New Beginning: Government Under the Constitution

In 1789, less than a decade after adopting the Articles of Confederation, the American people were called upon to scuttle the old and to form a new and strikingly modified government under the Constitution. There were no guidelines or historical examples to support the conviction that a republican form of government could succeed. Indeed, there were pessimists, both within and without the country, who thought the experiment would end in dismal failure. Two centuries later, we celebrate a form of government which is stable and flexible, one which provides justice, service and liberty to its citizens far beyond the framers' imagination!

Official announcement that New Hampshire, the ninth state, had ratified the Constitution was made to the Confederation Congress on July 2, 1788, by the states' delegates in Congress. The Constitutional Convention had been specific in its resolution detailing the procedures necessary for the new government to become operative:

... as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected. That the Electors should meet on the Day fixed for the Election of the President, and should transmit their votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

The Confederation Congress spent more than two months debating before issuing a call to the states for elections necessary
to put the new government in motion. The delay was, in part, a waiting game for action of North Carolina, and particularly New York, on the Constitution and a sectional struggle over the temporary site for the new government. Contest for the temporary capital mainly revolved between New York City, then the seat of government, and Philadelphia, although Wilmington, Lancaster, Baltimore and Annapolis were considered. New York could only be considered if the state ratified. This delay tried the patience of a watchful nation. Finally, on September 13, 1788, New York City was selected as the temporary site and Congress passed an election ordinance for the first Federal elections.

Several actions were necessary for the ratifying states to place the new government in operation. The first order of business was choosing presidential Electors. Congress stipulated January 7, 1789 for this action. The method of electing presidential Electors was the responsibility of the states. The Constitution gave each state the number of Electors equal to the sum of its representatives and senators. February 4, 1789 was designated as the day Electors would cast their ballots in the states.

Senators and representatives had to be appointed and elected. Each state was entitled to two senators. Pending a national census, Article I. Section 2 of the Constitution specified the initial number of representatives (counting slaves as "three fifths of all other Persons") based on an estimate of the state's population: New Hampshire three, Massachusetts eight, Rhode Island one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The elections were vital for the establishment of the new government. The Constitution provided only a vaguely defined skeleton; legislation by the First Congress was necessary to convert the framework into active institutions. Departments had to be created by legislative enactments. A judiciary had to be organized and empowered and urgent provisions for the levying and collection of taxes had to be made.

The Federalists and Antifederalists transferred their political rivalry from ratification to the first elections without visible pause. Amendments to the Constitution, either in a second convention or by Congress after the formation of the new government, was a
major campaign issue in Pennsylvania, Massachusetts, Virginia, and New York. The campaign was also enlivened by the injection of old political issues and divisions. Personalities and previous records of candidates were a factor. The elections extended from September, 1788, through August, 1790. The two laggards, North Carolina and Rhode Island, finally elected representatives in 1790. The Federalists won a comfortable working majority in both houses of Congress.

There was no uniformity in these first elections for presidential Electors in the states. Four states held popular elections, two combined popular nominations and legislative elections, three elected Electors by legislature, and in New Jersey they were chosen by the Governor and Council.

The Constitution stipulated that state legislatures should elect senators. The contest for senators did not seem to attract much attention. They were elected by joint ballot or concurrent agreement by the legislatures in all states except Pennsylvania, which had a single-house legislature.

The election of representatives got considerable attention from voters in some states. The primary issue in the states was between statewide election or election by district. In drafting the state election laws both Federalists and Antifederalists considered which mode of election would further their political goals. Pennsylvania, New Hampshire, Delaware, Maryland, Georgia, New Jersey and Rhode Island held statewide elections. Massachusetts, Virginia, South Carolina, New York and North Carolina held district elections. The states were districted, not without some gerrymandering, into the number of Representatives to which each state was initially entitled.

Presidential Electors were mandated to cast their votes on February 3, 1789, at a place designated by the state legislature—in most instances, the state capitol. North Carolina and Rhode Island were not yet in the Union. New York lost its presidential vote because the legislature was still squabbling over the method of selecting Electors. Each Elector was required to vote for two persons, one at least a non-resident of the state. The Constitution did not stipulate a preference for the presidency. If a majority voted for the same man, he was to be President. The candidate having the next largest electoral vote was to become Vice-President.
There was no contest for the presidency. George Washington was the nation's choice long before the election was held. He was indispensable in the experiment in self-government. The political scheming and maneuvering centered around the selection of the first Vice President. There were many candidates for this office.

In this first election there were only seventy-two Electors. Two in Maryland and one in Virginia failed to appear. The total Electoral vote cast in the ten states was sixty-nine. George Washington received every vote. John Adams received thirty-four, one less than a majority of the votes cast. There were scattered votes for Samuel Huntington, John Jay, John Hancock, Robert Hanson Harrison, George Clinton, John Rutledge, John Milton, James Armstrong, Edward Telfair and Benjamin Lincoln. Both Washington and Adams knew the results long before the official counting in the Congress.
United States Confederation Congress
By the United States in Congress assembled, September 13, 1788
[New York, 1788] Broadside

This election ordinance, passed by the Confederation Congress in New York City on September 13, 1788, represented the initial steps in the formation of the new government under the Constitution. January 7, 1789, was the date set for Electors to be selected and February 4 for Electors to cast ballots for a President. March 4 was the time "... for commencing Proceedings under the said Constitution."

The new government was slow in getting underway. On March 4, 1789, the designated day for the first Congress to meet, only a quarter of the members were present. A week later, the Senate was still four members short of a constitutional quorum, and the House of Representatives was twelve members short. It was April before the House had a quorum and April 16 before the Senate could organize.

Two hundred copies of this election ordinance were ordered printed. Charles Thomson signed those sent to the governors of the states. Members of Congress sent the broadside to state officials and friends. The Ordinance was widely printed in newspapers in September, October, and November in New York, Connecticut, Massachusetts, New Hampshire, the District of Maine, Maryland, Pennsylvania, Virginia, Georgia, South Carolina and in Lexington (Kentucky).

Smith, William
Wm. Smith D.D. to James Wilson Esq. Chester, Kent County, Maryland Jany 19th 1789
Autograph letter signed. 3 p.

Smith, a Scottish-born Anglican minister, educator and publicist, was, at the time this letter was written, President of Washington College in Kent County, Maryland. He was also rector of Chester Parish. Soon after his arrival in America, he served as the first provost of the College, Academy and Charitable School of Philadelphia. He rejoined the College in Philadelphia in the sum-
mer of 1789. A political gadfly, Smith's letter to Wilson is most revealing of his concerns over the first Federal elections, particularly the votes of the Electors for the President.

But another Difficulty appears to rise from the Constitution itself. The two highest in Votes having a Majority of all the Electors . . . are to be President & Vice-president—Suppose then the Electors of even Nine States all agree to have Gen. Washington President, & Mr. Adams, or any other V. Presdt. These nine States cannot say in their Nomination or votes Genl. W. Presdt; John Adams V. P., but must vote indiscriminately for both & neither will be highest in Votes but perhaps have an equality. Suppose, then, but one other State ... give but one or two Votes, still keeping the Name of Adams, but joining it either a Clinton or a Henry, then those two States or any one of them, or a single capricious Vote of any one of them, can make Mr. Adams President. We know there is one Way to secure this Business . . . having a Majority of all the electors, to agree, all of them, to nominate Gen. Washington, while some of them give some 8 or 10 Votes to some other Persons in the Room of Adams, so as to leave Him lower in Number than Gen. W. but yet higher than any other, if it is wished that he should be V. Presdt.

Prior to the adoption of the Twelfth Amendement to the Constitution, in 1804, presidential electors voted for two persons without stipulating between a vote for president or vice president. The highest number of votes, if a majority, elected a president. If two persons received a majority but with the same number of votes (as occurred in 1800 between Thomas Jefferson and Aaron Burr), the national House of Representatives, casting a single vote by state, chose between them.

Before finally agreeing upon the method of selecting the President, delegates to the Constitutional Convention wrangled many days. Various systems were proposed: election by the national legislature, by state legislatures or state executives or directly by the national electorate. At least sixty ballots were taken before the Convention compromised upon the electoral system stated in Article II, Section I of the Constitution. It was and is an artificial, delusive and complex system whereby the electorate participates indirectly in presidential elections. This system has led, in the not too remote past, to much political mischief in American presidential
elections. Presidents Hayes (1876) and Benjamin Harrison (1888) received fewer popular votes than their opponents. The electoral system gives all the electoral vote to a winner in a state no matter how slim the margin of victory. In 1824 Andrew Jackson won the popular vote but failed to receive a majority of the electoral vote. The House of Representatives elected John Quincy Adams.

Many of the members in the Constitutional Convention expected that the Electors would scatter their votes and a majority for any candidate would be rare. Thus the President would be elected by the national House. Proposals have been made for change in the electoral system but political leaders fear any change would threaten the two-party system.

54
Washington, George


Autograph letter signed. 1 p.

Washington’s letter accepting the Presidency:

Sir,
I had the honor to receive your official Communication, by the hand of Mr. Secretary Thompson [Thomson], about one o’clock this day. Having concluded to obey the important & flattering call of my Country, and having been impressed with an idea of the expediency of my being with Congress at as early a period as possible; I propose to commence my journey on Thursday morning which will be the day after tomorrow.

Counting the Electoral votes was the first task after the First Congress organized. John Langdon, Senator from New Hampshire, had been elected president pro tempore to perform this function. On April 6, 1789, before the members of both Houses of Congress, Langdon personally opened, counted and declared the results: President, George Washington; Vice President, John Adams. The Senate then made arrangements to officially notify both men. Charles Thomson, long-time secretary to the Congress, was selected to notify Washington.

Thomson left New York on April 7, carrying the formal certificate of election and a personal letter from Langdon to Washington, dated New York, April 6, 1789:
Sir,
I have the honor to transmit to your Excellency the information of your unanimous election to the Office of President of the United States of America. Suffer me, Sir, to indulge the hope that so auspicious a mark of public confidence will meet your approbation, and be considered a sure pledge of the affection and support you are to expect from a free and enlightened people.

Washington left Mount Vernon on April 16 and arrived in New York in the afternoon of April 23. The journey was marked by a varied but continuous ovation along the route. Never before had such an outpouring of affection, trust and respect been shown to an American.

55
New London. Supplement to the Connecticut Gazette.
Friday, May 8, 1789.
Broadside, printed on both sides.

This newspaper account of the first inauguration of Washington on April 30, 1789, is dated New York, May 1. At noon, Washington was escorted by a military procession from his residence on Cherry Street to Federal Hall. The oath prescribed by the Constitution (Article 2, Section 1) was administered by Chancellor Robert R. Livingston of New York in the gallery fronting on Wall Street. Following the swearing in, Washington delivered his inaugural address to both houses of Congress in the Senate Chamber.

After the address: "His Excellency, accompanied by the Vice-President, the Speaker of the House of Representatives and both Houses of Congress, then went to [St.] Paul's Chapel, where divine service was performed by the Right Rev. Dr. Provost, Bishop of the Episcopal Church in this State and Chaplain to Congress."

The newspaper account concludes with a note of optimism:

The ceremony of this memorable day, completed the organization of the Federal Body. Every honest man must feel a singular felicity in contemplating this day. Good government, the best of blessings, now commences under favourable auspices. We beg leave to congratulate our readers on the great event.
United States. (Tariff act of 1789)
Congress of the United States, begun and held at the city of New-York, on Wednesday, the fourth of March, one thousand seven hundred and eighty-nine. An Act for laying a duty on goods, wares and merchandizes imported into the United States.


The tariff was the earliest act passed by the First Congress under the Constitution. Duties, averaging about eight per cent, were laid on the items enumerated in the schedule.

The returns from the above tariff legislation contributed approximately eighty-eight per cent of the total ordinary receipts of the national government during the years 1789 and 1790.

U.S. Laws, Statutes, etc.
Acts passed at the Congress of the United States of America, begun and held at the city of New York, on Wednesday the fourth of March, in the year MDCCLXXXIX. And of the independence of the United States, the thirteenth. Being the Acts passed at the first session of the First Congress of the United States . . .

This publication contains the twelve proposed amendments to the Constitution, passed by the first U. S. Congress, which were submitted to the states for ratification. The first proposal related to apportionment of legislators, the second to pay of congressmen. The others included safeguards for personal rights of citizens and a statement on the powers reserved to the states. The first two proposals were not ratified, but the remaining were, and became the first ten amendments to the Constitution. Commonly called the Bill of Rights, they guard the liberties of citizens against the abuse of national power. The amendments were ratified by eleven states between November, 1789, and December, 1791.

Some of these could be called freedom amendments, because they guarantee the citizen freedom of speech, religion, the press and other rights inborn and inalienable. The roots of the Bill of
Rights are to be found in the great documents of Anglo-American liberty: Magna Carta, Petition of Right, 1628, the Bill of Rights, 1689, colonial charters, the Virginia Declaration of Rights, the Declaration of Independence, the first constitutions of the thirteen states, and the Ordinance of 1787, which contained the first Bill of Rights enacted by the Confederation government.

During the process of ratifying the Constitution in the states, approximately one hundred substantive provisions had been recommended as amendments. Many of the Antifederalists wanted a second convention to accomplish the task, but only New York and Virginia officially called for such a step.

James Madison, who ran against James Monroe for a seat in the U.S. House of Representatives from Virginia, spoke in favor of amendments during his campaign. Madison pressed and managed the amendment issue in the House, both to make good his campaign promise and to obviate any possibility of a second convention. He incorporated the most frequently recommended amendments in his presentation to Congress. House approval was given to seventeen amendments. Senate approval was given to twelve. Action was completed on September 25, 1789.

Madison’s list of proposed amendments was prepared with studious concern. He concentrated on correcting the defects of the Constitution which he thought would reconcile the great body of critics to the new government. His amendments did not represent structural changes in the Constitution, but were supplemental to and a reinforcement of the document. The amendments incorporated the most frequently voiced objections, and the ratification of the Bill of Rights satisfied all but the most doctrinaire critics of the Constitution.

Madison’s initial intention was to insert the proposed amendments in an appropriate place in the body of the Constitution. Roger Sherman, Representative from Connecticut, observed that “We might as well endeavor to mix brass, iron and clay, as to incorporate such heterogeneous articles.” He moved, and it was later adopted, that the amendments be placed as separate articles at the end of the Constitution. That form has been followed in all the amendments.

On October 2, 3, 1789, President Washington officially transmitted the proposed amendments, neatly inscribed on parchments,
to the states for their action. Washington’s covering letter was brief: “In pursuance of the enclosed resolution I have the honor to trans­mit to your Excellency a copy of the amendments proposed to be added to the Constitution of the United States.”

Our knowledge of events in the states during the ratification of this most consequential part of our Constitution is meager. If there were debates the newspapers printed only fragmentary ex­cerpts. Virginia, where there was a long struggle over the amend­ments, became the eleventh state, counting Vermont admitted as the fourteenth state March 4, 1791, to ratify in December, 1791. Secretary of State Thomas Jefferson sent official notice to the states in a letter dated March 1, 1792. It was a most unusual letter an­nouncing amendments of great significance to our Constitution:

Sir,
I have the honor to send you herein enclosed, two copies duly authenticated, of an Act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein; also an Act to establish the post office and post roads within the United States; also the ratifications by three fourths of the Legislatures of the Several States, of certain articles in addition and amendment of the Constitution of the United States, proposed by Congress to the said Legislatures, and of being with sentiments of the most perfect respect, your Excellency’s &.

Georgia, Connecticut and Massachusetts did not officially rat­ify the amendments, although it now appears that Massachusetts did ratify but neglected to send official notice of the action to the President. The three states did symbolically ratify in 1939, as part of their Sesquicentennial observations.

The Lilly Library copy was presented to Thomas Jefferson by Washington with this inscription: “The President of the United States requests the Secretary of State to accept the enclosed Volume of Laws passed during the first session of the Congress of the United States.”

58
Rhode Island. Laws, etc.
Rhode Island ratified the Constitution on May 29, 1790. Seventeen days later, June 15, the state ratified eleven of the proposed amendments. Before ratification by the General Assembly, copies of the amendments had been printed in broadside form and sent to the town for deliberation of the freemen. From available evidence, there did not seem to be strong objections to the amendments.

It should be noted that Rhode Island approved only eleven of the proposed amendments, rejecting the one relating to compensation of Congressmen.

59
United States. Supreme Court.
_A case decided in the Supreme Court of the United States, in February, 1793. In which is discussed the question—"Whether a state be liable to be sued by a private citizen of another State?"
_Philadelphia: Printed by T. Dobson. M,DCC,XCIII.

_Chisholm vs. Georgia_ was the first decision of the U. S. Supreme Court stating that a state might be sued by a citizen of another state. There was violent public reaction to the decision and the states repudiated the Court's decision by voting to ratify the Eleventh Amendment to the Constitution.

The suit was brought in the U. S. Circuit Court of Georgia by Alexander Chisholm of South Carolina, executor of the estate of Robert Farquhar also of South Carolina. Farquhar, under contract, had supplied the state of Georgia with cloth and clothing in 1777 which Georgia had failed to pay. Damages in the amount of $69,613.33 in South Carolina currency were sought. The governor of Georgia denied the jurisdiction of the Georgia Circuit Court on the grounds that Georgia was a free and sovereign state and could therefore not be sued by a citizen of another state. After preliminary hearings, the case was heard before the Supreme Court. The majority, with one dissent, upheld the Court's jurisdiction over the case.

60
United States. 3d Congress, 1st session, 1793-1794.
_Third Congress of the United States: at the first session begun and held at the City of Philadelphia, in the state of Pennsylvania, on Monday the second of December, one thousand seven hundred and ninety-three._ [Philadelphia, Childs and Swaine, 1794]. Broadside.
The Eleventh Amendment to the Constitution was the response to the decision of the Supreme Court in the case Chisholm vs. Georgia. It was, observed Justice Felix Frankfurter, passed by the U. S. Congress “with vehement speed”. The proposed amendment was introduced in the Senate two days before the Court rendered its decision on Chisholm vs. Georgia. It was approved by the Senate January 14, 1794; by the House on March 4, and submitted to the states on March 5, 1794.

The amendment was ratified by twelve of the fifteen states by February, 1795. It was not until January, 1798, however, that President John Adams formally advised Congress that the amendment “may now be deemed to be a part of the Constitution”. By later constitutional interpretation, the amendment was in effect February, 1795, when ratified by the twelfth state.