

A Companion Volume to

LIGHT TO THE NATIONS II:

The Making of the Modern World

The History of the United States:
1492-1900

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Key to Using This Volume in Conjunction
with *Light to the Nations II*

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A New Constitution

“How are you today, my dear General!”

With these words, Gouverneur Morris greeted General George Washington, after slapping him genially on the back. Morris, a Pennsylvania delegate to the Constitutional Convention, had said that, though he respected Washington, he was not in awe of the great man. James Madison, however, believed none of it. He bet Morris a dinner that he would not walk up to Washington, slap him on the back, and say, “How are you today, my dear general.” And Morris took up the bet.

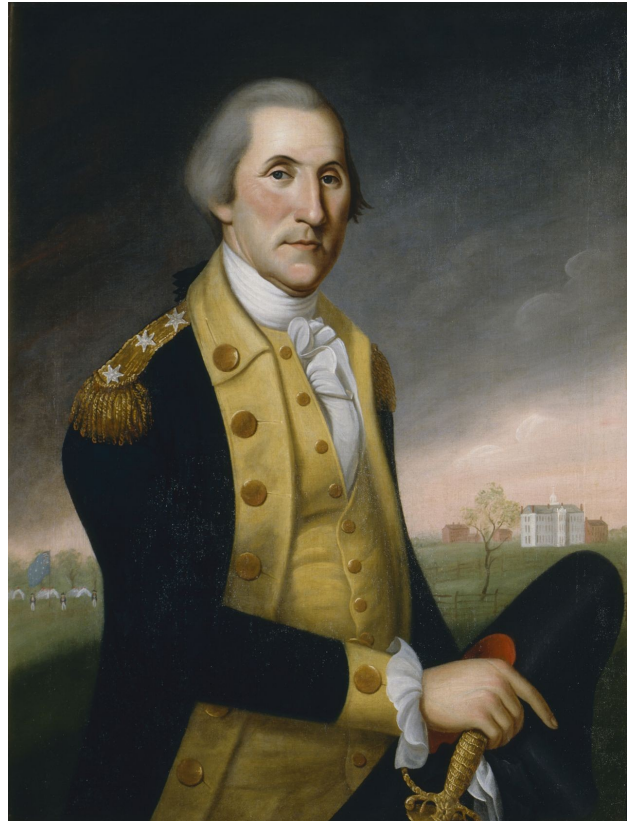
Afterward, over the dinner that Madison provided, Morris confessed that, if he had felt no awe for Washington before, he did now. Washington's cold stare following the familiar greeting, Morris said, had thoroughly shaken him. He would never repeat such a familiarity again, not for a thousand dinners!

The Constitutional Convention

George Washington's reaction to Gouverneur Morris' friendly greeting might seem a tad prickly – but given the customs of the time touching personal honor, it made perfect sense. After all, this was the great Washington, the man who had preserved the Continental Army through the long years of the revolution. A man who had become the symbol of the unity of the nation. And who was this Gouverneur Morris to treat the General in so chummy a way? Only a congressman from Pennsylvania, and younger than Washington by 30 years! (Morris was only 35 years old at the time of the convention.) No wonder Washington gave him that cold stare!

Thus did Gouverneur Morris learn the sentiment animating all his colleagues at the Constitutional Convention: awe for Washington. This awe was to serve the convention in good stead, for it was Washington the delegates chose to serve as president over the convention. As president, Washington could not engage in any of the discussions or debates; but he would prove to be the force that united the convention.

It may have seemed at first that this convention, like the previous one at Annapolis, would not come off. Though it was set to open on May 15, 1787, by that date only a few delegates had



**George Washington,
by Charles Wilson
Peale**

arrived in Philadelphia. Eleven days passed, and delegates from only seven out of the 13 states were present. Over the next few months, delegates from other states trickled in. Rhode Island's delegates never arrived.

The convention's delegates could be divided into two general groups. The first group, the *nationalists*, favored a strong central government that would be able to dominate the state governments and keep them in check. They wanted no mere revision of the Articles of Confederation, which they thought could never provide a strong, centralized, national government; the nationalists favored a complete and total overhaul of the Articles – really, an entirely new constitution. Nationalist delegates tended to come from the “large states” (those with a larger population) such as Virginia, New York, Pennsylvania, and Massachusetts – as opposed to the small states, those with fewer inhabitants (like Rhode Island, Connecticut, and Georgia).



The Pennsylvania state house, where the Constitutional Convention was held

wanted to preserve one of the most important features of the Articles – one vote per state in Congress. The nationalists, on the contrary, favored proportional representation – more votes in Congress for the larger states; fewer votes for the smaller states.

With such seemingly irreconcilable divisions among the delegates, the Constitutional Convention would have to weather many hard days ahead. It would need someone with the stature of Washington to keep it together.

A Contentious Convention

During the first days of the convention it appeared that the nationalists would attain all their desired goals. For one thing, unlike their opponents, they came to the convention well organized. Just four days into the convention, one of their number, Edmund Randolph of Virginia, offered a plan for a “revision” of the Articles of Confederation – the “Virginia Plan.”

Randolph's plan was based on the conviction that the best form of government is a mixed form, like that found in the constitution of Massachusetts. The Virginia Plan called for a two-house (bicameral) legislature. The states would not be represented equally in the legislature (as in the Articles of Confederation) but *proportionally*. That is, the large states would have more representatives; the smaller states, fewer representatives. The people of the states would elect members of the “first house” of the legislature, which, in turn, would select the members of the “second house,” called the Senate. Along with the legislature, the Virginia Plan called for a “national executive” (a president), who would be chosen by the legislature. The president's function would be

The second major division among the delegates included those who favored a weak central government and the preservation of state sovereignty. These delegates wanted to keep to the stated purpose of the convention – a simple revision of the Articles of Confederation. Representing the small states, these anti-nationalists

to “execute” laws passed by the legislature – that is, make sure they were put in force. Along with the national executive, the legislature would appoint members of a “national **judiciary**,” to be made up of one or more superior courts and a certain number of inferior courts.

The Virginia Plan gave the national government very wide powers. The legislature, said the plan, would make laws “in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual [that is, state] legislation.” The national government would presumably judge when the state legislatures could not effectively make laws. The national legislature, too, could negate any laws passed by a state legislature if it thought the laws violated the national constitution. If a state refused to obey the national government, the national legislature could use military force against it. To guard against misuse of power by the national legislature, the Virginia Plan called for a Council of Revision (made up of the executive and members of the judiciary) that could overturn acts of the legislature that it thought violated the rights of the states.

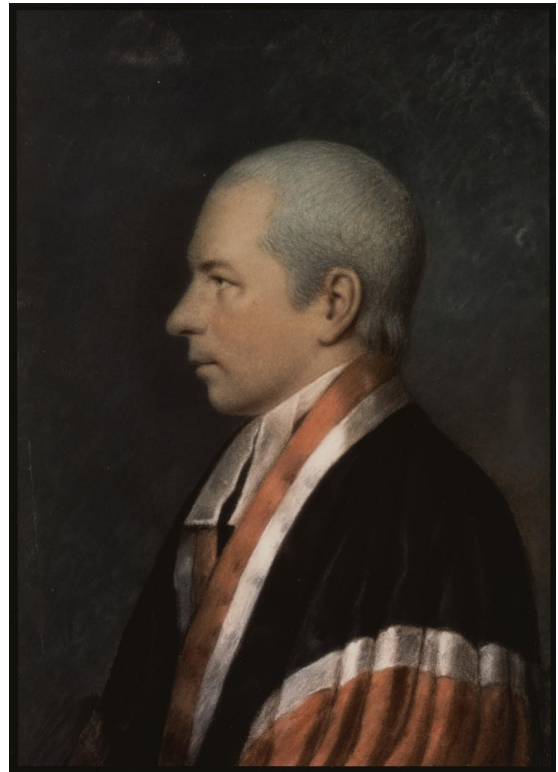
Many delegates had reasons to oppose at least parts of the Virginia Plan. Some thought state legislatures should appoint the members of the first house of the national legislatures. Others objected to the idea of a national executive, unless it was a group of men instead of one man. A one-man executive or president, they said, was too much like a king. But such objections did not undermine the basic character of the Virginia Plan. In fact, for some time it appeared that the supporters of the plan, the nationalists, would gain what they most desired – a strong central government that would dominate the state governments.

The nationalists, who represented the interests of the large states, did not expect any organized opposition from the small states. But then on June 9, 1787, a small-stater, William Paterson of New Jersey, spoke out against proportional representation in the legislature. If the large states could send more representatives to the national legislature than the small states could, they could end up dominating and controlling the small states. If the large states, Paterson said, insisted on proportional representation, then they could form a union without the small states. Then, on June 15, Paterson offered his own plan, called the New Jersey Plan. This plan would only revise the Articles of Confederation, not replace them. It said that the states should be equally represented in the national legislature.

The nationalists had not expected such an organized resistance from the small staters. So effective was the opposition that on June 18, when the delegates approved the Virginia Plan (seven states for it; three states for the New Jersey Plan), the small staters kept the convention from moving forward.

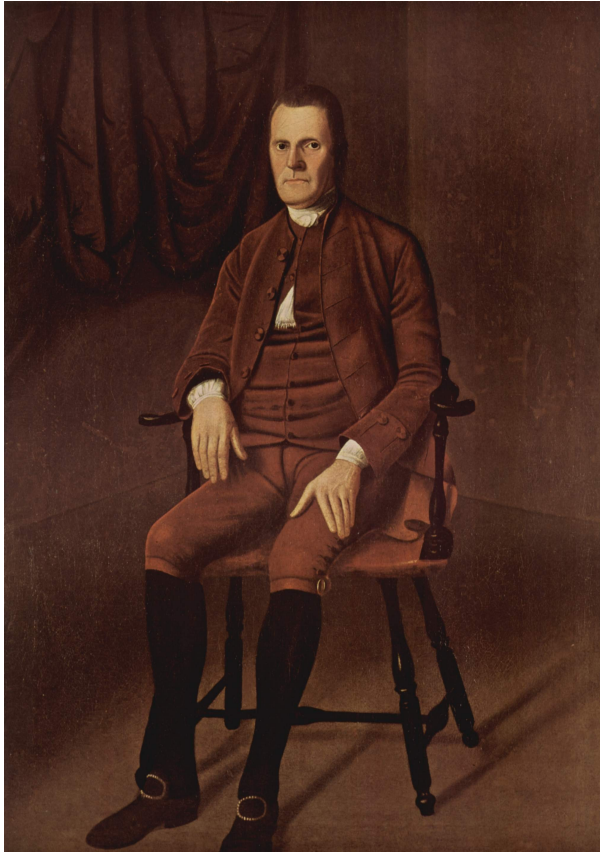
The fact that the summer was hot and humid did not improve the delegates' tempers. Back

judiciary: a system of courts in a country



William Paterson

and forth they went, argument following argument, over the one issue on which they could not agree: whether the states should be represented in the national government by equal or proportional



Roger Sherman, by Ralph Earl

representation. It was when matters seemed most desperate that Roger Sherman of Connecticut offered his “Connecticut Compromise.” Actually, Sherman had already offered his compromise, as far back as June 11; but the convention had rejected it. Now, the delegates were in a better frame of mind to consider what many would think a common-sense solution: that the states be represented in the first house by proportional representation and in the Senate by equal representation (each state receiving one vote). When a vote was taken on the compromise, five states approved it; five rejected it. Despite the tie, however, the compromise was recorded as passing.

With this, the chief bone of contention between them solved, the nationalist and small-state delegates could turn to drafting the new constitution.

A Constitution of Compromise

Following the adjournment of the Constitutional Convention on July 16, a committee sat down to draft the text of the new constitution. Much to the disappointment and, perhaps, chagrin of the nationalists, the draft included the Connecticut Compromise. But what were they to do? The small

states had made it clear that they would walk out of the convention if it did not respect their demand for equal representation in the national legislature.

The draft of the constitution, released on August 6, 1787, established two houses in the national legislature, to be called the Congress of the United States of America. The first house, the “House of Representatives,” had proportional representation, while in the second house, the “Senate,” states were represented equally: two representatives from each state. While the people directly elected members of the House of Representatives, state legislatures appointed members of the Senate.

The draft constitution provided for an executive, called the “president,” who would be chosen indirectly by the people; that is, each state would have electors (the number based on the number of its representatives) for whom the people would vote and who then voted for the president. An elector would have the discretion to vote against the will of the people, if he thought it necessary: the delegates thought such a buffer between the people and the election for a president was necessary to prevent the election of a **demagogue**. The president would not only execute the laws; he would serve as commander-in-chief of the armed forces and possess **veto** power over the acts of Congress. Only a two-thirds majority in both the House and Senate could **override** a president's veto.

Alongside Congress and the president, the draft constitution established a third branch of government – a judiciary with a highest court, to be called the Supreme Court. The justices who served on the Supreme Court would be appointed by the president for life, with the consent of the Senate. Lifetime terms, the delegates hoped, would enable the Supreme Court to make decisions without the influence of politicians or public opinion.

The presentation of the draft constitution before the convention did not end all differences of opinion. Delegates debated whether to abolish the slave trade, whether the national government should maintain a **standing army**, issue paper money, or require that office holders possess a certain amount of property. We shall see how they resolved these questions and others when we look more closely at the Constitution in the next chapter.

Americans are accustomed to think of the Constitution as a work of genius; but that was not the opinion of many if not most of the delegates to the Constitutional Convention. Though most of the delegates ended up signing the document, many did it with reluctance; for the constitution did not establish a confederacy of sovereign states or a purely national government. It established a “federal” model of government – one that separated the spheres in which the national and state governments were to work. The United States was to have two sovereigns. The states were to be sovereign over what happened within their borders, while the central or federal government had the care for those matters that concerned the nation as a whole – for instance, war and peace, treaties with foreign nations, trade between the states and between the United States and other nations. But unlike the Articles of Confederation, the new constitution granted the federal government direct taxing power over the citizens. No longer did the federal government have to rely on the states for contributions.

demagogue: a person, especially a political leader, who gains power by appealing to the emotions and prejudices of the people

veto: the power or right of one branch of government to cancel or postpone the decisions or acts of another branch of government

override: to cancel

standing army: a permanent military force

The Ratification Fight

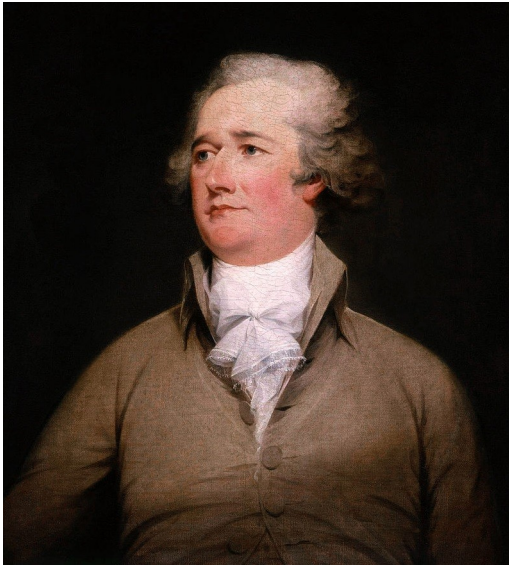
The adoption of the new constitution by the Convention was only the first step. It was far from certain that the required majority – nine out of 13 states – would ratify it. The “federalists” (as the supporters of the constitution called themselves) faced a vigorous opposition. This opposition, the “anti-federalists,” opposed the new constitution for a variety of reasons. Most opposed it because they feared the power of the strong central government it established.

Anti-federalists argued that the Constitutional Convention had gone beyond the authority given it by Congress. Congress had charged the convention simply to “revise” the Articles of Confederation; but instead, the Convention had come up with an entirely new constitution, significantly different from the Articles. Moreover, the new constitution could go into effect with the approval of only nine states, but the Articles of Confederation said any changes to it had to have the approval of all 13 states. In offering the new constitution to the states, then, the Convention was acting illegally, said the anti-federalists.

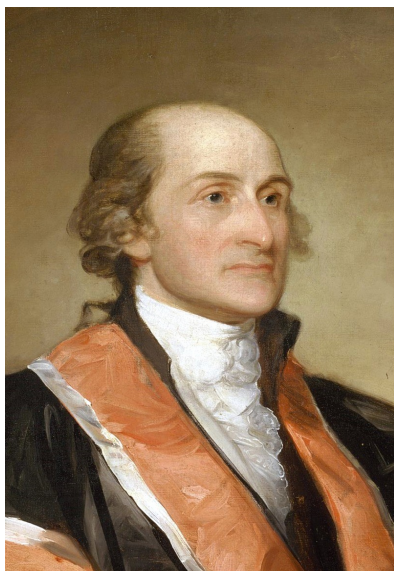
The anti-federalists argued that the new constitution essentially changed the nature of the United States government – and not only because it divided the legislature into two houses and added to it a president and a judiciary. The government under the Articles of Confederation, said the anti-federalists, was a *confederation* of sovereign and independent states; the new constitution, on the

consolidated: united, combined

impeachment: an accusation that a government official has committed a crime



Alexander Hamilton



John Jay

other hand, would establish a **consolidated** government that in time would rob states of their sovereignty and make them dependent on it. Unlike the Articles, the new constitution would allow the national government to tax citizens directly, thus potentially taking sources of money from state governments. It could keep a standing army in time of peace, which it could use against the states. The Constitution made federal laws superior to state laws – meaning that Congress could basically render state laws null and void if it passed laws that contradicted them. These and other powers the constitution gave the federal government could, said the anti-federalists, lead to the ultimate overthrow of the state governments themselves.

Some anti-federalists were ardent democrats; they had not fought the revolution to overthrow kings and aristocrats only to give power to the wealthy. The new constitution, they argued, would do just that; it would turn government power over to large landowners, bankers, and rich merchants. Only 65 senators and representatives would be elected to the first Congress, and these, the anti-federalists charged, would be made up mostly of the aristocracy of the states. Moreover, congressmen would be so far removed from the people they represented that they could easily be controlled by the wealthy. Thus, the new government would work for the good of the rich and against the interests of the poorer classes.

Finally, the anti-federalists charged, the new judiciary – the federal courts and ultimately the Supreme Court – had no real checks on its power. Since judges were appointed for life and could only be removed by a difficult process of **impeachment**, they answered to no one. Federal judges thus could declare state laws and even laws passed by Congress unconstitutional, and the states could do nothing about it. Even Congress was basically powerless against the Supreme Court, for the only way it could combat the court would be by passing a constitutional amendment, which required approval by two-thirds of the states before it could become part of the constitution: a very difficult task.

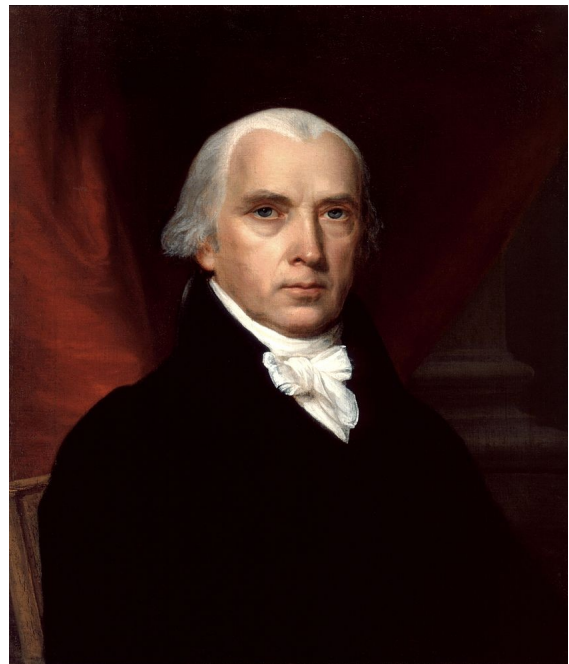
Those who favored the constitution, the “federalists,” were not silent in defending it. In a series of articles penned for New York journals, Alexander Hamilton and John Jay of New York, and James Madison of Virginia, addressed many of the arguments made by anti-federalists. They argued that the Articles of Confederation did not allow the central government enough power to guarantee the general welfare of all the states. They argued for the merits of the new constitution. Since they were written by men who had taken leading roles in the Constitutional Convention, these articles, later collected into a volume called *The Federalist*, have gained the reputation as an authoritative

interpretation of the Constitution.

Hamilton, Madison, and Jay argued that state governments had nothing to fear from the government the Constitution established. Madison wrote that the new government would be both *national* and *federal*. As a national government, it could make laws that affected all citizens, regardless of which state they lived in; but, as a federal government, it would only concern itself with issues that affected all the states together. Thus, such questions as of war and peace, relations with foreign countries, trade between states, and the issuing of a common **currency** would belong to the central government. Everything having to do with what happened within state boundaries and did not affect other states or foreign countries would still be addressed by the states alone. Madison admitted that if a state and the central or federal government disagreed in certain circumstances, the federal government would decide between them. But, said Madison, the decision would be made “impartially ... according to the rules of the Constitution; and all the usual and most effective precautions are taken to secure this impartiality.”

currency: money

Moreover, said Madison, the very structure of the federal government protected states' rights. Indeed, though the House of Representatives would have a more national flavor, the Senate would be more federal; for its members would be appointed by the state legislatures and every state would have equal representation in that body. The executive, called the president, was both national and federal in character. He would be elected by the people, but not directly, for the House of Representatives, which would cast the actual votes, would do so as divided into state delegations. Alexander Hamilton addressed concerns about the Supreme Court. The judiciary, he said, “will always be the least dangerous to the political rights of the Constitution, because it will be least in a capacity to annoy or injure them.” If anything, said Hamilton, the federal courts will tend to protect the people from the central government's attempts to extend its powers beyond the limits the constitution sets for them.



James Madison

The authors of *The Federalist* pointed out what they saw as the advantages of the new constitution. In what is perhaps the most famous of the articles, “Federalist Number 10,” Madison addressed the dangers factions and interests groups pose for the peace of society. Referring to Shays' Rebellion (though without directly mentioning it), Madison noted that small republican governments like those in the states had more to fear from the unrest caused by factions. It is easier, he said, for discontent people to join together if they live nearby one another than if they are separated over a much larger territory. In a large republic, said Madison, factions are more numerous, smaller, and more spread apart. They are thus less able to join together in a common enterprise. “The influence of factious leaders,” he wrote, “may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States.”

Such defenses of the new constitution were, however, unable to calm the fears or answer all the arguments of the anti-federalists. So it was that the fight for the ratification of the constitution

proved as difficult as had been the task of composing it in the convention.

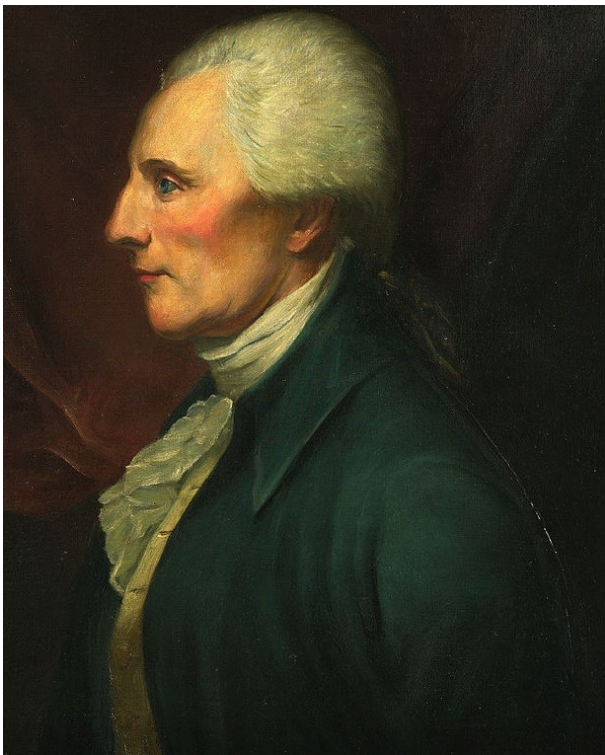
Ratification, State by State

The Constitutional Convention had asked the states to consider and adopt the new constitution. However, this task was not given to state legislatures, but to special state conventions made up of delegates chosen by the electorate of each state for that special purpose. The delegates to the Constitutional Convention favored state conventions over legislatures because they thought a convention would represent a much wider population than a legislature would and would thus be more likely to ratify the new constitution.

Though they had caused the most uproar in the Constitutional Convention, it was the small states (except for Rhode Island) that most enthusiastically embraced the new constitution. The first state to ratify it was a small state, Delaware, on December 7, 1787. Though a large state, Pennsylvania ratified the constitution five days later; but on December 18, the small state New Jersey cast its vote for the constitution, followed by Connecticut and Georgia in the first two months of 1788.

The fight for the constitution in other states was, however, fierce. One of the most important battleground states was Massachusetts. One of the most populous states and, moreover, a major center for the country's shipping and trade, Massachusetts could influence other states to ratify the constitution, or not. If Massachusetts failed to ratify, other major states, such as Virginia and New York, would probably also vote not to ratify. And for a time, it looked as if Massachusetts might not ratify. The first vote of the state convention, which met on January 9, 1788, was 192 against to 144 for ratification.

Among the criticisms of the constitution leveled by anti-federalists in Massachusetts and elsewhere, was its lack of a bill of rights. Some, such as Richard Henry Lee of Virginia, feared that, without special guarantees written into the constitution, the new federal government would abolish “the ancient customs, rights, the laws, or the constitutions



Richard Henry Lee, an anti-federalist

heretofore established in the United States.” An anti-federalist of Pennsylvania, writing under the pen name “Brutus,” said the rights of citizens (such as freedom of speech, freedom of religion, trial by jury) and of states need to be stated “clearly and precisely” in any “social compact,” including the proposed constitution.

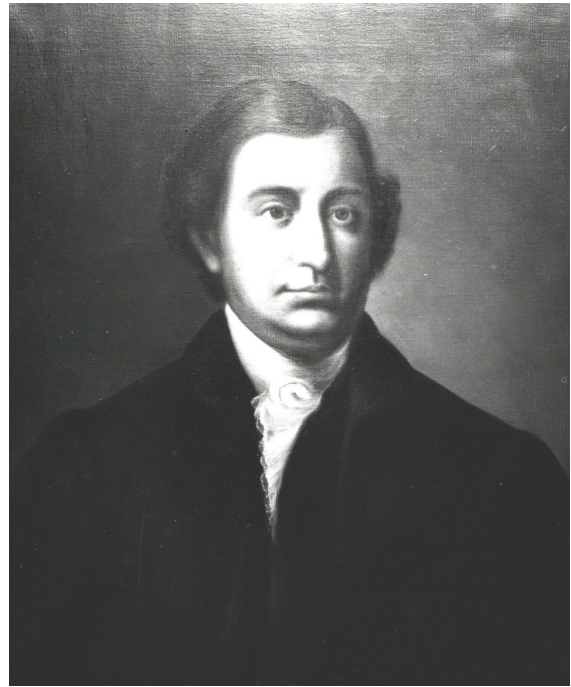
Many Federalists, however, argued that the constitution needed no bill of rights. In *The Federalist*, Alexander Hamilton said a government of representatives of the people is under the control of the people, and so they do not need any special protections against that government. The people tell their representatives what to do. A bill of rights might even be dangerous, said Hamilton, since it could give the government an excuse to violate rights that are not actually stated in the bill of rights. And, in any case, said Hamilton, the constitution does protect at least some of the rights of citizens, as when it limits Congress' ability to imprison people. “The Constitution,” wrote Hamilton,

“is a bill of rights.”

A call for a bill of rights was loud in the Massachusetts convention – so loud, that when that state finally ratified the constitution (187 for to 168 against), it specifically requested that a bill of rights be added to the constitution.

In the spring of 1788, Maryland, South Carolina, and New Hampshire ratified the constitution. This brought the number of ratifying states to nine – the number required to establish the new government. Yet, without New York and Virginia (the two largest and most powerful states), it was doubtful that the federal union could survive. And in both of these states, the anti-federalists were quite influential.

The Virginia anti-federalists included such patriot leaders as George Mason (the author of the Virginia Bill of Rights) and Patrick Henry. The federalists, however, had important names among them – James Madison, Colonel Henry (“Lighthorse Harry”) Lee, John Marshall (later to be chief justice of the Supreme Court), and Edmund Randolph. The debates over the constitution in the Virginia convention were vigorous; but what probably won the day for the federalists was George Washington's support for the constitution. On June 23, 1789, Virginia ratified the constitution, but only by a small majority, 89 for, 79 against.



**Edmund Randolph,
a federalist**

Virginia's ratification left only North Carolina, Rhode Island, and New York undecided. It was to sway the New York delegates that Madison, Hamilton, and Jay wrote the series of articles later called *The Federalist*. Yet, despite the eloquence and arguments of *The Federalist*, it was far from clear that supporters of the constitution had the votes to get it ratified in the New York convention. What finally convinced the convention to ratify the constitution was the realization that, if it didn't, New York would be left outside the union with Rhode Island for company (Rhode Island had not even called a constitutional convention) – and the New York aristocrats despised Rhode Island for its radical democratic ways. Still, New York only ratified the constitution by the small margin of 30 for to 27 against.

As for North Carolina, it did not ratify the constitution until November 21, 1789, some seven months after the new government was in place. Rhode Island held out until the end of May 1790. Like North Carolina's, Rhode Island's ratification message called on the United States government to adopt a bill of rights.

