

Constitutional Foundations

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CONTEMPORARY CONNECTION

Federalist 10 spoke about the danger of factions that could paralyze government. The Republican conservative faction called "the freedom caucus" has held up legislation in the House of Representatives even though they only represent a minority of the House Republicans.



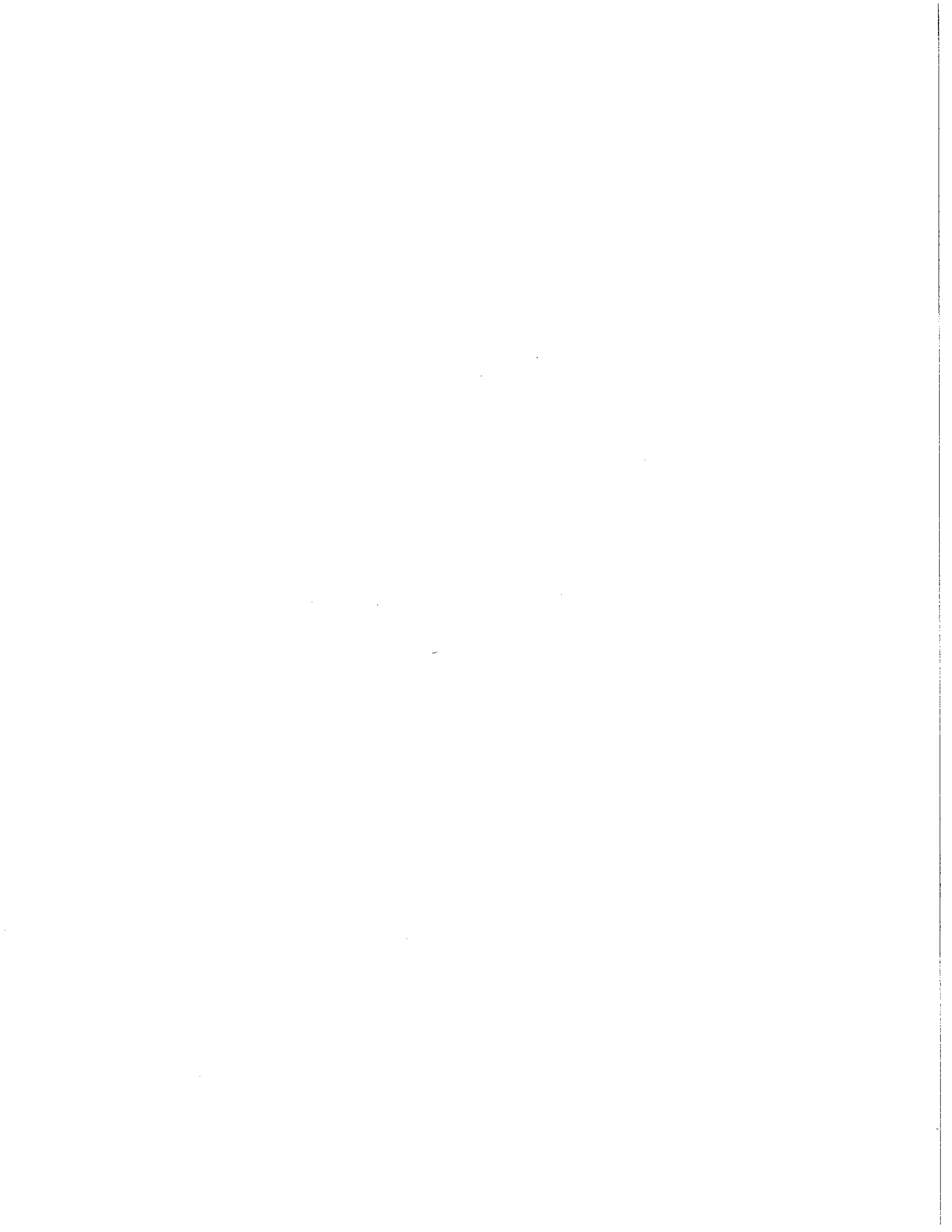
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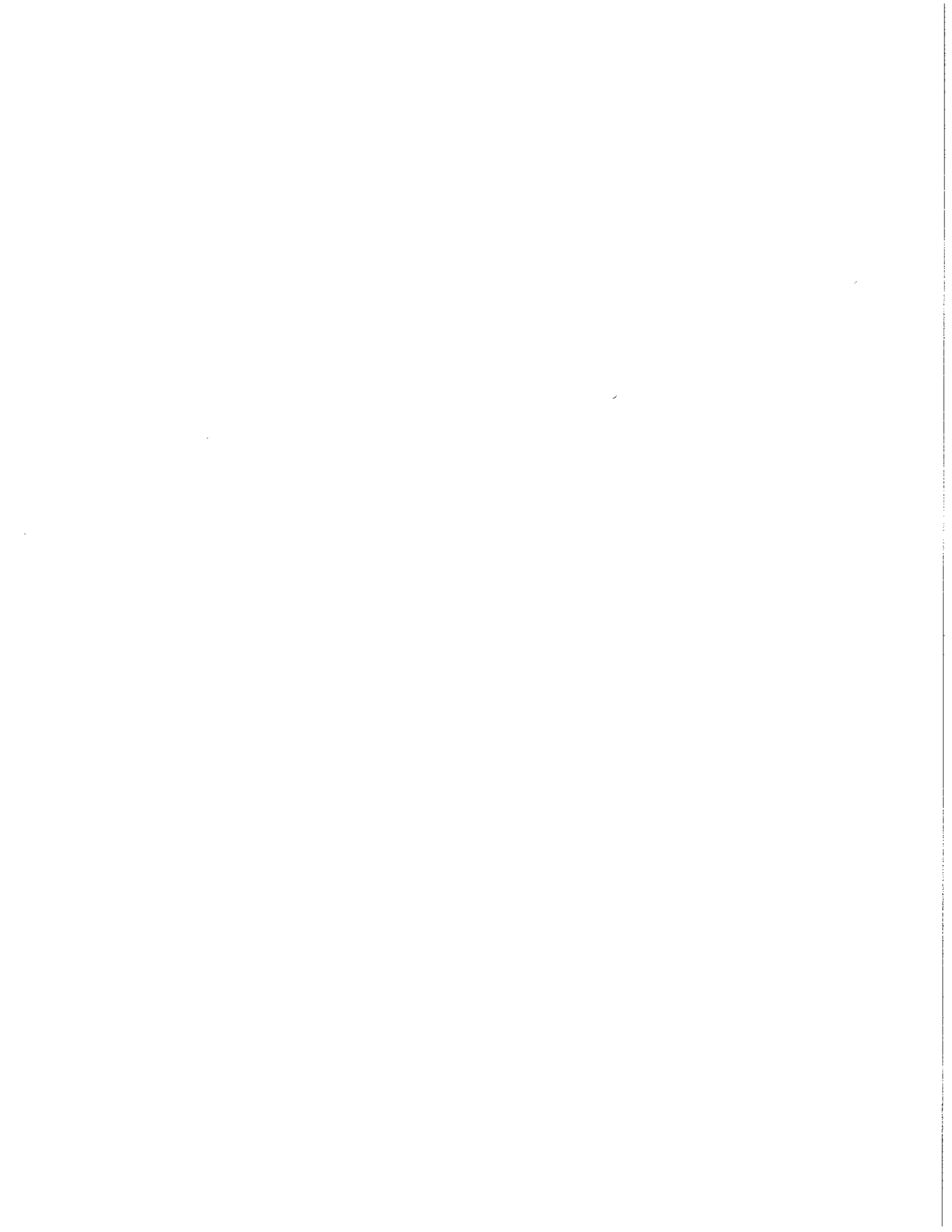
The Constitution provides the basic framework of government. It is the supreme law of the land. It evolved from a political philosophy which, although democratic in origin, was cynical and had economic interests in mind when the document was finalized. In order to understand the practical manner in which the Constitution describes the relationship of the branches of government to each other, to the states, and to the individual, you first must look at what preceded its ratification—the history of British rule of the colonies, the American Revolution, and the failed first attempt at creating a workable constitution, the Articles of Confederation. These factors all contribute to the creation of what has been called a living document—the Constitution of the United States.

THE DECLARATION OF INDEPENDENCE

Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert Livingston included the political ideas from philosophers such as Locke, Rousseau, and Montesquieu in the Declaration of Independence. Looking at Locke's *Second Treatise of Civil Government*, you can't help but notice the similarities between the language Locke used and the phrases used in the Declaration of Independence. Ideas such as natural rights as they relate to life, liberty, and property; the consent of the governed; and the concept of limited government were all borrowed by the authors of the Declaration of Independence. For instance, Locke describes natural rights as "the state of nature

A powerful heritage created a climate that influenced our forefathers to turn toward a rocky and risky road of revolution.





- **The Grievances**—In a lawyerlike dissertation, the second part of the Declaration of Independence makes the case against Great Britain. Taxation without representation, unjust trials, quartering of British soldiers, abolition of colonial assemblies, and a policy of mercantilism created a logic for drastic change.
- **The Statement of Separation**—Announcing to the world that the colonists had no choice but to revolt, Jefferson stated that it is not only the right, but the duty of the colonists to change the government. You should understand how risky the revolution was for the colonists. Like David against Goliath, the outcome of the American Revolution was far from certain. England had superior power, a navy that was supreme, and resources that could support a war effort. The colonists, resorting to guerrilla tactics and a knowledge of their land, had leadership and a desire for freedom.

Called a “conservative revolution,” the new leaders tried to create a government based on the idea of the consent of the governed. Individual state governments guaranteed their citizens the rights they had under British rule. Power was not centralized and the new nation made sure that the new constitution, the Articles of Confederation, could not end up as a government with a king.

Even though the Declaration of Independence stated that “all men were created equal,” the societal structure did not reflect equality. The unalienable rights of “life, liberty, and the pursuit of happiness” were assumed to apply to male white colonists. The issue of slaves and women having these rights was not addressed. Because the American Revolution was the first attempt at applying these principles, the fact that all segments of society were not initially included was not surprising because those in power did not want a great deal of political and social upheaval. Whether this principle has been realized is still a debatable question. Today, many minority groups would make the argument that they have not been given full equality.

Property as an indicator of wealth and status was also a requirement for political office. The states and individual state legislatures became the dominant force. Economic problems immediately faced the new nation in the form of repayment of war debts to the central government and individuals facing an economic recession caused by the war. Farmers who believed that the new government was not fulfilling the objectives of the Declaration of Independence took up arms. Even though Shays’ Rebellion failed, it sent a signal to the newly formed government that it had major problems.

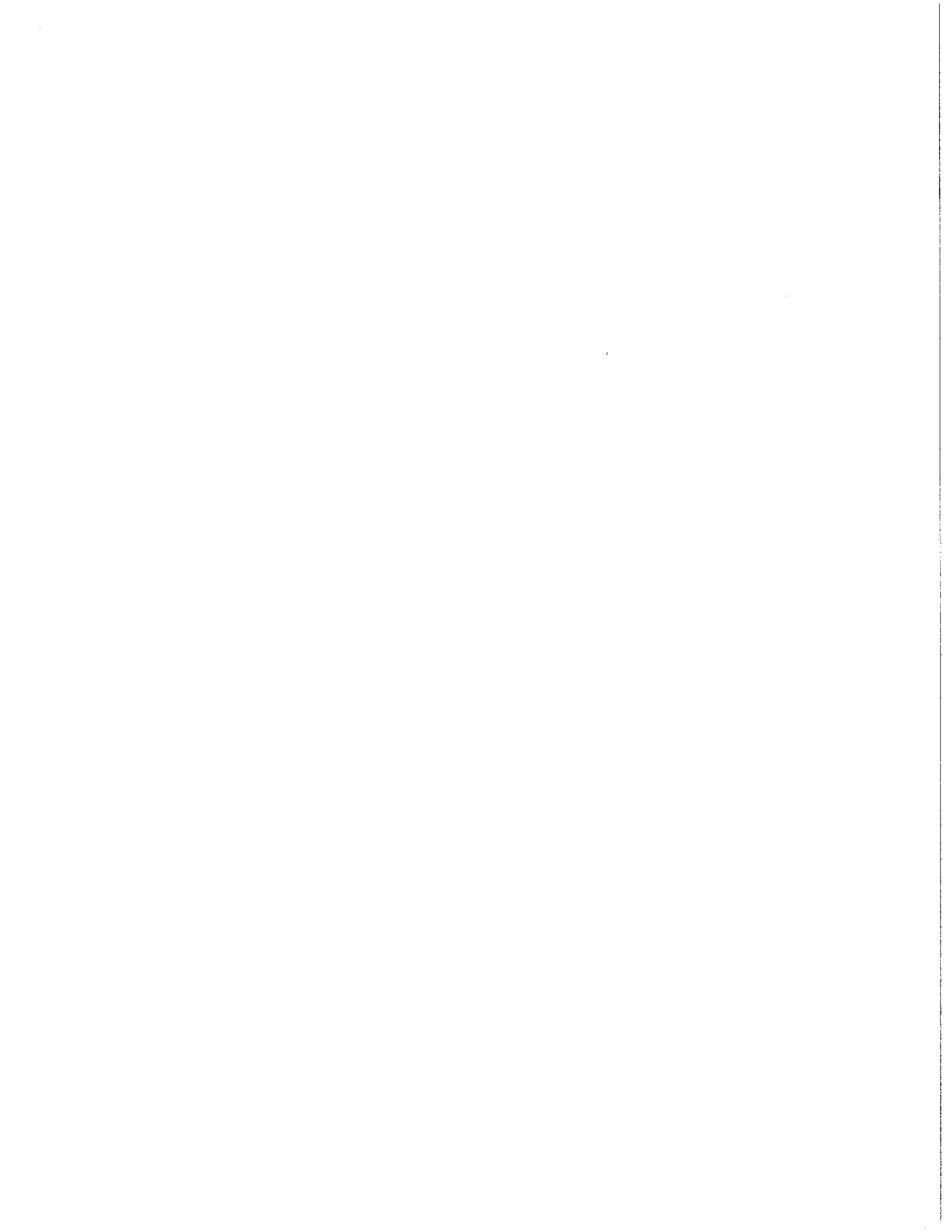
THE ARTICLES OF CONFEDERATION

Although the Articles of Confederation recognized the need for a central government, it relied on the states to make the decisions that would ultimately determine whether the country would survive. Under the Articles of Confederation, the national government had two levels of government—a weak national government with a one-house congress and dominant state governments. Congress was given limited power to declare war, make peace, and sign treaties. The national government could borrow money, but it had no power to tax the individual states. The Articles of Confederation created a national army and navy, but the government had no power to draft soldiers. There was no chief executive or national court system, and legislation had to be passed by a two-thirds majority.

The states could create economic havoc by imposing tariffs on each other, by creating their own currency in addition to the national currency, by refusing to amend the Articles of Confederation (an amendment needed unanimous approval by the states), and by refusing to recognize treaties made by the national government.

The American Revolution restored to the colonists the rights they had as British subjects and carried out many of the major promises of the Declaration of Independence.

The Articles of Confederation were doomed to failure from their onset.



Foreign policy was virtually nonexistent. The Barbary pirates threatened our ships, and our borders were vulnerable to attacks from both English and Spanish interests.

A success of the national government was the Northwest Ordinance, which abolished slavery in the newly acquired Northwest territories.

The most positive aspect of the government was that a new middle class was developing on the state level. Even though the old guard from the colonial era still existed, small farmers began to dominate state politics. This created a broader political base and started the beginning of opposing political parties (Federalists and Anti-Federalists).

By 1787 it was obvious that, at a minimum, the Articles of Confederation had to be revised, and many felt that they should be totally changed to reflect the realities of what a functional government should be.

Constitutional Convention

A diverse delegation representing varying interests met in Philadelphia and concluded that a new constitution was needed to replace the Articles of Confederation.

With the exception of Rhode Island, the rest of the states sent 55 delegates to the Constitutional Convention in Philadelphia in 1789. The make-up included merchants, lawyers, farmers, and bankers as well as state government officials. Leaders such as Thomas Jefferson, Thomas Paine, Patrick Henry, John Adams, and John Hancock doubted that abolishing the Articles of Confederation was the answer to the country's problems and did not attend. Those in attendance felt that a revision of the Articles of Confederation would not go far enough. Hamilton, Washington, and Madison led the fight for a new constitution. Benjamin Franklin, at age 81, was one of the oldest delegates attending the convention and the only delegate to have signed both the Declaration of Independence and the Constitution.

Philosophically, the delegates were split on how to reconcile basic differences regarding the organization of a new government. They shared a cynical belief that people could not be given power to govern and that political conflict would naturally occur if there were not built-in checks. Because the delegates came from the newly emerging middle class as well as the traditional rich property owners, they quickly saw that factions would exist both in the government and in society. (The Federalist Papers, in Federalist No. 10, pointed out that these factions could ultimately paralyze effective government. Self-interest of the delegates resulted in an agreement that the objective of government should be to protect the property owner. Ultimately a series of checks and balances, outlined in Federalist No. 47, and a structure of government that stressed a separation of powers became the fiber of the new Constitution.)

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THE CONSTITUTION

The framers of the Constitution believed that inequities of wealth were a principal source of political conflict, but they did not try to eliminate them from the Constitution.

Constitutional historian Charles Beard in his *An Economic Interpretation of the Constitution* (1913) argued that the founding fathers were concerned with protecting the wealth of the property class. He painted a picture of the delegates to the convention as men who were wealthy and who cared about the financial interests of that class.

The compromises reached at the convention included voting, representation, slavery, and trade. Because wealth was such an important consideration, the delegates decided to let the individual states determine the criteria for voting qualifications. Property became the major criterion, and each state was able to determine who was eligible to vote in the national elections for Congress and the president.



A Bicameral Congress

The thorny issue of how to create a new Congress split the convention between the larger more populous states and the smaller states. The smaller states, led by New Jersey, insisted that each state should have equal representation. The Virginia Plan argued that a legislature based on population would be more equitable. The Connecticut Compromise, also known as the Great Compromise, resulted in the formation of a bicameral (two-house) Congress—one house is represented equally by the states (the Senate) and the other house is represented by population (the House of Representatives).

Once the structure of the new Congress was agreed upon, the divisive issue of slavery had to be resolved. There was never a doubt that Jefferson's original proposition that "All men are created equal" would never see the light of day in the new Constitution. Nevertheless, the issues of slave trade and slave representation had to be resolved. The South agreed to halt the import of slaves in 1808 if the North agreed to return fugitive slaves. More difficult was the issue of representation. If each slave counted as one person, the South could have easily held the balance of power in the House of Representatives. Thus, the Three-Fifths Compromise was agreed on. Every five slaves would count as three people for representation and tax purposes.

The last major compromise dealt with tariffs. The North wanted to tax Southern exports to Europe and wanted to protect their own manufactured goods. The South did not want to tax European goods so that their own exports would not be taxed. They agreed to tax only imports.

A series of compromises was reached.

Economic Issues

The delegates also addressed the weaknesses of the Articles of Confederation. Because a primary concern was protection of the property owner, they dealt with economic issues. Congress was given the power to tax, regulate interstate and foreign commerce, create a viable national currency, and, in what later became known as the elastic clause, make "all laws necessary and proper" to carry out the stated powers of Congress.

States were strictly prohibited from duplicating the powers of the federal government that would have an impact on the nation's economy (i.e., denied the power to coin money, regulate interstate and foreign commerce, and interfere with the federal government's ability to collect debts).

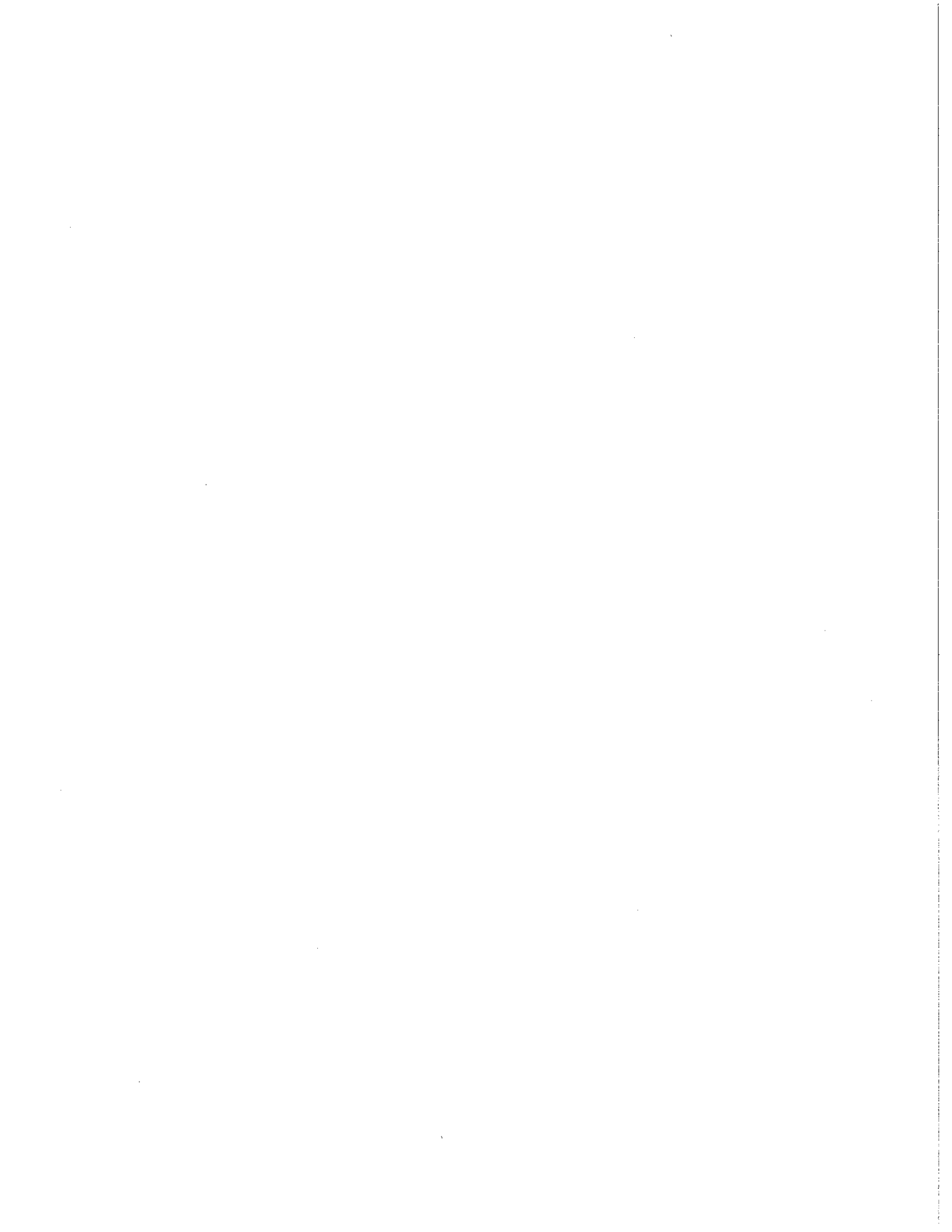
The drafters also saw the need for a chief executive and a court system; however, as we will soon see, the relationship between these two branches of government became the benchmark of the new Constitution.

THE BIRTH OF POLITICAL PARTIES

(The Federalists, in Federalist Paper No. 10, led by Alexander Hamilton, John Jay, and James Madison, argued that a "tyranny of the majority" could threaten the economic fiber of the nation. They believed that the new Constitution, through its checks and balances and the separation of the three branches of government, would ensure the protection of the minorities. Through a series of articles published as the Federalist Papers and signed by the pseudonym Publius, they outlined the necessity of a government that would be forced to compromise as a result of the separate powers of each branch. They also felt that the Constitution had enough safeguards built in for individuals. The Constitution gave each state "full faith and credit" as well as a "republican" form of government. In addition, as the Federalists were quick to point out, the prohibition of the passage of *ex post facto* laws (laws that were retroactive in nature) and bills of attainder laws

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The first political parties were born during the fight to ratify the new Constitution. Because the philosophy of each party reflected an economic base, it became apparent that the issue of individual rights could jeopardize the approval of the new Constitution.



(laws that dictated prison sentences for accused who were not given a trial) and the prohibition of suspending the writ of *habeas corpus* (a guarantee of individual due process rights) gave individuals protection against a tyrannical federal government. Typically, the Federalists represented the upper class, bankers, and rich large-property owners. Their economic philosophy was clearly expressed throughout the Federalist Papers.

The Anti-Federalists, led by the newly emerging middle class, had George Mason and Richard Henry Lee as their chief spokesmen. In a rival publication to the Federalist Papers, *Pennsylvania Packet*, and *Letters from the Federal Farmer*, and through individual essays penned under the name of Brutus, they argued that the principles of the Declaration of Independence would be eroded by the new Constitution. They felt that the Constitution would firmly establish an economic elite and would create the potential for an abusive federal government, especially in the area of protecting individual rights.

The Anti-Federalists insisted that a bill of rights had to be part of the new Constitution. Otherwise, a powerful president supported by the Congress could easily abuse the civil liberties of the individual. Additionally, the sovereignty of the states became a concern even with the guarantees provided. Nowhere was this argument more heated than in New York. The Anti-Federalists prevented the approval of the Constitution until Madison and Hamilton guaranteed that the first Congress would approve a bill of rights. Typically, the Anti-Federalists represented the farmers and the so-called common people. They rejected the elitist base represented by the Federalists.

