

The Fight for Our Rights: Federalists v. Antifederalists: Introduction; Background: The Articles of Confederation; Washington's Intrigue; Taking Sides

The Fight for Our Rights: Federalists v. Antifederalists

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NOTE: Much of the information contained in this study was excerpted from books by Harlow Giles Unger: *Lion of Liberty: Patrick Henry and the Call to a New Nation* (Cambridge, MA: Da Capo Press, 2010) and *America's Second Revolution: How George Washington Defeated Patrick Henry and Saved the Nation* (Hoboken, NJ: John Wiley & Sons, 2007).

I. Introduction:

The Constitution of the United States is revered by right-thinking Americans as the fountainhead of its freedoms. The document has stubbornly held fast against relentless attempts to conjure from its Articles and Amendments permission to arrogate powers to the federal government that were not granted to it by the states. Nevertheless, over the past century informed citizens have been able to perceive that its Preamble's pledge to "secure the Blessings of Liberty to ourselves and our Posterity" has been gradually redefined to mean "secure the Blessings of Government to ourselves and our Posterity."

During the debates that preceded ratification, there were forward thinkers who warned about the inherent jeopardy of granting too much power to a central government. They perceived that future office holders among the three branches of government would not necessarily possess the same honor and integrity as those first elected.

To guard against interlopers on liberty there were those who argued against the ratification of the Constitution. In fact, the convention at which the Constitution was drafted met at the behest of the respective states for the purpose of strengthening the Articles of Confederation. Instead the delegates in secrecy cobbled together an entirely new government.

This is a brief analysis of the events that precipitated the need for revision, the resultant drafting of the Constitution, the intrigue that surrounded its creation, the debates that followed among the thirteen states, and the compromise to attach a Bill of Rights that led to its adoption.

II. Background: The Articles of Confederation:

After the Declaration of Independence was signed by representatives of the thirteen states, the next order of business was to form a government. In November 1777, the Articles of Confederation were completed and sent to the thirteen states for ratification.

The citizens of the new nation were determined to withhold as much power from a central government as possible to avoid falling under the oppressive hand of a monarch such as George III or a legislature such as the British Parliament.

Article Two of the document proclaims, "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled."

The freedoms left to the states included the option to set import duties and restrictions and these stipulations varied among the states, so much so that to avoid the red tape, Britain and Europe stopped trading with the United States. This resulted in a twenty-five percent drop in foreign trade which included a twenty-percent decline in farm income.

Combined with this was Spain's decision to close the port of New Orleans to American commerce on the Mississippi. This forced farmers out of business since there were no roads over the Appalachian Mountains by which western farmers could transport their grain to eastern markets. Unable to sell their goods, foreclosures shut down hundreds of farms as livestock, land, and equipment were lost. Those whose inventory did not cover the debt were taken to debtors' prisons leaving distraught wives and terrified children helpless and homeless.

Similar circumstances occurred in Massachusetts where taxes were raised to cover lost government revenue. When property was confiscated as a result, farmers in the western part of the state joined Daniel Shays in an insurrection. Shays was a captain in the Continental Army who fought with distinction in the Battles of Bunker Hill, Ticonderoga, Saratoga, and Stony Point.

Known as Shays' Rebellion, the irate farmers attacked the U.S. arsenal at Springfield but were repulsed by militia. Nevertheless, the effort solidified farmers across the state and the next election removed the governor and three-fourths of the legislature from office.

Fearful of a national uprising, Congress proposed a revision of the Articles of Confederation that would strengthen the national government's powers. George Washington promoted the idea as did Patrick Henry, that is, until the latter was made aware of a proposed treaty submitted to Congress by Secretary of Foreign Affairs John Jay.

Jay had been in a year-long negotiation with Spanish envoy Don Diego de Gardoqui who suggested a treaty in which the United States would "forebear" navigation of the Mississippi River for thirty years in exchange for Spain opening its key ports as European gateways for American trade. Jay had asked Congress to change his instruction to allow him to give up American navigation rights on the Mississippi and Congress agreed.

Southern states were immediately outraged, the Northern states were giddy, and Patrick Henry was irate. The five southern states would lose commerce from the Western frontier while the slack would be taken up by Atlantic ports primarily in the north. Henry's fury was stoked by Jay's violation of Congress' specific instruction that the treaty must insure free navigation of the Mississippi.

Article Two insured “states’ rights,” and to further insure that foreign powers could not encroach upon them, Article Six addressed the issue of treaties, “No state, without the consent of the United States in Congress assembled, shall ... enter into any conference, agreement, alliance, or treaty with, any king, prince, or state.”

Had the Articles not strictly forbidden entering into treaties without a two-third approval by Congress then the interests of the northern states would have easily trumped those in the south.

This kind of internecine conflict was evident at the very beginning of our republic and became the catalyst from the War between the States seventy-five years later.

The Articles of Confederation were shown to be too weak to manage such a large swath of the North American continent which was in the incipient stages as a nation. Shays’ Rebellion and the Jay-Gardoqui Treaty exposed not only this weakness but the potential tug-of-war that would only intensify if some stronger but mollifying system was not put into place.

This led Alexander Hamilton to a call for a convention in Philadelphia “to render the constitution of the Federal Government adequate to the exigencies of the Union.”

On February 21, 1787, the Confederation Congress recommended that the states send delegates to a convention “for the sole and express purpose of revising the Articles of Confederation.”

Virginia Governor Edmund Randolph wrote a letter to Henry encouraging him to attend the convention which he declined without offering a reason. George Washington and James Madison made personal pleas to Henry to reconsider to no avail. In fact Madison advised Washington, “Mr. Henry, who has been hitherto the champion of the federal cause, has become a cold advocate, and, in the event of an actual sacrifice of the Mississippi by Congress, will unquestionably go over to the opposite side.”

In fact, for Henry, the die was already cast. He rationalized that if the impotent Articles of Confederation had almost stripped Virginia of her “natural rights” to ship goods to market, an even stronger version would surely succeed at some future date.

That he was correct in his assessment is evidenced by a letter to Henry by James Monroe regarding negotiations surrounding the Jay-Gardoqui Treaty:

On August 12, 1786, Monroe wrote a long letter to Governor Patrick Henry reporting “that Committees are held in this town [Washington] of Eastern men and others of this State [Virginia] upon the subject of a dismemberment of the States East of the Hudson from the Union and the erection of them into a separate government.” Their separatist scheme, Monroe reported, “is talk’d of in Massachusetts familiarly and is suppos’d to have originated there.” Bay State Congressmen Nathaniel Gorham, Rufus King, and Theodore Sedgwick sought to encourage a Spanish treaty that closed the Mississippi for twenty-five or thirty years. Their plan, Monroe told Henry, was not only “a step toward the creation of a separate northern confederacy,” it was also “connected with other objects—and perhaps with that upon which the Convention will sit at Annapolis.”

By closing the Mississippi, Monroe warned Henry, they sought “to break up ... the settlements on the western waters [and] prevent any in future.” This would “make it the interest of the [western] people to separate from the confederacy, so as ... to throw the weight of government and population in this quarter.” James Monroe also told Governor Henry that “in conversations at which I have been present,” New England Congressmen spoke of “a dismemberment so as to include Pennsylvania.” Sometimes, Monroe said, they hoped even to include Delaware and Maryland in a northern confederation of “all the states south to the Potowmack [Potomac].¹

When the convention to upgrade the Articles was convened in 1787, Henry’s defection was joined by others including New York Governor George Clinton, then Virginia Governor Edmund Randolph, Richard Henry Lee, George Mason, James Monroe, and William Grayson. This group was stuck with the title of Antifederalists.

¹ Jon Kukla, “Opponents of the Constitution” (lecture, New-York Historical Society, New York, NY, Oct. 14, 2004).

Those who emerged from the convention recommending ratification of a new government under a new constitution included George Washington, James Madison, Benjamin Franklin, Thomas Jefferson, John Adams, Alexander Hamilton, and “Lighthorse” Harry Lee.

Ratification depended on the Federalists winning the debate, but the objections raised by the Antifederalists and verbalized by the surgically precise orations of Patrick Henry proved to be prophetic as we look back retrospectively over the 123 years since the Constitution’s ratification.

III. Washington’s Intrigue:

George Washington has been given the *nom de guerre* Sword of the Revolution and the title Father of His Country. He may also be regarded as the Ramrod of the Constitution. Congress called a convention in Philadelphia to consider strengthening the Articles of Confederation but Washington micromanaged the delegates to abandon the Congressional mandate and instead create an entirely new government.

The General’s military reputation had rightly won him the honor and respect of most if not all of those attending the convention and he immediately began capitalizing on his credentials to influence their thinking toward a new constitution:

On Thursday, May 17, 1787, ... although South Carolina and New York delegates had arrived, the Convention still lacked a quorum. Over the next week, enough delegates arrived from Massachusetts, New Jersey, and Delaware to produce a quorum of seven states. Washington made a point of collaring most of them at various dinners in his honor or theirs and drumming into their minds that he favored a new constitution creating a strong central government with “Legislative, Executive & Judiciary departments concentrated.”²

Washington considered his lobbying so successful that once the Convention was gaveled to order he was certain the requirement to revise the Articles of Confederation would be abandoned in favor of new national government.

² Harlow Giles Unger, *America’s Second Revolution: How George Washington Defeated Patrick Henry and Saved the Nation* (Hoboken, NJ: John Wiley & Sons, 2007), 33.

Robert Morris, probably the wealthiest man in America and a close friend of Washington's, called the Convention to order and nominated Washington to preside as president. By procedural rules this election forbade the general from entering into discussions or commenting during the debates. This however had no impact on his ability to manage the delegates or influence the eventual outcome of their decision:

At least three dozen delegates seated before him had served under him in the Revolutionary War and knew all too well how to discern Washington's pleasure or displeasure from his all-but-imperceptible nods, frowns, scowls, or smiles. He knew them, and they knew him—some, intimately. Four of them—Pennsylvania Speaker of the Assembly Thomas Mifflin, Virginia governor Edmund Randolph, Maryland Congressman, James McHenry, and New York attorney Alexander Hamilton—had served as close personal aides on his staff during the Revolutionary War. Thirteen had been officers in the Continental Army; thirteen others, officers in the militia. Seven delegates had served with Washington in the Continental Congress of 1774 or 1775 or both.³

Prior to the Convention, Washington sent to all the state governors and political leaders his conception of a new national government. What became known as the Virginia Plan, was the first order of business as soon as Washington was elected president of the Convention.

Since Edmund Randolph was Virginia's governor, he reluctantly agreed to read the proposal to the delegates; reluctantly, because he had gone to Philadelphia seeking only minor revisions to the Articles of Confederation. Instead, he put in motion a process that would ignore the current government and establish an entirely new one.

The eventual result was a bloodless coup d'état, what Unger characterized as "America's Second Revolution," which became the title of his 2007 book on the subject.

The Virginia Plan presented numerous resolutions primary of which was the elimination of the Confederation Congress and the creation of a "supreme Legislative, Executive, and Judiciary" branches of a new national government.

³ Unger, *America's Second Revolution*, 35.

This plan outlined a system by which laws passed by its Congress would be supreme, would override state laws, and grant use of the military to enforce them. The rationale cited the incompatibility of the various states' conflicting systems of laws and their reluctance to abide by those imposed by the Confederation Congress.

The delegates collectively rejected this plan. It robbed the states of their sovereignty and was out of order since the Congress' instruction to them was to revise the Articles of Confederation. To consider the Virginia Plan would be to consider overthrowing the legally constituted government by adopting an entirely new system.

Virginia's Charles Coatsworth Pinckney, an attorney, challenged the legality of Randolph having the authority to propose anything beyond what the Congress had directed:

“The act of Congress recommending the Convention” did not “authorize a discussion of a System founded on different principles from the Federal Constitution [i.e., the Articles of Confederation].” The Virginia Plan, he argued, violated the mandate of Congress to “revise” the Articles of Confederation. To violate that mandate would represent a usurpation of authority not granted by Congress or the Articles of Confederation.⁴

Both northern and southern delegates were collectively repulsed by use of the word “supreme.” The northern merchants visualized customs agents directing import-export duties away from their states into the national treasury while southern planters feared the presence of federal troops on their lands replacing those of the recently defeated British army.

No one was excited about voting on the proposal and, to avoid the necessity, a motion was made and passed to convert the Convention into a Committee of the Whole House.⁵

⁴ Ibid., 46.

⁵ “The entire membership of a legislative body, sitting in a deliberative rather than a legislative capacity, for informal debate and preliminary consideration of matters awaiting legislative action” (*Random House Dictionary*, s.v.: “Committee of the Whole”). “In the version of the Committee of the Whole that existed in the British House of Commons, the original use of this committee was to debate bills privately and prevent a recorded vote from being taken” ([http://en.wikipedia.org/wiki/Committee_of_the_Whole_\(United_States_House_of_Representatives\)](http://en.wikipedia.org/wiki/Committee_of_the_Whole_(United_States_House_of_Representatives))).

This convenient procedure allowed discussion and debate with privilege to change one's opinion or vote and no vote on the Virginia Plan while in committee would be final.

The resultant debate became not only unfettered but also vociferous as the delegations from the smaller states argued that larger states would dominate the Union.

As the debate raged, delegates grew increasingly mean-spirited, with some northerners even mocking the accents of delegates from the deep South, to which southerners countered by pretending they could not understand Boston's delegates and asking them to repeat themselves.⁶

One of the critical arguments had to do with the size of the majority that could confirm a treaty. Southern delegates had clear memory of how close the Jay-Gardoqui Treaty was defeated but only because the Articles of Confederation required a two-thirds majority for confirmation. They insisted on and won that requirement from the northern states.

However, each day was wrought with controversy, dispute, and deadlock which ultimately caused Washington to lose all patience. He began to lobby delegates outside the meeting hall, the City tavern, and at private homes demanding they reach a compromise:

"Every state has some objection. That which is most pleasing to one is obnoxious to another and vice versa. If then the Union of the whole is a desirable object, the parts which compose it must yield a little in order to accomplish it."⁷

On September 12, Pennsylvania's Gouverneur Morris recited the completed manuscript of what was to become the Constitution of the United State of America. He not only wrote the Preamble but was also the one who stylized the entire manuscript, for the wording of the document is primarily that chosen by Morris.

The wording of the Preamble not only recalls that of the Declaration of Independence but it also begins with the seed of collectivism which Patrick Henry would later assail:

⁶ Harlow Giles Unger, *Lion of Liberty: Patrick Henry and the Call to a New Nation* (Cambridge, MA: Da Capo Press, 2010), 191.

⁷ *Ibid.*, 192–93.

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Morris continued to recite the entire manuscript which contains seven Articles. The first three define the shape and powers of the national legislature, the executive, and the judiciary. These gave Congress powers to raise taxes and levy duties, borrow money, regulate foreign and interstate commerce, maintain a standing army and navy, and declare war. The president was to be commander-in-chief of the military, have diplomatic powers, and make treaties.

Article IV forced the states to recognize each other's laws and the procedure for adding new states to the Union. Article V gave the process for amending the Constitution, stipulating that two-thirds of both houses of Congress may propose an amendment but it would not be ratified without the consent of three-fourths of the states.

Article VI stipulated that the Constitution, U.S. laws, and treaties rank highest as the "supreme law of the land" with local laws lowest and of no consequence for the rest of the nation. Article VII mandated that two-thirds of the states, or nine of the thirteen, must ratify the Constitution for adoption to take effect.

George Washington was the first to sign. However, Virginia Governor Randolph, who introduced the Virginia Plan to the Convention, refused to sign calling the document a "fetus of monarchy" saying it was "impossible to put his name to the instrument."

Virginia's George Mason criticized the "dangerous power and structure of the government." He predicted the Constitution would lead either to monarchy or a tyrannical aristocracy and proclaimed, "As the Constitution now stands I can neither support it or give it my vote in Virginia, and I cannot sign here what I cannot support there."

IV. Taking Sides:

Virginia was the key state in the ratification process. And in Virginia there were stalwarts of independence who were openly opposed to the concentration of power in a centralized government that left the states and their citizens with no guarantees their rights would not be infringed.

Patrick Henry, George Mason, Richard Henry Lee, and Edmund Randolph were opposed to ratification and without Virginia's consent, even if ratified the Union would be split and the Constitution ineffective.

Washington's dream depended on winning the favor of the Voice of Independence, Patrick Henry. Upon his return to Mount Vernon, Washington wrote to Henry:

In the first moments of my return I take the liberty of sending you a copy of the Constitution which the Federal Convention has submitted to the people of these states. I wish the Constitution had been made more perfect, but I sincerely believe it is the best that could be obtained at this time—and as a constitutional door is opened for amendment hereafter—the adoption of it under present circumstances of the Union is in my opinion desirable. The political concerns of this country are suspended by a thread. If nothing had been agreed upon anarchy would soon have ensued—the seeds being ripely sown in every soil.⁸

Henry was not in the mood to receive such correspondence from a man whom he admired most among his fellow patriots. His disgust was so adamantly directed toward the Constitution that he could only respond to Washington in muted tones:

I have to lament that I cannot bring my mind in accord with the proposed Constitution. The concern I feel on this account is really greater than I am able to express. Perhaps mature reflection may furnish me reasons to change my present sentiments into a conformity with the opinion of those personages for whom I have the highest reverence. Be that as it may, I beg you will be persuaded of the unalterable regard and attachment with which I ever shall be, dear sir, your obliged and very humble servant.

Henry's concerns were so numerous that he felt it inappropriate to enumerate them in a letter to Washington. He would save his objections for the upcoming debates.

⁸ Ibid., 198.

Certain phrases in the Constitution hinted at inevitable tyranny, such as the threat of unlimited and unbounded power over the states granted in the final paragraph of Article I, Section 8:

To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department of Officer thereof.

Henry was further troubled that there were no term limits for the president, members of Congress, or the judiciary. All could serve indefinitely and possibly collude to create a tyranny; collude with foreign governments to sell territorial rights as Congress had almost done with Spain regarding the Jay-Gardoqui Treaty. He didn't like the government having the power to maintain a standing army, impose taxes without consent of the states, to "negative" state laws, and to enforce federal laws with troops.

His primary concern was that the states lost their sovereignty and the individual rights to freedom of speech, religion, press, trial by jury, redress of grievances, and assembly were not protected. Virginia's Declaration of Rights guaranteed all these things but they now could be overridden by the "superior" federal government.

Many of the grievances expressed in the Declaration of Independence were now again a concern to Henry. The states had abused this power under the Confederation, now it was given to the "superior" Congress: "Representatives and direct Taxes shall be apportioned among the several States" introduces Article I, Section 2, paragraph 3. Henry had long opposed any permanent national government tax, yet the Constitution granted this power in its very first Article.

Henry's fears have presently been proved prophetic. In February 1913 the Sixteenth Amendment was ratified that reads, "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived" Today the power to tax has allowed Congress to wittingly run up a national debt of \$14,467, 710,000, 000.