

Why America is Great:

We the People

Volume VI

Why America Is Great: We, the People

"It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection or choice, or whether they are forever destined to depend for their political constitutions on accident and force.... [T]he crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made...."

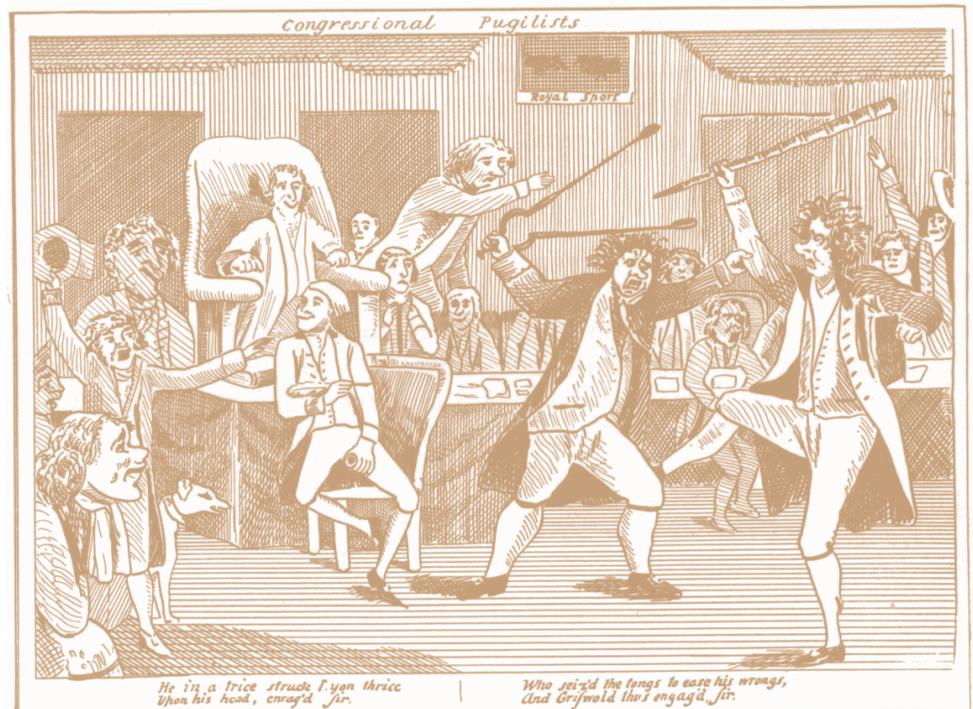
—Alexander Hamilton, *The Federalist Papers*, No. 1¹

With the ink still wet on the draft of the new Constitution, the delegates to the Convention in Philadelphia knew that their work was only half done. Now they had to sell their new plan to the whole country—a country divided by state loyalties, economic interests, geographic prejudices, and social persuasions. When it came time to vote “yea” or “nay” on the Constitution, two primary factions took center stage: the Federalists and the Anti-Federalists.

The tension that gave rise to the Federalist and Anti-Federalist groups had been mounting for some time, and had in many ways driven the debate in the Constitutional Convention. The Federalists believed it critical to the survival of America that the *federal* government be strengthened, and that this would help counterbalance the power of the states. Federalists believed America should cease to be a *confederation* of states and instead become a *nation* of states. They argued that union between the states would protect the nation from foreign invasion, facilitate trade both at home and abroad, and foster economic growth for the young, resource-rich country.

Anti-Federalists were strongly opposed to the idea of a centralized government; they believed that the best way to guard the rights and liberties of the people was to preserve the sovereignty of the states. They feared that a centralized government would begin abusing its power the same way Britain had before the Revolution. They also believed it would foster a political “class” or aristocracy that would accumulate power for itself, usurping the role of the everyday American in political discourse.

While the delegates in the Convention continued to have differences of their own, a majority of them believed that they had created in the Constitution a model of government that would form the basis of a free society. And because they believed a free society was built on the preservation of individual rights, they had endeavored to construct a government that not only provided proper protection for the people, but also enabled them to fully exercise their liberties.



A New Order Is Proposed

Before they had presented anything to the public, and while still in closed session, the delegates to the Convention knew they had to determine the method by which the public would vote on the new Constitution. This was a delicate issue. Normally, the state legislatures would have voted on a matter that pertained to their constituents. But this situation was different. Granting the power of ratification (or consent) to the state legislatures would be a tacit confirmation of state sovereignty. And if the states were still sovereign, then the American *people* were not. And one of the primary purposes behind the Constitution was to create a nation ruled by the people.

Fellow Virginian George Mason agreed. Leaving ratification to the state assemblies, he explained,

Said Virginia delegate James Madison:

I consider the difference between a system founded on the legislatures only, and one founded on the people, to be the true difference between a league or treaty and a constitution.²

would also set a dangerous precedent. Even if the legislatures were to approve the Constitution, “succeeding Legislatures having equal authority could undo the acts of their predecessors; and the National Government would [then] stand in each State on the weak and tottering foundation of an Act of Assembly.”³ The *people*, said Madison, are “the fountain of all power”; it was their right and their responsibility to decide on the restructuring of their government.⁴ Thus it was decided that popularly elected *conventions* would deliberate and vote on the Constitution. This was wisdom. By design, ratification conventions would be temporary bodies, consolidating the people’s authority for the specific purpose of considering the Constitution. Their decision made, the conventions would dissolve. Thus, at any point in the future, no Congress or President or judge would be able to alter the Constitution—only the *people* could amend it, because they had chosen it.

Next, how many of the 13 states needed to vote “yes” on the Constitution before it became law? Some delegates said the vote should be unanimous—all states should have to agree on the Constitution, just as they had all had to agree to the Articles of Confederation. But Nathaniel Gorham of Massachusetts pointed out that requiring unanimity would empower one or two states to cancel the votes of the rest. Rhode Island, for example, would almost certainly not ratify the Constitution because it categorically refused to cooperate with the other states (it hadn’t even bothered to send a delegation to the Convention). One stubborn state shouldn’t be allowed to decide the fate of the other twelve.⁵ After some deliberation, the Convention finally determined that *nine* states would be sufficient to ratify the Constitution, and that no state refusing to ratify would be bound by the new law.

But before the Convention could send the Constitution to the states, it had to first present the document to the sitting Congress. This was not easy, as it required the delegates to confess to Congress that they had *not*, in fact, revised the Articles of Confederation, as they had been charged to do, but had come up with an entire new form of government. When Congress received the Constitution in late September 1787, passions flared. Congress, like the country, was split between Federalist and Anti-Federalist interests, and the chamber could not agree on the document either way. After a few days of debate, Congress decided to send the Constitution—without recommendation for or against—to the states for their decision. The ratification process had begun.

A Strategy of Persuasion

The pro-Constitution delegates from the Convention returned to their home states, bracing for a fight. Four states—Massachusetts, Pennsylvania, Virginia, and New York—were critical to ratification. Without the votes of these politically and economically powerful states, the new order would not take hold in America. Thus it was that a young delegate from one of these states, Alexander Hamilton of New York, devised a strategy of persuasion for his home turf. Hamilton summoned fellow New Yorker John Jay and Virginia delegate James Madison, and the three set to work writing dozens of essays explaining and defending different aspects of the Constitution. The essays, 85 in all, were published under the pseudonym “Publius” in New York newspapers between October 1787 and the spring of 1788. Widely read and discussed in New York, *The Federalist Papers*, as they came to be called, also spread to other states as Americans vigorously discussed the proposed Constitution.

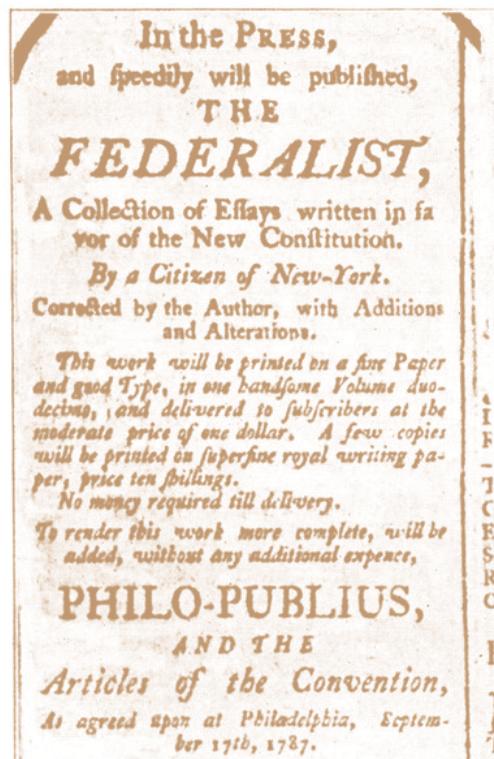
The form of government prescribed in the Constitution was without precedent, built from a unique blend of principles from past civilizations and lessons gleaned from America’s colonial experience. What, exactly, made this plan unique?

A Balance of Power

One of the primary issues addressed by the authors of *The Federalist Papers* was how the Constitution struck a new balance of power between the state legislatures and the federal government. Many Americans had feared that a centralized government would threaten not only the rights of the states, but the rights and liberties of individual citizens. So James Madison tried to give the people a different perspective. “The federal and State governments are in fact but different agents and trustees of the people,” he explained, “constituted with different powers, and designed for different purposes.... [T]he ultimate authority, wherever the derivative may be found, resides in the people alone....”⁶

Hamilton, in his turn, demonstrated that the safety and well-being of the states actually *depended* upon a stable, central government. “[T]he vigour of government is essential to the security of liberty,” Hamilton wrote.⁷ If the states insisted on remaining sovereign, “we shall be driven to the alternative, either of taking refuge at once in the arms of monarchy, or of splitting ourselves into an infinity of little jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord and the miserable objects of universal pity or contempt.”⁸

The new balance of power was obtained by delegating certain powers to the federal government and leaving the rest in the hands of the states. Hamilton, for instance, specified three areas of authority that the Constitution placed under federal purview. The first was the raising of revenue. After all, without funds, the government was helpless to perform its duties. Hamilton explained that the “most palpable defect of the subsisting confederation is the total want of a SANCTION to its laws.”⁹ Without a tangible means of collecting revenue, the federal government would have no way of enforcing its authority or executing its responsibilities, such as defending the states against foreign attack. Accordingly, the first “power” assigned to Congress, found in Article I, Section 8 of the Constitution, is the authority to “lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United



States.” It also specifies that “all duties, imposts and excises shall be *uniform* throughout the United States.”¹⁰

A second power assigned to the federal government was the ability to regulate commerce. Under the Articles of Confederation, each of the 13 states had established its own rules regarding trade, with disastrous results. In Federalist No. 22, Hamilton noted that the “interfering and unneighbourly regulations of some States” were “contrary to the true spirit of the Union,” and fomented hostility and dissension.¹¹ In addition, the states shared no standards by which to conduct transactions with other nations, preventing them from building strong economic and diplomatic relationships. “No nation acquainted with the nature of our political association,” complained Hamilton, “would be unwise enough to enter into stipulations with the United States...while they were apprised that the engagements on the part of the Union, might at any moment be violated by its members...”¹² Consequently, the delegates gave Congress the power to “regulate commerce with foreign nations, and among the several states, and with the Indian tribes”; to establish a common currency and exchange rates; and to determine laws concerning bankruptcy and counterfeiting.¹³

The third major responsibility given to the federal government was the power of defense. The hurdle for many Americans in this respect was their fear of a standing army. They remembered too well how Britain had sent increasing numbers of troops to their shores to police—and later, attack—them. For this reason, many argued that each *state* should be in charge of its own defense. Hamilton argued strongly against this, saying that having several armies with different allegiances would expose the country to more danger than would a single army under a central government. “Who [is] so likely to make suitable provisions for the public defense,” he said, “as that body to which the guardianship of the public safety is confided—which, as the center of information, will best understand the extent and urgency of the dangers that threaten—as a representative of the WHOLE will feel itself most deeply interested in the preservation of every part....?”¹⁴ The Constitutional Convention thus gave Congress the power to declare war, to establish and maintain both an army and a navy, and to “define and punish piracies and felonies committed on the high seas.”¹⁵

So if the Constitution invested Congress with powers over taxes, the economy, and the military, how were the states to ensure their safety—and the safety of the people—against federal encroachment?

James Madison addressed this in Federalist No. 45. “The powers delegated by the proposed Constitution to the Federal Government, are few and defined,” he insisted. “Those which are to remain in the State Governments are numerous and indefinite.”¹⁶ In other words, the powers of the federal government were specified, and thus could be held in check; the powers of the states were implied and open to wide interpretation.

The federal and state governments, properly balanced, would keep each *other* from consolidating too much power, and thus protect the people’s freedoms.

Checks and Balances

Another issue addressed by the authors of *The Federalist Papers* was the new balance of power *within* the federal

government. "In the compound republic of America," explained Madison, "the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each, subdivided among *distinct and separate departments*. Hence a *double security* arises to the rights of the people. The different governments will controul each other; at the same time that each will be controuled by itself."¹⁷

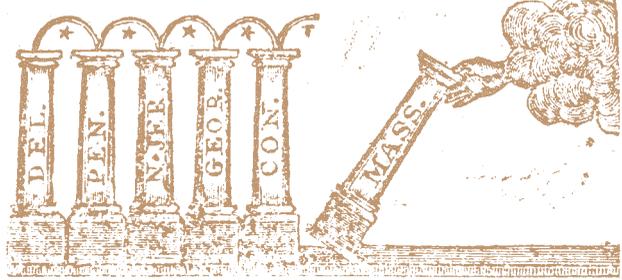
The delegates at the Constitutional Convention believed that one of the quickest paths to tyranny was the concentration of power in a single entity, including such a body as Congress. In order to protect the American people from this danger, they determined to distribute power *within* the federal government among as many different hands as possible. They were well enough acquainted with the nature of power to know that "a mere demarkation on parchment" would not keep different departments in their place.¹⁸ The only way to confine political power, said Madison, is "by so contriving the *interior* structure of the government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places."¹⁹

Historically, many societies had been built on a hierarchical pattern, descending in order from the *one* to the *few* to the *many*, traditionally embodied in a king, an aristocracy, and the common people.²⁰ In theory, the tension between these classes helped keep them in balance with each other. America, however, represented a new societal pattern. She had been built, so to speak, from the bottom up. Her people had always lived far from royal rule; they ruled themselves, looking to a Divine Providence and to both common and written law as their guides. America also had no official class system; instead, Americans were increasingly brought together by the same primary interest of guarding their liberties. So the Constitutional Convention chose to separate the powers of the American federal government according to responsibility: a legislative branch to *make* law, an executive branch to *enforce* law, and a judicial branch to *guard* the law.²¹

This practice of separating *powers* was not new; Britain, for example, had divided political power between the king and Parliament, and then divided Parliament into the Houses of Lords and Commons. The delegates drew from this model, but they also wanted to improve upon it. Believing the people to be the "only legitimate fountain of power," the Convention sought to construct the government in such a way that it would always answer back to the people.²² The first way to do this was to ensure that the different branches prevented each other from becoming too powerful. "[T]he great security against a gradual concentration of the several powers in the same department," said Madison, "consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others."²³

The delegates' first undertaking was to divide the legislative branch, embodied in Congress, into two bodies, the House of Representatives and the Senate. The House would be a purely representative body, consisting of officials chosen by popular vote for two-year terms. House members would be elected

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



UNITED THEY STAND—DIVIDED FALL.

A vessel arrived at Cape-Ann, after a short passage from Georgia, confirms the pleasing intelligence announced in our last, that that State has unanimously ratified the Federal Constitution. Thus is a **FIFTH PILLAR** added to the glorious fabric. May Massachusetts rear the **SIXTH**.

As we predicted in our last, so it happened—Monday morning, was ushered in with the ringing of bells in this metropolis, on account of the pleasing intelligence received by Saturday night's mail, that the State of Connecticut had added a **FOURTH PILLAR** to that **GRAND REPUBLICAN SUPERSTRUCTURE**, the **FEDERAL CONSTITUTION**.

in proportion to population, meaning large states would have many representatives and smaller states fewer. The Senate, while also a representative body, was created less as a voice for the general public and more as a deliberative, diplomatic body, guarding the interests of the states. Senators would be chosen not by popular vote but by the state legislatures, and would serve six-year terms. Each state was allowed two senators each, regardless of population. All legislative activity would require the input and approval of both of these bodies, forcing them to work together for the good of the whole nation.

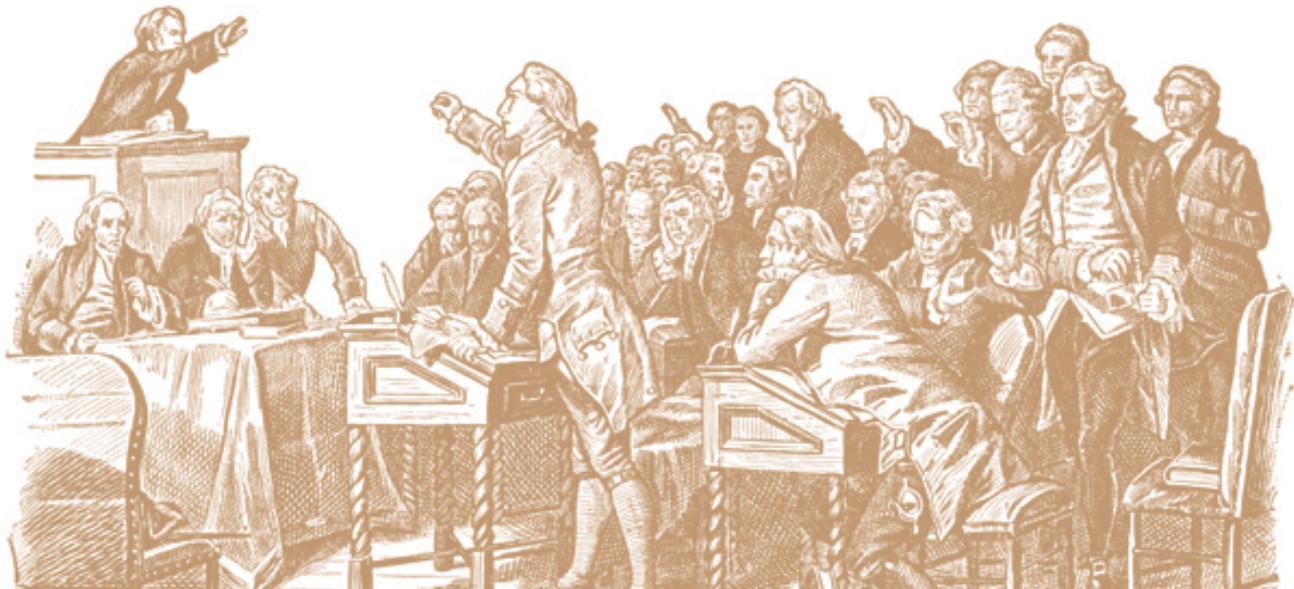
As the two houses of Congress would “check” each other, they would both *be* checked from the outside by the executive branch. When the House and Senate passed a bill, for instance, it would be sent to the executive, or President, for approval. If the President refused to sign it, the bill would go back to Congress for reconsideration. However, both the executive and Congress would be kept in check indirectly by the judicial branch, headed by a Supreme Court. The court would have power to settle disputes arising over interpretation of law made under the Constitution. The judicial branch would also have power to judge cases involving ambassadors and other public ministers, or disputes to which a state or citizens from different states were party. Supreme Court justices would be the only officials in the federal government to hold their offices for life—another advantage against the other two branches.

To some, this design seemed complicated; they feared that its many checks and balances would make the legislative process difficult. However, this is part of what the delegates intended. They knew that if the federal legislative process was sufficiently complex, only the worthiest and most beneficial legislation would become law. They also knew from experience that delays would force legislators to consider and *reconsider* the merits of a particular law. “[I]t is the *reason* of the public alone that ought to controul and regulate the government,” wrote Madison. “The *passions* ought to be controuled and regulated *by* the government.”²⁴

The People Take a Vote

While *The Federalist Papers* and the persuasive efforts of Federalist leaders were convincing for some, the ratification process was intense, lasting—from start to finish—over two and a half years. Delaware was the first to ratify, passing a unanimous vote only six weeks after the Convention adjourned. Pennsylvania and New Jersey were soon to follow. On January 2 of the following year, Georgia approved the Constitution by a vote of 26 to 0. By the end of June 1788, eight states had entered the Union, leaving the country one state away from official nationhood.

Attention turned to Virginia, considered by many to be the Anti-Federalists’ final hope. Some of the most powerful men in the state, such as Patrick Henry and George Mason (the latter of whom had been a delegate to the Convention but had refused to sign the product), were steadfastly opposed to the Constitution. Henry, known for his passionate eloquence, lashed out in defense of states’ rights. “Who



authorizes gentlemen to speak the language of We, the people, instead of We, the states?" he demanded once during a seven-hour speech. "The people gave them no power to use their name."²⁵ Debate grew so heated that James Madison, after a particularly fierce altercation with Henry, took to his bed for three days.²⁶ Finally, on condition that a Bill of Rights, delineating certain individual liberties, be added to the document, the Virginia Convention ratified the Constitution, passing it by only 10 votes.²⁷ Virginia had come in a close 10th. Four days earlier, on June 21, 1788, New Hampshire had ratified the Constitution, and, as the ninth state to do so, had claimed the honor of making it the law of the land.

As news spread, the country erupted into joy. Across the states, people marched in parades, ran alongside marching bands, and sang songs written for the occasion. Coastal towns christened new ships with names such as *Union*, *Federal Constitution*, and *Rising Sun*.²⁸ And following Virginia's vote, the remaining states were not far behind. Within a few weeks, New York, considered the toughest terrain of all, ratified the Constitution by a mere three votes. In November, North Carolina joined. Rhode Island, as expected, was the last to concede. Having refused initially even to call a convention, the outnumbered state heeded its own self-interest and joined the Union on May 29, 1790.

America had, in effect, won its own revolution. As Thomas Jefferson wrote, "The example of changing a constitution, by assembling the wise men of the State, instead of assembling armies, will be worth as much to the world as former examples we have given them. The Constitution...is unquestionably the wisest ever yet presented to men."²⁹ Hamilton, in his final essay of *The Federalist Papers*, put it more succinctly: "The establishment of a constitution, in time of profound peace, by the voluntary consent of a whole people, is a prodigy...."³⁰

Endnotes

- 1 Alexander Hamilton, Federalist No. 1, "General Introduction for the Independent Journal," *The Federalist Papers*, accessed online at The Avalon Project, Yale Law School, Lillian Goldman Law Library, http://avalon.law.yale.edu/18th_century/fed01.asp.
- 2 Catherine Drinker Bowen, *Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787* (Boston and Toronto: Little, Brown and Company, 1966), 225.
- 3 Ralph Ketcham, ed. "The Federal Convention of 1787: Method of Ratification (July 23)," *The Anti-Federalist Papers and the Constitutional Convention Debates* (New York: Mentor, 1986), 128.
- 4 "Madison Debates: August 31," accessed online at The Avalon Project, Yale Law School, Lillian Goldman Law Library, http://avalon.law.yale.edu/18th_century/debates_831.asp.
- 5 Bowen, 229.
- 6 James Madison, Federalist No. 46, The Avalon Project accessed online at, http://avalon.law.yale.edu/18th_century/fed46.asp.
- 7 Alexander Hamilton, Federalist No. 1, *The Federalist Papers by Alexander Hamilton, James Madison, and John Jay*, Garry Wills, ed. (New York: Bantam Books, 1982), 4.
- 8 Alexander Hamilton, Federalist No. 9, *The Federalist Papers*, Wills, 39.
- 9 Alexander Hamilton, Federalist No. 21, *The Federalist Papers*, Wills 98.
- 10 U.S. Constitution, Art. 1, Sec. 8, accessed at http://avalon.law.yale.edu/18th_century/art1.asp. Emphasis added.
- 11 Alexander Hamilton, Federalist No. 22, *The Federalist Papers*, Wills, 104.
- 12 *Ibid.*, 103.
- 13 U.S. Constitution, Art. I, Sec. 8, accessed at http://avalon.law.yale.edu/18th_century/art1.asp.
- 14 Alexander Hamilton, Federalist No. 23, *The Federalist Papers*, Wills, 114.
- 15 U.S. Constitution, Art. I, Sec. 8, accessed at http://avalon.law.yale.edu/18th_century/art1.asp.
- 16 James Madison, Federalist No. 45, *The Federalist Papers*, Wills, 236.
- 17 James Madison, Federalist No. 51, *The Federalist Papers*, Wills, 264. Emphasis added.
- 18 James Madison, Federalist No. 48, *The Federalist Papers*, Wills, 254.
- 19 James Madison, Federalist No. 51, *The Federalist Papers*, Wills, 261. Emphasis added.
- 20 Garry Wills, ed., Introduction, *The Federalist Papers*, xvi.
- 21 *Ibid.*
- 22 James Madison, Federalist No. 49, *The Federalist Papers*, Wills, 255.
- 23 James Madison, Federalist No. 51, *The Federalist Papers*, Wills, 262.
- 24 James Madison, Federalist No. 49, *The Federalist Papers*, Wills, 258. Emphasis added.
- 25 Bowen, 298.
- 26 *Ibid.*, 300.
- 27 The first United States Congress would later pass a Bill of Rights in the form of ten amendments to the Constitution. The Bill of Rights is considered the Anti-Federalists' most important contribution to the document.
- 28 Bowen, 306-308.
- 29 *Ibid.*, 279.
- 30 Alexander Hamilton, Federalist No. 85, *The Federalist Papers*, Wills, 449. "Prodigy" is in all caps in the original.

