



## Scholar Exchange: Ratification Debates

# Briefing Document

### INTRODUCTION

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- When was the Constitution completed and signed, and how was ratification supposed to occur?
- What were the circumstances and structure of the debate between the Federalists and Anti-Federalists? Who were these two groups?
- What were the principle arguments made by the respective groups?
- Why did the Federalists ultimately win and successfully get the Constitution ratified? How did they have to compromise to do so?
- What is the relationship between the ratification process and the principle of popular sovereignty? How was the meaning of popular sovereignty fought over by the Anti-Federalists and Federalists?

It is September 17, 1787, and after months of debate in the hot Philadelphia summer, the Constitutional Convention finally adjourns and the new Constitution is signed, with three prominent holdouts: George Mason, Edmund Randolph, and Elbridge Gerry. (Mason, Randolph, and Gerry mainly objected to the lack of a Bill of Rights in the Constitution and the size of the national government in comparison to state governments.)

With the new Constitution signed, according to Article VII of the document, the ratification process now began. Nine of 13 states would have to ratify and approve the new Constitution in order for it to replace the Articles of Confederation.

Ratifying the Constitution was hardly a certainty. While the Federalists, the supporters of the new Constitution, had numerous built-in advantages to winning ratification, the contest was extraordinarily close. At various points in the fall of 1787 and into the summer of 1788, it appeared there was enough opposition in key states like Pennsylvania, Massachusetts, New York, Virginia, and North Carolina to sink the Constitution.

So an important lesson to keep in mind is that the ratification debates themselves are not only important because of what they say about the meaning of the Constitution and what the most notable debates were, but they also show just how contested this document was when it was presented to the American people.

- **Big Idea #1:** The ratification of the Constitution was a long, difficult battle, and there was hardly any guarantee that the Federalists, who supported ratification, would win.
- **Big Idea #2:** Popular sovereignty is an important part of ratification. When the Constitution was signed on September 17, 1787, it was a mere proposal—the framers understood that the people themselves still had to



review and accept this new Constitution. Acting through their state ratifying conventions, the people had to decide whether to give the Constitution life.

## THE FEDERALISTS AND THE ANTI-FEDERALISTS

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To frame our discussion, it's useful to ask: **What were the conditions for this debate as it began in the fall of 1787?** Key is the relative advantages that the Federalists had over the Anti-Federalists.

### Who were the Anti-Federalists?

And, what were some of the challenges that they faced in opposing the Constitution?:

- They were, on average, poorer than their opponents and found it generally more burdensome to be absent from home for lengthy periods of time necessary to attend the ratifying conventions. For elite Anti-Federalists like George Mason, this was not a limitation, but for middling Anti-Federalists like "Centinel" it was.
- The ratifying conventions were closely contested, but Anti-Federalist delegates were more likely to depart before a vote was taken, and that obviously was an advantage to Federalists.
- Federalists also had greater education and, according to scholar Michael Klarman, a "major oratorical advantage" as "backwoodsmen were neither particularly inclined nor especially able to hold their own in intellectual jousts with classically educated patricians." This is what the Anti-Federalist "Centinel" complained of.

"Centinel" was the pseudonym of Pennsylvania Anti-Federalist Samuel Bryan, the son of George Bryan, a state Supreme Court justice and Anti-Federalist leader. His major attack on the Constitution was that it advantage to "the few" over the many or "the people."

- Federalists also received a "measure of deference" from backcountry and middling Anti-Federalists who were disinclined to challenge their social superiors directly. Thus, this was one reason Anti-Federalists defended anonymous or pseudonymous newspaper contributions as "essential" to leveling the playing field.
- Class and regionalism:
  - Small farmers whose land was encumbered with debt were vastly more likely to oppose ratification than lawyers and merchants, and their objections were frequently "stated in class-conscious terms."
  - Westerners were substantially more likely to oppose than Easterners and Northerners were more likely to support the Constitution than Southerners.
  - Small states produced fewer Anti-Federalists relative to large states.
- Leading scholar of the Anti-Federalists Saul Cornell points out that the Anti-Federalists were not monolithic, but instead, could be broken down into *three* groups with varying perspectives on republicanism, popular sovereignty, and criticisms of the Constitution: elite Anti-Federalists, middling Anti-Federalists, and plebian Anti-Federalists.



- *Elite Anti-Federalists:* Arthur Lee’s Cincinnatus essays embodied elite Anti-Federalist thought. The name “Cincinnatus” drew on a patrician Roman ideal of virtue and the essays were meant to respond to James Wilson, from one gentleman to another, and the essays were filled with references to William Blackstone, Edmund Coke, and other jurists, Roman history, Latin quotations, and quotes from Montesquieu in French. Thus, the audience was meant to be other members of the gentry learned in ancient and modern language.
- *Middling Anti-Federalists:* There are several prominent examples of middling Anti-Federalists. “Federal Farmer” was one, as he declared his opinion was “only the opinion of an individual, and so far only as it corresponds with the opinions of the honest and substantial part of the community, is it entitled to consideration.” Melancton Smith, the likely author and leading New York Anti-Federalist, wanted to evoke the values of yeoman farmers and the tone of the essays was moderate, stressing that he was “open to conviction, and always disposed to adopt that which, all things considered, shall appear to me to be most for the happiness of the community.” Other examples included “Cato” and “Brutus” following this “moderating” style.
- *Plebian Anti-Federalists:* Plebian essayists tended toward a more inflammatory style, using eviscerating attacks upon the aristocracy. The clearest example is “Centinel.” Plebian Anti-Federalists like “Centinel” claimed the right to speak by virtue of their close connection to the people. Centinel said that, “Those who are competent to the task of developing the principles of government, ought to be encouraged to come forward, and thereby the better enable the people to make a proper judgment.” Thus, he saw himself as a guardian of the people’s liberties and these essays tended towards scathing, class-conscious rhetoric and rejected the idea that wealth and leisure were essential to cultivating the disinterestedness needed for republican virtue—he believed wealth in fact made man less likely to be virtuous.

### Who were the Federalists?

- Federalists tended to be more educated, be of upper class and reside in cities, and to be nationalist in their outlook. Federalists thought that a strong national government was absolutely necessary for the United States to flourish and continue as a new, independent republic.
- Federalists thought without a strong national government, the United States would never be treated as an equal sovereign by European nations. Thus, strong central government was thought to be necessary to become a true sovereign nation—a “treaty worthy” nation.
- Leading Federalists included James Madison, George Washington, Alexander Hamilton, John Jay, John Dickinson, James Wilson, and Gouverneur Morris.

### How were the Federalists advantaged in the ratification contest?

- According to legal historian Michael Klarman, the Federalists’ largest advantage in the ratifying contest was one they did not create—Americans largely agreed the Articles were badly flawed.



- Thus, the Federalists could set the terms of the debate as between the Constitution and the Articles rather than whether the Constitution was independently flawed.
- Klarman calls this the “tactic of switching the burden of persuasion” that was effective.
- The Federalists managed “barely—to keep intermediate options off the table. With the nation’s choice limited to the Articles and the unamended Constitution, the Federalists—again, barely—won the contest.”
- One key Federalist advantage was the location of ratifying conventions.
- To begin, because of the location of the ratifying conventions, it was expensive for western districts where Anti-Federalists were dominant to send delegates to coastal cities. (For instance, this may have cost Massachusetts Anti-Federalists dozens of delegates at their state convention.)
- Even the social life of coastal cities mattered. When mingling with the local population, the overwhelming number of people in those in major cities supported the Constitution. Thus, geographic distribution of constitutional support and opposition was a Federalist advantage. (Coordination was easier when Federalists had support from commercial networks.)
- Thus, Federalists got an advantage in the press, too, since in the late 1780s, 90% of the American population lived outside of urban areas, but almost *all* newspapers were published in cities and overwhelmingly supported ratification. Of over 90 major American newspapers then in circulation, only 12 published *any* significant amount of material criticizing the Constitution. Thus, the Federalists benefited from having the press mostly on their side.
- The Federalists also benefited, in a few states, especially South Carolina, from malapportionment of the ratifying conventions.
- Finally, they also benefited from the Anti-Federalists having a more difficult time organizing their constituencies, which were “backwoods and western.”
- *Big Key/Take-Home Point:* The contest was extremely close, and the Federalists were *both* advantaged *AND* lucky.

**The Federalist and Anti-Federalist perspectives** were built and altered over the course of the ratification debate itself.

As historian Pauline Maier notes, the state conventions themselves often shifted views.

This included both (1) Anti-Federalists who ended up supporting ratification who believed they were “fairly beaten” by the rhetoric of Federalists; and (2) Federalists who, under pressure to develop new understandings of the Constitution, interpreted Congress’s powers in a way to correct unjust existing systems and to, for instance, treat the Senate as a



“bastion of state sovereignty and a barrier against national consolidation instead of a regrettable concession to small-state demands.”

## THE FEDERALIST PERSPECTIVES

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Federalists generally wanted a stronger national government—looking at events of the 1780s, the failure of Continental Congress during the Revolutionary War, and the weaknesses of the Articles of Confederation as proof that a true national union required a central government with sufficient powers.

- Based on the European model of nation-states, national governments needed the ability to raise armies, tax, control commerce with other nations and between states, control foreign policy exclusively, as well as the power to declare war.
- Government should be based on popular sovereignty or “rule by the people” and not state sovereignty, as the Articles of Confederation had been, and the union should be perpetual and supreme.
- As Madison says in *Federalist #10*, the Federalists believed that past thinkers were wrong to assume that only small republics could succeed and that, in fact, large republics with geographical advantages like the United States were better because they would make it difficult to create perpetual factions and it would better represent the *whole* people and not particular interests.
  - In *Federalist #51*, which we will discuss at greater length during our lesson on separation of power, Madison talks about the advantages of a large republic under democratic principles versus systems built on monarchy and autocracy: “In the compound republic of America, 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.”
  - As Madison says, separation of powers, ambition counteracting ambition among representatives, and being in a large republic with many interests, factions, and classes would make it difficult for the majority to repress the minority.
- Representation was a key issue of debate between the Federalists and the Anti-Federalists. The Federalists saw representation as a “mirror” of society and did not think direct representation was desirable—experience under state constitutions showed the problems with too much democracy and legislative dominance and instead, representatives should be the most virtuous and selfless members of society best capable of mirroring the desires of the whole people.
  - But, as Madison points out in *Federalist #10*, Federalists thought in a large republic, it would be virtuous, disinterested figures who would rise to power and could represent the whole people and not particular classes, interests, or factions. As a result, rather than following popular sovereignty towards direct democracy, as plebian Anti-Federalist demanded, this idea of representation also intended to refine public opinion.

Two voices stood out among the Federalists: *James Madison and Alexander Hamilton*.

Madison has often been called the “father of the Constitution.” He had an essential role in ratification, as legal historian Michael Klarman breathlessly describes:

- *Central Figure from the Push for the Constitutional Convention Through the Ratification of the Bill of Rights:* “James Madison played a critical role at almost every stage of this process.”
- *The Call for a Convention:* “Partly at his initiative, the Virginia legislature issued a call for the Annapolis convention. When that convention failed, Madison and the few other commissioners who attended boldly decided to invite states to another convention.....Madison then drafted the bill in the Virginia legislature appointing delegates to the Philadelphia convention.....He also helped persuade Washington to participate.....”
- *Shaping the Constitutional Convention’s Agenda:* “Almost single-handedly, Madison shaped the convention’s initial agenda. Alone among the delegates, he had systematically reflected upon the vices of the Articles....the pathologies of the state governments and devised a scheme of government that he believed would remedy them. Then he persuaded his fellow Virginia delegates to arrive early in Philadelphia so that they could coordinate behind a plan that would become the convention’s blueprint.”
- *The Constitutional Convention Itself:* “At the convention itself, Madison was one of three or four most able and frequent contributors....Although Madison lost on many issues about which he cared deeply, his role in shaping the Constitution was at least as important as anyone else’s.”
- *The Ratification Fight in Virginia:* “Without Madison’s tireless organizing efforts and his Herculean service at the Richmond ratifying convention, Virginia—by far the largest and most important state—might well have rejected the Constitution.”
- *The Bill of Rights:* “Madison then orchestrated and shaped—again almost single-handedly—the Bill of Rights....”
- *Madison’s Legacy:* “[R]arely if ever in American history has a single individual played such an instrumental role in an event as important as the nation’s founding.”

Madison and Hamilton, alongside John Jay, wrote “**The Federalist Papers**” between October 1787 and May 1788. So, what were “The Federalist Papers?”

- The Federalist Papers were a series of essays printed in newspapers to persuade critics of the Constitution and those on the fence to support ratification.
- Most did not circulate beyond New York before the spring of 1788.
- The 175,000 words and 85 essays were written independently and with little collaboration or coordination under time-pressure.

- Madison wrote 29, Hamilton 51, and Jay five. Madison focused on the big theoretical and structural questions of government and politics—particularly on the subjects of representation and republicanism. Hamilton focused on specific issues like the structure of the executive branch and the judiciary, as well as Congress’s powers to tax and to raise armies.

The power of *The Federalist* grew over time. The Supreme Court only cited it once between 1790 and 1800 and only 58 times in the 19th century before steadily increasing usage in the 20th century.

The papers were both capable of high-minded theory and persuasive political arguments designed to win over undecided voters and on-the-fence delegates to conventions.

### THE ANTI-FEDERALIST PERSPECTIVES

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Anti-Federalists viewed the new Constitution as creating “consolidation”—in other words, creating such a strong national government that it would consume the state governments and create one single, domineering state.

As Saul Cornell, the great historian of the Anti-Federalists, points out, there were nine issues that appeared time and again in Anti-Federalist writings: consolidation, aristocracy, representation, separation of powers, judicial tyranny, the lack of a Bill of Rights, taxes, standing armies, and Executive Power.

Argument about inevitability of consolidation rests on three propositions:

- *First*, “imperium in imperio,” two sovereignties could not co-exist.
- *Second*, Montesquieu observed that a stable republic could only safely operate over a “contracted territory” of citizens with similar customs and interests.
- *Third*, the Constitution permits abuse of power which would be exploited. The features of the Constitution most likely to be manipulated: aristocracy of Senate, lack of Bill of Rights, and SOP.

**Brutus:** Likely the writings of either leading New York Anti-Federalist Robert Yates, who left the Constitutional Convention early along with John Lansing because of their concerns about the size of the new national government, or it is the writings of Melancton Smith again. The Constitution approaches so near to a consolidation that it “must, if executed, certainly and infallibly terminate in it.” Brutus criticized various features of the Constitution, including the unlimited power of Congress, the extensive jurisdiction of national courts, the Necessary and Proper Clause, and an unlimited taxing power.

### Anti-Federalist Concerns

- The Anti-Federalists connected the Constitution’s flaws to the **overt danger of standing armies** and armed tyranny.
- For some Anti-Federalists, the greatest source of **tyranny is the judiciary**.



- Anti-Federalists also worried that various structures of the new Constitution would create a **permanent aristocracy and despotism**, particularly the president and Senate.
- Of the three non-signers of the Constitution, George Mason **placed structure of presidency** high among his objections.

### George Mason and Concerns over the Presidency

Mason favored a plural executive. Following the example of some states, like Pennsylvania, rather than a single president, the executive power would either be granted to a council, possibly made up of Supreme Court justices and other public officials, or that council would act as a check on the president's powers.

Without a constitutional council, the president would “be unsupported by proper information and advice, and will generally be directed by minions and favors or will become a tool to the Senate—or a Council of State will grow out of the principal officers of the great departments, the worst and most dangerous of all ingredients in a free country.”

Mason was alarmed w/r to the Senate, over the cabinet or cronies, to influence the president. He viewed it as too aristocratic (he wanted restriction on its authority over money bills), too much potential for tyranny, and too big a danger of collusion btw branches.

### Concerns of the Judiciary

Anti-Federalists also worried about the judiciary, both because it might work to enlarge the powers of the federal government and because it would also threaten both state courts and one of the most important civil institutions—the jury.

Disproportionate amount of time spent by Anti-Federalist authors on the judiciary. Of the list of evils conjured up by opponents of the Constitution, the most repeated charges were the specter of a distant government with extensive powers of taxation, control of the judiciary, and a standing army to enforce its arbitrary decrees (like British rule).

Most ominous threat was more insidious because it was covert—look to effort to undermine freedom of the press. This would make it impossible to resist tyranny under the Constitution (dominance of the Federalist press).

Particularly concerned about threat to liberty posed by seditious libel (and the dangers of such prosecutions). Looked to trial of leading Anti-Federalist printer Eleazer Oswald in 1782. Fear of using it to stifle political opposition.

In 1788, Oswald, published the Independent Gazetteer in PA. He had a conflict with Andrew Brown, former editor of the Federal Gazette. Oswald published critical essays—some historians, for instance, believe Oswald was behind some of the Anti-Federalist “**Centinel**” essays criticizing the Constitution as aristocratic. Federalist editor demanded Oswald reveal names of those authors who attacked him. Initially, released by anti-Federalist judge. But Chief Justice Thomas McKean used contempt to deny Oswald a jury trial.

McKean was an important and notable Federalist figure. He had been president of Congress under the Articles of Confederation, had signed the Declaration of Independence and Articles, and would serve as chief justice for over two decades before becoming governor.



Anti-Federalists saw the decision of McKean as proof judges would use interpretive authority to expand powers of government. Popular Anti-Federalist thought saw federal judiciary as a serious defect in Constitution.

**Federal Farmer**, which was likely written anonymously by New York Anti-Federalist leader Melancton Smith, argues, “It is true, the laws are made by the legislature; but the judges and juries, in their interpretations, and in directing the execution of them, have a very extensive influence for preserving or destroying liberty.”

- Federal Farmer believed that the more popular an institution was, the less it threatened liberty.
- Thus, abuses of power by judges were less easily corrected than those of the legislature. Decisions of judges might initially affect only an individual and only be noticed by a few.
- The danger was hastened by the fact that Americans had always been jealous of the legislature and executive, but not always of the judiciary. The nature of law and society in America made courts a serious threat to liberty.

**Centinel** documented concerns of the time about the danger of judicial usurpation, “state judicatories will be wholly superseded, for in contests about jurisdictions, the federal court, as the most powerful, will ever prevail.”

**Brutus**: The federal judiciary clearly would exercise a final power of interpreting the meaning of the Constitution and laws. Now federal jurisdiction extended to equity cases. Gave it “considerable latitude of construction.”

- *Brutus #1*: General critique of the Constitution is that it gave far too much power to the central government. Brutus highlights the “Necessary and Proper” clause and the “Supremacy Clause” as having the effect of granting the federal government “absolute and uncontrollable power.”
- *Brutus #1*: the threat to states is that with these unlimited powers, it was no longer the case that the United States was a confederation of smaller republics—states would be “annihilated.” The taxing power of the new federal government made this worse. With the power of direct taxation, states would no longer have sufficiently means to support their own powers and citizens without money and thus would lose their autonomy and sovereignty.
- *Brutus*: “And in their decisions they will not confine themselves to any fixed or established rules, but will determine, according to what appears to them, the reason and spirit of the Constitution. The opinions of the Supreme Court, whatever they may be, will have the force of law; because there is no power provided in the Constitution that can correct their errors....the legislature must be controlled by the Constitution, and not the Constitution by them.”

### Power of the Jury

Feared “entire subversion of the legislative, executive and judicial powers” of the states. Federal judges would have a stake in “using this latitude of interpretation” to broaden Congress’s powers, which would enlarge their own authority.

Anti-Federalists instead preferred the power of the jury. Seen as a key republican institution at the state and local level.

Elite Anti-Federalists saw jury as check on the power of judges.

**Federal Farmer** asserted the superiority of the jury, compared it to the legislature. Can decide both law and fact. Expansive jury powers controls judiciary and were essential for democracy.

Federal Farmer's activist vision of the jury part of broader commitment to popular constitutionalism in which mediating elites would have little function. Body of the people had right of control in important concerns. Faith in jury, not judges, to interpret law. Jury service as form of civic education.

Federal Farmer says we cannot consolidate the states on proper principles. The organization of the government presented proves we cannot form a general government in which all government can be safely lodged. Abuse of power is not well guarded against.

Unnecessary power given to the judicial department respecting questions arising upon state law.

**Brutus:** Judges are rendered totally independent of the people and legislature, both by their offices and salary, so cannot be corrected or removed unless certain convictions were found (bribery, reason, high crimes).

Looks at both nature and extent of judicial powers—and how those powers will be exercised.

- *Nature/Extent:* Look to Article III, Sect. II, "judicial power shall extend to all cases in law and equity, arising under this Constitution." Sees this as equal to power of state courts w/general jurisdiction. Power to resolve *all* questions on any case on the construction of the Constitution.
- Courts are to give meaning to the Constitution (construction) which "comports best with the common, and generally received acceptation of the words in which it is expressed, regarding their ordinary and popular use, rather than their grammatical propriety." "Dubious" words are explained by context.
- Result is entirely subverting state powers (legislative/executive/judicial). Every adjudication will affect the limits of state jurisdiction. Judiciary will lean strongly in favor of general government.
- Thus, the judiciary was also (to Anti-Federalists) an example of the overall threat and problem with the new Constitution. If the "Necessary and Proper" clause already gave extensive and potentially unlimited power to Congress, the federal judiciary would read it broadly. Increases the powers of the federal government.
- Similarly, he thought that federal judges would look to the preamble and grant "every department" to take "cognizance of every matter, not only that affects the general and national concerns of the union, but also of such as related to the administration of private justice, and to regulating the internal and local affairs of the different parts."
- Three principle problems: judiciary will extend legislative authority. It will increase the jurisdiction of the courts. And it will diminish and destroy the authority of Congress and the federal courts as a result. Thus, there is a relationship between the expansion of Congress's power and the power of the federal courts that would, in the eyes of Anti-Federalists, operate to extend federal power generally and destroy state governments.

- *Issue with Judicial Review:* Courts are vested with “supreme and uncontrollable power” to determine what the Constitution means. They cannot execute a law which they judge to oppose the Constitution. Congress will not pass laws that courts will strike down—thus, judgment of the courts will become rule to guide the legislature in their construction of their powers.

## THE RATIFICATION OF THE CONSTITUTION AND THE PUSH FOR A BILL OF RIGHTS

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### *How is it that the ratification debates came to an end? What kind of compromise led to the Bill of Rights?*

During the battle over ratification, the Anti-Federalists tried to propose not only amendments to the Constitution that included structural changes, but also demanded a second constitutional convention.

#### **Pennsylvania Ratifying Convention**

James Wilson was a leading voice among the Federalists and, in his October 1787 speech at the Pennsylvania Ratifying Convention, he made clear his opposition to a Bill of Rights, something shared broadly by Federalists. They believed that under a Constitution that created a government of limited powers, there was no need to list the rights that would be protected, both because it would imply greater powers than given and would suggest some unnamed rights were unprotected.

Thomas Jefferson responded to the arguments of the Federalists that a Bill of Rights was unnecessary and implied further power of the national government. He argued that “Half a loaf is better than no bread” and that even if a bill of rights would not be “absolutely efficacious under all circumstances, it is of great potency always and rarely inefficacious.”

William Findley, a leading Anti-Federalist who was previously a farmer and would go on to become the longest serving member of Congress, argued at the PA Ratification Convention that, “Because all securities are broken, shall we have none?” Federalists during the Ratifying contest “staunchly resisted all proposals for amending the Constitution,” whether securing individual rights or changing the structure and limiting the power of the federal government.

#### **Massachusetts Ratifying Convention**

Only once facing defeat at the Massachusetts ratifying convention did Federalists promise to recommend subsequent amendments and include a bill of rights in exchange for support of unconditional ratification. This became the pattern for the remaining conventions. (MA was the sixth state to ratify the Constitution and only by a mere 19 votes—a 187-168 margin.)

Governor John Hancock, a sometime critic of the Constitution, was chair of the MA ratifying convention. Upon the final vote, he took the floor and said all arguments for and against the Constitution had “been debated upon with so much learning and ability, that the subject is quite exhausted.” Everyone agreed that the Articles had great defects and a general system of government was essential to keep the country from ruin.

Hancock was confident that with the proposed amendments enacted, the amended Constitution would “give the people of the United States, a greater degree of political freedom, and eventually as much national dignity, as falls to the lot of any nation on earth.”



Hancock himself, though weary of the impropriety of joining the deliberations of the convention, proposed amendments (although they were likely drafted by Federalists who thought they would be best coming from Hancock). In total, the nine proposed amendments included amendments saying that all powers not expressly delegated to Congress be reserved to the states, and amendments protecting the right to a grand jury in criminal cases and the petit jury in civil cases.

### Virginia Ratifying Convention

Patrick Henry was the major Anti-Federalist voice. Henry had long been known for his oratorical power going back to his 1765 “Treason” speech in protest of the Stamp Act before the Virginia House of Burgess and his 1775 “Give Me Liberty or Death” before the Second Virginia Convention. Thomas Jefferson called him the “best humored man in society I almost ever knew” and the “greatest orator that ever lived” due to his “consummate knowledge of the human heart.”

Henry opposed ratification because he thought the public was “extremely uneasy” over the proposed change in government. In his view, the people were already secure and the new proposal destroyed that security while putting the republic in “extreme danger.” The new Constitution set up a government of nine states (the number needed for ratification) while annihilating treaties with foreign nations, posing a grave threat to American liberties, and creating a “consolidated government instead of a confederation” by replacing “We, the States” with “We the People.”

As Pauline Maier puts it, because Jefferson and James Madison frequently found themselves on the other side of disputes with Henry in Virginia politics, Henry, the “great adversary” who threatened the passage of the Constitution in Virginia, played a “critical role in Madison’s understanding of Virginia’s divisions over the Constitution.”

In Virginia, Madison, Washington, Edmund Pendleton (president of the Virginia convention), George Nicholas, John Marshall, and others supported the Constitution, while a second group, including dissenters Governor Edmund Randolph and George Mason, wanted amendments. Henry and his third group said they wanted amendments, but ones that Madison said would “strike at the essence of the system” and would lead to a similar system to the Articles of Confederation or the creation of several Confederacies over national union.

Randolph responded to Henry by defending the Constitution, declaring that the time for amendments had passed, and argued that while he refused to sign the Constitution because he thought the Convention’s demand that state conventions either accept or reject the Constitution was written was too severe, the only question was whether amendments should be made previous to or after ratification. To insist on prior amendments after several states had ratified without insisting on prior amendments would bring “inevitable ruin to the Union.”

Anti-Federalist Richard Henry Lee came to a similar conclusion to Randolph—instead Virginia should ratify the Constitution but demand “such amendments as can be agreed upon” as statements of “their undoubted rights and liberties which they mean not to part with.” Thus, the demand for subsequent amendments or a Bill of Rights was born. (Stay tune for a future lesson on the Bill of Rights!)

Henry’s demand that the Constitution needed a Bill of Rights was the Anti-Federalist argument hardest for the Federalists to dismiss. Edmund Pendleton, going into the final vote on ratification, crafted a compromise gesture by introducing a set of resolutions calling for the adoption of the Constitution paired with a demand that the First Congress under the new Constitution consider “whatsoever amendments may be deemed necessary.” Henry and his supporters still wanted amendments prior to ratification, but Henry’s motion was defeated 88-80 and Pendleton’s passed 89-79.



The debate was so hardly fought and narrowly won for the Federalists that Spencer Roane, who would become a bitter critic of the new Constitution, noted that there was “no rejoicing on account of the vote of ratification” and the Federalists behaved “with moderation and do not exult in their success.” Henry refused the call of some Anti-Federalists to block the new government, saying he would be a “peaceable citizen” and would work to “remove the defects of that system in a constitutional way” by pushing for new amendments.

### **New York Ratifying Convention**

Governor George Clinton was a leading Anti-Federalist. He waited until the regular meeting of the state legislature in January 1788 to send it the Constitution and other documents, including an explanation from Anti-Federalists Robert Yates and John Lansing why they left the Constitutional Convention early.

Of the 65 delegates at the ratifying convention, 46 opposed the Constitution in some respect. But news of Virginia’s ratification took away the resolve of many New York Anti-Federalists, most of whom gave up on outright rejection of the Constitution. Instead, they debated 55 possible amendments and argued over whether such amendments should be a prior condition to ratification or merely recommended for subsequent adoption.

On July 11, 1788, Melancton Smith (“Federal Farmer”), based on correspondence with Patrick Henry and Virginia Anti-Federalists, proposed New York conditionally ratify with the understanding that a second general constitutional convention would be called to propose amendments. After the convention voted by a close 30-27 margin to ratify accompanied by “explanatory” and “recommendatory” amendments, Melancton Smith and Robert Lansing circulated a letter asking for another convention to consider the various proposed amendments by state ratifying conventions.

After the New York Convention's circular letter, the Virginia House of Delegates by 85-39 voted with the Senate concurring to petition Congress to call a second constitutional convention immediately and urged other states to do so. Patrick Henry’s influence seemed pervasive and one Madison ally called the “triumph of anti-federalism is complete.” The Virginia legislature had also voted for Anti-Federalists for the Senate over Madison, as Henry campaigned to keep Madison both out of the Senate and House. (Madison would serve in the House in the First Congress.)

### **North Carolina Ratifying Convention**

Although the Constitution was ratified, North Carolina still held a convention in late July 1788.

The debates in North Carolina were intense and highly personal, and Anti-Federalists still rejected the preamble—believing “we the states” were the source of sovereign power and that the state was the only true representatives of North Carolinians.

By 184-83 vote, the North Carolina convention *rejected* the proposed Constitution and accompanied its rejection with 46 amendments—20 to be part of a Bill of Rights and 26 to change specific features of the Constitution disliked by Anti-Federalists.

By the end of 1789, North Carolina ultimately joined the Union and ratified the Constitution, leaving only Rhode Island as the remaining non-ratifying state. This means that when the first elections were conducted in the fall of 1788, two states that were part of the original thirteen were not yet in the Union!

### **Rhode Island Ratifying Convention**

In late May 1790, Rhode Island, by a narrow 34-32 margin, ratified the Constitution and only because four opposition members were absent and the convention only happened after half a year of pressure to bring Rhode Island back into the union, as the state's legislature turned down calls for a convention repeatedly

Federalists were part of a pressure campaign which included threatening Rhode Island with tariffs and other financial penalties, while leaders in Providence threatened to secede and create an independent state if Rhode Island did not ratify.

Rhode Island's leadership rejected these calls in part because of their opposition to slavery and the slave trade, their concern over the state's paper money, and the state program for retiring Rhode Island's Revolutionary War debt.

### **The Bill of Rights**

Following the fight for ratification and the demands of several state conventions for a Bill of Rights, James Madison became the reluctant leader of the congressional effort to pass the Bill of Rights.

But first, the new government needed be elected, constructed, and opened. The ninth state to ratify the Constitution, New Hampshire, did so on June 21, 1788. George Washington was unanimously chosen as the first president, as the Constitutional Convention assumed would happen. Congress officially met for the first time on March 4, 1789.

He did so to "quiet that anxiety which prevails in the public mind" and because the great mass of people who opposed the Constitution did so because of a lack of rights protections. It was possible to "satisfy the public mind that their liberties will be perpetual . . . without endangering any part of the constitution" essential to the new government.

Thomas Jefferson was instrumental in convincing Madison, who was against a Bill of Rights at first and believed it unnecessary given that the Constitution created a government of limited, enumerated powers.

After finally ratifying the Constitution, both North Carolina and Rhode Island approved all (or all but one in Rhode Island's case) of the 12 proposed amendments. But by the end of 1790, only four states had approved all 12 amendments, while three had approved all but the second (which precluded members of Congress from giving themselves a pay raise that took effect before an intervening election to the House—approved in 1992 as the 27th Amendment.)

The one that didn't get passed? An amendment to the ratio used to apportion representation in the House of Representatives: "After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons." Had it passed, Congress would have over 6,000 members by now!





## Scholar Exchange: Ratification Debates Briefing Document

In May 1791, Vermont became the 14th state in the Union. By the end of the year, they alongside Pennsylvania and Virginia approved all 12 amendments or all but the second, so the 10 amendments known as the “Bill of Rights” were ratified in December 1791.

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