

## **“Iron Handed Despotism”: Anti-Federalists and American Civil Liberties”**

**Fran Moran, Ph.D.**  
**Political Science Department**  
**New Jersey City University**  
**Jersey City, NJ 07030**

“The powers vested in Congress by this constitution, must necessarily annihilate and absorb the legislative, executive, and judicial powers of the several States, and produce from their ruins one consolidated government, which from the nature of things will be an *iron handed despotism...*”

-- Dissent of the Pennsylvania Minority  
18 December 1787

In the late autumn of 1787, Pennsylvania became the second state to approve the proposed Constitution and vote to replace the Articles of Confederation as the primary governing document in the country. Those on the losing end of this vote subsequently drafted a list of grievances and objections and circulated their concerns to members of the remaining ratification conventions. My opening epigraph is from that document and I use it not to ridicule the sorry prognosticating skills of the men of that era, but rather to raise the question as to how they could have been so wrong. How could these patriots have so misread the fate of the nation? Of course, this is another way of asking, why would the Constitution raise such fears of impending political disaster? After all, this document is routinely celebrated for introducing and defending freedom, equality, and democracy. By incorporating freedom of the press, freedom of religion, a variety of essential rights for those accused of committing crimes (e.g., right to counsel, protection from unreasonable searches and seizures, right to a speedy trial, etc.) the Constitution would seem to leave little room for any sort of despotism, iron handed or otherwise. Indeed, this issue of the *Academic Forum* is devoted to one of the real virtues of American democracy – freedom of speech. In my paper I am going to examine how the civil liberties mentioned above came to be included in the Constitution. I argue that much of what we celebrate in the Constitution today, including most of the civil liberties at the heart of American democracy, owe their inclusion in the Constitution to men like those Pennsylvanian dissenters who opposed ratification. I begin with a brief overview of the American government that preceded the Constitution, and then look at the Constitution that was drafted in Philadelphia in 1787 and sent to the states for ratification. After I highlight some of the main differences between the two documents, the next sections explore the arguments made by Anti-Federalist critics of the Constitution and the consequence of those arguments for the development of American democracy.

### **The Articles of Confederation**

While the U.S. Constitution is credited for being the longest-lived written (a qualifier to take into account the English constitution) national constitution (Massachusetts and New Hampshire both continue to use constitutions that antedate the U.S. one) still in use in the world, it is not the first governing document used in the United States. That distinction belongs to the “Articles of Confederation and Perpetual Union,” the framework for government that delegates to the Second

Continental Congress began drafting in June 1776. The Articles were fully ratified by the 13 states on 1 March 1781 and remained in effect until being supplanted by the Constitution in 1788. One key indication of the general structure and scope of this government is in the name itself; that is, the revolutionaries were creating a *confederation*, which is generally defined as a voluntary union of independent states. We can see early indications of this thinking within the Declaration itself, in that in the closing paragraph the revolutionaries specify just what exactly is declaring independence and what that declaration means:

That these United Colonies are, and of Right ought to be, Free and Independent States; that they are absolved from all Allegiance to the British Crown, and that all political Connection between them and the State of Great-Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do.

It is important to note the use of the plural throughout this listing. In other words, each of the 13 colonies/states wanted to retain a measure of sovereignty over affairs within their own borders, but each recognized that on some issues – particularly defense and security – it would be best to coordinate efforts. The government they created reflected that thinking.

Under the Articles of Confederation political power was dispersed among the 13 states rather than concentrated at the center in the national government. Indeed, Article III of the Articles of Confederation provides a nice indication of the nature of the relationship among the states:

The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

“A firm league of friendship” is a fairly weak basis on which to hold a country together. That is, in order to accomplish any of the tasks it was set, the national government essentially would be relying on the good will of the state governments. That national government consisted of a single unicameral legislature (much like the Continental Congress itself) in which each state had a single vote. Beyond that, there was no independent executive or judiciary. These later two branches were both unwanted – images of King George and the governors he appointed still being too fresh – and unnecessary since ultimate sovereignty in the new country rested in the state capitals rather than in the national government. This point was made explicit in Article II of the Articles:

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.

And the powers expressly delegated to that Congress were limited indeed. The national government was unable, for instance, to collect taxes (it could levy taxes, but the states collected the revenue and it was up to the states to then turn those monies over to the national government), regulate interstate or foreign

commerce (meaning each state could develop its own economic policy), print money (each state could establish its own currency), maintain a standing army (each state retained its own military; in case of national emergency the states were asked to volunteer their armies). Without a judicial or executive branch, the national government was effectively unable to enforce its own laws, which meant it was up to each of the states individually to determine which national laws it would accept and enforce. Moreover, each of the states was co-equal with the others, so that, for instance, each state regardless of size, population, or wealth had the same voting power within the Congress, and amending the Articles required the consent of all 13 states.

### **The Constitution and the Road to Ratification**

In the midst of some deep economic and political turmoil throughout the mid 1780s, the Continental Congress authorized a convention of the 13 states to discuss ways to amend the Articles. That convention began meeting in May 1787 in Philadelphia and became what we refer to today as the Constitutional Convention. Given the Articles as the starting point, the document produced by this convention represented a marked departure in the scope and structure of the national government, a point not lost on some of those attending the convention or among those, like the Pennsylvania Dissenters, who were part of the ratification debates. Most importantly, the national government created by the Constitution is both much larger and more powerful than that existing under the Articles. Just to note some of the differences between the two, in the 1787 Constitution, we have a bicameral legislature, where “the people” elect one house – the House of Representatives – and the state legislatures the other – the Senate. For the first time, the country will now have a national executive – a President and Vice-President – elected by the Electoral College – and that executive will have a group of advisors who serve upon his nomination and confirmation by the Senate. Finally, we have a national judiciary – a Supreme Court initially – whose members are nominated by the President and confirmed by the Senate. In terms of power, Article 6, Clause 2, provides the sharpest indication that we are entering a new world in the political relations among the states, in that for the first time, the national government, rather than the state governments, is sovereign:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State, shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

In terms of the powers of the new government, the Constitution specifies that the national government may now, among other things, levy and collect taxes, maintain a standing army, regulate interstate commerce, print and coin money (uniquely; no longer will states have their own currencies). More broadly, Congress specifically and the new federal government in general possesses the power “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 or Officer thereof” (Article II, Section 8, clause 18).

The document was approved by the convention on 17 September 1787, and Article VII spelled out the ratification process: the Constitution would go into effect when 9 states in special conventions voted to ratify. The same Article, the last in the Constitution, goes on to note that the constitution was

“Done in Convention by the Unanimous Consent of the States *present* the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth” [emphasis added]. Recall that the Articles themselves specified that any amendments required the approval of all 13 states, and the language quoted above in Article VII creates the impression that unanimity was attained at the convention. Yet note the use of the word “present.” One state – Rhode Island – opted not to send any delegates and was thus not present to vote on the new plan of government. Recognizing that unanimity was likely unobtainable, participants at the convention settled on the “9 of 13” formula. But even with this much more relaxed standard, the ratification of the Constitution was by no means assured.

The table below lists in chronological order the date, vote totals, and margins of victory in each of the ratifying conventions:

State	Ratification Date	Vote Total	Margin of Victory*
Delaware	7 December 1787	30-0	16
Pennsylvania	12 December 1787	46-23	12
New Jersey	19 December 1787	38-0	20
Georgia	2 January 1788	26-0	14
Connecticut	9 January 1788	128-40	45
Massachusetts	6 February 1788	187-168	10
Maryland	28 April 1788	63-11	27
So. Carolina	23 May 1788	149-73	39
New Hampshire	21 June 1788	57-46	6
Virginia	25 June 1788	89-79	6
New York	26 July 1788	30-27	2
North Carolina	21 November 1789	187-77	56
Rhode Island	29 May 1790	34-32	2

*\*Margin of Victory refers to the number of votes that would have needed to switch sides in order to change the result of the vote.*

The Constitution was officially ratified after New Hampshire’s vote in June 1788. But also take note of the states that had yet to ratify at that point, particularly Virginia and New York. It is unlikely, given the size, influence, and importance of these states, that without their approval any government could function; so that despite New Hampshire’s vote, it is unlikely that the Constitution would have gone into effect until each of these states signed on. Secondly, note the ratification dates for North Carolina and Rhode Island. As indicated above, Rhode Island did not attend the Philadelphia Convention and opposed amending the Articles. By the time it ratified in 1790, we were already into the first Washington administration. On August 8, 1788 North Carolina originally voted to reject the Constitution (184 to 84). So that effectively means, the 9 votes for ratification would have had to come from 11 rather than 13 states. And here the margin of victory totals are telling. Note that if as few as 14 votes (the six in New Hampshire, the six in Virginia, and the 2 in New York) had switched sides, the Constitution would have been

defeated. Also note that if another 22 votes (the 12 in Pennsylvania and the 10 in Massachusetts) had switched sides, in other words 36 votes total, the Constitution not only would have been voted down, but would have been opposed by a *majority* of the states. More importantly, that majority in opposition would have included the 4 most powerful states in the union – New York, Virginia, Massachusetts, and Pennsylvania. All of which gets me to the question with which I began; that is, what did the Anti-Federalists – as those who opposed ratification came to be called – see in the Constitution that made these votes so close? The answer, I think, is found not in what the Constitution included so much as what it omitted.

### **Liberty, Democracy and the Constitution**

If we examine the ratification debates in the various states and look at the Constitution under review, we find that Anti-Federalist opposition focused on two broad areas: liberty and democracy. For instance, Patrick Henry (best known perhaps for his fiery rhetoric supporting the Revolutionary War) was a delegate to the Virginia ratification convention and came out as an ardent opponent of the Constitution. In a passionate address to the convention, he urged his fellow delegates to consider carefully the path they were about to take: “This proposal of altering our Federal Government is of a most alarming nature... you ought to be extremely cautious, watchful, jealous of your liberty; for instead of securing your rights you may lose them forever... If this new Government will not come up to the expectation of the people, and they should be disappointed -- their liberty will be lost, and tyranny must and will arise.” This focus on lost liberty and the threat of impending tyranny was common throughout the ratification conventions. The idea of the Constitution being the basis for lost liberty may be difficult to accept today given the way in which that document and the government it created has developed over the past 200-plus years. Yet Henry’s concern becomes much more understandable when we recognize that the basis for the civil liberties we celebrate is found in the Bill of Rights, which, it bears reminding, was not part of the 1787 Constitution submitted to the states.

The absence of a clear Bill of Rights was especially important given the new power of the government created by the constitution. That is, while it is true that the Articles of Confederation also failed to enumerate individual rights, that omission was of little consequence since real political power rested in the state capitals. And in the state constitutions, the rights and liberties of the people were either clearly expressed in an explicit Bill of Rights or incorporated directly into certain passages within the Constitution. As another Anti-Federalist critic (“Brutus”) pointed out:

in all the Constitutions of our own States; there is not one of them but what is either founded on a declaration or bill of rights, or has certain express reservation of rights interwoven in the body of them. From this it appears, that at a time when the pulse of liberty beat high, and when an appeal was made to the people to form Constitutions for the government of themselves, it was their universal sense, that such declarations should make a part of their frames of government. It is, therefore, the more astonishing, that

this grand security to the rights of the people is not to be found in this Constitution.

Brutus offers a telling critique here in that, as he notes, the Constitutions of the 13 states were drafted either during or just after the Revolutionary War – that is, “when the pulse of liberty beat high” – and in those stressful times leaders in each of the 13 states nonetheless saw fit to include safeguards for individual rights and liberties. Yet in the new crises brought on by the political fallout from Shay’s Rebellion or the economic recession, the men meeting that summer of 1787 in Philadelphia saw no such necessity. Instead, they opted for order over liberty. Indeed, Brutus goes on to note that not only does the Constitution not include any civil liberties, but it directly jeopardizes the rights already included in the state constitutions. Recall the passage from Article 6, Clause 2 quoted above on the supremacy of the national constitution over the state constitutions. If the national takes precedence, and if anything in conflict with the national loses to the national, then it is at least theoretically possible that the national government could expunge the civil liberty provisions in the state constitutions. As Brutus argues,

It is therefore not only necessarily implied thereby, but positively expressed, that the different State Constitutions are repealed and entirely done away, so far as they are inconsistent with this, with the laws which shall be made in pursuance thereof, or with treaties made, or which shall be made, under the authority of the United States. Of what avail will the Constitutions of the respective States be to preserve the rights of its citizens?

This is essentially the same concern articulated by the Pennsylvania Dissenters. If our liberties are defined and protected by our state constitutions, and those state constitutions are subservient to the national constitution and the national government, then our liberties become dependent on the character of the politicians running the national government. For many Anti-Federalists, that was no great comfort and it appeared that the renewed powers of the national government threatened the rights so recently acquired at so great a sacrifice. Writing during the Virginia ratification debates, John Mercer eloquently noted that:

When we turn our eyes back to the zones of blood and desolation which we have waded through to separate from Great Britain, we behold with manly indignation that our blood and treasure have been wasted to establish a government in which the interest of the few is preferred to the rights of the man. When we see a government so every way inferior to that we were born under, proposed as the reward of our sufferings in an eight year calamitous war, our astonishment is only equaled by our resentment.

As we can see in the above quote, among the Anti-Federalists, the liberties *of* the people appeared to be threatened further when they considered the extent to which power

was being taken *from* the people. Recall our discussion of the structure and organization of the new government and note that the only branch with any popular control was the House of Representatives. The Senate, the new Executive Branch, and the new Supreme Court were all beyond the reach of ordinary citizens. Indeed, senators enjoyed lengthy terms of office (6 years), and no elected official was subject to term limits (unlike The Articles of Confederation and many of the state constitutions, such as Pennsylvania's, which included provisions for "rotation of office" as term limits were referred to at that time). The lengthy term of office coupled with the absence of limits on reelection set the stage for a permanent government not unlike the monarchy from which the country had so recently broken free. For instance, Mercy Otis Warren (1788) pointed out that "A Senate chosen for six years will, in most instances, be an appointment for life..." (p. 83). Given our current reelection rates in the Senate (in the 2004 election, 96.2% of those senators who sought reelection retained their seats; 98.3% of the representatives who sought reelection retained their seat), her prediction seems remarkably prescient. She also noted that without any term limit provision, nothing would "prevent the perpetuity of office in the same hands for life; which by a little well timed bribery, will probably be done, to the exclusion of men of the best abilities..." (p. 82) While the use of the term "bribery" may be a bit harsh, given the current status of campaign finance law in this country, this prediction too seems on the mark.

If the situation seemed grim with the legislative branch, it was positively dire with respect to the Presidency. The Electoral College was widely criticized as an undemocratic imposition on the people that seemed to capture perfectly the antidemocratic biases of the men attending the Philadelphia Convention. After all, in supplanting the popular vote with that of the Electoral College in the election of the president, the Constitution seemed to mock the idea of popular control of the government. And the office of the Presidency itself appeared to many Anti-Federalists to be the imposition of a thinly disguised king. For instance, at the conclusion of his lengthy and pointed attack on the presidency, New York Governor George Clinton summarizes the full scope of the president's power and the inevitable result of that concentration of power into the office of a single person:

He is the generalissimo of the nation, and of course has the command and control of the army, navy and militia; he is the general conservator of the peace of the union-he may pardon all offenses, except in cases of impeachment, and the principal fountain of all offices and employments. Will not the exercise of these powers therefore tend either to the establishment of a vile and arbitrary aristocracy or monarchy?

For the Anti-Federalists, the inevitable result of supplanting the Articles with the proposed Constitution would surely be a government that was much the worse for "we the people":

What then may we expect if the new constitution be adopted as it now stands? The great will struggle for power, honor and wealth; the poor become a prey to avarice, insolence and oppression. And

while some are studying to supplant their neighbors, and others striving to keep their stations, one villain will wink at the oppression of another, the people be fleeced, and the public business neglected. From despotism and tyranny good Lord deliver us (Philanthropos, 1786).

Or, as another Anti-Federalist critic put it:

This being the beginning of American freedom, it is very clear the ending will be slavery, for it cannot be denied that this constitution is, in its first principles, highly and dangerously oligarchical; and it is every where agreed, that a government administered by a few, is, of all governments, the worst (Leonidas, 1788).

The combination of a sovereign national government, dominated by the wealthy, with sufficient power to overrule state constitutions seemed destined to end the American experiment to forge a politics devoted to protecting our inalienable rights to life, liberty, and the pursuit of happiness. We would be embarking on the road to that iron handed despotism reducing the bulk of the population to slavery of which the Pennsylvania Dissenters warned:

Now we the low born, that is, all the people of the United States, except 600 thereabouts, well born, do by this our humble address, declare and most solemnly engage, that we will allow and admit the said 600 well born, immediately to establish and confirm this most noble, most excellent and truly divine constitution. And we further declare that without any equivocation or mental reservation whatever we will support and maintain the same according to the best of our power, and after the manner and custom of all other slaves in foreign countries, namely by the sweat and toil of our body. Nor will we at any future period of time ever attempt to complain of this our royal government, let the consequences be what they may. (“John Humble”, 1787)

### **Conclusion: Anti-Federalists and Our Civil Liberties**

As the ratification debates continued to roil the country and as the vote dragged on in the larger states, the Anti-Federalist argument as to the absence of a bill of rights became the rallying cry for those opposed to ratification. Alexander Hamilton, an ardent Federalist, conceded as much, noting that “The most considerable of the remaining objections is that the plan of the convention contains no bill of rights” (Federalist, 84). Indeed, Massachusetts, New York, Virginia, South Carolina, Maryland, and New Hampshire all included in their ratification motions a request (or demand) that a bill of rights be added to the Constitution; and Rhode Island withheld its ratification pending that addition. Although Hamilton (in Federalist #84) argued against the necessity for a bill of rights in part on the grounds that such a listing of rights was unnecessary since it

implied that the government had powers which it did not in fact possess (that is, why include a protection for free press when nothing in the Constitution gives the government the power to regulate the press?), his view did not prevail and in the first session of the first Congress elected under the new Constitution, James Madison, one of Hamilton's co-authors in the Federalist papers and a newly elected representative from Virginia, introduced a proposed bill of rights. Several states introduced their own versions of a bill of rights or specific demands on what rights should be included in such a bill, and both houses of Congress spent the summer of 1789 debating and refining the proposed amendments. On 21 September the House and Senate each approved versions of the bill of rights and on 25 September the proposed amendments were formally sent to the states for ratification. Of the twelve amendments initially included in the package sent to the states, ten were adopted and the Bill of Rights formally went into effect on 15 December 1791. The motivation driving both introduction and approval of the rights, and the specific content of those rights, owed much to the Anti-Federalists and their concerns about the power of the government being created by the Constitution. It was up to the Anti-Federalists to remind supporters of the Constitution why the Revolution was fought in the first place and why such sacrifice could be justified. They reminded the Federalists that the point of government was to protect our liberties and that the Constitution, in its original form, failed in this most important task. And as Patrick Henry astutely pointed out, "Will the abandonment of your most sacred rights tend to the security of your liberty? Liberty, the greatest of all earthly blessing — give us that precious jewel, and you may take every thing else!"