Chapter 6

Toward a More Perfect Union
1783-1788

The struggle following independence

- Each state was its own little country.
- The diversity and independence of each colony becomes a hindrance to national unity.
- Each state had its own vision of democracy.
- Each state had its own currency.
- Most states restricted voting to property holders.

The first constitution, The Articles of Confederation

- Weak central government
- The Federal government had no taxing power; the Federal government had no money.
- The former colonists feared the power they saw abused by Parliament and the king
- States still independent like countries

Transition Incomplete

- The term “American” had only emerged in the 1780’s.
- Before that the term was “continental.”
- Most former colonists primary loyalty was to the state, the former colony.
- The colonies had been in existence for almost a century or longer.

Canada Would Eventually Join

- The former colonists believed the Canadians would eventually join them in the confederation.
- The French that then made up the population of Canada were wary of the colonists.
- The English had granted the French-Canadians rights they had not given colonists.
- The Articles of Confederation had provisions for accepting Canada into the union.
- The word “America” reflects this belief.

Post War Dysfunction

- Virtually every major war has an economic turn down (either recession or outright depression) and a major one followed the Revolutionary War.
- All remedies opposed by states
- Gridlock… no response to crisis
- Regional rivalries re-emerge following the success of the Revolutionary War.

English do not abide by Treaty of Paris— Their View

- The English won’t abandon their forts in Northwest Territory region
- The English believe the U.S. is powerless to enforce Treaty of Paris.
- English arm Native Americans of the region
- English military believes new parliament sold them out – i.e., partisan politics in foreign policy
- Military has support of party out of power

The English View on Post Treaty

- The new U.S. federal government did not reimburse Loyalists who fled to Canada for confiscated property-- many fled under duress.
• No money in U.S. Treasury
• The English were correct that the new federal government was very vulnerable, almost powerless to defend itself.
• England sued for peace for political reasons not military– it was still strong militarily.
• The English people did not want to fight.

The Northwest Ordinance
• To raise money government sells Indian land to settlers.
• England had prohibited expansion into this region– had encouraged Indians to resist.
• Five new states created.
• Land to be sold to common people
• Slavery would be prohibited
• Regions still marked by squares

Shays Rebellion
• Farmers revolt protesting taxes
• Troops called out to suppress revolt
• Right to bear arms was not right to revolt
• Outcome seen as necessary but tragic
• Gen. Washington said: A redress them...employ the force of government against them at once…”
• The grievances were legitimate, but not the revolt; rule of law verses rule of the gun.

The Political Environment
• Most acknowledge that the Articles of Confederation was not working
• But not unanimous; state loyalties still very strong; very wary of a strong federal authority
• A weak central government was not practical
• Two visions of government emerge; i.e. state authority verses federal authority.
• A debate that haunts us even today

Writing a Second Constitution
• Madison and a small circle of associates believed the Articles are totally unworkable.
• “If it were up to James Madison, the convention would make a second revolution.” (Berkin, p. 30)
• Some delegates come thinking they are merely repairing the Articles.
• Those who reject federalism stay away from convention– meeting unrepresentative.

George Washington’s Presence
• In an age of strong regionalism and no national media, he is the only national figure.
• He comes to the convention in favor of a strong national government.
• During the war he had traveled extensively.
• He knew the new nation was vulnerable to English attack, which did eventually come.

Convention Delegates
• “Although many of the men were strangers to one another, they could see quickly that they shared much in common. They were men of wealth and comfort – landowners, slaveholders, lawyers, merchants, land and securities speculators, and an occasional doctor or clergyman – men with a near monopoly on formal and professional training in a predominantly agrarian society.” (Berkin, p. 49)
Wise Men of the Convention

- “A dozen men emerged as the critical participants in the convention, shaping the debates, igniting the controversies, and proposing the compromises that made a new constitution possible. Madison was... one of them. Hamilton... was another. Benjamin Franklin, as the grand old man of the Revolution, was a third, although the convention gave the doctor more respect than actual authority that summer.” (Berkin, p. 51)

The Nationalist’s Coalition

- “By the time the convention got under way, a solid nationalist coalition of Washington, Madison, Robert Morris, Gouverneur Morris, and the venerable Benjamin Franklin had been created.” (Berkin, p. 37)
- Washington, Madison, and Franklin were among the elite who had forged the Revolution.
- Without these five men there would have been no new Constitution, no new government.

Benjamin Franklin

- Co-author of the Declaration of Independence.
- Negotiator at the Treaty of Paris settlement.
- Now in his 80’s, an icon of the Revolution.
- Critical role in nation’s founding has been unfairly diminished by Jefferson and Washington’s near mythological reputation.
- Franklin’s extravagant life-style and rejection of religion result in reduction of his real story.

Franklin & The Treaty of Paris

- The English were outsmarted in the negotiations by Franklin, Adams and company—English thought they were better negotiators than the Americans.

Franklin’s Work was Critical

- “He (Franklin) negotiated critical loans of both money and supplies, won French recognition of American independence, and later, as one of the peace commissioners, outfoxed the overconfident English and European diplomats at the Paris talks.” (Berkin, p. 38)
- Jefferson, whose reputation had yet to be tarnished by personal scandal, was in Paris at the time of the Constitutional Convention.

Alexander Hamilton

- “Although still a young man, Hamilton was widely acknowledged by friends and enemies alike as exceptional.” (Berkin, p. 40)

Hamilton’s Views

- “But the most disturbing Hamiltonian stance was his complete disregard for state sovereignty and his willingness – indeed his eagerness – to see the states reduced to little more than functional departments in a national political structure.” (Berkin, p. 42)
- “As an immigrant, Hamilton lacked any ties to a particular region that might have qualified his devotion to the American nation in its entirety.” (Lind, p.3)

Hamilton as a Visionary

- “Hamilton’s support for a commercial and industrial economy clashed with Jefferson and Madison’s vision of a primarily agrarian society...” (Berkin, p. 220)
- He is considered by many to be the father of the U.S. banking and financial system
• Believed in a strong national bank.
• the founder of the U.S. Coast Guard

Hamilton’s Life
• Born on the Caribbean island of Nevis.
• Illegitimate son of Scottish merchant & English-French mother; raised by brother.
• A personal military aide to Gen. Washington.
• Co-author of the Federalist Papers as Publius.
• First Secretary of the Treasury
• Seen as extremely ambitious & egocentric.
• He will be killed in a duel with Aaron Burr.

Gouverneur Morris
• “He scandalized the convention’s proper New Englanders by his open philandering, although he won the admiration of the more worldly New Yorkers and South Carolinians…” (Berkin, p. 53)

First Vision: Strong federal government
• Called the Federalist, nationalist or continental position
• Suppresses regional diversity.
• Becomes too powerful.
• Rights hindered by outside values.
• Theoretically, less democratic the more national the representation.

• Called the anti-Federalist Position
• No national civil rights policy
• Federal Aviation Administration
• What if each state had its own airplane regulation, designations, policies
• Federal Communications.
• This debate will lead to the Civil War.

The Convention Debate
• The tensions between the nationalists and the states’ rights advocates would play out in the debates over each branch of government.
• Fear that the federal government would become too powerful was transferred to the specifics of fearing which branch of government would dominate.
• The debate was constant and sometimes bitter

Consensus on Some Points
• “There was a consensus on only one thing: A new and more effective central government was essential.” (Berkin, p. 71)
• One reason for the consensus: “But few men who opposed drastic change had bothered to come at all.” (ibid)
• Had there been modern polling the U.S. Constitution might never have been written.

Original Intent
• Conservative politicians and jurists talk about original intent, but that’s illusive, unattainable.
• “They spoke as defenders of popular will on one issue and as guardians of elite judgment on the
next. They voted to enhance the powers of the central government on a Monday and to protect the
sovereignty of the states on a Tuesday. They reaffirmed their nationalism and then doggedly
defended the interests of their region.” (Berkin, p. 77)

**Compromise Evident Everywhere**

• The wording of the Constitution is reflective of the debate at the Convention.
• Measures adopted reflected practical compromises between competing positions.
• Ideologues often quote the uncompromised positions as a means of interpreting intent.
• The biases of the convention delegates are evident throughout the document.

**Convention Delegates’ Biases**

• In discerning “original intent” the prejudices of the time must be considered as context.
• Their views based on knowledge of the time
  – African-American slaves were human but somehow inherently inferior, childlike.
  – Women were like property for men.
  – Psychiatry as a science did not exist.
  – Only in isolated cases could doctors prevent death.
  – Science is lacking all discoveries yet to come.

**The Rights of Men**

• All believed in the “rights of man.”
• Most believed it only applied to the elite males.
• Virtually all believed it did not apply to women
• Even those who believed slavery was immoral did not believe African Americans equal.
• There was only one Synagogue in America.
• Few priests to enable Catholics to practice.

**Delegates’ Fears**

• “‘I am apprehensive,’ wrote the normally optimistic Ben Franklin, ‘that the Government of these
States, may in future times, end in a Monarchy. But this Catastrophe I think may be long
delayed...’” (Berkin, p. 79)
• “Few delegates underestimated the difficulties that lay ahead.” (Berkin, p. 76)

**The Fundamental Question**

• “Unless the delegates could agree on the form the legislature would take, its powers in relationship
to the state legislatures, who that legislature would represent, and how its members would be chosen
to serve – unless all this could be resolved, the nation would be in more danger than it was under the
Articles of Confederation.” (Berkin, p. 75)

**Crossroads in the Debate**

• “If the convention split, if delegations abandoned their tables and returned home, if the
Confederation continued to oversee the demise of the nation, the death of the nationalists’ hopes
would undoubtedly come from the debate over the legislature. (Berkin, p. 80)
• The delegates were tiring of the debate.

**Madison the Architect**

• Madison crafts a compromise to save the cause for the nationalists.
“In the Virginia Plan, he (Madison) relied on the diffusion of power among three branches – legislative, executive, and judicial – to thwart that temptation to tyranny.” (Berkin, p. 73)

“With a surgeon’s skill, Madison had cut the most important branch in half, creating a bicameral congress.” (ibid)

**Convention Secrecy**

“While the delegates took their seats, the doors were locked, the windows closed, and the guards took up their posts around the statehouse.” (Berkin, p. 79)

How do we discover original intent beyond what was actually said when there was so much secrecy at the convention?

We have only Madison’s notes as a source.

**Limited By Experience**

“...The executives that they (the convention members) knew before independence were, after all, a tyrannical king and a long parade of his royal governors. Most delegates still carried scars of struggles for control between king and colonists and between governors and assemblymen…’” (p. 83)

**Many Royal Governors Corrupt**

“Many a royal governor, either a novice bureaucrat or a man in the twilight of his career, had brazenly demanded bribes for concessions to local interests or rewards for their compliance in ignoring the king’s instructions.” (Berkin, p. 83)

**Checks and Balances Principle**

‘The branches had to be able to cooperate, but they also had to be able to restrain one another. The tools of restraint given to one branch depended upon the dangers inherent in the powers given to another.” (Berkin, p. 83)

When all three branches of the government are part of a disciplined political alliance, does this principle work?

**The Debate Shifts Focus**

“On June 9 the convoluted and inconclusive discussion on the executive had petered out, and the delegates moved to the heart of the matter: Who would be represented in the lawmaking branch, and how?” (Berkin, p. 96)

Compromises spawned by fatigue and general longing to return home.

**Federalists’ Strength Grows**

“Slowly but surely, Madison, Hamilton, Gourverneur Morris, and James Wilson – the central figures in the do-or-die nationalist circle – had drawn the Pinckneys and Rufus King into their embrace, and by the time the committee of the whole began its confused efforts to sort out the executive branch, a solid bloc of Virginia Plan advocates had been created from Massachusetts, Pennsylvania, Virginia, the Carolinas, Georgia – and Hamilton.” (p. 97)

**Madison The Artful Politician**

“Fortunately for the nation, the framers were accomplished politicians.” (Berkin, p. 98)

The art of compromise has been lost in recent years with the emergence of a process dominated ideologues who believe their opponents are evil or stupid, or both.
What is America a Union of?

- Is America a union of states as is implied by the name “United States”?
- Is it a union of people as is implied by the opening line of the Constitution: “We the People of the United States…”
- The Confederation, and later the Confederacy in 1860, both claim it is a union of states.

A Compromise is Forged

- “…Sherman, Paterson, and their colleagues from Delaware and the large-state renegade, New York, hammered out a compromise proposal: a bicameral congress, one house based on proportional representation, the other ensuring equal representation for the states. There was nothing new in this Connecticut Compromise. In fact, Roger Sherman had proposed something remarkably similar to the Continental Congress in 1776.” (Berkin, p. 103)

Protecting the Rights of An Elite

- “Morris’s bald assertion that America did indeed have an economic and social elite and that its intentions were, if natural, still predatory sat badly with the delegates. Even Madison, who would defend the rights of this elite minority against the envy and passions of the less prosperous majority in his Federalist #10, cringed at so naked a description of his own social circle.”

Is This What “Original Intent” Means?

- When modern conservatives speak of “original intent” are they referring to this view of the Founders, which was not articulated?
- It was the principle in protecting Slavery.
- The right of a social elite to own other humans who will work for nothing.
- Some Founders were uncomfortable with this concept, but supported it nevertheless.

Slavery Unchallenged

- “It was not a debate over the continuation of slavery or over the three-fifths formula for including slaves in the population base for the House, for neither of these issues was especially controversial. The Confederation had operated on the three-fifths formula, and, arbitrary though it was, it was familiar enough to the delegates to be acceptable.” (Berkin, p. 113)

Slave Trade To Continue

- “The southern delegates, especially those from South Carolina, wanted the convention’s assurances that the slave trade could continue, at least for some time, and that African or Caribbean blacks brought to America would be considered taxable imports.” (Berkin, p. 113)
- South Carolina, the state most controlled by slave owners; largest slave population.

South Carolina in Race History

- The first to secede from the Union.
- The Confederate state where the Union is first overtly attacked at Fort Sumter.
- In 1948, South Carolina’s Governor Strom Thurmond, leads a “Dixiecrat” revolt at the Democratic National Convention.
- Senator Thurmond leaves Democrats for the Republican Party initiating a trend.
Compromise Takes Hold

- “The Great Compromise, as the vote on July 16 came to be called, ushered in a new spirit at the convention. It became clear that men were tired and missed their families and their own beds.” (Berkin, p. 114)
- Tired of the debate, the delegates, knowing that a solution must be forged, turn to compromise as a means of solving problems and arriving at consensus.

Committees Take Over

- “Increasingly, the convention preferred to send thorny problems and even potentially troublesome ones to committees where compromises could be worked out. And increasingly they relied on committees to fill in the details of their grand design.” (p. 114)
- This is the model that Congress will adopt for most of its future work; it continues today.

Who Could Choose the President

- “As the weary delegates soon realized, they faced a double dilemma: Who could they trust to choose the president, and what could they trust the president to do?” (p. 116)
- This will be the fundamental question which results in the creation of the Electoral College which has the results that on three occasions someone was elected without a popular majority; Samuel J. Tilden (D) in 1876, Grover Cleveland (D) in 1888, and Al Gore (D) in 2000

Fatigue Takes Its Toll

- “The delegates had been cooped up in a locked room for over a month and a half, listening to one another argue, bicker, and drone on about matters large and small, and everyone’s patience was wearing thin.” (Berkin, p. 116)
- Quite simply put the delegates were growing tired of the debate & conflict.
- Many of the “enlightened” compromises were the product of fatigue and loneliness.

Hamilton No Longer A Force

- “Hamilton’s absence was less deeply felt by other nationalists at the convention. In truth, he had ceased to be a major force at the convention on June 18 when he had present his own plan for a new government.” (Berkin, p. 118)
- Hamilton was known to be brilliant, but his reputation was that he had an enormous ego, which hindered his effectiveness.

President’s Role Evolves

- “Before the month was over, delegates had begun to talk of the president as the representative of the people and as the people’s guardian against legislative hubris.” (Berkin, p. 120)
- Though the delegates would have been shocked to see how powerful the president would become, they laid the groundwork.

Contradictory Desires

- Throughout the deliberation at the Convention, they wanted conflicting principles to dominate simultaneously.
- They don’t want the legislature to be too strong, but they don’t want the president to be too powerful either.
- Only one delegate anticipated the strong alliances that emerge in political parties.
Elbridge Gerry

- As Governor of Massachusetts he would gain renown for his efforts to draw political boundaries that favored his political party, *gerrymander* is now a verb in the English language.

Predicting Partisan Politics

- Gerry said: “If the people elect the executive, any organized group that draws together men from across the nation will be able to control the outcome.” (p. 122)
- Though Gerry’s prediction would become true, the question becomes “what would be the alternative?” The multi-party system?
- In Europe, there is chaos in multiple parties

Morris’s Faith in the People

- “An aristocrat through and through, Morris seemed nevertheless to be one of the few men with confidence in the people’s judgment. ‘If the people should elect,’ he assured the convention, ‘they will never fail to prefer some man of distinguished character, or services; some man, if he might so speak, of continental reputation.’” (Berkin, p. 122)

Delegates View Election Flaws

- “The fatal flaw in a popular election – the lack of familiarity with men outside the voter’s native state – was a matter of practical circumstance rather than an intellectual or moral defect.” (p. 126)
- Though in the future electronic media would change this, now “crafting” the image of the candidate is the problem.

Washington Remains Neutral

- “With Washington presiding and thus unwilling to enter into the discussions, Madison found himself distressingly alone, the sole committed nationalist and the only advocate of a ‘president of the people’ in his delegation.” (Berkin, p. 130)
- Washington’s contribution was his “symbolic” presence, absolutely critical.

Constant Revision

- “For the next five weeks, the convention picked apart and revised virtually every clause of the committee’s handiwork on virtually every aspect of the new national government.” (Berkin, p. 131)
- “What had prompted this outpouring of frustration and anger from the members of the committee was the return to the mire of the presidential debate.” (Berkin, p. 132)

Fear of Tyranny & Corruption

- “Despite all the efforts to bolster the independence of the executive branch and to protect it from the malicious control of the Senate, the delegates remained haunted by member of a tyrannical king and abusive governors who held office at the pleasure of the king. Section 4 insures that the Republic would not have to resort to revolution to remedy the abuse of power. Indictment, trial, and conviction put the president *within* rather than *above* the law.” (Berkin, p. 153)

Subtle Changes in Power

- “Although they were not willing to deprive Congress of its power to select the president, the delegates did vote to reduce its power to overturn a veto. The reversal process now required the support of three-quarters rather than two-thirds of the legislators.” (Berkin, p. 133)
- A subtle change which strengthens veto.
Compromises Forged in Frustration

- When conservatives discuss the desire to discover “original intent” they often omit a thorough analysis of the quality of the debate on specific issues, or specific sections of the document.
- On some sections the debate was thorough, while on other sections the compromises were made for other reasons.

One Such Flawed Compromise

- “To the outrage of several, the delight of a few, and the surprise of the entire convention, the committee had decided to endorse the popular election of the president through state electors. Their proposal read like a patchwork of several suggestions that had surfaced over the summer.” (Berkin, p. 137)
- Was there thoughtful, deliberative debate?

Unintended Outcome?

- Would the delegates to the Constitutional Convention have approved the Electoral College had they known that it would produce presidents who would win the electoral vote but lose the popular vote?
- They did not approve the hybrid election system we have now, they saw electors as being selected by state legislatures.

Where Did This Electoral College Compromise Originate?

- “Several years after the convention, John Dickenson claimed full credit for the creation of the electoral college.” (p. 139)
- “Dickenson may have proposed the electoral college on that September afternoon, but the idea itself belonged to James Wilson…” (p. 140)

Why Had Wilson Proposed It?

- “…James Wilson, who had patiently, persistently argued for some form of popular participation in the choice of the national executive since early June.” (Berkin, p. 140)
- So an instrument intended to increase popular participation in 1787, in 3 modern elections has gone against popular choice.

Conflicting Claims

- “Despite Dickenson’s later claim that a concern for the people’s confidence had motivated the committee, Morris made no mention of this. Instead, he focused on the convention’s bedrock fear of abuse of power, conspiracy, and corruption.” (p. 140)
- How do we discover original intent when delegates’ recollections are contradictory?

Impeachment Debate

- The delegates feared that the president would be corrupt in his powers.
- If he resorted to bribes or subversion of legal authority like the colonial governors they should have a means of removal.
- With men among the delegates who were unfaithful to their wives while in Philadelphia they did not envision this as grounds.

Confusion in Word Meanings

- “At George Mason’s suggestion they added ‘high crimes and misdemeanors’ to ‘treason and bribery’ as grounds for impeachment.” (Berkin, p. 146)
- In 18th century American English “misdemeanors” did not mean what it does today. Languages always are evolving.
• Now it means “minor offense.”

**Impeachment & Original Intent**
• "impeachable offense is whatever the majority of the House of Representatives considers it to be at a given moment in history." (1970, Gerald Ford, Republican Minority Leader, House)
• This modern interpretation is not consistent with “original intent.”
• Selective use of “original intent.”
• The impeachment clauses were created to deal with crimes unique to an executive, or unelected officeholder, such as abuse of power; not petty crimes like adultery and perjury & not philosophy.

**Presidential Powers To Grow**
• “The president’s powers were situational, potential, and dependent upon historical developments that the convention delegates could not be expected to predict or even imagine. Many of those powers were crisis-driven: In case of war, he would command the military operations; to prevent war, he could send diplomats to negotiate treaties.” (Berkin, p. 147)

**America’s International Role Changes**
• What the Delegates to the Convention will not foresee it that America will become an international power.
• Much less the most powerful country in the world with no equal.
• Presidential power will grow with the growth in the power of America.
• Domestic power grows with international.

**Morris Edits the Wording**
• “In his revision Morris captured perfectly the nationalist vision of a supreme central government capable of knitting together a sprawling country and of overcoming the petty divisions among its competitive states.” (Berkin, p. 150)
• In doing so, Morris artful tone, added certitude where there had been question.

**Morris’ Editing Was Significant**
• Many politicians and some jurists allude to the “original intent” as evidenced in the wording of the Constitution. Yet some of the vague wording is reflective of the compromises that were essential to the passage of the document at the convention. The tone of the Constitution obscures the many disagreements and resulting compromises.

**Ultimately The Legislature Prevails**
• “Despite the plague of suspicion about Congress’s excessive power that had swept through the convention in July and August, the Constitution confirms that the delegates’ greatest faith lay in the nation’s legislative branch.” (Berkin, p. 151)
• In modern times, for the president to have excessive power Congress must give it up.

**Congress Will Dominate**
• “... the Constitution gives the legislature permission to ‘make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers’ – a leap of faith to accommodate the unforeseen by men rarely given to such trust.” (p. 152)
• Congress’s sweeping powers are only constrained by veto, and judicial review.

**President as National Symbol**
• “In the end, his greatest strength may have come from the nature of his selection: the popular election of the president, indirect though it was, made it possible to see him as a symbol of the nation itself.” (p. 154)
• Is this strength compromised by the uncommon situation of the president loses the popular vote but wins the electoral vote?

**Incentives to Compromise**

• “They knew how perilously close to dissolution the convention had been during the struggle over proportional representation in Congress, and they knew how convoluted their reasoning had often been on the election of the president.” (Berkin, p. 155)

• How do political theorists discover original intent in this historical setting?

**Imperfect Solution**

• “The desire to make corrections, additions, and deletions seemed spent. Yet the delegates sensed that a perfect accord had not been reached. Few delegates were surprised when Edmund Randolph rose to declare that he could not endorse the Constitution.” (Berkin, p. 160)

• The delegates were simply growing tired.

**Great But Not Perfect**

• “Perfection could not be achieved, in Franklin’s view, no matter how many conventions were called. And this is why the work of the delegates gathered in Philadelphia was so admirable. They had produced a near-perfect system of government that Franklin was confident would ‘astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel,’ and that ‘our States are on the point of separation, only to meet hereafter for the purpose of cutting one another’s throats.’”

**The Constitution is Signed**

• “On Monday, September 17, sixteen weeks after the convention began, the delegates gathered to hear the secretary, Major William Jackson, read the engrossed Constitution.” (Berkin, p. 162)

• Only recently has September 17th emerged as a day of reflection and celebration. A day to study the document.

• It should equal that of the Fourth of July.

**The Difficult Road Ahead**

• With the Constitution now signed by most of the delegates the second significant challenge lies ahead.

• The Constitution must be ratified.

• It must be approved by the people.

• There were powerful opponents who had refused to even attend the convention.

• The process would be perilous.

**Epilogue**

**Ratification of the Constitution**

**1787-1789**

**The First Assault on The Constitution**

• The signed document was sent to the Confederation Congress.
• Congressman Richard Henry Lee of Virginia tried to smother the agreement with multiple amendments.
• He was overruled.
• He will die shortly after this transpired.

**States Could Opt Out**
• Article 7 required the approval of nine states to become law.
• States that did not ratify the document could remain independent.
• Or the disapproving states could form their own alternative union.
• This will be the principle that leads to the eventual creation of the Confederacy.

**The Delegates Were Exhausted**
• “A few, like the irrepressible Gouverneur Morris, were already making plans to flee political life for what they considered a much-deserved vacation. Most of the delegates... were steeling themselves for the next phase of the constitutional struggle; ratification of ‘the plan’ by their home states. ” p. 169

**Ratification Not Guaranteed**
• “Unless nine states approved the Constitution, the long months of debate, argument, negotiation, and compromise would prove futile, and the crisis brought on by an incompetent government would continue. Could they rally the support they needed? No one knew.” (Berkin, p. 169)
• Delegates were unsure it would pass.

**Even Washington Unsure**
• “‘The Constitution,’ George Washington wrote somberly to his old friend Henry Knox, ‘is now before the Judgment Seat.’ For him, and for all the Federalists the question was: would nine states ratify?” (Berkin, p. 171)
• Washington’s support was essential, though he mostly worked behind the scenes.

**Madison Manages the Campaign**
• “Madison felt confident that Delaware, New Jersey, and Connecticut would ratify. As for Rhode Island– few veterans of American postwar politics were surprised when the legislature of Rogue’s Island voted not to hold a ratifying convention at all.” (p. 172)
• The importance of his contribution is not always recalled adequately by Americans.

**Virginia & NY Are Problems**
• Ironically, the greatest danger lay in the home states of the two men most intimately associated with the new plan of government. In Madison’s Virginia, a fierce contest was brewing, as powerful and influential men began to publicly denounce the Constitution. And in Alexander Hamilton’s New York, the nation’s only genuine party machine, the Clintonites, were already mounting an organized campaign of opposition.” (p. 172)

**Federalists vs. Anti-federalists**
• The debate for approval of the Constitution becomes known as a political battle between Federalists and Anti-federalists.
• Madison, Washington, Franklin and those who pushed for a strong central government will be known as “Federalists.”
• Those who favored retaining strong states’ rights will be called “Anti-federalists.”
Some Prominent Delegates Opposed Ratification
• “(George) Mason remained firm in his resolve to oppose the Constitution, although he knew he would pay a high price for his apostasy. His ‘Objections to the Constitution,’ first scribbled on the back of his copy of the plan, was already circulating Philadelphia.” (Berkin, p. 170)

Confederation Congress Must Approve Constitution
• “A copy of the Constitution and Gouverneur Morris’s brilliantly politic letter were already on their way to the Confederation Congress. Once Congress accepted this report from the Constitutional Convention, state legislatures were expected to call for the election of delegates to special ratifying conventions. At these conventions the Constitution would be approved— or rejected.” (Berkin, p. 171)

Debate Has Class Overtones
• “Antagonism between the elite and the poorer classes was as old as America itself, and in almost every state, long-standing divisions between the privileged class that the convention delegates represented and the struggling people of the backcountry reappeared in the battle over ratification.” (Berkin, p. 172)
• Class has always been part of US politics.

Geographic Patterns of Support
• “In western counties of Virginia, Pennsylvania, or Massachusetts, voters were certain to elect delegates who shared their deep-seated distrust of merchants, tidewater planters, and lawyers, the ‘very influential men’ Hamilton described.” (p. 173)
• Frontier people feared loss of liberty.

The Poor Trust The Wealthy
• “The backcountry men and women would depend in great measure upon champions who were from the same social class as the nationalist leadership. In many cases this proved their undoing.” (Berkin, p. 174)
• Throughout US history those of lower classes have trusted wealthier champions to advocate for them, most of the time they have been disappointed by such leaders.

Federalists More Experienced
• “From the beginning the supporters of the Constitution did have one advantage: a political savvy born of experience.” (p. 174)
• Because the Anti-Federalist had boycotted the constitutional convention they had not thought through the arguments to the degree the Federalists had.
• They were also far less organized.

Pro-Ratification Political Spin
• “Perhaps the nationalists’ most brilliant tactic in the battle of ideas ahead of them... was their decision to call themselves ‘Federalists’ and their cause, ‘Federalism.’ The men behind the Constitution were not.. federalists at all. They were advocates of a strong national government whose authority diminished the independence of the states. Their opponents were the true federalists...” (Berkin, 175)

An Indefensible Position
• “The Anti-Federalist suffered from more than the damaging misnomer. In most states they found themselves on the defense, urging voters to be loyal to a government they conceded was in need of repair. Indeed, many confessed they wanted a new government; they just didn’t want the government the convention was proposing.” (Berkin, p. 175)

Conspiracy Theories
• “What Anti-Federalists did share was a pervasive suspicion, a belief that the Constitution was the end product of a carefully laid conspiracy by a cabal of ambitious men.” (Berkin, p. 176)
• Simplistic & sinister conspiracy theories often supplant the factual realities of those who are uninformed or marginalized.
• Sometimes there are conspiracies.

Ratification Politics as Mean-spirited as Modern Politics
• “At their worst, both sides resorted to name-calling and labeling; ‘consider the source’ was the central message of many of the central message of many of the pro and anti diatribes.” (Berkin, p. 177)
• The harsh and slanderous overtones of current partisan politics is not new.

Some Criticism Legitimate
• “Substantive criticisms of the Constitution did emerge, of course, many of them echoing the concerns of the convention delegates themselves.” (Berkin, p. 177)
• Many of the delegates who had expressed dissent at the convention, went home and made convincing arguments there.
• Some did not become active opponents.

Washington Assumed to be First President
• “The explanation for this lack of controversy is simple: George Washington. Like the Federalists, the Anti-Federalists were confident Washington would be the nation’s first president if the Constitution was ratified. And like their opponents, the revered him.” (Berkin, p. 178)

Delaware Ratifies First
• “Although Pennsylvania had rushed to convene its convention in November, it was Delaware who won the honor of ratifying the Constitution first.” (p. 182)
• This is why Delaware calls itself the first state, even until today.
• Delaware did not have a frontier region as did most of the other states.

Pennsylvania Divided
• “The two preexisting state parties – one representing urban and commercial interests, the other western, rural interests – had quickly chosen sides on the issue of the new government. The urban, and now Federalist, forces controlled the Pennsylvania legislature, and they naturally hoped to take advantage of their position while they still held a majority.” (p. 182)

Will Massachusetts Ratify?
• “Madison was keenly aware of the importance of the Massachusetts vote. Anti-Federalists forces were strong in North Carolina, New York, and Virginia, and were gaining surprising strength in
New Hampshire. These states would be deeply influenced by the decision of the Massachusetts convention.” (p. 183)

**The Legacy of Shays’ Rebellion**
- “When the (Massachusetts) delegates met on January 9, the spirit of Shays’s rebels was evident. Western hostility to Boston merchants translated into western opposition to the Constitution.” (p. 183)
- The story of Shays’ Rebellion is rarely told as reflective of a class struggle for economic justice during the years after the Revolution.

**Class Struggle & Ratification**
- “Massachusetts Federalists fought fiercely but unsuccessfully to gain control of the convention. Class-based attacks on the supporters of the Constitution had proved highly effective in the elections.” (p. 184)
- What is often portrayed in history textbooks is that the conflict was geographic, it was, but it was primarily class based.

**Federalists Play Dirty Politics**
- “When Massachusetts Federalists realized that the Anti-Federalists held a small majority, they worked hard to woo some of these delegates to their cause. The ethics of their tactics were often questionable. They warned the poorer delegates, for example, that they would not be reimbursed for their expenses unless the Constitution was ratified.” (Berkin, p. 184)

**Experience Triumphs**
- “But the Massachusetts Federalists succeeded, in the long run, because they were superior debaters, more prestigious citizens, and had greater skill in political settings.” (Berkin, p. 184)
- Again, the experience at debate and political maneuvering at the convention works in favor of the Federalists.

**New Hampshire Delays Decision**
- “New Hampshire proved him (Madison) terribly wrong. Many delegates arrived at the convention bound by instructions from their communities – and those instructions were to vote ‘no.’” (Berkin, p. 185)
- The state simply had a larger region that was comprised of small farmers did the states that had a large merchant class.

**The NH Delay Helps Opponents**
- “In Virginia George Washington had greeted the news of the New Hampshire postponement with dismay. It lent encouragement to the Virginia Antis and to the New York opposition as well.” (p. 186)
- If the Anti-Federalists could cause the Federalists to fall short they could seek further concessions at a new convention.

**“Publius” to the Rescue**
- “The only bright spot seemed to be the public response to the series of essays by ‘Publius,’ … These essays carefully and effectively addressed every aspect of the Constitution, anticipating objections and provided cogent rebuttals to them. Although the authorship was anonymous, most of
Madison’s correspondents knew that the essays were the work of John Jay, Alexander Hamilton, and Madison himself.” (p. 186)

**The Federalists Papers**
- In 1788, Hamilton, Madison, and John Jay write 85 essays supporting their position.
- They are published in New York City newspapers.
- The essays receive wide distribution outside the New York City region.
- The essays eloquently and rationally lay out the reasoning for the Constitution.

**Virginia Ratification Critical**
- “By the time the Virginia convention met, both Maryland and South Carolina had – as hoped – ratified the Constitution.” (p. 187)
- “The city of Charleston (South Carolina), where the convention met, was unabashedly, even noisily pro-Constitution, and this may have dampened the opposition further. When the vote came, it was 149-73 in favor of ratification.” (Ibid.)

**One More State Needed**
- “Eight states had accepted the new government. Although Virginia Federalists hoped that their state would be the ninth pillar of the federal temple, that honor went to New Hampshire. Reconvening in June, the New Hampshire convention voted 57-47 to support the Constitution.” (p. 187)
- Though Madison was the architect of the process he had trouble delivering Virginia.

**Pattern of Approval**
- The closer one lived to the Atlantic coast the stronger the support of approval.
- Delaware first to approve.
- North Carolina & Rhode Island reject it.
- New Hampshire delays decision.
- In many instances approval was contingent on changes that were to become the Bill of Rights; i.e., First 10 Amendments.

**Two States Divided**
- New York City threatens to secede from New York State if upstate voters reject it.
- First evidence of a political & philosophical divide still a major part of New York politics
- Massachusetts divided between the eastern half supporting ratification and the western half opposing it.
- That’s similar to Massachusetts today.

**The Bill of Rights**
- The original Constitution did not have a Bill of Rights enumerated (i.e. written out).
- Federalists thought that each of the states would establish their own listing of individual rights separately & independently.
- Strategic error; gave strength to opponents
- The Anti-federalists’ fear was what Madison had called the “Tyranny of the Majority.

**New York’s Approval Critical**
- “All eyes turned to New York. Although the new government was technically a reality, few people believed it could succeed without both Virginia and New York within its fold.” (Berkin, p. 188)
• Though the Constitution was now ratified, New York’s geographic position and its importance as a trade center made approval there absolutely essential.

Hamilton Campaigns For Passage
• “The unchallenged leader of the Federalist campaign in New York was Alexander Hamilton. The chief author the ‘Publius’ essays and the mastermind of the Federalist strategy at the state convention, Hamilton worked tirelessly to devise tactics that would snatch victory from the jaws of the Clintonites.” (Berkin, p. 188)

New York Ratifies
• “Faced with the news of Virginia’s decision and fearing that Hamilton and his urban Federalists might make good their secession threat, the Anti-Federalist majority bent to the will of the minority. By a vote of 30-27, New York joined the Union.” (Berkin, p. 190)
• Ratification had succeeded and most important states had joined-- success.

North Carolina & Rhode Island
• North Carolina rejects Constitution 30-27.
• Reverses itself in November 1789.
• Rhode Island does not ratify the Constitution until March 1790.
• Congress had been convened already
• Washington had been sworn as president
• At this point in history the presidential inauguration was in March not January.