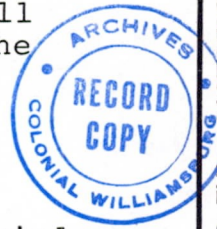


Vol. 8, No. 1

February 1987

The next six issues of Questions and Answers will focus on some critical stage of the development of the Constitution. The following topics are scheduled to appear in this order:



- February: Time Line of the Constitutional Period
- April: The Imperial Constitution and British Notions of the Constitution - Dennis O'Toole
- June: Virginia's Revolutionary Government; focus on Virginia - Kevin Kelly
- August: Life Under the Articles of Confederation - John Selby
- October: The Movement for Constitutional Reform; the Virginia Perspective - J. Douglas Smith
- December: The Philadelphia Convention; What Document Resulted that Talk

SUBJECT: THE UNITED STATES CONSTITUTION

Time Line of the Constitutional Period

1774

September 5-
October 26

The first Continental Congress met in Philadelphia. Each of the thirteen colonies except Georgia sent delegates.

October 18

The Continental Congress created the Continental Association, which was to enforce a complete boycott of British commerce unless Parliament repealed the Intolerable Acts by September 1, 1775.

1775

February 9

Parliament declared that a state of rebellion existed in Massachusetts and ordered additional troops to Boston.

April 19

After Paul Revere's midnight ride on April 18, Middlesex County (Mass.) minutemen met British troops at Lexington. Later that day at Concord "the shot heard round the world" was fired, signaling the beginning of armed conflict between the colonies and the Crown.

May 10

The second Continental Congress convened in Philadelphia.

June 15

George Washington of Virginia became Commander in Chief of the Continental Army.

1776

January 9

Thomas Paine's pro-independence pamphlet, Common Sense, was published in Philadelphia.

May 6

The Virginia Convention at Williamsburg adopted the declaration of Rights.

May 15

The Virginia Convention adopted a resolution instructing the colony's delegates in Congress to introduce a motion for independence.

- June 7 In Congress at Philadelphia, Virginia delegate Richard Henry Lee introduced a resolution calling for independence, the formation of foreign alliances, and the creation of a plan of confederation after independence was achieved.
- June 29 The Virginia Convention adopted a constitution for the "Commonwealth of Virginia."
- July 2 Congress adopted the Lee resolution for independence.
- July 4 Thomas Jefferson's Declaration of Independence as amended by Congress was approved and signed by John Hancock.
- December 1212 With British successes in the New Jersey campaign threatening Philadelphia, Congress fled to the safety of Baltimore.
- December 25/26 General Washington crossed the Delaware River from Pennsylvania to Trenton, New Jersey, and defeated the Hessians in a surprise attack.

1777

- October 17 British Major General John Burgoyne surrendered 5,700 troops at Saratoga, New York. The British defeat prompted France to recognize American independence and render the new nation valuable aid.
- December 19 George Washington led the Continental Army into winter quarters at Valley Forge. Of 10,000 troops, only 7,500 survived to break camp on June 18, 1778.

1778

- February 6 France agreed to a commercial and military alliance with the United States.
- June 17 Congress rejected Britain's final effort at reconciliation.

June 28 At the Battle of Monmouth, General Charles Lee's disobedience and misbehavior led to his court-martial on July 4.

1779

June 21 Spain declared war on Great Britain as co-belligerent with France but refused to recognize American independence.

September 13 John Paul Jones, in command of the Bonhomme Richard, took the British warship Serapis after defiantly answering a demand to surrender with "I have not yet begun to fight."

1780

September 25 Benedict Arnold fled to a British warship after the capture of Major John Andre exposed his plot to turn over the American fortress at West Point to Crown forces.

1781

March 2 The Continental Congress was succeeded by "The United States Congress Assembled" as empowered by the Articles of Confederation ratified the day before.

October 19 British General Charles Cornwallis surrendered to General George Washington and the French commander Comte de Rochambeau at Yorktown, Virginia.

1782

February 27 The House of Commons voted against further prosecution of the war.

September 27 Benjamin Franklin, John Adams, and John Jay began formal peace negotiations with Great Britain in Paris.

1783

September 3

The Treaty of Paris, formally ending the Revolutionary War, was signed. It was ratified by Congress on January 14, 1784.

1784

April 23

Congress accepted Thomas Jefferson's system to divide western lands and admit them as states on equal footing with the original thirteen states. Although never put into effect, this plan served as the basis for the Northwest Ordinance of 1787.

December 23

Congress designated New York City the temporary national capital.

1785

July-November

Diplomatic difficulties continued among the formerly warring powers. Problems included the boundary of Florida, the right to passage on the Mississippi River, and Great Britain's continued occupation of western forts.

1786

January 16

The Virginia legislature adopted Thomas Jefferson's Statute for Religious Freedom (first proposed in 1779 but rejected at that time). It later served as a model for the first amendment to the Constitution.

August 7

In Congress, Charles Pinckney of South Carolina moved for a revision of the Articles of Confederation, but the motions were never submitted to the states.

September 11-14

Delegates from five states met in Annapolis, Maryland, and called for a convention to meet in Philadelphia in May 1787 for the purpose of revising the Articles of Confederation.

- November 23 Virginia authorized the election of delegates to the Convention at Philadelphia.
- December 4 Virginia delegates elected.
- August 1786-
February 1787 Massachusetts farmer Daniel Shays led a mob action, which became known as Shays' Rebellion. Shays and his followers, who were finally subdued by the Massachusetts militia, had demanded more paper money, tax relief, and pro-debtor laws.
- 1787
- February 21 Congress called the Constitutional Convention.
- May 25 The Constitutional Convention opened in Philadelphia. Eventually all states but Rhode Island attended. George Washington was elected President of the Convention.
- May 29 The Virginia Plan, proposed by Edmund Randolph, went beyond revising the Articles and called for a new national government.
- June 15 William Paterson's New Jersey Plan, an alternative to Randolph's, revised the Articles of Confederation but retained more powers to states.
- July 13 Congress passed the Northwest Ordinance that provided for the admission of new states on an equal footing with the original thirteen colonies.
- July 16 The Connecticut Compromise resolved the convention's deadlock over representation in the new Congress, creating a bicameral legislature representing the individual states (Senate) and the population (House).
- August 6 The Committee of Detail submitted a draft constitution to the Convention.

- September 17 Debate in the Constitutional Convention ended. The Constitution, largely drafted by Gouverneur Morris, was adopted by that body (with Virginians Edmund Randolph and George Mason refusing to sign) and submitted to Congress.
- September 28 Congress transmitted the Constitution to the states.
- October 27 Seeking to persuade New Yorkers to ratify the Constitution, Alexander Hamilton, James Madison, and John Jay began to publish their 85 carefully crafted essays, which were later published as The Federalist.
- October 31 Virginia called a state convention.
- 1788
- March 3-31 Virginia elected delegates to a state convention.
- June 2-27 The Virginia Convention held.
- June 21 With ratification by New Hampshire, the ninth state, the Constitution became effective and thereby replaced the Articles of Confederation. Twelve amendments, however, were suggested during the ratification process and awaited further attention.
- June 25 Virginia ratified the Constitution (89 to 79) and proposed amendments that later became part of the Bill of Rights.
- September 13, Congress set dates for the election of the President and Vice President and for the convening of the first Congress in New York City.
- December 23 Maryland ceded to the new national government ten square miles of land along the Potomac River for the site of the future capital city.

1789

- March 4 Under the authority of the Constitution, the first session of the first Congress gathered at Federal Hall in New York City, although without a quorum.
- April 6 George Washington was elected President by a unanimous vote of the electors.
- April 30 George Washington and John Adams were inaugurated in New York City as the first President and Vice President of the United States.
- July 27 The Department of Foreign Affairs (soon renamed the State Department) was established as the first executive department. Though appointed Secretary of State on September 26, Thomas Jefferson did not take office until March 22, 1790.
- August 7 The War Department was established. Henry Knox later became the first secretary.
- September 2 The Department of the Treasury was established. Alexander Hamilton later became the first secretary.
- September 9 The House of Representatives recommended twelve amendments to the Constitution. The ten ratified in 1791 became our Bill of Rights.
- September 24 Congress passed the Federal Judiciary Act organizing the Supreme Court and creating the federal judicial system.
- September 26 George Washington appointed John Jay the first Chief Justice of the Supreme Court.

Questions & Answers

Vol. 8. NO. 2

April 1987

QUESTIONS AND ANSWERS

The British Constitution in England and America before 1776

By Dennis O'Toole

Q. You speak of a "British constitution," but Great Britain never really had a written constitution like we have today, did she?

A. You've just asked a very American sort of question. We find it difficult to conceive of a time when there wasn't a fundamental law, written on paper for all to see, standing above and controlling our government in behalf of our rights and liberty. But that's how it was before 1776.

Q. Wasn't there an unwritten constitution, though?

A. No one on either side of the Atlantic doubted that there was such a thing as "the British constitution." Much of it, indeed, was to be found in written documents such as Magna Carta. There was disagreement, though, as to which other documents--laws, charters, proclamations, court opinions--were part of the constitution. Moreover, there existed a large body of unwritten principles that were assumed to be part of the constitution. Adding to the confusion, there was much disagreement concerning to what extent the Americans, as colonists, were even entitled to constitutional protections.

Q. Can you summarize what the key differences were between English and American views of the British constitution?

A. To use a distinction historian Jack P. Greene has developed, there emerged "metropolitan" and "peripheral" views of the British constitution. In Great Britain, the metropolitan center of the empire, the view emerged in the eighteenth century that the Parliament of Great Britain (made up of king, Lords, and Commons) was the supreme and sole governmental power throughout the kingdom and its expanding global empire. Its law superseded all other law, and hence, by implication, it determined what was "constitutional" and what was not.

On the periphery of the empire, in Ireland and then in Britain's American colonies, a quite different understanding developed during the eighteenth century. This view held that Englishmen abroad enjoyed by birthright the same privileges and liberties as did Englishmen at home, especially the right to govern their own affairs and to be taxed only by their own elected representatives. And these rights, according to exponents of this view, had been confirmed by charters of government and sanctified by custom and long use. According to Americans who formulated this view, the Parliament of Great Britain was supreme within Great Britain and, by customary usage, had authority to regulate trade within the empire. But its attempts to tax Americans were seen as "unconstitutional" usurpations of power. One important implication of this view was that there were several rather than one "supreme legislative" within the British Empire, and that these several centers were united only by their mutual allegiance to the crown.

Q. What events caused the Anglo-American disagreement over the British constitution to erupt?

A. The short answer to that is Great Britain's victory over France in the Seven Years' War, which was brought to a conclusion in 1763. It was a world war, and world wars are expensive. Great Britain had a huge debt to pay off and a huge new chunk of North America to defend and control as a result of her triumph. The Stamp Act of 1765 was designed by Lord Grenville's administration to raise revenues from the king's American subjects to apply toward relieving Great Britain's pressing fiscal needs. But, as Americans were quick to point out, this was the first time Parliament had ever attempted to tax directly the crown's American subjects. The gauntlet thus being thrown down, each side then worked out with remarkable speed its justification for its own view of the British constitution.

Q. What roles did Virginia and Virginians play in this constitutional debate?

A. Virginia, along with Massachusetts, played the leading roles politically and intellectually. The Virginia Assembly, in its December 1764 petition to the king against the proposed stamp duties, claimed for Virginians the "ancient and inestimable Right of being governed by such Laws respecting their internal Polity and Taxation as are derived from their own Consent." The following May the House of Burgesses adopted Patrick Henry's resolutions declaring the Stamp Act to be contrary to "British

freedom" and "the ancient constitution" and therefore not to be obeyed.

The constitutional principles behind Virginia's--and America's--resistance to Parliamentary taxation were compellingly articulated by Richard Bland and Thomas Jefferson. Bland's The Colonel Dismounted, which was published just two months before the Assembly petitioned the king in 1764, states that it is the colonists' "Birthright" as Englishmen to be "governed by laws made with our own consent." Parliament, he allowed, might make a law "such as respects [the colony's] EXTERNAL government," but any law "respecting our internal polity which may hereafter be imposed on us by act of Parliament is arbitrary, as depriving us of our rights, and may be opposed."

A decade after Bland wrote and the Assembly petitioned, Thomas Jefferson made his first substantive contribution to the unfolding constitutional debate and to American political thought. Read first in manuscript by a gathering of Virginia's political leaders at Peyton Randolph's house, then printed in Williamsburg in August 1774 with the title A Summary View of the Rights of British America, this radical pronouncement swept away the distinction between external and internal legislation that Bland and others had so carefully elaborated. America's legislatures were, under a common crown, as "free and independent" within their spheres as was Britain's legislature, the Parliament. For Parliament to act otherwise, as it had done, was to reveal "a deliberate, systematical plan of reducing us to slavery." Addressing himself directly to the King, Jefferson concluded with these defiant words: "The God who gave us life, gave us liberty at the same time: the hand of force may destroy, but cannot disjoin them. This, Sire, is our last, our determined resolution. And that you will be pleased to interpose . . . to procure redress of these our great greivances . . . is the fervent prayer of all British America."

Q. What's the significance of this debate over the British constitution? Great Britain and her American colonies didn't go to war over differing constitutional theories. did they?

A. The debate wasn't academic. The disagreement between the mother country and her colonies was about power, about where authority to regulate local affairs in America would reside. The power to tax is the power to take property from the taxed, the power to regulate trade is the power to determine when and where one may sell one's goods and services. The fact that Britons and Americans came to

blows over this urgent question was due in part to the increasingly rigid assertion of incompatible views of the constitution of the British Empire by each side and to the absence of any agreed upon means of resolving the constitutional dispute by means other than force.

That the constitutional dispute was a serious and far-reaching one is evidenced by the remarkable period of constitution making Americans embarked upon with the declaring of independence in 1776. The same issues of the relationship between central government and local governments, and of the protection of individual rights within the framework of governments made strong and vigorous, were grappled with repeatedly at the state and national levels by Americans, and with revolutionary results. But that's another chapter in the story.

Q. A concluding question. What books would you recommend as essential reading to interpreters on the subject we've dealt with today?

A. Gordon S. Wood's The Creation of the American Republic, 1776-1787 (1969) remains the definitive study of the origins of constitutional government in the United States. Last year the University of Georgia Press published Peripheries and Center by Jack P. Greene. This succinct and convincing study joins Greene's unrivaled knowledge of the structures and development of America's colonial assemblies with a reappraisal of the constitutional debate to shed new light on this fundamental issue. Finally, I'd recommend an oldie but a goodie: Charles Howard McIlwain's The American Revolution: A Constitutional Interpretation (1923). It's flawed, but still merits reading because it forcefully makes the case for the centrality of the constitutional issue in any explanation of the causes and course of the American Revolution. David Konig thinks highly of George Dargo's Roots of the Republic: Perspectives on Early American Constitutionalism.

Questions & Answers

Vol. 8, No. 3

June 1987

Virginia Government During the Revolution

By Kevin Kelly

Q. What was the structure of government established by the Virginia Constitution of 1776?

- A. The Virginia Constitution, adopted on June 29, 1776, was very much a product of the two-decade-long debate over the role of government and the rights of citizens. Although there were to be three separate and distinct branches--legislative, executive, and judicial--the legislative was clearly superior.

The legislature, or General Assembly as it was called, consisted of a House of Delegates and a Senate. As had been the case in the House of Burgesses, each county elected two delegates. They would now serve for two years. They also had to be residents in the county they represented. Jamestown and the College of William and Mary lost their representatives, but Norfolk and Williamsburg kept theirs. The state was also divided into 24 districts, each of which elected one senator. A senator served four years. The suffrage remained what it had been since 1736: a voter had to be a free white male over 21 who owned either 100 acres of unimproved land or 25 improved acres or a house and lot in an incorporated city. The senate was the weaker of the two legislative houses; it could neither initiate legislation nor amend money bills.

The executive branch was composed of the governor and a Privy Council. The General Assembly annually elected the governor, who could serve only three consecutive terms. The council, elected by the legislature, was made up of eight members, who served twelve years. However, two were to rotate off the council every three years. The governor could not veto legislation and could not prorogue or adjourn the assembly. Furthermore, he was not to take executive action without the consent of the council. Finally, the executive branch appointed local militia officers and justices of the peace only upon the recommendations of the county courts.

The third branch was composed of separate courts of Admiralty and Chancery, a General Court, and a Supreme Court of Appeals. Judges who sat on these courts were elected by the General Assembly.

Q. Although the Constitution of 1776 was philosophically attractive to Virginia Whigs, did it create a solid, functioning government?

A. Problems were evident from the very start. Some were inherent in the structure of government, others were the result of declaring independence. Because Lord Dunmore still remained a military threat, Patrick Henry, Virginia's first elected governor, was immediately faced with the necessity to maintain Virginia on a wartime footing. It quickly became clear that the constitution hamstrung the governor's ability to wage war effectively. Within a year the General Assembly passed a resolution allowing the governor to exercise powers not authorized by the constitution. As the Revolutionary War dragged on, Virginia continued to confront real and threatened military actions, and the General Assembly continued to strengthen the governor's hand. The need to solve real wartime problems overrode prewar fears of centralized power in an executive.

Once Virginia declared independence the question of what laws were still in force had to be faced. In 1776 the General Assembly appointed a committee to produce a new law code. This work fell principally on George Wythe, Edmund Pendleton, and Thomas Jefferson. After rejecting the idea to write a completely new set of laws, the three modified and updated existing colonial statutes. In 1779 the revision was presented to the General Assembly. Some of the laws had already been passed (such as that ending entail or those beginning the process of disestablishing the Anglican church), some were passed in that year, but the vast majority were tabled until peacetime. It was not until 1785 that those revised statutes that were still relevant were enacted into law.

Meanwhile, in the absence of a comprehensive code, Virginia's court system was slow in being established. It was not until January 1778 that judges for all the state courts, save the Court of Appeals which was not created until later that year, were appointed by the General Assembly. For much of the war, Virginians remained in something like a legal limbo. However, when the Court of Appeals finally deliberated its first case in October 1782, its ruling established the important principle that the court could declare a legislative act unconstitutional.

Q. What kind of men rose to political power during Virginia's war years?

- A. During the war, the Virginia government remained in the hands of the large landowners. By continuing the colonial custom of county courts nominating new members, the Constitution of 1776 guaranteed that the planter gentry remained in charge at the local level. Furthermore, men of considerable property were elected to the General Assembly. Yet there were regional differences among the legislators. The older settled areas of Virginia tended to send members of the social and political establishment to the General Assembly, while the newer counties elected men of less social standing. Moreover, real differences on issues began to separate the regions. Delegates from the Southside took more locally oriented stands on matters of taxation for example, whereas Tidewater representatives were less willing to allow religious toleration.

Despite a similar background to the older prewar leaders, a new younger group emerged on the political scene during the war. This was most notable among lawyers. Edmund Randolph, St. George Tucker, John Taylor of Caroline, and John Marshall, all still in their 20s or early 30s, began their careers in the late 1770s and early 1780s. One characteristic that linked these individuals was their military service. Many other young Virginians got their first leadership experience as Revolutionary War officers. Many of these men came to prominence during the 1780s and continued active in state and national politics in the 1790s.

Q. What were the major problems that confronted the Virginia government during the Revolutionary War?

- A. Virginia's major difficulties between 1776 and 1783 revolved around its efforts to respond to war-related contingencies. The General Assembly was never able to establish a truly efficient system for recruiting the state's quota of soldiers for the Continental Army. They rejected the idea of enlisting slaves and were unable to offer a bounty appealing enough to attract volunteers. The Assembly attempted a draft, but it proved highly unpopular and was soon abandoned.

Virginia had an equally difficult time raising the materials necessary to supply both the Continental allotment and state troops. Although the state offered incentives for the production of such scarce items as salt, gunpowder, weapons, etc., the state's economy lacked the resources to shift into manufacturing

(although some small successes were made, in gun- and cannon-making, for example). Moreover, the state did not set up a permanent quartermaster corps until 1781, and only in 1780 did the legislature establish a fixed system of county quotas for clothing and provisions. After Cornwallis invaded the state, the legislature authorized the executive to impress necessary military supplies. Even then, such actions produced strong protest and opposition.

The major problem that contributed greatly to most of Virginia's other difficulties was Virginia's inability to raise the necessary revenue to fund her wartime activities. Virginia first resorted to an issue of paper notes (backed by taxes). That was soon followed by interest-bearing notes. The state attempted to pay off these loans by a general poll tax, as well as by an assessment on the value of land and slaves. Unfortunately the need for funds ran ahead of the state's ability to raise revenue. By 1779 the assembly increased the poll tax, introduced a tariff, and levied a special tax payable in grain commodities. Through this period the value of currency fell. Currency depreciation and subsequent price inflation further undercut the state's ability to purchase military supplies. The financial crisis in 1779 led to the confiscation of loyalist property, which was an action Virginia had been reluctant to take. Finally in 1781, the legislature repudiated its paper money and demanded that taxes be paid in hard money. Virginia, eluding bankruptcy, weathered the financial storm in spite of her fiscal caution.

- Q. What books could I read if I want to know more about Virginia's government during the war?
- A. Billings, Selby, and Tate, Colonial Virginia: A History is a current survey that provides a good introduction. David J. Mays's Edmund Pendleton, 1721-1803: A Biography is also an excellent source of information about Virginia in the late eighteenth century. Finally, John Selby's The Revolution in Virginia (forthcoming) will provide the most detailed treatment of the young state's war years. For a contemporary discussion of Virginia's first constitution, see Thomas Jefferson, Notes on the State of Virginia, edited by William Peden.

Questions & Answers

Vol. 8, No. 4

August 1987

Life Under the Articles of Confederation

by John Selby

- Q. Is it true that for most of the Revolutionary War the United States did not have a constitution?
- A. Although the Continental Congress functioned during the early years of the Revolutionary War as if the Articles of Confederation already had legal force, the new United States of America technically did not ratify its first constitution until 1781. John Dickinson submitted the first draft of the Articles of Confederation and Perpetual Union to Congress in 1777. This draft provided that Congress would hold title to the unsettled lands between the Appalachian Mountains and the Mississippi River. Led by Virginia, seven "landed" states that held claims to lands beyond the mountains succeeded in amending the draft to leave title with the states. The six "landless" states objected, and Maryland in particular refused to ratify the Articles as amended. Both sides had good arguments for their positions. Sales of western lands promised Congress its best hope of financing the war. On the other hand, Virginians such as George Mason knew that many leading Marylanders and citizens of other landless states held stock in speculating land companies whose claims no "landed" state would recognize. Only if Congress obtained land that it could then grant to these companies would these leaders stand to make a profit. The impasse ended in January 1781 after Mason and Thomas Jefferson among other Virginians became convinced that their state had to sacrifice its claims for the good of the union. Although they had reached this conclusion before Lord Cornwallis and the main British army began marching toward Virginia, Mason's resolution did not pass until the last day of the legislative session in January 1781 as Benedict Arnold's fleet swept up the James River to assault Richmond. Virginia, however, placed a condition on its beneficence: Congress could recognize no speculating claim that originated before the session. Maryland

retaliated by ratifying the Articles of Confederation but preventing Congress from accepting the cession until 1784. At length, in an accommodation to save face on both sides, Virginia agreed to retract its condition with the understanding that Congress would abide by it anyway.

Q. What form of government did the Articles of Confederation establish?

A. The Articles of Confederation formed a "Perpetual Union" of thirteen sovereign states that was more than a military alliance and yet less than a sovereign nation itself. Although from the beginning the name of the new country was "the United States of America," contemporaries used plural pronouns to refer to the union rather than singular as is the custom today. The states agreed to defend each other and, toward that end, granted Congress control of diplomatic affairs, the power to declare war and peace, and exclusive direction of the army and navy other than the militia. The states also agreed to share Congress's expenses in proportion to the amount of land surveyed in each, to grant "full faith and credit" to each other's administrative and judicial actions, and to permit citizens of any state to move freely within all the states. Although individual states retained title to western lands, Congress had the power to adjudicate boundary disputes, determine the value of coins, set standard weights and measures, and operate a post office. To draw a modern analogy, the Confederation established an American Common Market, but unlike the European Common Market, the Confederation also had responsibility for common defense.

The central government under the Confederation consisted solely of the Continental Congress, composed of two to seven delegates from each state. Whatever the number of delegates, each state had one vote. A majority of nine states was required to determine major issues such as declaring war or peace, issuing coins or currency, ratifying treaties, or appointing a commander in chief; otherwise, a simple majority sufficed. Amending the Articles required unanimous consent of the states. Congressmen could serve only three years out of any six. They elected their own president (Peyton Randolph was the first), who could serve only one year out of any three. For most of the war Congress administered its affairs through standing committees: the Secret Committee (foreign trade), the Committee of

Secret Correspondence (diplomatic and consular matters), the Marine Committee (naval affairs), and the Committee on Accounts and the Treasury Committee. Congress also had a Board of War and military administrators such as the Adjutant General, the Commissary General, and the Quartermaster General. With ratification of the Articles in early 1781, Congress abandoned trying to run the government by committee and created four executive departments: Finance (headed by Robert Morris as Superintendent of Finance), Foreign Affairs (headed by Robert Livingston), War (headed by Benjamin Lincoln), and Marine (which reported to Morris). Some cabinet posts thus antedate the adoption of the 1787 constitution. The Superintendent of Finance served as de facto prime minister. All the department heads reported directly to Congress. Although these executive departments bear some resemblance to modern British parliamentary government, it should be remembered that the parliamentary system as we know it had not yet fully evolved in Britain. The Americans should not be thought to have been trying to emulate it.

Q. Were the 1780s a "critical period" of American history?

A. Both contemporary critics of the Articles of Confederation and many nineteenth-century historians argued that the weakness of the central government during the Confederation period jeopardized the great achievements of the American Revolution. The implication of the interpretation is that those who opposed adoption of the 1787 constitution were benighted. While not denying the seriousness of the Confederation's problems, modern historians are more appreciative of the fact that opponents of the 1787 constitution had valid interests at stake. Most twentieth-century writers have not automatically assumed that the proposals of the Philadelphia Convention afforded the only possible solutions to the difficulties facing the new nation. Some have even suggested that the 1787 constitution rather than the Articles may have been the greater threat to the ideals of the Revolution.

Q. How extensive was criticism of the Articles of Confederation?

A. By the mid-1780s, most leading Americans were probably dissatisfied with the Articles of Confederation. The debate raged over how far to go to improve them. The

sharpest critics called for an entirely new constitution; those less critical proposed amendments granting Congress added authority. The harshest critics came from sections of the country like the Tidewater and central Piedmont of Virginia that had prospered from participation in British imperial trade before the war and now found themselves excluded by independence from the mercantilistic system. British merchants eagerly flooded the new nation with goods during the first year of peace to satisfy American demand pent up through seven years of war. Notwithstanding the importance of the United States as an export market, British authorities kept American merchants from selling in British and West Indian markets through which colonists had earned credits to pay for their imports before the war. Although some American merchants already searched for new world markets (for example, the Empress of China, the American vessel that opened the fabulous China trade of the next half-century, sailed for Canton from New York in 1784), the ventures had yet to have economic effect. By late 1784 and 1785 the new country, especially its port cities and commercial agricultural areas, fell into a deep depression. Areas of the nation more involved in subsistence agriculture suffered, too, as credit dried up and foreclosures began, but those sections generally had less reason to complain about the weakness of the Confederation government.

- Q. What were the principal areas of criticism of the Confederation government?
- A. Critics of the Articles of Confederation believed overall that the document conferred too little power on the central government for effective rule. Critics identified at least five areas of government that they thought required drastic revision: taxation, control of paper currency, interstate commerce, international police, and foreign affairs.
1. Throughout the war, Congress struggled with the fact that it did not possess the power to tax the people directly. It had instead to depend on requisitions (that is, requests) for funds and supplies from the states which in the best of times responded only slowly. Twice, in 1781 and 1783, Congress proposed to amend the Articles to allow it to levy an impost or import duty, but after long delays at least one state in each instance refused to ratify: Rhode Island in 1782 (leading Virginia

to rescind its consent) and New York in 1786. These failures caused many critics to abandon hope of amending the Articles and to think in terms of totally rewriting the constitution.

2. The postwar depression also brought to the fore the need to control state issues of paper currency. To meet wartime expenses, both the Continental Congress and the states had resorted so heavily to the expedient of printing paper money with little or no security that enormous inflation resulted. Congress repudiated most of its issues even before the fighting ended and, after the peace, refrained from issuing more. Some states had better records than others in redeeming their war debts. (Virginia, for example, met most of its obligations within a decade or so by sales of its enormous tracts of western lands.) Some states continued issuing paper currency after the peace. Again some had better records than others in controlling the issues. Rhode Island and North Carolina in particular became notorious for their lack of restraint. Hard times also led debtor elements in various states to lobby successfully for laws that placed moratoriums on debt collection or legal tender laws that allowed payment of bills in paper currency or commodities instead of specie.

Such expedients greatly alarmed the monied class who vigorously opposed government interference with the sanctity of public or private contracts however humane the reason.

3. In colonial days not even the august majesty of the British crown had resolved all of the economic tensions among the colonies. With that supervisory power gone, confrontations broke out between New York, Connecticut, and New Jersey over trade in and around New York harbor and between Maryland and Virginia over fishing rights in the Potomac River. Disputes over land titles also occurred between New Hampshire and New York in Vermont, New York and Massachusetts in the Finger Lakes region, Connecticut and Pennsylvania in the Wyoming Valley, and Pennsylvania and Virginia in the Pittsburgh area. Many of these disputes were resolved either independently or through the good auspices of the Confederation government. (Virginia settled its boundary dispute with Pennsylvania between 1781 and 1784.) Still, a threat remained to one of the

Confederation's primary objectives, formation of a common market. In 1786 Virginia issued its call for a convention in Annapolis specifically to address questions of interstate commerce.

4. Although the Articles of Confederation granted Congress some authority over boundary disputes and committed the states to give full faith and credit to each other's legal actions, no national court system existed to adjudicate conflicts of jurisdiction. Even in areas where Congress had authority, the Confederation government had no mechanism to enforce its decisions. This impotence became more glaring after the signing of the peace treaty when Congress ordered demobilization of the Continental Army until only a few small detachments remained at posts such as the arsenals at Springfield, Massachusetts, and Harper's Ferry, Virginia. When an unfavorable tax structure coupled with the postwar depression brought foreclosures in central and western Massachusetts in 1786, Daniel Shays led irate farmers to close local courts and keep them from executing decrees. The militia from nearby counties proved unreliable and the military detachment at Springfield too weak to intervene. The governor condoned the solicitation of private contributions in eastern parts of the state to recruit troops to suppress the uprising--a precedent itself quite alarming to proponents of law and order. These events during the winter of 1786-87 (between the meeting of the Annapolis Convention and the gathering of the Philadelphia Convention) prepared many moderate critics of the Articles to accept more extensive revisions in the structure of the central government than they had originally considered.
5. Finally, in foreign affairs, critics considered that the Confederation government had a dismaying record. Most embarrassing was the failure of Congress to persuade the British to fulfill the provisions of the peace treaty that called for evacuation of British forts on American soil along the Canadian border. Britain would not evacuate unless Congress persuaded the states to open their courts to British creditors. (Virginia would not do so, for example, because the British refused to consider slaves who had fled to their lines as captured "property" which the peace treaty committed them to return to private American

citizens after the war.) The Confederation also had less than notable success negotiating with Britain and France for commercial treaties, with the Barbary States in northern Africa to prevent raids on American shipping, and with Spain for freer navigation of the lower Mississippi River.

- Q. Did the Confederation government have any significant successes?
- A. Aside from winning the war, the Confederation government's most notable success lay in the innovative policy it adopted for settlement of the western lands. The policy rested on the radical principle that colonies of the United States (that is, the western territories) ought someday to become equal to the mother country (the original thirteen states). Had Great Britain adopted such a policy regarding the American colonies, the Revolution well might not have occurred. Congress enacted this policy in the Ordinance of 1784, which Jefferson drafted, and expanded it in the Northwest Ordinance three years later. The latter statute established the procedure for attaining statehood that new states have followed to the present. The Northwest Ordinance also abolished slavery north of the Ohio River. In a third statute, the Ordinance of 1785, Congress designed the rectilinear grid system by which almost all the West was surveyed, reserved lands for the support of public education in the Northwest territories, and provided a dependable source of revenue for the Confederation through systematic sale of the rest.
- Q. What books would you recommend for interpreters to read about the Confederation period?
- A. The best overall study is Jackson T. Main, The Anti-Federalists: Critics of the Constitution, 1781-1788 (Chapel Hill, N. C., 1961). Although the focus is the debate over ratification, several introductory chapters recount the troubles of the Confederation. Jack Rakove's The Beginnings of National Politics: An Interpretative History of the Continental Congress (New York, 1979) covers the topic in considerable detail. E. James Ferguson's The Power of the Purse: A History of American Public Finance, 1776-1790 (Chapel Hill, N. C., 1961) illuminates a formidable sounding topic with great clarity. For Virginia politics, a good account is Volume II of Irving Brant's biography, James Madison, the Nationalist, 1780-1787 (New York, 1948).

Questions & Answers

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QUESTIONS AND ANSWERS 1987 - THE UNITED STATES CONSTITUTION

Movement for Constitutional Reform: The Virginia Perspective

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1. What were some of the conditions that contributed to the development of sectional attitudes in Virginia in the 1780s?

Political rivalries or factions in Virginia during and after the Revolution were based, in part, on geography. The social, political, and economic interests of the six or seven sections into which Virginia was divided did not always coincide. One must always be careful in making sweeping generalizations about the consensus in a particular section. Perhaps it would be well to remind ourselves of these sections and their general character.

Tidewater Virginia was delimited by a line drawn from Alexandria through the fall line towns of Fredericksburg, Richmond, and Petersburg. Within this area there was a section that was somewhat separate--the Northern Neck. Tidewater was Anglican; knit together by its riverborne commerce, especially in tobacco; with a merchant group in Alexandria, Norfolk, and the fall line towns. Slavery was important. Tidewater's political strength was given continuity in the Virginia Constitution of 1776 by the representation given this section. (See the table below from Jefferson's Notes on the State of Virginia.)

The Northern Neck was originally thought of as the area between the Potomac and the Rappahannock rivers. The term was expanded to include all the land west to the Blue Ridge including the counties of Fairfax, Fauquier, Loudoun, Prince William, Stafford, and King George. The bases of wealth in the Northern Neck were the large grants of land made to a relatively few families by the agents of Lord Fairfax. Northern Neck families with Fairfax connections had dominated in this area throughout the colonial period, and they would continue to exert strong political and social influence after the Revolution. As soil fertility declined in the older part of the Northern Neck, the fertile lands to the west in the northern Piedmont (Fairfax, Fauquier, and Loudoun) attracted a growing population in the 1780s. Slaveholding among the great landholders declined in the 1780s in this section while slaveholding increased among smaller landowners. In agriculture, this section had led in the shift from tobacco to wheat which was well underway by the close of the Revolution. Key to the area was the trade with and through Alexandria. That city's population, black and white, increased from 2,000 to 3,000 in the 1780s. The Northern Neck had a rich ethnic mix, predominantly English, with Scotch prominent among the merchants of Alexandria, and Germans and Quakers prospering in the rich farmland of Loudoun County.

Southside Virginia was and is that region from the James River Valley southward into the Carolina Piedmont. This was the heartland of Virginia tobacco growing in the colonial period, the post-Revolution and, indeed, to this day. While the total value of Virginia tobacco exported rose during the 1780s, its share of

the total value of Virginia exports declined from 68 percent to approximately 54 percent by 1790-1791. The tobacco farmers of this region had not discovered the virtues of fertilizing their lands either with lime or manure. Worn-out lands were left to grow scrub while new lands were cleared. Cattle were pastured on the scrub land, which prevented a complete reversion to forest. Eventually, fertility was restored to the worn-out lands that were cleared once again. Most of the land under cultivation on the farms and plantations was used to raise corn, cereals, cotton, flax, and garden crops. Money was scarce in the region; transport of crops to market was difficult and expensive. Slavery was important and expanding after the Revolution. For reasons of geography, economics, and social characteristics this region was somewhat isolated, poor, and provincial. The political views and actions of its representatives mirrored this. In religion the area belonged to the Baptists and Methodists. There were no Anglican churches after the Revolution.

Piedmont Virginia is the rolling, hilly in the west, area between the Blue Ridge and the western edge of Tidewater (the fall line). This area had a mixed agricultural picture with tobacco, wheat, and corn grown at the end of the Revolution; by the end of the 1780s tobacco planting was greatly reduced in the region. Coupled with the decline in tobacco production was a decline in the importance of slavery in the 1780s and 1790s. Small landholders predominated in this region, and they looked to Petersburg and Richmond as markets for their few surplus crops. The northern Piedmont looked to Fredericksburg and, increasingly, Alexandria as their natural outlets. In religion the Piedmont was much more diversified than Southside. Presbyterians, Baptists, Methodists, and Quakers were found there along with Episcopalians, although the Anglican church was in decline. In economic matters Piedmont Virginia shared similar views with Southside.

The Northern Shenandoah Valley was isolated from eastern Virginia by the Blue Ridge and by ethnic and religious differences. The two northern counties (Frederick and Berkeley) were extremely fertile with probably the best farmland in the state. The two dominant groups tended to settle in towns distinctly their own: Scotch-Irish in Winchester and Staunton; Germans in Martinsburg, Mecklenburg, Stephensburg, and Strasburg. Eastern Virginians, attracted by the productive lands, moved across the Blue Ridge in increasing numbers during and after the Revolution. Their center was Charlestown. Whether Virginian, Scotch-Irish or German, the farmers and merchants of the Valley looked to Philadelphia as their natural market. By the 1790s Alexandria and Baltimore were beginning to make some inroads into this Valley trade. As one traveled south the land was not so fertile or so well cleared, with Shenandoah County more cultivated and Rockingham County more forested. Slavery existed in the area but it was far less important than in eastern

Virginia; some four-fifths of the landholders in the Valley did not own any slaves at all.

The Southern Shenandoah Valley (Augusta, Rockbridge, and Bath counties) and Southwest Virginia were similar to the northern Shenandoah Valley in their ethnic pattern of settlement. Native Virginians and Scotch-Irish were the leading groups in Augusta and Rockbridge. In southwest Virginia (Botetourt, Wythe, and Montgomery counties) Germans were by far the largest ethnic group. Surplus crops from Augusta and Rockbridge were carted overland to Richmond, but it was an arduous and risky business. Slaveholding was not important in this region. In religion the region was dominated by the Presbyterians and the German Pietists (Dunkards, Mennonites, and Brethren).

In political and economic matters the entire Valley of Virginia and Southwest Virginia had generally common views in the 1780s. As we shall see, this consensus did not entirely hold up when the new Constitution of 1787 was being debated.

Trans-Allegheny Virginia was that vast area now covered by the states of West Virginia and Kentucky. This region had attracted increasing numbers as the Revolution progressed. In the 1780s the influx was explosive so that the population of the region was approximately 100,000 by 1790. Landless folk from the Virginia and North Carolina Piedmonts, younger sons of Shenandoah Valley farmers and graziers, and squatters from various places were all lured into the area. Some of these settlers purchased large tracts of land; in some cases they brought slaves to clear them; in others they paid squatters to do the work. While the other sections of Virginia--especially the Tidewater, Piedmont, and Valley--tended to have a common sectional economic outlook, the Trans-Allegheny region was fragmented by its isolated settlements, its diversity of interests, and the difficulty of communications. Kentuckians looked down the Ohio to New Orleans as their natural market; on the other hand, northwestern Virginians overwhelmingly looked east to Cumberland, Baltimore, and Philadelphia. As we shall see, Trans-Allegheny Virginia split over the ratification of the proposed Constitution of 1787.

2. What were the internal political rivalries in Virginia at the close of the Revolution?

Differences between and among the sections in Virginia had, of course, been apparent during the pre-Revolutionary period. Voting power in the House of Burgesses was heavily weighted toward eastern Virginia; colonial roads were generally abysmal, but Piedmont and Valley Virginians felt the Assembly was particularly indifferent to their needs for better communications; the question of frontier defense against the Indians aroused strong passions in westerners who often believed the east was negligent in its support; slavery had a much stronger hold in the east; in religious life the dissenters of the Piedmont and Valley chafed under the state church policies; access to western lands was another divisive factor; different types of farms and agriculture set the east apart from the north and west in their interests; ethnic tensions between and among the predominant English stock and the Scotch, Scotch-Irish, German, and Quakers added further unrest; finally, there were strong feelings about navigational improvements, especially on the Potomac River, that created sectional rivalry.

These pre-Revolutionary conflicts were given additional impetus by the internal tensions in Virginia over the conduct of the war. The raising of forces, taxation to support the state government and the military effort, the impressment of food supplies, the conduct of military strategy, the need for troops to protect the Virginia frontier--these and other issues perpetuated sectional feelings.

One source of bitterness--political representation--was embedded in the new Virginia Constitution of 1776. The old dominance of the east seemed to be enshrined in the new government. Thomas Jefferson, as a westerner, was so perturbed that he included an interesting table in his Notes on the State of Virginia which called attention to this imbalance:

| | : Square : Miles | : Fighting : Men | : : Delegates | : : Senators |
|--|---------------------|---------------------|------------------|-----------------|
| : Between the sea and the : falls of the rivers..... | : 11,265 | : 19,012 | : 71 | : 12 |
| : Between the falls of the : rivers and the Blue : Ridge of mountains..... | : 18,759 | : 18,828 | : 46 | : 8 |
| : Between the Blue Ridge : of mountains and the : Alleghenies..... | : 11,911 | : 7,673 | : 16 | : 2 |
| : Between the Alleghenies : and the Ohio..... | : 70,650 | : 4,458 | : 16 | : 2 |

While sectional attitudes developed around these several issues, the early 1780s saw the introduction of some new factors and new issues. The leading divisive social question was the disestablishment of the church of Virginia. More about that later. The most important issues that separated the sections in Virginia in the early 1780s were economic. Gradually the representatives from the various sections in the state legislature tended to coalesce around a particular viewpoint on these economic questions. Thus political factions arose. These factions (they were not defined or disciplined enough yet to call them political parties) not only began to reveal internal divisions in state matters but also generally reflected the views of their adherents on the national questions that came to the fore as the 1780s progressed. What were some of these issues? Who were the men who emerged in the early 1780s as principal factional leaders?

Virginia, along with the other states, had issued a vast amount of paper currency during the Revolution. No one was happy with this situation; between 1780 and 1784 the assembly enacted legislation to reduce this outstanding paper currency. In fact, by 1784 the state was spending over 80 percent of its annual budget on debt retirement. This meant that there was less money in circulation, which helped to depress prices. In general, the farmers--whether plantation owner, middling, or small freeholder--were hurt by the depressed prices and their representatives tended to unite in their efforts to effect relief.

Depressed prices meant difficulty in paying taxes. Western Virginia delegates were able to push through the Assembly a scale for the property tax--the principal source of state revenue. In 1782 the property tax was levied at ten shillings per pound valuation in the Tidewater, seven shillings sixpence in the Piedmont, five shillings sixpence in the Valley, and three shillings in Trans-Allegheny. Further relief was sought to permit farmers to pay taxes in commodities--tobacco, flour, hemp, and deerskins. This relief was extended first to westerners, then to eastern Virginians by 1783. Another tactic was to postpone the collection of the property tax, which was done in 1784.

The effect of all this was that by 1784 Virginia had redeemed most of the paper money issued during the Revolution, had reduced its debt, and had done all this without serious sectional, factional divisions.

The economic issue that caused the deepest split in Virginia after the Revolution was the question of the debts owed to British merchants. The relative unanimity that prevailed on the debt retirement and tax relief questions did not endure. It was around the positions taken on the British debts question that

fairly clearly defined political factions began to emerge by 1784. Let us examine briefly how two factions developed in the period 1782-1784 in the Virginia Assembly.

One faction we can call the Nationalist/Creditor group. In general, these men stressed the importance of fiscal responsibility (strong currency, payment of debts, fiscal "honor"); economic interdependence through commerce with other states and foreign countries; greater national strength through correcting the flaws in the Articles of Confederation. Theirs was a more cosmopolitan outlook toward the nation and the world. This group had no real leader in the Assembly until James Madison took his seat in 1784. However, there were several extremely important men who supported these views who were not members of the Assembly. George Washington's support was critical. Not only did he bring the immense prestige of his Revolutionary leadership, but also his connections with friends in Maryland and further north gave the faction national influence. This faction had valuable representation in the Confederation Congress in James Madison (1780-1783) and James Monroe (1783-1786). Although not a member of the Assembly, Edmund Randolph, attorney general of Virginia (1776-1786), was in a highly strategic position in Richmond to advise his Nationalist/Creditor friends of political developments.

On the fringes of this group were Thomas Jefferson and George Mason. Jefferson was away from Virginia during most of this period, serving briefly in Congress (1783-1784) and then in France (1784-1789); however, he kept in touch, especially with James Madison, who kept him informed of developments in Virginia. Mason's prestige was of great value to the Nationalist/Creditor group. His views on fiscal propriety, however, were founded more on a sense of personal rectitude, that is, a man paid his debts not because he was compelled to by "the state" but because it was the honorable thing and expected of a gentleman. If governmental compulsion were used, Mason was prepared to support action by the Commonwealth of Virginia, but he was adamantly opposed to action by a central government.

The opposition faction was a loose-knit group that we can designate the State/Debtor group. In general, these men favored a plentiful money supply (paper) to help with debt payment and to help drive up prices; tax relief in the form of tax payments in commodities or delays in the collection of taxes; various plans to provide debt relief. Their outlook was more provincial; their concerns were local and state-oriented. They wanted better roads to Virginia home markets, a chance to acquire fertile lands in the West, and a protected market for their products. The nominal leader of this faction was Patrick Henry. It is hard to determine just how influential Henry was. He was frequently absent from the House of Delegates and missed many roll call votes. He was not, by personality or experience, cut out to be a

legislative leader. With all of his seeming indifference, Henry exerted considerable influence. Generally allied with this viewpoint was Speaker John Tyler who brought to the State/Debtor group a few friends from the lower James River. General Thomas Nelson of Yorktown was in this camp as well. Another familiar name, Richard Henry Lee, led a small following in the House of Delegates that was part of this State/Debtor alliance. Patrick Henry was accused by his political opponents of always shifting his views to coincide with what seemed to be prevailing popular sentiment. This may be true, but it is certainly clear that a majority of the House of Delegates agreed with the State/Debtor faction in the early 1780s.

3. What economic issues on the state and national levels concerned Virginians most in the period from 1784 to 1787?

The economic issues that concerned Virginians the most in these years may be summarized as follows:

British Debts . . . It is estimated that citizens in the thirteen English colonies owed British merchants a total of approximately £4,000,000 at the beginning of the Revolution. In 1791 British merchants jointly drew up an account of the debts still unpaid and presented the list to the British government. Approximately 500 Virginia planters were named in the accounts, but the likelihood is that many other Virginians owed debts to British interests as well. The table below indicates Virginia's share of this debt; not included in the table are the debts owed by the middle and northern colonies. The figures are in pounds sterling.¹

| | 1776 | 1790 (5% interest added) |
|----------------|-----------|--------------------------|
| Maryland | 289,000 | 571,000 |
| Virginia | 1,164,000 | 2,305,409 |
| North Carolina | 192,000 | 379,000 |
| South Carolina | 347,000 | 687,954 |

The Virginia Assembly enacted a moratorium on the collection of both domestic and foreign debts in November 1781. The Anglo-American Treaty of 1783 guaranteed that creditors on both sides would not be hindered in the recovery of debts owed them. Many prominent Virginians, including Washington, Jefferson, Pendleton, and Mason, favored the repayment of the principal of these debts.

¹James F. Shepherd and Gary M. Walton, Shipping, Maritime Trade, and the Economic Development of Colonial North America (Cambridge, 1972), pp. 131-133.

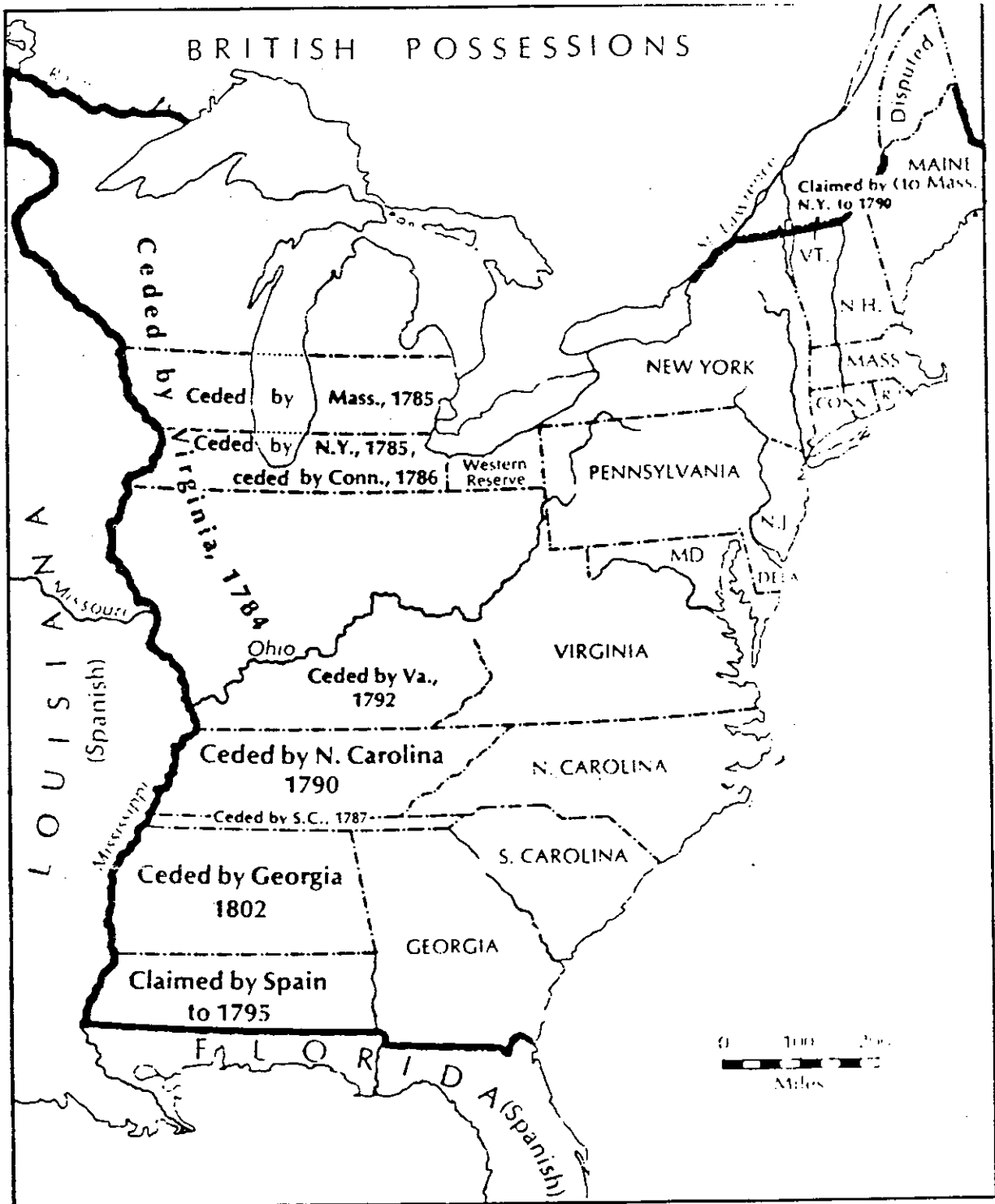
They were opposed to the payment of interest. Furthermore, many Virginians were bitter about the destruction of property in the state by British marauders such as Colonel Banastre Tarleton's raiders, damage inflicted by the British Navy, and by the loss of an estimated 30,000 slaves to the British side.

Virginia's moratorium on the payment of her British debts had a national impact. The British in 1783-1784 refused to vacate forts south of the Great Lakes required of them by the Treaty of 1783. This refusal was based, in part, on Virginia's obstruction in the debts matter. Washington and Madison, among others, feared that Great Britain might renounce the Treaty of 1783, which would split apart the fragile United States.

Both the Virginia House of Delegates and the Virginia Senate passed bills late in 1784 that contained plans for the repayment of the British debts over a period of seven years and excluded any interest charges. These bills were never reconciled by conference committee, however, and the Assembly never enacted a debt repayment scheme. Therefore, Virginia's moratorium of 1781 remained in effect until the ratification of the Constitution of 1787. It is hard to discern a clear division on this question in the House of Delegates. In general, the strongest support for the Nationalist/Creditor view came from Tidewater and the Northern Neck. However, many western Virginians began to fear continued British presence on the frontier and sided with easterners in voting for debt repayment. The State/Debtor faction received its strongest support from Southside Virginia and the Piedmont in opposition to payment of the British debts.

Scarcity of Money . . . Specie had always been scarce in Virginia. The French army brought in some during the Yorktown campaign, but by war's end most of the specie in Virginia had vanished in the wave of paper money that washed over the state. At the end of the Revolution, Virginians were using paper currency, military certificates issued to soldiers in lieu of money, commodities, the barter system, and the sale or trade of slaves to pay their debts and to purchase their goods. As we have seen, Virginia's Assembly made a determined effort during 1780-1784 to reduce the supply of paper money in circulation. Everyone was affected by this--merchants, planters, middling farmers, small landholders, slaveholder, and non-slaveowner alike.

There were two principal reasons why the scarcity of money in the 1780s did not result in an orgy of cheap currency in Virginia. One was the roughly equal strength of the Nationalist/Creditor and State/Debtor groups in the Assembly. The other was that there was no prominent leader in either faction who supported increasing the money supply through the issuance of paper currency. Not even Patrick Henry, when the opportunities arose, would stand up in favor of this remedy.



Virginia's Western Claims

The calls for an increased money supply were loudest in the mid-1780s as the postwar depression hit Virginia's farmers and merchants alike. By 1787 there were signs of economic recovery, and the paper money issue gradually lessened.

4. How did Virginia's cession of its western land claims contribute to strengthening the nation?

There were many elements at work in the question of what to do about the western lands held by the seven states that claimed lands between the Appalachians and the Mississippi River. Small states wanted to reduce the size of larger states by relinquishing these lands; settlers in the lands probably preferred the creation of new states to the continued control by a distant eastern state government; the northern and western boundaries of states needed to be secured against encroachment; problems were caused by the inability of a distant state government, in Richmond, for example, to protect settlers, provide roads, and encourage and regulate trade; there was the promise of economic opportunity and riches in the ownership, sales, and development of these lands; there was no machinery for the arbitration or adjudication of disputes between states with common western borders or lands. All of these were part of the controversy over the disposition of these lands.

But the most important questions were these: Would the cession of these western lands fatally weaken state sovereignty and dangerously strengthen the central government? On the other hand, if the lands were not ceded would the states holding them contribute to the destruction of the United States because the central government lacked the power to establish boundaries, settle disputes, and exercise the national sovereignty required to maintain stability and internal order and to encourage growth and development? These were momentous questions and inspired strong views on both sides. Gradually, however, the view prevailed that the states had far more to gain by strengthening the central government because their very existence might be endangered were they selfishly to insist on holding on to the western lands.

In late 1780 the Confederation Congress issued a call to the seven states that held western lands to cede their claims. The seven were Connecticut, Georgia, Massachusetts, New York, North Carolina, South Carolina, and Virginia. The Virginia Assembly, on January 2, 1781, passed resolutions that begin with the clear statement that, "being well satisfied that the happiness, strength and safety of the United States depend under Providence upon the ratification of the Articles for a federal union between the United States heretofore proposed by Congress for the consideration of the said States and preferring the good of their Country to every object of smaller importance do Resolve that

this Commonwealth will yeild (sic) to the Congress of the United States for the benefit of the said United States all right title and claim that the said Commonwealth hath to the Lands Northwest of the River Ohio upon the following conditions to wit: . . ."

The conditions that the Virginia Assembly spelled out were important. The most significant condition for the future of the United States was the promise that the new states to be carved out of this territory would be admitted to the United States as equals to the original states. Other stipulations in the resolutions were: that George Rogers Clark and the soldiers who had fought with him to capture and defend western lands be granted a tract of land in payment and appreciation for their efforts; that Congress honor the claims of title to western lands held by Virginians and guarantee title rights to former soldiers who had been given military bounty land claims in lieu of pay; and that Congress void any out-of-state land company claims that had not been authorized by Virginia.

This last clause was the stickiest issue, but the other conditions exacted by Virginia also rankled some members of the Confederation Congress. They were so opposed that for three years--until March 1784--Congress refused to accept Virginia's offer. Opponents in Congress finally had to recognize that it was much better to accept the Virginia conditions in order to strengthen the government under the Articles of Confederation and to provide for orderly settlement of the western lands.

When the Confederation Congress approved the Virginia cession on March 1, 1784, it was perhaps the most important action accomplished by that Congress in the years under the Articles of Confederation. By this action Congress went far toward removing the chief obstacle in the struggle of the smaller states for equity with the larger states. The controversy over western lands had complicated the life of the new nation principally by delaying the ratification of the Articles of Confederation from 1777 to 1781. (Maryland, for example, refused to ratify the Articles until Virginia ceded its western lands.) The controversy had probably been the chief cause of trouble in interstate relations under the Articles.

The significance of the cession cannot be overemphasized. Now all of the states had a common interest in the national domain. Virginia and other states that ceded land now had much more supportable claims. Their claims were to receive national protection. Supporters of state sovereignty could point to the fact that Congress, by recognizing the validity of state titles, had actually strengthened state sovereignty. Furthermore, the ceding states were relieved of the almost impossible task of trying to govern the ungovernable, distant western lands. The cession meant that Virginia now had stable, recognizable, and guaranteed boundaries. As one writer has said, "In a very

"A Bill for Establishing Religious Freedom" January 16, 1786

WELL AWARE that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do, but to extend it by its influence on reason alone; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time: That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness; and is withdrawing from the ministry those temporary re-

wards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependance on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt

acts against peace and good order; and finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

WE THE General Assembly of Virginia do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

AND THOUGH we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right. ❧

concrete way, the cession helped to define what Virginians meant by 'Virginia.'

For the central government the cessions strengthened the union. The United States at last had property which it owned and which it could sell to raise much needed revenue. There was now the stimulating prospect of expansion of the United States to the west by the creation of new, free, and equal states. Congress would soon begin work on plans for laying out states which culminated in the great Northwest Ordinance of 1787.

Perhaps the greatest significance for the new nation in the western lands debates was the growing realization that there was, in fact, an authentic national interest that could exist alongside the jealously guarded rights of the states. If the union were to be preserved and strengthened, the states would have to give up something in order to gain the greater benefit of stability and harmony between and among themselves. It was this lesson that would begin to permeate the thinking of those who sought ways to protect the interests of the several states while at the same time correcting weaknesses in the Confederation. The cession of Virginia's lands thus pointed clearly toward the "miracle" at Philadelphia in 1787.

5. What was the significance for the nation of the struggle in Virginia to separate church and state?

It is probable that the leading social issue in the 1780s in Virginia was the effort to end the close ties between the church of Virginia and the government of the state. We should note here what the late George J. Cleaveland, registrar of the diocese of Virginia, wrote in 1976:

At the first legislative assembly of the House of Burgesses held in the Jamestown Church in 1619, the real legal establishment of the Church of Virginia began. No minister was allowed a seat, voice, or vote in that session of the Assembly, and throughout all the colonial period that denial of ministerial capability to sit in the House of Burgesses was maintained . . . so in 1619 and in ensuing sessions of the General Assembly up to and after 1776, the Church in Virginia became in law the Church of Virginia.

Up to the time of the American Revolution the Church of Virginia was usually spoken of as the Church, the Church by Law Established, the Established Church, and the Church of Virginia.

You are familiar with the controversy that developed as dissenting religious groups became more numerous and more vocal in Virginia prior to the Revolution. In brief, these dissenters wanted two things: 1) the freedom to establish their own

churches, call their own ministers, solemnize marriages by their own ministers, and worship in their own church buildings; 2) to be free from taxation to support the church of Virginia or the established church. Many dissenters simply hoped to gain toleration for their right to exist and to worship. Once that step was achieved, the struggle could be broadened to end the enforced taxation. However, there were many dissenters who favored some form of state taxation for support of religious groups so long as the money raised was given to the religious group the individual taxpayer selected.

Against this background it is instructive to look again at Article XVI of the Virginia Declaration of Rights, the principal author of which was George Mason. I think it is helpful to place in parallel columns the original article as drafted by Mason and the article as finally approved.

Mason's Draft

18. "That religion, or the duty which we owe to our CREATOR, and the manner of discharging it can be directed only by reason and conviction, not by force or violence; and therefore, that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless under color of religion, any man disturb the peace, the happiness, or safety of society, and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other."

Virginia Declaration
of Rights

Article XVI. "That Religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other."

The alteration in the words of this article is significant. As originally drafted by George Mason, the article uses the authority of the state to guarantee that "all men should enjoy the fullest toleration in the exercise of religion . . ." The implication here is that the state has the power, the religious authority as it were, to grant toleration. But if the state has the power to grant toleration, the further implication is that the state is granting toleration to those who are not participants in the religious group connected to the state, in this case the church of Virginia. To put it another way, the

clause as drafted by Mason seems to support the continuation of the idea that the church of Virginia enjoyed a favorable position in its relation to state authority.

The change in language in this article is the result of James Madison's influence. Madison was on the committee to review Mason's draft of the Virginia Declaration of Rights. In Madison's view, the article did not go far enough. He wanted to go beyond mere toleration granted by the state. Madison wanted to establish the principle that "all men are equally entitled to the free exercise of religion" because it is an inalienable right. It is not a right granted to the individual by the state, because it is a right that is fundamental to all men to exercise "according to the dictates of conscience." Madison's revision was accepted. The adoption of the Virginia Declaration of Rights on June 12, 1776, with its Article XVI, established in written form the principle that religious freedom is an individual right and not something granted by the state.

Thomas Jefferson and James Madison were of like mind on this question. As J. R. Pole has recently written, "Jefferson and Madison . . . were passionately opposed to all forms of religious establishment: there was no subject in public life about which Jefferson felt more strongly." Professor Pole goes on to observe:

It would be quite wrong to think that this principle [the complete separation of church and state] arose from atheism. Jefferson was deeply religious in the sense of believing that God had created all things, including the moral order of the world (which was part of the natural order). He did not believe in the divinity of Christ, but he seemed to believe in the moral values of Christianity. Madison was a former Princeton student of theology and perhaps had a more Christian disposition. Both men believed in liberty of conscience, a belief that sprang from a firm conviction that all consciences were equal. No man could therefore impose his beliefs upon others from his own sense of the evidence. Forced religious belief was not true religion at all--and it was in fact a form of blasphemy against God.

The adoption of the Virginia Declaration of Rights did not automatically end persecution of dissenters in Virginia. As late as 1778 dissenters were still being imprisoned in Virginia. Something more was required.

Jefferson and Madison had two goals in mind. The first was religious freedom for all men, and the second was total separation of church and state. The first goal was given expression in Article XVI of the Virginia Declaration of Rights. The second goal was expressed in the Statute for Religious Freedom written principally by Jefferson in 1777. The statute

was drawn up in Fredericksburg in January 1777 by a committee appointed by the General Assembly to draft a major revision of the state's laws. The committee members were Thomas Jefferson, Thomas Ludwell Lee, George Mason, Edmund Pendleton, and George Wythe. George Cleaveland has made the point that "these men, churchmen all, drew up the statute which, as far as legislative action could, made forever certain religious liberty as the right of every Virginian . . . let it be remembered that it was members of the established church of Virginia, now the Episcopal Church, who wrote that law, and that it was a General Assembly predominantly of Episcopal churchmen who enacted it into law." Dr. Cleaveland believes that "the statute was probably a composite of the views of all the members of the committee . . . Jefferson claimed authorship of the statute, and he surely had a vital part in its production, but it seems highly likely that Mason had a part in its production. The preamble was probably Jefferson as well as the final paragraph."

While Jefferson was governor of Virginia in 1779, the bill was introduced in his behalf in the Virginia General Assembly by John Harvie. Thus began a struggle that Jefferson described as the most bitter political contest of his career. It would take almost eight years, many debates, and much bitter controversy before the statute, termed "A Bill for Establishing Religious Freedom," was passed by the Virginia General Assembly on January 16, 1786.

In the same year, 1779, in which the statute was introduced, the Virginia General Assembly repealed all taxes for the support of religion. However, the church of Virginia still had a role to play in Virginia. The vestries continued to exercise their old colonial responsibilities of caring for the poor and looking after orphans in the parishes. In addition, the church maintained control of the glebe lands, public property granted in the colonial period by the Crown for support of ministers.

The strategy, if it can be called such, was for church of Virginia members (Episcopalians) to dig in to fight the loss of revenue from the state by allying themselves to other denominations. Their goal was to enact state taxation for the support of religious groups on a non-denominational basis. In the spring of 1784, the House of Delegates committee on religion issued a report in support of a general assessment for religious purposes. While the tax was to benefit all religious groups, it would have the effect of strengthening the position of the Episcopal church and probably would continue the semblance of a connection between the state and the Episcopal church. At first Episcopalians and Presbyterians were allied in support of the Assessment Bill, while Baptists led the fight against it. The bill as introduced in December 1784 provided that each taxpayer had the right to specify which clergyman his taxes were to support; those who did not choose to support a clergyman or a

religious group could designate their tax for the support of secular education. The General Assembly adjourned without taking action on the Assessment Bill in 1784.

James Madison's strategy was to delay action on the Assessment Bill until popular sentiment swung against it. The strategy worked perfectly. A friend of Jefferson, George Nicholas of Albemarle County, suggested to Madison that an outpouring of popular petitions might turn the tide against the measure. Madison liked the idea so well that he drafted in the spring of 1785 his classic statement on religion and the state entitled "A Memorial and Remonstrance." This "Remonstrance" against the Assessment Bill was printed and widely circulated in Virginia. Presbyterians, now alarmed by the prospect of continued Episcopal influence, joined Baptists to fight the bill. The outpouring of sentiment against the Assessment Bill was quite remarkable. The House of Delegates received over 100 petitions from 48 of the 72 counties in the state. The names in opposition on these petitions numbered over 10,000; those names in favor numbered only around 1,200. By the fall 1785 session of the General Assembly the Assessment Bill was dead. The petitions in support of the bill came from the lower region of the Northern Neck and from Southside. Opposition came from all over the state.

Madison, capitalizing on the momentum of the moment, reintroduced the Statute for Religious Freedom. The House passed the statute without change on December 20, 1785. The Senate modified the preamble, and the House accepted the modification. The revised statute was passed on January 16, 1786, entitled "A Bill for Establishing Religious Freedom." It is a landmark document and deserves to be reprinted in full as an appendix to these notes.

The significance of this has been well summarized by Professors Keith Crim and Thomas O. Hall, Jr., as follows: "The idea of a state church established by law and supported by taxes gave way to the idea of a quasi-state church, preeminent in influence and prestige, then to the idea of state support for all religious groups, and finally to the principle set forth in the Virginia Statute for Establishing Religious Freedom. . . . This was a remarkable statement in view of the dark history of religious strife."

Virginia had separated church and state, but on the national scene the principle was an important issue in the debates over the ratification of the proposed Constitution of 1787. The final act of the Virginia Convention of 1788, called to consider the new Constitution, was to approve on June 27 certain proposed amendments to the Constitution, and to recommend them to the first Congress. The Virginia resolution began:

Videlicet:

That there be a Declaration or Bill of Rights asserting and securing from encroachment the essential and unalienable Rights of the People in some such manner as the following;

Twentieth, That religion or the duty which we owe to our Creator, and the manner of discharging it can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by Law in preference to others.

When the new Congress under the Constitution convened, James Madison was instrumental in the introduction of the first ten amendments, the "Bill of Rights." When these amendments were adopted in 1791, it can be said that they had a clear Virginia imprint on them. The First Amendment to the United States Constitution is a tribute to Jefferson, Madison, but above all, it is a monument to the memory of George Mason.

6. How did Virginia-Maryland controversies help reveal weaknesses in the Articles of Confederation?

It can perhaps be said that of all the strands in early American history which were brought together at Philadelphia in 1787, none was more important than that which began with the Maryland Charter of 1632. In that year, Cecilus Calvert, the second Lord Baltimore, received a charter from King Charles I granting him a large area of land north of Virginia. Under the charter Maryland claimed territorial control of the Potomac River including the southern shore, or the Virginia side of the river.

The Virginia Constitution of 1776 recognized the claims of Maryland to the southern shore of the Potomac. Just why the authors of the Constitution of 1776 agreed to this is not clear. However, the Virginia Constitution of 1776 also claimed that Virginia had free navigation rights on both the Potomac and Pocomoke rivers. By 1784 James Madison was sufficiently concerned about this oversight that he was ready to approach Maryland to see if an agreement could be made giving to Virginia control of its side of the Potomac River.

You will recall that Maryland had refused to sign the Articles of Confederation until Virginia ceded its claims to western lands. Once that was accomplished, Maryland signed in 1781. Maryland and Virginia were two of the strongest supporters of congressional authority under the Articles of Confederation. Both states consistently sent to Congress delegations who were

Both states consistently sent to Congress delegations who were Nationalist/Creditor in their outlook. That is, they favored strengthening the powers of the central government particularly in the regulation and control of commerce. The Virginia and Maryland delegates to Congress believed there were two main flaws in the Articles of Confederation; the first was lack of power to impose uniform taxes on all the states. The second flaw was Congress's lack of power over interstate and foreign commerce.

Although Virginia and Maryland delegates supported unsuccessful efforts in the Confederation Congress to correct these flaws--for example, an amendment to the Articles of Confederation in 1781 giving Congress the power to levy a duty of 5 percent on the value of all goods imported into the United States; and, in 1784, a Congressional request to the states for the power to pass navigation acts to protect American shipping for a period of fifteen years--their efforts were frustrated by opinion in other states, as well as in the minds of many Virginians and Marylanders, that these were policies which would give too much power to the national Congress. In the absence of any national policy, states were left to make their own arrangements. Many of them did, including signing pacts between themselves to settle commercial disputes. Virginia and Maryland used this approach.

In the summer of 1784 a proposal was made in the Virginia General Assembly to invite Maryland to join Virginia in naming commissioners to meet to discuss joint matters of concern relating to commerce on the Potomac. The four Virginia commissioners were an Alexandria merchant, Archibald Henderson, James Madison, George Mason, and Edmund Randolph. The Maryland Assembly chose Samuel Chase, Daniel of St. Thomas Jenifer, Thomas Johnson, and Thomas Stone.

It is important to note that the instructions to the Virginia delegates by the Virginia Assembly focused narrowly on conflicting claims about the Potomac. The Maryland delegates, on the other hand, were asked to pursue a much wider range of issues --the Pocomoke River, the need to survey and divide jurisdiction over the Chesapeake Bay, shore rights, customs duties, disagreements over navigation, lighthouses, and coastal defense.

Maryland proposed a place and date, Alexandria, the week of March 21, 1785, for the meeting. Governor Patrick Henry received this proposal, but he was not in sympathy with providing Nationalist/Creditors with an opportunity to work out trade regulations in secret. He conveniently neglected to notify the Virginia commissioners of the place and date of the meeting. When the Maryland commissioners came to Alexandria on March 21, 1785, there were no Virginia representatives to meet them.

At this juncture, Henderson and Mason tried to recover from the embarrassment by agreeing to go ahead themselves to confer with the Marylanders. Hearing of the confusion, General Washington invited them to Mount Vernon. With Washington acting as a gracious but non-participatory host, the conference convened on March 25, 1785. Washington was by no means disinterested. He was deeply involved in encouraging the development of transportation and commercial links between the Chesapeake/Potomac basin and the Allegheny Mountains beyond to the Ohio River Valley. Encouraged by Washington's interest and hospitality, the commissioners reached a wide-ranging agreement and adjourned on March 28, 1785.

In their report the commissioners recommended that Virginia and Maryland agree jointly on common fishing rights in the Chesapeake Bay, along with the erection of lighthouses, beacons, and buoys; they proposed the establishment of naval offices; the Potomac River was declared a common waterway not just for Virginia and Maryland, but for all of the other states; they recommended that import and export duties be uniform for both states and they established a proportional scale of duties when ships and cargo were brought to ports in both states. They dealt with monetary issues by recommending that the currency of the two states be equal in value and that foreign coin and currency be given a common value in the two states.

The importance of the Mt. Vernon Conference of 1785 is that two states provided a model to deal with common trade, navigation, debt, monetary, and jurisdictional problems on a broader scale than simply two states settling their differences. Many of their recommendations had a national character; in fact, they showed that even with the best of wills, two states acting jointly could provide only for a local solution when a broader, national solution was required.

The Virginia Assembly at its next session approved the Mt. Vernon Conference recommendations without debate. Madison was the adroit floor and committee leader in this smooth passage. The Maryland Assembly considered the Mt. Vernon report as soon as the fall session opened. The Marylanders added even more resolutions to the basic agreement reached at Mt. Vernon. Most importantly, they endorsed the recommendation of the Mt. Vernon Compact that there be annual meetings to discuss common problems and that Delaware and Pennsylvania should be invited. The Maryland Assembly approved the Mt. Vernon report on November 22, 1785, and sent it on with the additional resolutions to the Virginia Assembly.

The Virginia Assembly in the fall of 1785 devoted much time to the whole question of trade and the authority to regulate both foreign and domestic commerce. Among the issues dividing the

Assembly were proposals on both sides of the question; one to give greater authority to the Congress; the other to go ahead with a unilateral commerce bill. Against this background, and with the Mt. Vernon Compact and the additional Maryland resolutions in hand, John Tyler brought forward a resolution to broaden the Maryland proposal for a conference limited to a few states. With the support of Madison, Tyler's resolution called for commissioners from Virginia to meet with commissioners from all of the other states in a convention "to examine the relative situations and trade of the States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and permanent harmony." Tyler's resolution was passed by the Virginia Assembly on January 21, 1786, the last day of the session. It provided for invitations to be issued to all of the other states to meet the following September. The purpose of the meeting was to draft a new amendment giving Congress power to regulate commerce or, in the words of the resolution, "a Meeting of Politico-Commercial Commissioners from all the States for the purpose of digesting and reporting the requisite augmentation of the power of Congress over trade."

Almost without realizing it, the tactic of using state action to bring about change in the government under the Articles of Confederation was evolving. Before it reached its climax in Philadelphia in 1787, there was one more scene to play out in the unfolding drama. This was the Annapolis Convention.

The Virginia Assembly named eight representatives to the Annapolis meeting. The House chose Walter Jones, James Madison, Edmund Randolph, Meriwether Smith, and St. George Tucker. The Senate picked George Mason, William Ronald, and David Ross. These Virginia commissioners decided that the "Convention" (the name apparently given to the meeting by Edmund Randolph) should meet in Annapolis on the first Monday in September 1786. Eight other states responded favorably to the Virginia invitation. Those who promised to send delegates were Delaware, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, and Rhode Island. Four states refused. Connecticut had been troubled by internal popular challenges to the legislature's authority; its legislature did not want to appear willing to subvert the legally established Congress of the Confederation by supporting a "popular convention" to undermine Congress. South Carolina had given its approval to an act giving Congress the power to regulate commerce for fifteen years and felt this was sufficient indication of its support. Georgia never accepted the Virginia invitation.

The most embarrassing abstention was Maryland's. The Maryland House of Delegates chose eleven strong nationalists, but the Senate refused to go along. Conservative Marylanders, especially Charles Carroll, feared that the authority of Congress

would be severely weakened by state-sponsored conventions such as the one proposed for Annapolis. The Senate wanted to restrict all Maryland meetings to discussions of controversies with neighboring Virginia, Pennsylvania, and Delaware. The Maryland legislature could not resolve its differences, and no commissioners were chosen. By the time this occurred it was too late to cancel the conference, and, in fact, the momentum was too strong to halt.

When the commissioners assembled at Mann's Tavern in Annapolis on September 11, 1786, only five states were represented. Delaware, New Jersey, and Virginia each had three commissioners present. New York's delegates were Egbert Benson and Alexander Hamilton. Pennsylvania was represented by Tench Coxe. What was said during the two days they met will perhaps never be known. They kept no records, and their correspondence reveals almost nothing about their deliberations.

Although we will never know exactly what they thought and said, we can surmise as follows: they were dismayed at the low attendance because this gave the meeting very little credibility; they chose not to wait a few days for more delegates to arrive because a handful more would still not give the needed weight to their deliberations; they were heartened that, at least, nine states had supported the idea of a meeting and five states were actually represented; this suggested that the time for reform of the Confederation was fast approaching; they concluded that the most effective action they could take would be to issue a call for still another meeting but to word the call so that the broadest reform might be undertaken at a subsequent convention. To draft their report they turned to Alexander Hamilton who had long been an advocate of a convention to make sweeping changes in the Articles of Confederation.

Hamilton's report was carefully worded so as not to arouse undue apprehension. Nevertheless, the Annapolis Convention report proposed that the state legislatures choose delegates to a convention called "to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union." Virginia's call to the Annapolis meeting had stressed commercial and trade issues. The significance of the Annapolis Convention report is that it radically transformed that narrow agenda into one that would permit amending the Articles of Confederation. Once that door was opened, there was no way to limit what revisions might be made.

It has been said that the Annapolis Convention delegates were either brilliant analysts of political moods who shrewdly calculated what was likely to happen at a second convention or they were frustrated, worried men who threw caution to the wind

and boldly gambled that they and the country had nothing to lose by proposing an avenue for sweeping governmental change. Whichever is true, it certainly can be said that when they adjourned on September 14, 1786, they had achieved two major things: they had gone so far as to name a place and date for the next convention, Philadelphia, the second Monday in May 1787; and they had proposed guidelines for the convention's deliberations that would permit changes of enormous importance.

7. What issues divided the delegates to the Virginia Convention in Richmond in June 1788?

There occurred in Richmond between June 2 and 27, 1788, one of the most remarkable political meetings in the entire history of the United States. This was the Virginia Convention of 1788, called to consider the proposed Constitution of the United States. Before we discuss the issues that divided them, let us review some basic background.

By the time the Virginia Convention convened, eight state ratifying conventions had approved the new Constitution-- Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts, Maryland, and South Carolina. Nine were needed to approve the new proposal. Ratification by the remaining states was uncertain. Opponents of the Constitution were strongest in New Hampshire, New York, North Carolina, and Rhode Island. Thus, Virginia was the key state. Opposition to the Constitution was very strong in Virginia; if the opponents succeeded in defeating the new plan of government, Virginia's example could well be the decisive factor in the Constitution's defeat.

There were 170 delegates elected to the Convention of 1788-- each of Virginia's 84 counties was entitled to two representatives; Norfolk and Williamsburg were given one each. They met in the New Academy on Shockoe Hill, and for three weeks they debated the new Constitution in what was probably the most brilliant and incisive analysis of the document by any of the conventions in the several states. The debates were passionate, and the outcome was uncertain. Far-ranging discussions on the proposed Constitution had taken place in Virginia for several months before the Convention of 1788. The two sides--for and against--were fairly clearly defined by June 1788. It was known that the outcome depended on how some ten or a dozen men who were undecided finally voted.

The debates were written down by David Robertson, a notable shorthand reporter. His record is probably close to a verbatim account of the inspired exchanges. Several years later, in 1828, Jonathan Elliot published a five-volume edition of all the proceedings in the several state ratifying conventions. Volume II of the series, Debates of the Virginia Convention, comprises 487 pages. It is considered to be the best of all the reports in

the five-volume series. Anyone interested in understanding the depth of feeling on both sides of the Constitution can do no better than to read this record of the Virginia Convention.

Brilliance of intellect, spirited articulation of viewpoint, and political tactical skill were almost equal on both sides. Those who supported the Constitution called themselves Federalists; their leaders were James Madison and Edmund Pendleton. Arrayed with Madison and Pendleton were Edmund Randolph, George Wythe, James Innes, Henry Lee, John Marshall, Francis Corbin, and George Nicholas. Madison carried the main burden of Federalist defense of the Constitution. The other Federalists did not speak often, in fact, only about six men on either side did the talking throughout the Convention. The Convention was filled with silent participants; 149 delegates said nothing in the debates during the twenty-five days of the meeting. Federalists dominated in Tidewater, the Northern Neck, the Shenandoah Valley, and the Alleghenies.

Opponents of the Constitution were known as Anti-Federalists. Their strongholds were in Southside Virginia, the Southwest, and Kentucky. The Piedmont, north of the James, was a mixed area with both Anti-Federalist and Federalist pockets of strength. The Anti-Federalists possessed the most dramatic leader, Patrick Henry. The delegates listened to Henry for fully one fourth of the time of the Convention. Allied with him were George Mason, William Grayson, Richard Henry Lee, Benjamin Harrison, and James Monroe.

What were the factors or characteristics that influenced a man to be Federalist or Anti-Federalist in Virginia by 1788? A number of historians have studied this question, among them, Richard Beeman, Forrest McDonald, Jackson Turner Main, and Norman K. Risjord. Their conclusions may be summarized as follows: wealth tended to be about equal on the two sides; eastern Virginia Federalists were generally wealthier than Anti-Federalists, but western Virginia Federalists included many who were less well-to-do. The result was that spread over the entire state the two sides tended to balance in total wealth.

Professor Main has written persuasively to support his thesis that there was a notable consistency throughout the 1780s in the political positions taken by opposing factions in Virginia, and, indeed, the other states as well. Main has used the terms Cosmopolitan and Localist to describe these two general groups. He argues that the backgrounds, attitudes, viewpoints, and general social/economic positions of the Cosmopolitans led them to become Federalists in support of the Constitution. On the other hand, Localists, who could be defined by their characteristics in the 1780s, tended to become Anti-Federalists in the debates over the proposed plan of government.

Cosmopolitans in Virginia were likely to live north of a line drawn from Norfolk northwest through Orange County and across the Blue Ridge. This group contained a few more wealthy men and slightly fewer small landholders than did the Localists. Professional men--merchants, lawyers, physicians--were more likely to be in this group. Men of education seemed slightly more favorable to the Cosmopolitan position. Men who had served in Congress and as officers in the Continental Line belonged more often than not to this group. Religion and intellectual interests were not that important; however, there was some predilection for the Cosmopolitan group by Episcopalians. This group contained large, prosperous commercial farmers and planters. Many, if not most, of the Cosmopolitans had a broad perspective; they had an extra-Virginia contact whether by birth, through commercial connections, travel, or education abroad. There were more men of non-English stock in this group in Virginia than in the opposing group. Cosmopolitans often combined agricultural and commercial pursuits.

Those whom Main describes as Localists developed a sense of identity as the 1780s progressed. They tended to vote together on the issues raised in the Virginia Assembly, and they represented the areas that were strongly Anti-Federalist in 1787-1788. It is helpful to consider the occupations of the two groups:

| | <u>Cosmopolitans</u> | <u>Locals</u> |
|---|----------------------|---------------|
| Merchants and Lawyers | 37% | 9% |
| Planters (owners of 1,000 acres or 40 slaves) | 41% | 39% |
| Farmers | 8% | 34% |
| Other nonfarmers | 14% | 18% |

As we have noted, the principal Localist leaders lived south of the James River. They were nearly all engaged in agriculture as planters or farmers. Localist leaders and their supporters, with some notable exceptions, were probably less well educated, less intellectual, and possessed a more provincial outlook based on a somewhat restricted range of experience. By birth and family, Localists were stronger in their Virginia roots than were the Cosmopolitans. Localists' military service was more likely to have been in the Virginia militia; if they had served in the Continental Army, they were not among the higher ranking officers.

When the Convention of 1788 opened, the delegates were divided almost equally. There were 86 votes felt to be

reasonably certain for the Federalist side. Patrick Henry and his Anti-Federalist allies were thought to muster 80 votes against the Constitution. However, not only were there the four definitely uncommitted delegates, but also there were some waverers in both camps who might be swayed in their support.

It was clear even before the Convention first convened that the Anti-Federalists would try to weaken or kill the document by introducing amendments. Their strategy was to insist that the document not be approved unless these amendments were attached. They did not want a straight vote on the Constitution as presented without any changes. They did not want to leave to chance or the whims of a future Congress the introduction of amendments perceived to be necessary for the protection of state rights (Henry's main point) or individual liberties (Mason's main point). Further, their strategy was to prolong the debate, delay a decision, and hope that frustration and attrition would lead to acceptance of their proposed amendments or, even better, outright rejection of the proposed Constitution.

The Federalist strategy was equally clear. They must prevent any amendments from being attached to the proposed Constitution. This would imply that Virginia's ratification was conditional. George Washington, although not a delegate, was particularly strong in his view that amendments or conditions might prove fatal. Other states that had already ratified the document without amendments would be disgruntled to have to reconsider the document with Virginia's proposed amendments. Those states that had not ratified might use the proposed Constitution with amendments as a pretext to reject the plan altogether. However, the Virginia Federalists were willing to accept proposals for changes or amendments after ratification. By making clear their willingness to listen to proposals for changes, to promise to work for them, and to encourage other states to agree, the Virginia Federalists did much to undercut Henry's stand.

The Convention was called to order on June 2, 1788. Edmund Pendleton, a Federalist, was elected president. When Pendleton left the chair, as he did several times to serve as a spokesman in the committee of the whole, George Wythe presided. On June 3, George Mason proposed and it was agreed that the Convention examine carefully and debate separately every section of the Constitution. Madison and his Federalist colleagues accepted this proposal readily because it would fit their strategy of focusing on the Constitution rather than on amendments.

Patrick Henry, however, preferred to speak in general terms about the threats he saw in the proposed document. He launched his attack on the third day of the Convention and laid out the arguments he would use for the next weeks of debate. In Henry's

view, "This proposal of altering our Federal government is of a most alarming nature. You ought to be extremely cautious, watchful, jealous of your liberty; for instead of securing your rights, you may lose them forever. If this new government will not come up to the expectation of the people, and they should be disappointed, their liberty will be lost, and tyranny must and will arise." Henry objected vigorously to the wording of the Constitution's preamble. He challenged the framers of the Constitution, "Who authorized them to speak the language of, We, the people instead of We, the states?" According to Henry, "If the states be not the agents of this compact, it must be one great, consolidated, national government, of the people of all the states."

Henry's tactic was to alarm as many segments of society as he could about the dangers he saw in the Constitution. Large planters, small debtor farmers, slaveholders, people of the Valley and the Trans-Allegheny country--all were given reasons why they were threatened individually and as a group by the terms of the document. He feared the power of the executive who would control the army; the House of Representatives did not contain enough Virginia representatives and the South would be dominated by the North; the power of the Senate to make treaties posed the threat of foreign influence in Virginia's affairs; he argued that the control of the military by the central government would produce tyranny. In summary, Henry feared that Virginia was giving up too much authority over its own affairs to the new Federal government.

Henry was joined in the debate on June 4 by George Mason, at age sixty-three the most intellectually brilliant mind on the Anti-Federalist side. Mason argued forcibly that the conversion of the confederation government into a consolidated government would result in the virtual annihilation of the state governments. Mason did not see how powers could be divided between the central government and the states; the central government would be much more powerful than the states and the latter would be overwhelmed.

Henry returned to the fray on June 5 in a speech that lasted several hours. He was to speak many times again, but this speech included all of his main points. Men must always be instinctively suspicious of governments and those who were ambitious to hold political power. Henry acknowledged that the new government would have the needed power to control civil unrest, but the greater danger, in his view, was that the government would become tyrannical in the exercise of its authority. His dominant theme was power--who would possess it and how would it be exercised. Henry dismissed the checks and balances of the Constitution as weak and ephemeral. He subjected the proposed document to a full-scale attack ranging over the entire document.

In later debates, Henry and Mason were joined by William Grayson and James Monroe in opposition. Grayson was strongly suspicious of the appointive power and the creation of hundreds of jobs under the new central government. He argued, "Is there any clause to hinder them from giving offices to uncles, nephews, brothers and other relations and friends?" Mason warned that "the Vice President . . . [was] not only an unnecessary but a dangerous officer." They were especially alarmed over the clause giving the Supreme Court jurisdiction over all cases "arising under the Constitution." Mason feared that the power of Federal courts in "their effect and operation will be utterly to destroy the State governments." Grayson argued that "the jurisdiction of all cases arising under the Constitution, and the laws of the Union, is of stupendous magnitude. . . . This court has more power than any court under heaven. One set of judges ought not to have this power . . ." Monroe could not see how Congress could enact laws uniform and fair for the entire country. Congress would not take into account the differing needs and conditions in the several states. The result would be capricious laws benefiting some states but not all.

The Federalist response to the arguments of Henry and his allies was generally reasoned and low-key throughout the Convention. However, Henry "Light Horse Harry" Lee raked Henry with scathing sarcasm, and Governor Edmund Randolph confronted Henry in heated anger toward the end of the Convention. It was Randolph who rose to reply to Henry's opening speech. Randolph had been a delegate to the Constitutional Convention in Philadelphia in 1787. He had refused to sign the proposed Constitution and had circulated a public letter explaining why. By June 1788 Randolph had reversed himself and in the Convention he came out strongly for the new plan. He argued that without it disunion would surely follow. Randolph then attacked Henry's view about the preamble. Plainly, in Randolph's view, "we the people" meant "we the people of each ratifying State." By Thursday of the first week of the Convention, Randolph was clearly losing his patience with Henry's lengthy speeches in opposition. Randolph blasted Henry, "If we go on in this irregular manner, instead of three to six weeks, it will take us six months to decide this question." It was on Friday, June 6, that Randolph delivered his most effective speech during the Convention. He carefully defined the flaws in the Confederation government, showed how the new Constitution corrected those weaknesses, and defended the powers given to the central government as essential to the creation of a strong national government.

Edmund Pendleton, as presiding officer, turned aside Henry's early contention that the Philadelphia Convention delegates had exceeded their authority. Henry's argument that the Philadelphia Convention should only have proposed amendments to the Articles

of Confederation and not written an entirely new document was met by Pendleton's expressed view that it didn't matter. According to Pendleton, the people were the key. The people had exercised their sovereignty by choosing delegates in Virginia to come together to consider the new document. In Pendleton's words, "The people have sent us hither to determine whether this government be a proper one or not." Pendleton then declared that this was the authority upon which the Virginia Convention rested and, ultimately, the Constitution as well. Pendleton labeled as "nonsense" Henry's contention that Americans had been contented with the Confederation and peacefully pursuing their own interests before the mischief had been done at Philadelphia.

The leading figure by far in the Virginia Federalist defense of the Constitution was James Madison. Madison at first had not intended to stand for election to the Virginia Convention, but his friends in Orange County warned him that only his presence could assure a Federalist's election in that county. No other Virginian had done as much to prepare for the Virginia Convention. It is beyond the scope of this question to deal with Madison's role in the years leading up to June 1788 but a list of his key activities will suggest his absolutely essential part: delegate to the Continental Congress; delegate to the Virginia Assembly; delegate to the Annapolis Convention in 1786; delegate to the Philadelphia Convention in 1787, reporter of its proceedings, and generally conceded to be the "Father of the Constitution"; author of 29 of the 85 essays written in defense of the proposed Constitution and published in four New York newspapers between October 27, 1787, and May 28, 1788, collectively known as The Federalist papers.

It was Madison, speaking so quietly that David Robertson the shorthand reporter had difficulty hearing him, who refuted Henry point by point. Madison spoke dispassionately, logically, and with an overwhelming command of historical background and knowledge of the proposed Constitution. Madison's principal argument that he used many times was that the states would not be overwhelmed by the central government. In a remarkable and long letter to Thomas Jefferson written from New York City on October 24, 1787, Madison provides us with perhaps his most cogent dissection of the Constitution and his understanding of Republican principles of government. It is worth quoting one paragraph from that letter because it is an excellent summary of the arguments Madison used in the Virginia Convention:

This ground-work being laid, the great objects which presented themselves were 1. to unite a proper energy in the Executive and a proper stability in the Legislative departments, with the essential characters of Republican Government. 2. to draw a line of demarkation which would give to the General Government every power requisite for general purposes, and leave

to the States every power which might be most beneficially administered by them. 3. to provide for the different interests of different parts of the Union. 4. to adjust the clashing pretensions of the large and small States. Each of these objects was pregnant with difficulties. The whole of them together formed a task more difficult than can be well conceived by those who were not concerned in the execution of it. Adding to these considerations the natural diversity of human opinions on all new and complicated subjects, it is impossible to consider the degree of concord which ultimately prevailed as less than a miracle.

Patrick Henry's tactic of diverting the discussion from the clause-by-clause analysis agreed to on June 3 prevailed for more than a week. Not until Saturday, June 14, did the Convention take up again its scrutiny of the Constitution in each of its sections. By June 23 tempers were at the flashpoint. Delegates were tired, disgruntled, and weary of the debate. By the close of its session on Monday, June 23, the Convention had completed its reading and debate of every sentence of the Constitution. The last day's session had been so acrimonious that Federalist leaders decided the time was ripe to force the question before the situation worsened. A Federalist head count indicated a slim margin in their favor of anywhere from three to possibly six votes.

During the protracted debates the Anti-Federalists had not been idle. Henry, Mason, and Grayson had been meeting together almost from the beginning to formulate a set of amendments to the Constitution. They used Mason's Virginia Declaration of Rights as their guide. However, they revised the language, dropped two of the sections, and in the end developed a list of twenty amendments. These they held in readiness for the proper time to introduce them.

The stage was set for the first climactic day, June 24. Madison, with his accustomed prescience, predicted the strategy each side would use. The Federalists would propose adoption without amendments, the Anti-Federalists would propose amendments to be added before ratification, the Federalists would counter with a proposal to ratify with the promise to recommend certain amendments after ratification. It was George Wythe who was given the floor to speak in favor of ratification and to move the adoption of the Constitution. Henry responded by asking the clerk to read two sets of amendments. One was the list based on Mason's Virginia Declaration of Rights and the other was a list of fourteen to amend "the most exceptional parts of the Constitution." A handful spoke on each side of the issue. Finally, Madison rose to save the day. He told the delegates that he would support most of the proposed amendments for subsequent adoption "not because they are necessary, but because

they can produce no possible danger." Late in the afternoon of the twenty-fourth the two sides agreed to the wording for a resolution of ratification. The weary delegates, sensing the end, put off until the following day the vote on the resolution.

On June 25 the galleries were filled by the opening gavel at 9:00 A.M. Two delegates had been summoned home. The air must have been tense with expectation as the 168 delegates took their seats. George Nicholas moved immediately for a vote on George Wythe's motion for ratification. John Tyler followed immediately to amend the motion by adding Patrick Henry's lists of amendments. The first vote, therefore, was on the Henry resolution, that, previous to ratification, a bill of rights and amendments "ought to be referred by the Convention to the other states in the American confederacy for their consideration." Henry's amendments were defeated 88 against to 80 in favor. The roll was then called on the motion to ratify the Constitution without change. One man, David Pattenon of Chesterfield County, switched sides, and the final vote was 89 in favor of ratification to 79 opposed.

Two important matters remained. The first was to adopt formally a statement of ratification. The other was to appoint a twenty-member committee, with members from both sides, to propose a list of amendments that Virginia would recommend to the new Congress. The committee chairman, George Wythe, presented its recommendations on June 27, the last day of the Convention. The Convention adopted the forty proposals--the original twenty bill of rights amendments with the addition of twenty more amendments designed to improve specific sections of the Constitution.

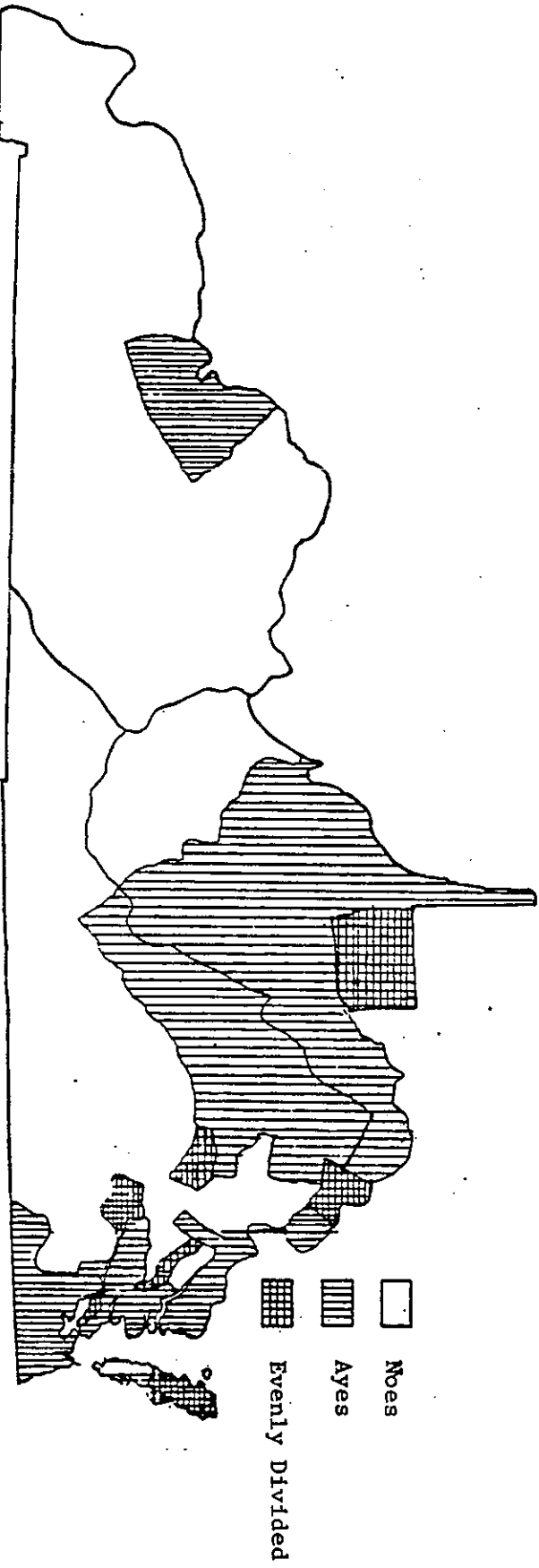
Ironically, New Hampshire had become the ninth state to ratify the Constitution on June 21, 1788, by a vote of 57 to 47. Word of this had not reached Richmond by June 25. But the role of Virginia, largest and wealthiest of the states, was decisive. What did it all mean? One writer has succinctly summarized it this way:

In the end, Virginia ratified. The vote was 89 to 79. A switch of half a dozen votes from the Madison-Pendleton Federalists to the Henry-Mason Anti-Federalists would have kept Virginia, at least temporarily, out of the new Union. It is not too much to say that such a change in the vote would have stopped the infant nation in its tracks. Virginia was then the most powerful State in the Confederation. Without her concurrence, Georgia and South Carolina would have been separated from sister States to the North, and most likely North Carolina would not have agreed at all.

But the vote was to enter the Union. Madison and Pendleton won, and Henry and Mason lost, but the antagonists mutually left to posterity a fascinating example of shrewd prophecy, keen insight, and learned debate on the towering questions of the role of government in a free society.²

²The Richmond News Leader, June 25, 1963

Map showing the sectional character of the vote of Virginia on the ratification of the Federal Constitution



Suggested Reading

Books

Charles H. Ambler, Sectionalism in Virginia from 1776 to 1861 (Chicago, 1910). An older work with useful insights. The map on the vote of the Virginia Convention of 1788 may be found in this book. Ambler was a student and disciple of Frederick Jackson Turner. Ambler perhaps overstates the "aristocratic" vs. "democratic" basis of the political differences in Virginia.

Jonathan Elliot, ed., The Debates of the Several States Conventions on the Adoption of the Federal Constitution, 5 vols. (Washington, D. C., 1936). There is no substitute for going to the original source for information on the Virginia Convention of 1788.

Freeman H. Hart, The Valley of Virginia in the American Revolution, 1763-1789, (Chapel Hill, N. C., 1942). Remains the standard work on the Valley.

William T. Hutchinson and William M. E. Rachal, eds., The Papers of James Madison, 14 vols. (Chicago, 1962-). Volumes ten and eleven contain correspondence for this period.

Rhys Isaac, The Transformation of Virginia, 1740-1790 (Chapel Hill, N. C., 1982). Isaac's last chapter, "Revolutionary Settlement: Religion and the Forms of Community," presents the view that only in religion was the Jeffersonian reform impulse successful.

Thomas Jefferson, Notes on the State of Virginia, ed. William Peden (Chapel Hill, N. C., 1955).

Michael Kammen, ed., The Origins of the American Constitution: A Documentary History (New York, 1986). A very useful, compact, paperback volume of proposed plans for the Constitution; correspondence of the key Founders; and a cross section of Federalist and Anti-Federalist viewpoints.

Jackson Turner Main, Political Parties before the Constitution (Chapel Hill, N. C., 1973). Main stresses the "stability, continuity, consensus" of Virginia during the Confederation period. He argues that the two "opposing factions" in Virginia were quite similar in their overall outlook. The appendix of this book has a capsule biographical listing of the principal figures on both sides in the 1780s.

J. R. Pole, Equality, Status, and Power in Thomas Jefferson's Virginia (Williamsburg, Va., 1986). This recently published volume in the "Foundations of America" series has helpful insights.

Norman K. Risjord, Chesapeake Politics, 1781-1800 (New York, 1978). Risjord analyzes the data somewhat differently from the approach of Jackson Turner Main, but his conclusions are generally similar to Main's. Risjord studies Maryland, Virginia, and North Carolina. The book has much valuable information; its organization is sometimes repetitious as the author moves back and forth among the three states.

Robert A. Rutland, ed., The Papers of George Mason, 1725-1792, 3 vols. (Chapel Hill, N. C., 1970). Volume three is valuable for this period.

Gordon S. Wood, The Creation of the American Republic, 1776-1787 (Chapel Hill, N. C., 1969). Wood traces the "revolutionary" change in the political thinking of the generation which declared independence and then went on to construct a governmental structure unlike anything they had experienced before.

Articles

Alan V. Briceland, "Virginia's Ratification of the U. S. Constitution," University of Virginia Institute of Government News Letter, LXI (October 1984).

George J. Cleaveland, "The Church of Virginia Established and Disestablished," The Interdiocesan Bicentennial Committee of the Virginias, Up From Independence (Orange, Va., 1976), pp. 19-47.

Keith Crim and Thomas O. Hall, Jr., "Religion and the Political Process: Virginia's Statute for Establishing Religious Freedom," University of Virginia Institute of Government News Letter, LX (May, 1984).

A. E. Dick Howard, "The Roots of American Constitutional Principles," University of Virginia Institute of Government News Letter, LX (January, 1984).

James H. Hutson, "Country, Court, and Constitution: Antifederalism and the Historians," William and Mary Quarterly, 3rd Ser., XXXVIII (1981), pp. 337-368. This is an absolutely indispensable article to read first before any other book or article on this period in Virginia history. Hutson reviews the several schools of historiography about "Revolutionary America's two most conspicuous groups of losers--the loyalists and the Antifederalists." In this perceptive article he traces the course of Anti-Federalist historiography from its "Progressive" period (1900-1939) through post-World War II "Consensus" history to the neo-Progressivism that seems to prevail today. It is extremely helpful in trying to sort out who were Federalists and Anti-Federalists and why they were so inclined.

Jackson Turner Main, "Sections and Politics in Virginia, 1781-1787," William and Mary Quarterly, 3rd Ser., XII (1955), pp. 96-112.

Norman K. Risjord and Gordon Den Boer, "The Evolution of Political Parties in Virginia, 1782-1800," Journal of American History, LX (1974), pp. 961-984.

Norman K. Risjord, "Virginians and the Constitution: A Multivariant Analysis," William and Mary Quarterly, 3rd Ser., XXXI (1974), pp. 613-632.

Virginia Commission on the Bicentennial of the United States Constitution/University of Virginia Institute of Government, Virginia Independent: A Chronicle of the Constitution Bicentenary in Virginia, I, nos. 1-4, II, no. 1 (1985-1987).

Booklet

The Virginia Commission on Constitutional Government, When Virginia Joined the Union (Richmond, Va., 1963). An interesting summary of the Virginia Convention of 1788 sympathetic to the Anti-Federalist views of Patrick Henry and his allies.

Questions & Answers

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The Philadelphia Convention

Virginia and the Framing of the Constitution

by Thad W. Tate



Q. How did the Constitutional Convention come about?

A. A group of more national-minded leaders of the new nation--a number that included James Madison, Alexander Hamilton, and George Washington among others--had by the mid-1780s developed a growing concern with what they regarded as incurable weaknesses in the Articles of Confederation and were determined to remedy them. As Dr. J. Douglas Smith has explained very effectively in question 6 in the October 1987 issue of Questions and Answers, two earlier meetings with more restricted purposes, both closely related to affairs in Virginia, provided the immediate path to the Philadelphia Convention that wrote the Federal Constitution. In March 1785 a group of Maryland and Virginia commissioners met at Alexandria to discuss mutual problems arising over commerce on the Potomac River. Washington invited the group to move to more convenient surroundings at Mt. Vernon, and the successful outcome of what then became known as the Mt. Vernon Conference prompted the calling of a more general conference or convention on commercial problems that would include representatives of all the states and would meet at Annapolis in September 1786. At the appointed time only three states, one of them Virginia, had a quorum of delegates present, and seven states were not represented at all. Although we know very little of the proceedings of the Annapolis meeting, those who did attend, including Hamilton and Madison, decided to seek a wider mandate by proposing to the states that delegates meet at Philadelphia the following May to consider how to make "the constitution of the Federal Government adequate to the exigencies of the Union." The Congress of the Confederation government ultimately endorsed the idea, but only after twelve state legislatures (all but Rhode Island) had done so. The way was thus opened for the Constitutional Convention, and the nationalists had the means they had sought to strengthen the Confederation.

Q. Why did those who advocated reform of the Articles of the Confederation find the Confederation government deficient? What can we determine about their motives and objectives?

A. At one level proponents of a stronger national government offered a straightforward set of objections to the Articles of Confederation: its inability to conduct what they regarded as an effective foreign policy and to conclude or enforce treaties, its lack of jurisdiction over interstate commerce, and its lack of power to raise revenue in that it could only request that the states provide for the expenses of the Confederation government.

These critics also condemned specific policies and actions of the state governments, especially laws that interfered with the collection of private debts by such means as the issuance of inflationary paper money that permitted repayment of debt at less than original value or by legislation that closed the courts to suits by creditors for debt recovery. Many historians would argue, in fact, that advocates of strengthening or replacing the Articles of Confederation were, if anything, especially concerned with restraining what they regarded, rightly or wrongly, as the excesses of many state governments. A good example is James Madison's "Vices of the Political System of the United States," a 1786 paper in which the future "Father of the Constitution" sought to organize his thoughts about the problems that American government faced and which concentrated heavily upon the states as the root of the difficulties.

If one attempts to move beyond specific objections and probe the frame of mind and the ideology of these incipient nationalists, questions of motivation become far more complex and susceptible to varying interpretations. Some historians have asserted that opponents of the Articles and of the power of the states sought to reverse an advance in democracy that the Revolution had achieved. Indeed, some proponents of a stronger national government, Madison among them, deplored an "excess of democracy" in the states. Even so, it is not clear that genuine democratization, as opposed to the establishment of republican forms for a society in which a relatively large number of free white males could vote, had characterized the Revolution in most of the states. Certainly the nationalists with extremely few exceptions had no intention of abandoning republican forms of government that included a strong element of popular representation. Rather they were willing to extend it to the national level where it did not really exist in

a Confederation government that was at its base a diplomatic league of sovereign states.

Other historians have argued that the advocates of the Constitution were in one degree or another abandoning an older political ideology, sometimes labeled civic humanism, which idealized a limited government carried on by public spirited leaders who resisted any impulse to pursue their own material interests and any effort of others to corrupt the political process for their own ends. The framers are instead perceived as moving to a frank acceptance of the competition of such interests as an inevitable feature of public affairs. Rather than rely on the virtue of unselfish leaders, they believed governments might be erected which permitted this inevitable play of interests but made it difficult for any one to dominate. Probably few, if any, of the framers adhered uncompromisingly to either ideology, but rather tended to combine elements of each in their political thought. Undoubtedly many nationalists looked to such competitive individualism as likely to encourage greater prosperity and economic growth, especially if a new government could encourage a genuinely national economy.

Those who framed the new constitution clearly intended to make fundamental changes in the political order that went far beyond a few piecemeal reforms in the structure of the existing government. Of that there seems little doubt, although we will always debate whether in accomplishing that end they fulfilled or extensively altered the original objectives of the American Revolution.

Q. Who were the members of the Philadelphia Convention?
How could they best be characterized?

A. When all the delegates to the Convention had arrived, they numbered fifty-five, representing twelve states. Rhode Island had voted against sending representatives. Each state, as in the Congress of the Confederation, had one vote, even though the size of their delegations varied. The delegates, chosen by the respective state legislatures, included, with a few notable exceptions, most of the prominent leaders of the Revolutionary era. In particular, Thomas Jefferson and John Adams, both serving in diplomatic posts abroad, were unable to attend. Among the more important delegates were Elbridge Gerry and Rufus King of Massachusetts; Roger Sherman of Connecticut; Alexander Hamilton of New York, who was not, however, especially influential in the Convention itself; William Livingston of New Jersey; Benjamin Franklin,

Robert Morris, Gouverneur Morris, and James Wilson of Pennsylvania; John Dickinson of Delaware; Charles Pinckney and Charles Cotesworth Pinckney of South Carolina; and James Madison, George Washington, and Edmund Randolph of Virginia.

The other members of the seven-man Virginia delegation--the second largest after Pennsylvania's eight--included George Wythe, who was unable to remain for the duration of the Convention; James McClurg, who also left early; and John Blair of Williamsburg, who is buried in Bruton Parish churchyard. McClurg had replaced Patrick Henry who was elected but refused to serve because he "smelt a rat."

Henry's response was typical of a number of relatively important leaders at the state level who did not share the nationalists' alarm at the condition of government in the new nation. For that reason the delegates by no means constituted a genuine cross section of political opinion among the voters at large. This was a convention of men who essentially agreed on the need to strengthen the Articles, even replace them altogether. The few who did not share that purpose, men like John Lansing and Robert Yates of New York, tended to drop out after a time and return home. Attendance fluctuated even among those who were committed to the nationalist cause, averaging about forty.

Efforts to characterize the delegates beyond their strong nationalist bent have varied. Forrest McDonald has pointed out that most were lawyers, thirty-one out of the fifty-five, but an even larger proportion--fully fifteen out of not many more than twenty--of the most active and influential delegates. This fact, among others, suggests the relatively high level of education and political experience among the framers. The early twentieth-century historian Charles Beard argued they were a wealthy group with a predominant economic interest, that of creating a strong government that would pay off at par value the depreciated securities of the Revolutionary government in which they were allegedly heavy investors. Detailed analyses of the framers, while certainly establishing their relative affluence, reveal a more complicated pattern of property holding that defies any such simplistic analysis. A more suggestive characterization offered by Stanley Elkins and Eric McKittrick is that with some notable exceptions like the venerable Benjamin Franklin they were a younger group of leaders, men who had begun their careers during the Revolution rather than under the old colonial governments and who often served either in the Continental Army or the Continental

Congress. Frustrated by what they regarded as the ineffectiveness of the Confederation, their loyalties and range of experience were more strongly national. If not altogether the "assembly of demigods" that Jefferson termed them, they were a remarkable group. No doubt almost all would have agreed with George Mason when at the opening of the Convention he wrote his son, "The Expectations and Hopes of all the Union center in the Convention."

Q. How did the Convention organize itself? Was it, as some historians have argued, essentially a "conspiracy" against the Articles of Confederation?

A. The charge of conspiracy derives especially from a number of circumstances surrounding the calling of the Convention and its initial organization. In the first place the course of events that led from Mt. Vernon to Annapolis and on to Philadelphia scarcely seems accidental, while the prime movers were guarded about stating their larger purposes. Although no one said so openly, many delegates well before Philadelphia had clearly developed a more sweeping agenda than simply revising the Articles. Whereas the Annapolis delegates had been quick to adjourn after issuing a call for the Philadelphia meeting when a quorum did not appear early in their meeting, the Philadelphia delegates waited patiently from the scheduled meeting date of May 14, 1787, to May 25 for a quorum to assemble. In the interim the Virginia delegates were engaged in preparing a set of propositions, known since as the Virginia Plan, which its principal author, James Madison, frankly saw as a "total Alteration in the present Federal System" rather than the recommendations for amendment the delegates were instructed to consider.

When the Convention assembled on May 25, the delegates elected George Washington as the president of the meeting and appointed a rules committee. The delegates, reinforced by an additional nine late arrivals, got down to serious work on May 29 when Edmund Randolph introduced the Virginia Plan. The following day Randolph also proposed and won acceptance for a resolution "that a national Government ought to be established consisting of a supreme Legislative, Executive, and Judiciary." As Madison and others had envisioned, the Articles were thus to be completely replaced, not amended. The Convention agreed with equal alacrity to conduct its business in secrecy--and it may surprise us that it actually succeeded in doing so.

Whether the steps leading to the calling and organization of the Convention amounted in the strictest sense to a conspiracy can be debated. Certainly the key nationalist agenda remained largely hidden until the Convention was ready for work, but was that conspiracy or effective political strategy? Despite the advance consultation among nationalists, the element of secrecy at Philadelphia, and the delegates' repudiation of their instructions, the agenda of the Convention was essentially to be effected by political means. Delegates knew they had to reach agreement by debate and compromise and then to win wider acceptance of their handiwork by an open process of ratification, not by imposing their new plan of government by coup d'état.

Q. What did the Virginia Plan contain?

- A. The principal provisions of the Virginia Plan included (1) a bicameral national legislature, with the lower house chosen by popular vote and the upper by the lower from a slate of nominees; (2) apportionment of representation in both houses according to the population of each state; (3) retention by the new government of all the powers already granted to the Confederation government plus a very broad right to legislate in all cases in which the separate states were "incompetent" to do so; (4) the right of the national legislature to veto any act of a state legislature that contravened the Constitution; (5) a decidedly weak executive power, vested in an indirectly elected president, somewhat reinforced by a council of revision that had an absolute veto of acts of the national legislature; and (6) provision for a national judiciary.

Although Madison's plan certainly reduced the power of the states extensively, it did not altogether promise a national government as powerful as it came to be. The veto of state legislation was, however, an undefined and potentially strong weapon of the national government, one on which Madison set great store. Even from this brief outline, when it is set against the final test of the Constitution, one can see that Madison by no means got everything he wanted, losing in particular the veto of state legislation and proportional representation in both houses of the legislature. Yet the Virginia Plan served as the point of departure for the Convention, and it pointed the way to a stronger national government incorporating executive, judicial, and legislative branches, operating in some part by direct representation of the people rather than the states alone, and sharing power with, rather than being subservient to, the states.

Q. How did the Convention debate and shape the Virginia Plan?

- A. Once the Virginia Plan had been introduced, the Convention quickly voted to go into Committee of the Whole to discuss Madison's proposals. This parliamentary device meant that when a measure was approved, it still had to be reconsidered and adopted officially after the delegates reconvened as the formal Convention. While the delegates sat in committee, debate could be freer and more wide-ranging, and ideas could be tried out and, even if initially approved, rescinded on second thought. Of course, those who lost an important point might have a second chance to prevail. As matters turned out, the opportunity for reconsideration almost certainly saved the Convention from breaking apart at one critical juncture.

The delegates remained in Committee of the Whole debating and discussing the Virginia Plan point by point from May 30 until a committee report to the Convention was approved on June 19. They then began a second and equally thorough round of debate in Convention that lasted from June 19 to July 26 when an amended set of proposals gained formal approval.

Until June 13 discussion centered on points that commanded wide agreement. Those that were more controversial were for the most part postponed. From roughly mid-June to mid-July the Convention passed through its most critical period when the delegates had to face those parts of the Virginia Plan that aroused opposition. The most significant disagreements concerned the mode of electing the president, proportional representation based on population in both houses of the legislature, and the veto of state legislation. Of these, the issue of representation was especially crucial. As Madison and his staunch ally on this question, James Wilson of Pennsylvania, continued to press the large state position, delegates from a number of smaller states, whose representation would be proportionately less in such a legislature, balked. On June 15 William Paterson of New Jersey, speaking for the small state delegates, moved a substitute plan, providing equal representation of the states in both the lower and upper houses of the legislature and state control of the choice of the executive, although otherwise leaving the national government with wide powers, greater in some respects than Madison himself had proposed.

Although the Committee of the Whole accepted the modified Virginia Plan and rejected the New Jersey

Plan, the debate continued and grew more heated in July. By July 2 the Convention was deadlocked, Benjamin Franklin on one celebrated occasion making an unsuccessful attempt to persuade the delegates to open their sessions with prayer. The impasse was broken by a resolution of Roger Sherman, a Connecticut delegate, who moved that proportional representation be allowed in the elected lower house but that the states have an equal number of representatives in the upper house. On July 16 his motion passed five states to four, and the crisis passed.

Called the Great Compromise in most histories of the Constitution, this step was more nearly a reluctant concession by the more populous states, although a bitter pill for James Madison. In some respects the disagreement has seemed trivial compared to the great desire among an overwhelming majority of delegates for a new and stronger central government. Some have seen it as masking the emerging sectional differences between a slaveholding South and a North moving toward emancipation of slaves. Many delegates, Madison among them, were indeed fearful of the potential for sectional division, but there was also a substantial state interest, even among a group as nationalist in outlook as this one. The thirteen states had a long history as separate colonies, and since 1776 most had put in place new state constitutions embodying local concerns and fixing the principle of republicanism. The states had become in a real sense a vested and legitimate interest that even the most ardent nationalist could not entirely overcome.

Within another week, on July 26, the Convention approved what had now become a very much modified Virginia Plan not only in the key areas of representation, the abandonment of the veto of state legislation, and the election of a president but in other respects as well, such as the elimination of the council of revision or the addition of an amending process, a procedure for ratification of the constitution, and provision for the admission of new states on a basis of equality with the original states. But the Convention had accepted the outlines of a new constitution.

Q. How did the Convention give the Constitution its final form?

A. The plan that the delegates had adopted on July 26 still took the form not of a systematic plan of government but of a disjointed group of twenty-three resolutions. The Convention accordingly chose a Committee of Detail (two New Englanders, two

Southerners, and James Wilson of Pennsylvania) and then adjourned until August 9 to allow the committee to turn the resolutions into a more finished document. By the appointed date the five members had converted them into seven more comprehensive articles. Although the Constitution retained that form and exact number of articles, a full month of continued debate and additional changes remained before its acceptance on September 8. Even then a second committee, the Committee on Style, gave the document one final polishing--not without making a few significant changes of their own--before thirty-nine of the forty-two delegates who were still in attendance signed the Constitution on September 17.

A significant part of the debate on the draft prepared by the Committee of Detail centered on the sectional issues of slavery and the slave trade, which the delegates had heretofore skirted, and of differing views between North and South, especially the states of the Lower South, about laws affecting American foreign commerce. The southern delegates remained fearful of export taxes on the products they sent overseas and of navigation acts that might restrict American trade to American ships and thereby raise shipping rates by giving northern vessels a monopoly of overseas cargoes. Ultimately an elaborate scheme of compromises was worked out. They included retention of a provision that the slave population in a state would count at a three-fifths ratio for the purpose of calculating that state's representation in the lower house of Congress, that new slaves could be imported through the year 1808 (the assumption being the slave trade would be outlawed at that time), that the obligation of the United States to return fugitive slaves to southern states would be stated in the Constitution, and that export taxes would be prohibited. In return Southerners agreed that navigation acts might be passed by simple majority and that a small tax might be levied on slave imports.

The victory was essentially southern--or lower southern, since the Virginia delegation was less concerned with these issues and Mason absolutely opposed the extension of the slave trade. It is easy, however, to overestimate the difficulty of reaching these agreements, for most delegates did not wish the slavery issue or the opening up of any sectional differences to upset the achievement of a new Constitution. At the same time many delegates betrayed deep apprehension over the recognition of slavery in the document. In every case the term slave or black was avoided by circumlocutions that referred vaguely to "persons" in a context that could only mean slaves, however.

In both the discussion of the work of the Committee of Detail and that of the Committee on Style many familiar details of the Constitution were given their final form, for example, the specific powers granted the legislature, the exact nature of the electoral college for the choice of a president, and the alteration of the preamble to read "We the People of the United States" rather than of each individual state.

Then at the last came efforts by two prominent Virginians to make further changes, one by Edmund Randolph seeking to call a second convention to consider amendments that the states might propose and another by George Mason to incorporate a full bill of rights in the Constitution, which it thus far lacked. Neither was successful, and the two Virginians were, with Elbridge Gerry of Massachusetts, the three members who stayed to the end and yet refused to sign the Constitution. With McClurg and Wythe no longer present, the Virginia signers included only Washington, Madison, and Blair.

Thus, as the delegates prepared to return home and the text of the new Constitution began to be distributed and published in the newspapers, the great contest over ratification and a searching debate between Federalists and Antifederalists began. The Convention had completed its work, but another important chapter in the history of the formation of the Constitution was yet to unfold in the fight for ratification.

Q. On balance, what were some of the most significant results of the work of the Convention in writing a new Constitution? Had it left any major problems unresolved?

A. Obviously the broadest consequence of the Convention was that it actually succeeded in writing a Constitution, one that created a full-fledged national government where only a loose confederation of states had existed. The expanded powers of the national legislature were particularly impressive--taxation, regulation of interstate commerce, the right to borrow money, and the two open-ended powers of doing whatever was "necessary and proper" to carry out its more specific powers and the power to provide for the "general welfare." If ratified, the Constitution promised a dramatic, even revolutionary, change in American government. Its very boldness put the Antifederalists on the defensive in the ratification debate.

Republican forms of government, of course, already existed in the states, but their extension to the national level was another striking move, one that directly challenged the common political wisdom of the day that republics worked only in very small territories where people could have a very direct relationship to government, whereas Federalists were prepared to argue that republics would, in fact, work best over extended territories where it would be more difficult for any single interest to dominate government.

As powerful as the new central government was, the Constitution, especially as a consequence of the Great Compromise, left a strong role for the states by dividing sovereignty between the two levels of government. This federal system has remained a distinguishing feature of the American polity, although the balance between state and national authority has shifted and often been a source of tension. The provision for admission of new states on a basis of complete equality also had important implications for the future. It did not preclude American imperial ambitions in the sense of extending territorial limits, but it did effectively bar the establishment of dependent colonies on the North American mainland.

By virtue of the clause defining the Constitution as the "supreme law of the land," the Constitution took the force of substantive law. It was not simply a theoretical statement of broad principles of government, nor was the Constitution, like that of Great Britain, an unwritten body of custom and precedent.

The Constitution, of course, could not solve everything, and its framers did not escape leaving some legacy of unresolved problems and questions. We have already noted its acceptance of slavery, though it is not clear how that question could have been settled in 1787. Indeed the Constitution was ultimately the instrument of emancipation in the Thirteenth Amendment, yet the sanction it provided slavery for many years caused much subsequent turmoil and grief for Americans. Despite arguments in the Convention that a bill of rights was not necessary, its omission was a serious matter, given the tradition already being established by a number of state constitutions such as that of Virginia. Fortunately this problem was quickly remedied by the approval of the first ten amendments as early as 1791. The Constitution was also much vaguer about the powers and responsibilities of both the judiciary and the executive than of the legislature.

It required subsequent legislation and political practice to define these powers more adequately.

It can also be said, of course, that in attempting to establish the principle of federalism by a division of sovereignty between the states and the central government the Constitution nonetheless failed to provide a means of defining the line of division precisely. Yet it is not clear that any such definition could ever have worked for all times and places. On the contrary, it might well have produced more conflicts and failures than the single spectacular one the Constitution suffered in 1861. The practical and responsible accommodation of this question that the Convention itself achieved in the Great Compromise may be the best example of the kind of flexibility and political skill on which maintaining a workable federal balance rests. In that way, and indeed in the whole task of writing the Federal Constitution, the delegates at Philadelphia demonstrated how effectively the political process can sometimes work.

Q. What brief list of readings on the formation of the Constitution would you recommend?

A. One should perhaps begin by rereading the Constitution itself no matter how familiar it might seem. Of the several recent accounts of the Philadelphia Convention, Christopher Collier and James Lincoln Collier, Decision in Philadelphia: The Constitutional Convention of 1787 (New York 1986), is an effective blend of readability and scholarship. Among older accounts, Clinton Rossiter, 1787: The Grand Convention (New York, 1966), and Catherine Drinker Bowen, Miracle at Philadelphia: The Story of the Constitutional Convention (New York, 1967), are good choices. Forrest McDonald, Novus Ordo Seclorum: The Intellectual Origins of the Constitution (Lawrence, Kans., 1985), opens up in a very clear manner the background of ideas and ideology that influenced the formation of the Constitution and traces their operation in the Convention. Gordon S. Wood, The Creation of the American Republic, 1776-1787 (Chapel Hill, N. C., 1969), will require careful reading, but it is of fundamental importance. For an up-to-date, well-organized guide to further reading and to the major interpretations scholars have presented of the formation of the Constitution, see Jack P. Greene, A Bicentennial Bookshelf: Historians Analyze the Constitutional Era (Philadelphia, 1986), issued by the Friends of Independence National Historical Park.