CHAPTER 9

The Confederation and the Constitution, 1776–1790

# Focus Questions

1. What distinguishes constitutions in America from a constitution in the British tradition?

2. What were the shortcomings of the Articles of Confederation?

3. What events and situations motivated a desire for a stronger central government in some Americans?

4. What compromises were required to produce the Constitution?

5. How did the Anti-Federalists view the proposed Constitution?

6. What was the ratification process for the Constitution, and how did the Federalists eventually triumph?

7. How did the principle of equality influence American society after the adoption of the Declaration of Independence?

# Chapter Themes

**Theme:** The American Revolution was not a radical transformation like the French or Russian revolutions, but it did produce political innovations and some social change in the direction of greater equality and democracy.

**Theme:** Compromise, on a number of important issues, was required to create the new federal Constitution. Adopting the new document required great political skill and involved changing the ratification process defined in the Articles of Confederation, writing persuasively in support of the stronger central government, and promising to add amendments to protect individual liberty and states’ rights.

**Theme:** The federal Constitution represented a moderately conservative reaction against the democratic and decentralizing effects of the Revolution and the Articles of Confederation. In effect, it embedded the revolutionary ideals of liberty and popular government within a strong framework designed to advance national identity and interests against the dangers of fragmentation and disorder.

chapter summary

The American Revolution did not overturn the social order, but it did produce substantial changes in social customs, political institutions, and ideas about society and government. Among the changes were the separation of church and state in some places, the abolition of slavery in the North, written political constitutions, and a shift in political power from the eastern seaboard toward the interior.

The first weak national government, the Articles of Confederation, was unable to exercise real authority, although it did successfully deal with the western lands issue. The Confederation’s weaknesses in handling foreign policy, commerce, and Shays’s rebellion spurred the movement to alter the Articles.

Instead of revising the Articles, the well-off delegates to the Constitutional Convention created a permanent charter for a whole new government. In a series of compromises, the convention produced a plan that provided for a vigorous central government, a strong executive, and protection for property, while still upholding republican principles and states’ rights. The pro-Constitution Federalists, generally representing wealthier and more commercial forces, frightened other groups who feared that the new government would undermine their rights and their interests.

The Federalists met their strongest opposition from Anti-Federalists in Virginia and New York, but through effective organization and argument, as well as promises to incorporate a bill of rights into the document, they succeeded in getting the Constitution ratified. By establishing the new national government, the Federalists checked the Revolutionary movement, but their conservative regime embraced the central Revolutionary values of popular republican government and liberty.

# developing the chapter: suggested lecture or discussion topics

* Analyze the structure and workings of the Articles of Confederation government, perhaps using the table in the chapter. Emphasis might be placed on the achievements of the Articles government, such as the western lands issue, as well as its obvious weaknesses.

REFERENCE: Jack N. Rakove, *The Beginnings of National Politics* (1979).

* Address directly the “Beard interpretation” of the Constitution as a conservative counterrevolution by the propertied elite. Explain the elements of the pro-Constitution movement that support such a view as well as its limits.

REFERENCES: Charles Beard, *An Economic Interpretation of the Constitution* (1913); Robert Brown, *Charles Beard and the Constitution* (1956); Edmund S. Morgan, *Inventing the People* (1988).

* Describe the ratification struggle as both a hard-fought political contest and a great political debate about the nature of humanity and the purposes of government. Consider, particularly, the key arguments of the Anti-Federalists, and what might or might not have been legitimate concerns of these historical losers (while remembering that the Bill of Rights is in effect a part of their legacy).

REFERENCE: Herbert J. Storing, *What the Anti-Federalists Were For* (1981).

* Consider the social changes brought about by the Revolution. Consider specific changes such as church-state separation in Virginia and the abolition of slavery in the North in relation to the Revolution’s larger social significance.

REFERENCE: Gordon Wood, *The Radicalism of the American Revolution* (1991).

# for further interest: additional class topics

* Discuss the question of how revolutionary the Revolution was, measured by the social changes it caused. One issue might be why Americans have tended to think of the Revolution more in terms of liberty and political ideas than in terms of social change.
* Compare the difficulties of establishing a stable government in post–Revolutionary America with similar situations in other new nations of the modern world.
* Consider how America and American government would be different if the Articles of Confederation had remained the national government. One focus might be the extent to which the concept of the U.S. government is identified with the government of the Constitution.
* Define sovereignty. In order for a national government to be sovereign, what must it be able to do? To what extent was the national government, under the Articles of Confederation, sovereign? How much did the national government’s level of sovereignty increase or decrease under the new federal Constitution? Examine the level of sovereignty in state governments under the Articles of Confederation and also under the Constitution.
* Discuss the reverence accorded the Constitution and the Founding Fathers in relation to the actual historical events of 1787. Examine particular provisions of the Constitution, and discuss whether they might have meant something different in the eighteenth century than they do today.
* Examine the treatment of race and slavery in the Constitutional Convention (including how and why it was mostly but not completely avoided in the actual text). Consider the question of whether directly addressing the slavery question would have made the creation of a federal union impossible—and perhaps even led to the creation of a separate proslavery confederation in 1787.

# character sketches

## Daniel Shays (1747–1825)

Shays was the Massachusetts Revolutionary War veteran whose rebellion, in 1786, spurred the movement for a new Constitution.

A militiaman at Lexington and Bunker Hill, Shays was typical of the ordinary Revolutionary-era Americans who left their farms to fight in the War for Independence. He rose to captain, and after the war, he was elected to various local offices.

Shays emerged as the leader of the revolt by indebted farmers when eight hundred armed men prevented a Springfield court from hearing foreclosure cases. He continually insisted that the farmers wanted only redress of grievances, not violence, but by early 1787, he was preparing to attack a state arsenal. The attack failed, and Shays fled to Vermont. He was condemned to death but pardoned the next year, and eventually, he returned to Massachusetts to live out his days in peace.

**Quote:** “The people assembled in arms…return for answer that, however unjustifiable the measure may be which the people have adopted in recourse to arms, various circumstances have induced them thereto.…That virtue which truly characterizes the citizens of a republican government hath hitherto marked our plans with a degree of innocence, and we wish and trust it will still be the case.” (Reply to General Benjamin Lincoln’s demand for surrender, 1787)

REFERENCE: David Szatmoy, *Shays’s Rebellion* (1980).

## James Madison (1750–1836)

Madison, the “Father of the Constitution,” is generally considered the most original political thinker among the Founding Fathers. The only failure during his long career of public service was his term as president, which included the near-disastrous War of 1812.

Madison attended Princeton and considered entering the ministry. He strongly disliked religious intolerance and his first political activities were on behalf of religious disestablishment in Virginia.

Throughout his life he kept extensive journals, and his notes on the proceedings of the secret Constitutional Convention provide the only detailed record of the arguments there.

Madison’s marriage to Dolley Payne Todd was a long and happy one. Since Jefferson was a widower, the Madisons’ home was the social center of Washington during both the Jefferson and the Madison administrations. Although quiet, bookish, and introspective, Madison was personally warm and engaging, especially in intimate settings.

**Quote:** “Hearken not to the unnatural voice which tells you that the people of America, knit together as they are by so many cords of affection, can no longer…be fellow-citizens of one great, respectable, and flourishing empire, Hearken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world.… If novelties are to be shunned, believe me, the most alarming of all novelties, the most wild of all projects, the most rash of all attempts, is that of rending us in pieces, in order to preserve our liberties and promote our happiness.” (*Federalist* No. 14, 1788)

REFERENCE: Irving Brant, *The Fourth President: A Life of James Madison* (1970).

## Patrick Henry (1736–1799)

Henry was the famous Revolutionary orator and five-term Virginia governor who later became the leading Anti-Federalist opponent of the Constitution.

He came from a plain frontier background rather than from the planter aristocracy. When his uncle took him to hear Samuel Davies, a famous Great Awakening preacher, young Patrick fell in love with the art of persuasive speaking.

Henry’s eloquent defenses of Virginia liberty, at the time of the Stamp Act, made him the youthful leader of the radical party in that state. He made his “give me liberty or give me death!” speech during the debate over whether the Virginia assembly should take steps toward independence.

Henry’s young protégé, Thomas Jefferson, succeeded him as governor during the Revolution, but Henry later demanded an investigation of Jefferson’s conduct in office, which caused a bitter and lasting feud between the two. In his later years Henry was plagued with financial troubles and became increasingly conservative.

**Quote:** “It is now confessed that this is a national government.… The means, says the gentleman, must be commensurate to the end. How does this apply? All things in common are left with this government. There being an infinitude in the government, there must be an infinitude of means to carry it out.” (Virginia debate on the Constitution, 1788)

REFERENCE: Richard R. Beeman, *Patrick Henry* (1974).

# great debates in american history

## Great Debate (1787–1789):

The Constitution: Should the United States adopt the new Constitution to replace the Articles of Confederation?

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| ***For:*** The Federalists—led by Washington, Hamilton, Madison, Jay, and Marshall; including most commercial, seacoast, urban, and upper-class groups. |   | ***Against:*** The Anti-Federalists—led by Patrick Henry, Samuel Adams, Richard Henry Lee, George Mason, and George Clinton; including many noncommercial, western, agrarian, and state-oriented interests. |

ISSUE #1: Need for change. Does the government of the Articles need to be replaced?

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| ***Yes:*** Federalist Alexander Hamilton: “The faith, the reputation, the peace of the whole Union are thus continually at the mercy, the prejudices, the passions, and the interests of every member of which it is composed. Is it possible that foreign nations can either respect or confide in such a government? Is it possible that the people of America will longer consent to trust their honor, their happiness, their safety, on so precarious a foundation?…The Confederation…is a system so radically vicious and unsound, as to admit not of amendment but by an entire change in its leading features and characters.” |   | ***No:*** Anti-Federalist Patrick Henry: “The honorable gentleman said that great danger would ensue if the Convention rose without adopting this system. I ask, where is that danger? I see none. Other gentlemen have told us, within these walls, that the union is gone, or that the union will be gone.… Till they tell us the grounds of their fears, I will consider them as imaginary.… Where is the danger? If, sir, there was any, I would recur to the American spirit which has enabled us to surmount the greatest difficulties.” |

ISSUE #2: Can a republic govern a large territory and a diverse population?

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| ***Yes:*** Federalist James Madison: “Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that the majority of the whole will have a common motive to invade the rights of other citizens.… Hence, it clearly appears that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic.…” |   | ***No:*** Anti-Federalist James Winthrop of Massachusetts: “It is the opinion of the ablest writers on the subject, that no extensive empire can be governed on republican principles, and that such a government will degenerate to a despotism.… No instance can be found of any free government of any considerable extent.… Large and consolidated empires may indeed dazzle the eyes of a distant spectator with their splendour, but if examined more nearly are always found to be full of misery.” |

ISSUE #3: Will the new constitutional government create an aristocratic power in the presidency?

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| ***No:*** Federalist Alexander Hamilton: “There is no comparison between the intended power of the President and the actual power of the British sovereign.…The President of the United States would be an officer elected by the people for four years; the king of Great Britain is a perpetual and hereditary prince.…What answer shall we give to those who would persuade us that things so unlike resemble each other? The same that ought to be given to those who tell us that a government, the whole power of which would be in the hands of the elective and periodical servants of the people, is an aristocracy, a monarchy and a despotism.” |   | ***Yes:*** Anti-Federalist George Clinton of New York: “Wherein does this president, invested with his powers and prerogatives, essentially differ from the king of Great Britain (save as to the name, the creation of nobility and some immaterial incidents…)? The safety of the people in a republic depends on the share or proportion they have in the government; but experience ought to teach you, that when a man is at the head of an elective government invested with great powers, and interested in his reelection…appointments will be made by which means an imperfect aristocracy bordering on monarchy may be established.” |

ISSUE #4: Does the proposed Constitution protect the people’s liberty?

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| ***Yes:*** Federalist Alexander Hamilton: “Here, in strictness, the people surrender nothing; and as they retain everything they have no need of particular reservations.… Bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous.… Why declare that things not be done which there is no power to do?… The truth is…that the Constitution is itself, in every rational sense, and to every useful purpose, a BILL OF RIGHTS.” |   | ***No:*** Anti-Federalist George Mason of Virginia: “There is no declaration of rights: and the laws of the general government being paramount to the laws and constitutions of the several states, the declarations of rights, in the separate states, are no security. Nor are the people secured even in the enjoyment of the benefit of the common law, which stands here upon no other foundations than its having been adopted by the respective acts forming the constitutions of the several states.” |

REFERENCES: Gordon Wood, *The Creation of the American Republic*, *1776–1787* (1969); Thornton Anderson, *Creating the Constitution* (1993).

# questions for class discussion

1. Was the United States in a crisis under the Articles of Confederation, or was the crisis exaggerated by the Federalists to justify their movement? (See first boxed quote on page 169.) Could the United States have survived if the Articles had stayed in effect? What successes did the Articles of Confederation achieve? Was the Constitutional Convention a second American Revolution? Contrast boxed quotes by Hamilton and by Jefferson on pages 169 and 170.

2. Why was the United States so uniformly held in contempt by European governments after the Revolution? Was it due more to the Articles of Confederation or to being a recently created nation?

3. What would have happened to the Constitutional Convention if Thomas Jefferson, John Adams, Thomas Paine, Samuel Adams, John Hancock, and Patrick Henry all attended?

4. Should the Founding Fathers’ general elitism and indifference to the rights of people, women, African Americans, and Indians be held against them? Or should they be viewed with more understanding in their historical context?

5. What was really at stake in the debate between Federalists and Anti-Federalists? Did the Federalists win primarily because of their superior political skills or because they had a clearer view of the meaning of the Revolution and the future of the United States? What role did the ratification process play in the fight between the Federalists and Anti-Federalists (and did it favor one side or the other)?

6. Why did Americans accept the Constitution, with its strong national government and powerful executive, after, only a decade earlier, violently revolting against similar British institutions? Why did the Anti-Federalists not violently oppose the new Constitution?

7. Which of the social changes brought about by the Revolution was the most significant? Could the Revolution have gone further toward the principle that “all men are created equal” by ending slavery or granting women’s rights? How does the Copley Family Portrait on page 162 in the section “Examining the Evidence” reflect the concept of “republican motherhood?” (See boxed quote on page 179 for worldwide influence of ideas from American Revolution.)

**CONTENDING VOICES: JONATHAN SMITH VS. PATRICK HENRY**

**Questions for Class Discussion**

1. Why did small farmer Jonathan Smith approve of the proposed Constitution?
2. How did Patrick Henry interpret the proposed Constitution in a very different manner?

# varying viewpoints

**Expanding the View**

* Charles Beard, *An Economic Interpretation of the Constitution* (1913).

A view of the Constitution as a conservative “counterrevolution”:

“The concept of the Constitution as a piece of abstract legislation reflecting no group interests and recognizing no economic antagonisms is entirely false. It was an economic document drawn with superb skill by men whose property interests were immediately at stake; and as such it appealed directly and unerringly to identical interests in the country at large.”

* Gordon Wood, *The Creation of the American Republic* (1969).

A view of the Constitution as the extension of republican political theory:

“Because new ideas had grown often imperceptibly out of the familiar, the arguments the federalists used in 1787–88 never really seemed disruptive or discontinuous. Americans had been prepared for a mighty transformation of political thought by a century and half of political experience telescoped into the rapid intellectual changes that had taken place in the three decades of the Revolutionary era.… Americans had destroyed the age-old conception of mixed government and had found new explanations for their policies created in 1776, explanations that rested on their expansion of the principle of representation. America had not discovered the idea of representation, said Madison, but it could ‘claim the merit of making the discovery the basis of unmixed and extensive republics.’”

# Questions for Class Discussion

1. Why was Beard’s view of the Constitution and the Founding Fathers so shocking when it first appeared? What would the implications be if Beard were correct?

2. Does Wood’s view fit Beard’s critique of those who see the Constitution as “a piece of abstract legislation reflecting no group interests”? What would Wood see as the interests of the Founding Fathers?

3. How would the holder of each of these views understand the relationship between the Revolution and the Constitution? How would each of them interpret the Anti-Federalists?