of Rights, which prevented Congress from infringing on those rights, allowed states to do as they pleased in this regard. But the Constitution did enshrine fundamental principles of separation of powers and popular sovereignty that remain cornerstones of American government, and its model was adopted wholesale by other republican governments, from Venezuela to the Cherokee Nation, over the next several decades. In the longer term, the constitutionalist idea that national governments ought to be founded upon and bound by a written text remains one of the most significant legacies of American nation building.

THE FIRST PRESIDENT

In keeping with its primary goal of creating a vigorous and energetic national government, the Constitution called for a chief executive who would wield more authority in American political life than any individual since independence was declared. Although no one campaigned for the job, George Washington seemed an obvious candidate by virtue of his broad personal popularity. Washington had participated in the Philadelphia convention as a delegate from Virginia, but had frequently expressed his intention to retire from public life. Still, few doubted that he was the



Fire Bucket Showing George Washington's

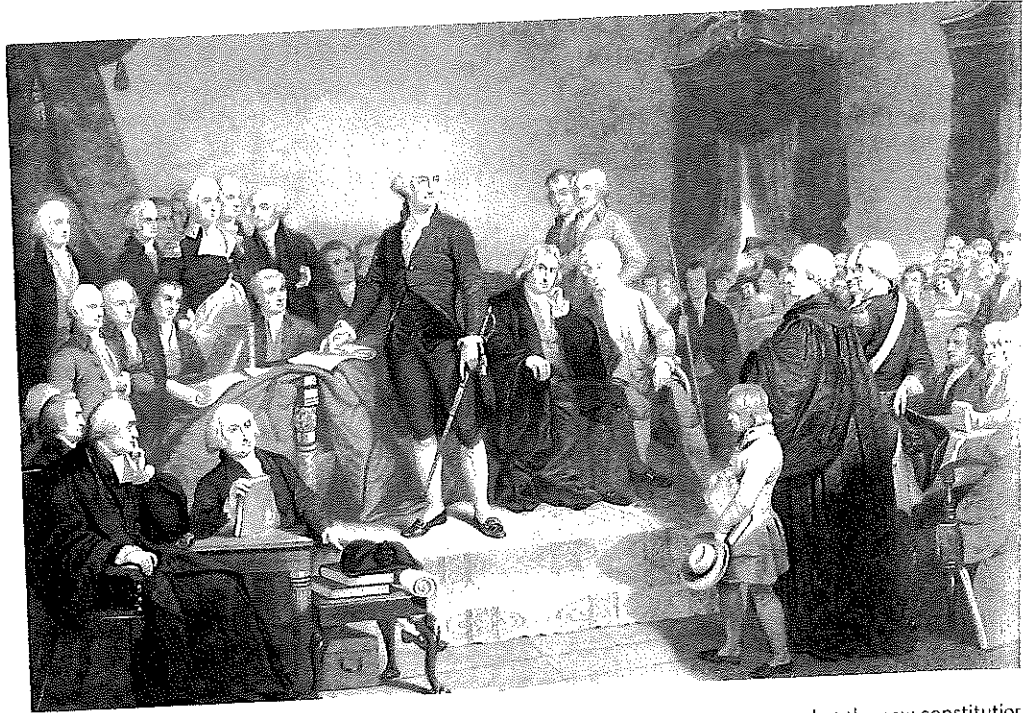
Face. Washington was celebrated as a strong military leader, likened here to Rome's Julius Caesar.

right man to unite the states and make the new office of president palatable to those who feared executive power. The expectation that Washington would fill the position had largely dissuaded Anti-federalists from making the presidency a significant issue in their campaign against the Constitution.

After ratification, Washington maintained a reluctant posture, but the sixty-nine electors, representing eleven states (North Carolina and Rhode Island were not yet on board), did not hesitate to select him unanimously when they gathered in February 1789. The more complicated portion of the process was communicating this decision to the Confederation Congress in New York so that the new president could be inaugurated. Due to frigid weather, it took two months to gather a congressional quorum, and the country was left in a state of limbo without a functioning central government. Finally, on April 6, Congress opened the ballots and announced publicly that Washington had been elected. It would take another week before the president-elect was officially informed, but Washington had already begun to pack his bags for the move from Virginia to New York. The will of the people was clear, he explained in his official response to the election: "I have been accustomed to pay so much respect to the opinion of my fellow citizens that the knowledge of their having given their unanimous suffrages in my favor scarcely leaves me the alternative for an option."

As he made his slow journey northward, Washington was celebrated in town after town with speeches, toasts, and parades. On the last day of April, the new president was sworn into office in New York's Federal Hall, taking his oath over a Bible brought from a local lodge of the Masonic Order, the secret society to which Washington belonged. After reading the oath prescribed in the Constitution, the officiating chancellor called out to the crowd below the gallery: "Long Live George Washington, President of the United States."

Having inaugurated a new chief executive with much pomp and ceremony, the leaders of the republic faced the challenge of conferring dignity upon the office of the presidency without appearing to have replaced one king with another. Some of the founders, including the new vice president, John Adams, thought that the honor of the nation called for Washington to be addressed with such majestic titles as "His Highness, the President of the United States, and Protector of their Liberties," but advocates of



Father for a Republic. George Washington entered office amid lingering concerns that the new constitution bring back monarchy. The fact that Washington, who appears to have been sterile, sired no natural heirs may have helped allay some of those concerns. "Providence left Washington childless," as the nineteenth-century saying went, "that a nation might call him father."

the simpler, republican-sounding "Mr. President" carried it. The Constitution had clearly delimited the powers of the executive branch, but everyday decisions about protocol, dress, and conduct would also shape the character of the new government.

NATIONAL COMMUNICATION NETWORKS

Documents such as the Declaration of Independence and the Constitution did not simply lay political foundations for the new government; they were also part of a growing communication system. Their power depended on the proposition that the new republic, however dispersed over the map and over time, might imagine itself as sharing a common identity and participating in a collective conversation. As the new nation emerged, men and women contributed to this conversation by a culture around printed texts. A wide range of printed newspapers and pamphlets circulated among various states and offered definitions of what people the United States had in common, beyond their shared status as subjects of the new national government.

LITERATURE AND THE NEW NATION

The first writer to pose in print the question "What is an American?" was not a delegate to the Continental Congress or the author of the Declaration, a pamphleteer for independence, or a defender of the Constitution. He was not a native English speaker.