

# Humanities

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**1787  
The American  
Experiment**



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## Humanities

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## Editor's Notes

The tension between opposing or among several competing forces, a fundamental source of strength in the American political system, is a recurrent theme in this issue of *Humanities*, devoted to the U.S. Constitution. It is identified by Thomas L. Pangle in an essay on the political philosophy informing the Constitution as a "new version" of republican government: "a diversity of cross-cutting interests mak[ing] the formation of an oppressive majority faction less likely." It appears in the opposition of views of judicial review, advanced by Judge Robert H. Bork and Professor Laurence H. Tribe. And it is the subject of the introductory essay by Chief Justice Warren E. Burger, who shows how it happened that thirteen separate and differing entities, against a powerful Anti-Federalist resistance, formed a union with power balanced among three federal institutions and between state and central governments.

Even the eagle, the symbol of American power on the cover, was usually depicted in the early years of the republic with a balancing image. As Michael Kammen observes in *A Season of Youth*, "... eagles are often not alone, not perched on some isolated, godforsaken aerie, but usually are hovering around a chick—and in this instance, I don't mean a freshly hatched hen or eaglet, I mean a demure young woman named Liberty."

Kammen goes on to explain that this iconography suggests an intricate ideological relationship between power and liberty. Indeed, in the tension between these two forces lies the success of the American experiment. Chief Justice Burger points out that the granting of the first has resulted in the securing of the second. The Constitution, he says, "represents a grant of power by the people to a government," and "the freedom created by this new system unleashed the energies, abilities, and talents of every individual..."

—Linda Blanken



I have always found it difficult, and I suspect others may share that difficulty, really to understand how separate and independent were each of the thirteen sovereign states that made up the Confederation preceding the Constitution. We know that the men of Massachusetts Bay regarded themselves as allies—*allies*—of other states; they thought themselves quite different from Virginians or Marylanders or New Yorkers, even though they spoke the same language.

This ambiguity of allegiances is illustrated in a significant episode that occurred seventy-four years after the drafting of the Constitution in another critical period of our history. In 1861, after the fall of Fort Sumter, when war seemed imminent, President Lincoln, acting on the advice of his Chief of Staff, offered to Robert E. Lee the command of all Union armies.

Lee, then a colonel in the United States Army, loved the Union, was against secession and was distressed at the idea of the Union's dissolution, and he hated slavery. But he was so much a product of the age of his father, "Lighthorse" Harry Lee, one of George Washington's generals, that he rejected Lincoln's offer. He immediately resigned from the army, abandoning his beautiful home overlooking the Potomac and the city of Washington, fully aware his property would be confiscated by the government in the event of war. Lee then went to Richmond—120 miles south—to offer his services for the defense of Virginia—not for the support of secession, not for the defense of slavery, not for the dissolution of the Union, but simply for the defense of his native state. In the eighteenth century and well into the nineteenth, many people thought of themselves as Virginians or New Yorkers first and Americans second. This episode in Lee's life has always helped me understand the enormous difficulty in 1787 of leading the Americans of the thirteen original states to think in terms of creating a federal union and a central government with a constitution binding them together as one nation.

In 1787, even the word "constitution" was not a familiar one, in the sense we now know it. The people

had a great fear of central governments stemming from the fact that we had a Revolution to escape from a distant, strong, and insensitive central government in London.

When the Continental Congress met in New York early in 1787 to consider convening what we now know as the Constitutional Convention, the authorizing resolution was carefully circumscribed. George Washington, Hamilton, Madison, and others wanted a true constitutional convention, but the Continental Congress voted only to recommend that a convention meet in Philadelphia to consider alterations in the Articles of Confederation. The resolution was explicit: the convention was called

... for the sole and express purpose of revising the Articles of Confederation.

There was no hint of drafting a

new Constitution, or of creating a strong central government. Patrick Henry, in Virginia, had refused to be a delegate because, as he put it, he "smelled a rat." The "rat" he smelled was the idea of a strong central government under a new written constitution. And when the draft of the Constitution was reported back to the Continental Congress, some members were so opposed to it that they offered resolutions to censure the delegates for drafting a *constitution* when they were sent only to review and revise the existing Articles.

The language of the Articles of Confederation reflects how jealous the thirteen states were about their own sovereignty. The very enabling resolution creating the Continental Congress reads in the terms of a treaty. We must marvel as we recall

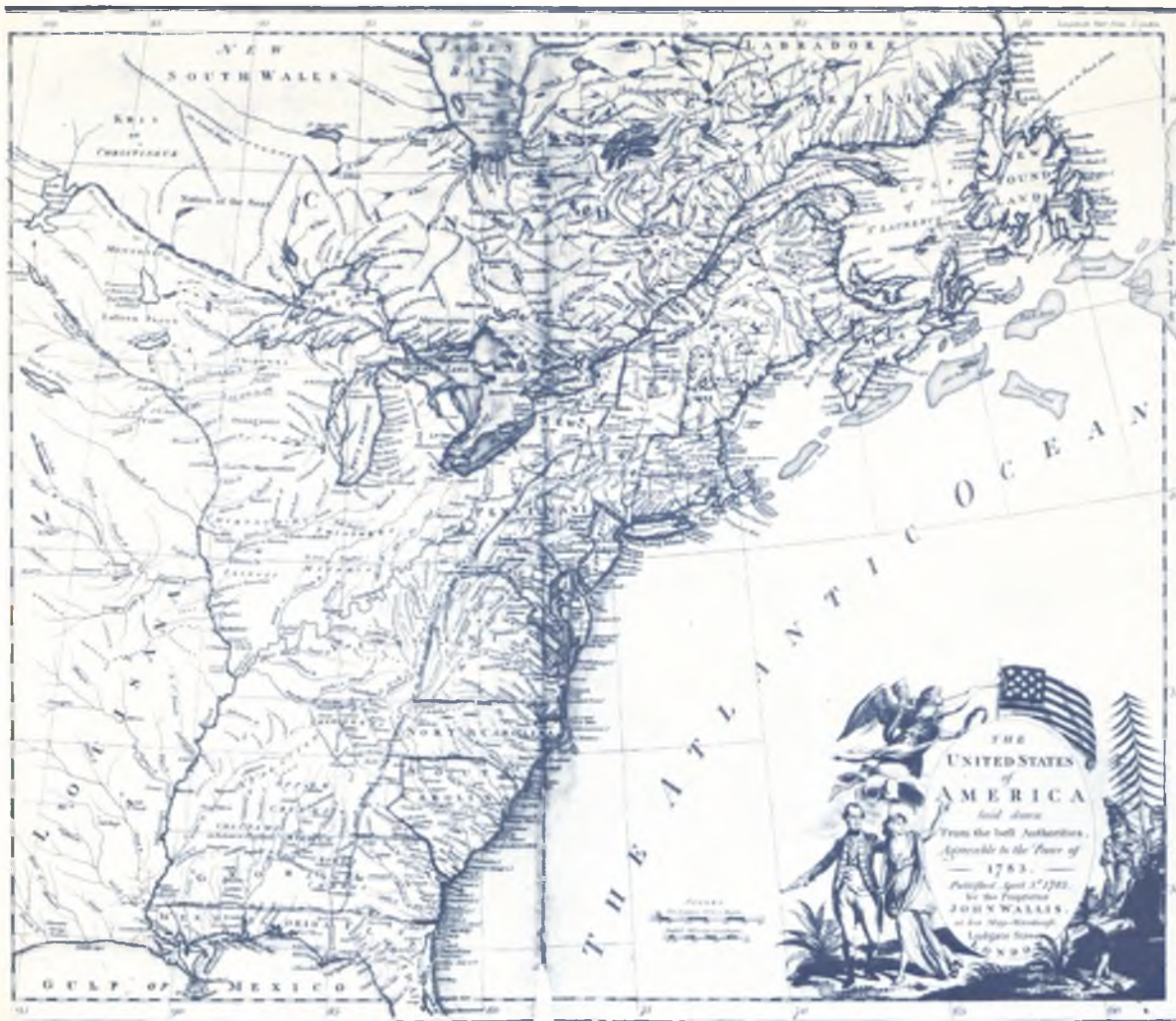
## The Emergence of National Power



*General Washington reviews the troops at Valley Forge, as interpreted by noted illustrator N.C. Wyeth (1882-1945). The expressions in the eyes of the men help explain why Washington's experience at Valley Forge convinced him of the need for a strong central government.*

U.S. Library of Congress





*The newly independent states, with boundaries established by the 1793 Treaty of Paris. London cartographer John Wallis shows George Washington and Benjamin Franklin in the cartouche, joined by allegorical figures Justice, Wisdom, and Winged Victory.*

those words written in 1777:

The said states hereby severally enter into a firm league of friendship with each other. . . .

A "firm league of friendship" to carry on a war against a great world power! This was Massachusetts, New York, Pennsylvania, Maryland, Virginia, and eight other states speaking to each other in terms sovereigns use when entering a multilateral treaty.

The Confederation had no power to levy taxes and no authority to raise armies. It is nothing short of a miracle that the Revolution was successful, or that there was any occasion to convene what we now describe as the Constitutional Convention. It was the good fortune of Washington's armies that George III had to keep a good deal of his powder dry to deal with France and Spain.

One state, for example, paid nothing in the way of taxes or contributions to the Confederation for at least five years before the meeting in Philadelphia. Rhode Island declined even to send delegates to Philadel-

phia in 1787 and voted against ratifying the Constitution. The soldiers under Washington often furnished their own clothing; many provided their own rifles and sometimes even their own gunpowder. Hamilton, the financial genius of the Revolution and of the Confederation, and later Secretary of the Treasury in the new government under the Constitution, was described in the revolutionary war period as "Receiver of Continental Taxes"—the "receiver," not "collector." Taxes were like church and charitable contributions—purely voluntary.

The terrible privations, the needless deaths from starvation and freezing suffered by Washington's troops at Valley Forge, only a few miles from where our Constitutional Convention later met, attest to the inherent weakness of the Confederation. The lack of real sovereign power in the Continental Congress, the absence of central authority, caused those men at Valley Forge to suffer through a terrible winter because the thirteen states had no binding duty to provide the promised food, the supplies, and the

money necessary to support the armies.

These terrible experiences not only dictated Washington's military strategy of trying to keep his ragged armies of amateur soldiers on the move and out of reach of the trained British forces, but also helped shape his political philosophy and that of some of his officers. They came to see that for some purposes a strong central government was imperative. A young lieutenant in Washington's army, who spent that winter at Valley Forge, also saw the need for a strong central national authority, and those views later found their way into his opinions when the lieutenant became Chief Justice. The great cases authored by John Marshall—*McCulloch v. Maryland*, *Cohens v. Virginia*, and *Gibbons v. Ogden*, in particular—bear the imprint of that winter at Valley Forge.

Alexander Hamilton surely had it impressed upon him that if the payment of taxes by the people and by the states was voluntary, there never would be a nation. Hamilton said that what was needed was not the kind of structure that appealed to

... the narrow colonial sphere in which we have become accustomed to move, [but rather] ... that enlarged kind suited to the government of an independent nation.

When we recall that nearly a century later so great an American as Robert E. Lee could not escape from the shackles of those "narrow colonial" attitudes, it is not surprising that the Continental Congress limited the resolution convening the delegates in Philadelphia to the "sole" purpose of revising the Articles of Confederation. Washington, Madison, Hamilton, Wilson, and others knew that the loose structure of the Confederation, as well as the Continental Congress, was what might be called today a "paper tiger." To continue that structure would not only inhibit development of the new nation and encourage the parochial rivalries and conflicts that had almost led to disaster, but would also tempt the great powers to exploit their lack of unity.

From 1776 to 1787, there were limits on commerce between the states; each of the thirteen states was free to set up trade barriers against other states; each could issue its own cur-



rency. The merchants and businessmen wanted a system that would open the channels of trade and commerce and develop manufacture. The new Constitution under its Commerce Clause gave the new nation a "common market" more than a century before that phrase came into our vocabulary with the advent of Europe's common market. A common currency, a central revenue system, a central banking system, a central authority to deal with other nations, and no trade barriers between the states, were imperative to convert the thirteen state sovereigns into a true sovereign nation.

Hamilton and Madison often disagreed, but on this issue they recognized that only a Constitution creating a central authority could provide the foundation needed for an expansion of the economy and future growth. Madison, our fourth President, who is often called the "father of the Constitution," had been a close student of the history of governments. He had immersed himself deeply in study long before going to Philadelphia and he was familiar with the views of the profound thinkers of Rome and Athens and the work of the European Enlightenment of the seventeenth and eighteenth centuries.

Madison could not match the eloquence of his fellow Virginians, Thomas Jefferson or Patrick Henry, but he was a profound thinker, a craftsman, and an architect in terms of political science. In some respects, he was more attuned to the philosophy of Washington, Hamilton, and Adams concerning the future than he was to the thinking of his close friend and mentor Thomas Jefferson. Given Jefferson's visions of a nation of farmers, artisans—and strong yeomen—his skepticism about a strong central government, and his abhorrence of broad judicial power, perhaps it was just as well that Madison arrived in Philadelphia early in advance of the formal meetings and that Jefferson, like Patrick Henry, was not present at the Convention at all.

It is surely clear now that a loose federation of thirteen sovereign states would have doomed us to a Balkanization that might have made us easy victims of the predatory world powers of that day and doubtless would have deferred our eco-

nomic and political development.

It is difficult to recreate the atmosphere that must have existed in Philadelphia in that summer of 1787. In terms of eighteenth-century travel and communication, most of the people of our thirteen states were very distant from each other. The states spanned the Atlantic Coast from New England to Spanish Florida. To the North were British military forces; the Spanish and French had interests in the South and West. Perhaps it was something of these concerns, these fears, that moved Benjamin Franklin, not known to be dedicated to orthodox religious patterns, to offer the motion that a chaplain be invited to open the sessions of the Convention with a prayer. And Madison, in *Federalist* No. 37, wrote:

The real wonder is, that so many difficulties should have been surmounted; and surmounted with a unanimity almost as unprecedented as it must have been unexpected. . . . It is impossible for the man of pious reflection not to perceive in [this circumstance], a finger of the Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution.

One thing the delegates shared, because of what they had suffered as colonists, was a feeling that a government with built-in checks and balances was imperative. Just how to achieve such checks and balances and still have a strong nation and an effective government was to keep them in Philadelphia for those many hot weeks from May to September. A theme underlying all the debates and discussions had to do with the notion of the states surrendering

some authority and sovereignty to a new, unknown, and as yet undefined national government.

James Wilson, one of the ablest men at the Convention, and Pennsylvania's first Justice on the United States Supreme Court, at one point in the debate put his finger on this problem, saying:

If no state will part with any of its sovereignty, it is in vain to talk of a national government.

And on another day he said:

I do not see the danger of the states being devoured by the National Government. On the contrary, I wish to keep them from devouring the national government.

In short, to create a national government, the thirteen states had to give up some of their powers. The fear of central power, the fear of a national government, was hammered at and hammered out all during the Convention, and the tensions that these ideas developed were revealed in the rather bitter comments of James Wilson and John Dickinson. Dickinson at one point, almost in despair, said:

If the General Government should be left dependent on the State Legislatures, it would be happy for us if we had never met in this Room.

As with any deliberative body, small or large, when the issues are of great consequence, and especially when they probe into unknown territory, feelings grow tense and utterances occasionally become harsh. Yet, that the Constitutional Convention was a process of give and take, there can be no doubt. The Great Compromise guaranteeing equal

*The Articles of Confederation, detail.*





representation of the states in the Senate in exchange for a population-based representation in the House was but one of the consequences of that process. On the main proposition, however—that is, the system of checks and balances, with three coequal and independent departments—Madison, Hamilton, Morris, Dickinson, and Wilson would not yield.

The delegates had labored four months to produce the document, and finally on that cool autumn morning—Monday, September 17, 1787—forty-two of the fifty-five delegates were present, and, as we know, three of them declined to sign their names to the draft.

Benjamin Franklin, one of the wisest of all the Founding Fathers, and the most senior, made some profound observations as that historic final meeting opened. His words are so important, so filled with wisdom, that they are worth recalling. He said this:

Mr. President, I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. . . . In these sentiments Sir, I agree to this Constitution with all its faults, if they are such.

And when asked what the Convention had created, Franklin answered: "A republic, if you can keep it."

The day after the Convention on September 18, 1787, a delegate from New Hampshire wrote to a member of his family, saying:

[I]t was done by bargain and Compromise, yet notwithstanding its imperfections, on the adoption of it depends. . . . whether we shall become a respectable nation, or a people torn to pieces by intestine commotions, and rendered contemptible for ages.

The delegates left Philadelphia exhausted and rightly entitled to be elated, but the document they produced had yet to run the gauntlet of the states' ratification processes and receive the approval of nine states. To accomplish that was no easy task, with articulate and popular heroes like Patrick Henry in Virginia opposing it, and with Thomas Jefferson taking no part but known to be somewhat cool. We know that it was the great prestige of George Washington and James Madison, buttressed by a rising young public leader, John Marshall, whose logic countered the powerful oratory of Patrick Henry in the Virginia Convention, and helped bring about Virginia's ratification. Without Virginia's ratification very likely there would have been no Constitution—at least at that time. The vote in Virginia was 89 for and 79 against ratification. The vote in New York was 30 for and 27 against; New Hampshire ratified the Constitution by 57 to 47.

Several features of the Constitution make it utterly unique in the history of governments. First, it represents not a grant of power from government to the people—as with King John's grant of the Magna Carta at Runnymede in 1215—but a

grant of power *by* the people *to* a government which they—the people—had created. Second, its structure with division into three coequal, coordinate branches of government was deliberately created to provide for checks and balances. This had never been tried in all human history. Experience demonstrates that our kind of structure does not necessarily produce the most efficient government, but that it does protect freedoms. Efficiency in the private sector, in the conduct of business and industry, is critical, but efficiency was not the primary objective of the draftsmen of the Constitution. Freedom from the kinds of restraints that brought people from Europe to this continent was the primary objective.

The third factor is perhaps even more important and is, in a sense, a product of the former. The freedom created by this new system unleashed the energies, abilities, and talents of every individual to develop as his or her own ambitions, abilities and industry allowed. In the short space of 200 years, this small contingent of three million people, scattered along the eastern seaboard, developed into a country of 250 million and a world power. Other nations had industrious, talented and ambitious people, but the uniqueness here was that this new system allowed every person to develop God-given talents and abilities without the heavy hand of government or tradition being a barrier or burden.

—Warren E. Burger

Warren E. Burger is Chief Justice of the United States and chairman of the Commission on the Bicentennial of the United States Constitution.

*The Articles of Confederation, detail.*

and Georgia.  
Article I. The State of this confederacy shall be called the United States of America.  
Article II. Each state retains its sovereignty, independence, and every Power, Jurisdiction and right, which this confederation expressly delegated to the United States, assembled.  
Article III. The said States hereby severally enter





James Madison, 1751-1836

# The Founders' Constitution

"It was a world of the leisurely essay, the hour-long sermon, and a discerning appetite for good argument." This, according to scholars Philip B. Kurland and Ralph Lerner, was the world of America's founding generation, a world into which Kurland and Lerner seek to usher twentieth-century readers through a five-volume anthology, *The Founders' Constitution*, to be published this year by the University of Chicago Press.

This anthology, the product of four years' culling and editing, consists of primary materials that date from the early seventeenth century to the 1830s, when the deaths of John Marshall and James Madison signaled the end of the Founders' generation. Hundreds of voices speak through personal letters, essays, polemical pamphlets, and legal opinions, as well as through the records of the 1787 Constitutional Convention and the later state ratifying conventions. Only the largest research libraries in the country contain all these sources. In the libraries, they are organized archivally by date or author; Kurland and Lerner have sorted the materials by idea.

"The notion was a simple one," says Lerner, "which grew out of a comment made by Walter Berns that there was no law school or political science department in the country that offers a course on the Constitution itself." Lerner, a political scientist, and Kurland, a constitutional law scholar, initially envisioned a small volume that might serve as the textbook for such a course, capturing the leading issues that energized the Founders. "We thought it was a

manageable project," Lerner continues, "but we were grossly mistaken. It just grew and grew."

Less than half of the materials considered by the editors actually appear in the current five-volume set. After several attempts at what Lerner describes as "shuffling and reshuffling the deck," they hit upon the idea of using the Constitution itself as a framework of organization. Thus, each clause of the Constitution is followed by an array of materials that illustrate the prehistory, drafting, debate, and subsequent interpretations of the intention of that clause. In this context, the editors hope, it is clear that the specific provisions are most properly understood as one stage in a developing line of political inquiry and concern that had begun long before 1787 and in some cases continues to this day.

This view is brought home by the first volume of the anthology, in which Kurland and Lerner illuminate the larger themes that underlie the Constitution as a whole and that in fact are reflected in the elegant but straightforward language of its preamble. "We the People of the United States," the preamble begins, and the editors take the opportunity to explore the issue of the popular basis for political authority, traced through twenty-eight documents from John Locke's Second Treatise of 1689 to a letter written by James Madison in 1821. The succession of thought shows that Locke's revolutionary assertion that the power to govern is given only by consent of the governed was, by the time of the Constitution, a basic premise asserted over and over, often in ringing terms. James Wilson, for exam-

ple, noted that "the sovereignty of princes . . . is only derivative, like the pale light of the moon"; that of a freely elected official was, by contrast, "original like the beaming splendor of the sun."

Yet popular consent was no simple truth; its application, the Founders knew, was problematic. John Adams argued that the people, far from being the "best keepers of their own liberties," were in fact "the worst conceivable; they are no keepers at all." Alexander Hamilton, in a wily argument for strong executive powers, suggested that the people themselves would reject "servile pliancy" in an executive: "They know from experience that they sometimes err; and the wonder is, that they so seldom err as they do, beset as they continually are by the wiles of parasites and sycophants, by the snares of the ambitious, the avaricious, the desperate." In an extraordinary exchange of letters in 1789, Jefferson and Madison continued to probe an issue on which they had long disagreed: How frequent should the resort to direct popular authority be? "The earth belongs to the living, and not to the dead," Jefferson says in proposing that once a generation ceases to form a majority of the population—a span of time that he proceeds to calculate in some actuarial detail to be about twenty years—the new majority should not be bound by the document its predecessors had agreed upon. Madison's artful reply details some practical consequences of this principle. As Kurland and Lerner note, "Many things might be said for a constitution being up for grabs every eighteen years, eight months, but stabil-





Gouverneur Morris, 1752-1816



Patrick Henry, 1736-1799



John Marshall, 1755-1835

ity is not one of them."

The desire to form "a more perfect Union," as the preamble continues, was no mere rhetoric to the Founders. Documents included in Kurland and Lerner's first volume chronicle the growing urgency with which American leaders of the 1780s regarded the deficiencies of government under the Articles of Confederation. There were no mechanisms for coping with national debt or regulating trade between states that issued different currencies. Neither foreign governments nor westward-moving American settlers respected the weak Congress that supposedly governed the country. As early as 1783, Robert Morris, responsible for national financial affairs, reported to Congress that American credit was exhausted with the statement: "The thing has happened which was expected." Concerned about Con-

gress's inability to pay its soldiers, Gouverneur Morris wrote—in cipher—to John Jay: "The Army have swords in their hands. You know enough of mankind to know much more than I have said and possibly much more than they themselves have yet to think of." And George Washington, in a letter to John Jay, commented wearily: "I am told that even respectable characters speak of a monarchical form of Government without horror."

Alexander Hamilton had been one of the first to point a finger directly at the Articles. In a letter written in 1778, when he was still in his early twenties, he deemed them "a pernicious mistake." By 1787, he was warning that his country had reached "national humiliation," with "the frail and tottering edifice" of its government "ready to fall upon our heads and crush us beneath its

ruins." The purpose behind this rhetoric was a serious one, for Hamilton and the others heading the movement for a Constitution had to convince the nation that the inevitable travails of a new country impoverished by war debt were being profoundly exacerbated by the form of government it had chosen. Their efforts to spread this view were counteracted by pamphleteers who argued for caution, who proposed tinkering only with the "vicious" or "feeble" provisions of the Articles, or who, like the anonymous "Centinel," warned against "sacrificing that inestimable jewel liberty to the genius of despotism" in the form of a strong central government.

On this issue, of course, Hamilton and his colleagues held sway. But it would be wrong, suggests Ralph Lerner, to divide the founding generation neatly into Federalists and Anti-Federalists and tot up victories

## The Encyclopedia of the Constitution

After nearly a decade of enormous organizational effort by editors, publishers, advisers, and more than 200 contributors, *The Encyclopedia of the American Constitution* will be published by Macmillan in the bicentennial year.

Edited by historian Leonard W. Levy, of the Claremont Graduate School, with Kenneth L. Karst, a law professor at UCLA, as associate editor, the *Encyclopedia* is designed to be the standard reference compendium in the field, with contributions

by the most eminent contemporary scholars in law, history, and political science.

As a "reference of first use," the work has been compiled for a wide audience, ranging from the high school student who needs to know why the little phrase "due process of law" stirs so much controversy to the law professor whose specialty is the commerce clause, but who wants to read up on the First Amendment or criminal justice. Both need a reliable, comprehensive

reference work arranged alphabetically, with clear cross references and concise bibliographical references.

Almost two-thirds of the text is devoted to constitutional concepts and history. The remainder consists of articles on 750 leading cases, from those most familiar to laypeople, such as *Marbury v. Madison* and *Brown v. Board of Education*, to less familiar but important cases, such as *Weeks v. United States* for the exclusionary rule and *Branzberg v. Hayes* for reporters' privilege; 250 public





Benjamin Franklin, 1706-1790

and losses. "Historians have a great eagerness to simplify the positions of parties in controversy," says Lerner. "In the case of the founding generation, this does a great injustice to the quality of the participation." In fact, both Kurland and Lerner note that it was the outstanding quality of the political discourse—its seriousness and commitment, its vigor and variety—that impressed them most in the course of their research.

Would the Founders be surprised that their creation, the Constitution, has lasted 200 years? "Well," says Lerner, "they took extreme care—nothing was too small for them to ponder." As men of the Enlightenment, they believed in close and responsible thinking; as leaders of an extremely political generation, they had developed extraordinary practical savvy. All this they applied to



James Wilson, 1742-1798

lessons from history—ancient and European—as well as their own recent experience under Great Britain. "They were not," says Lerner, "building for a season."

Yet at the same time, they knew they were doing something new in the history of the world. "They were exploring the edges and contours of large issues—such as the privileges and immunities of citizenship—that were theory but not common practice," says Kurland. "It's as if you had a definition of Antarctica as the South Pole, but then had to grope outward for its boundaries and limits." As John Tyler wrote at the time, "We are not passing laws now, but laying the foundation on which laws are to be made."

Letters and other private documents in *The Founders' Constitution* show that many of the leading advocates of the Constitution were disappointed by features that they were obliged to accept in the rough and tumble of the convention. In a



Alexander Hamilton, 1755-1804

frank letter to Jefferson, Madison regretted the lack of a national veto over state legislation. Hamilton, who had lobbied for life tenure for the chief executive, confided in one of his last letters that perhaps he was not cut out for a democratic world. Yet at a crucial moment in their country's history, the Founders of the Constitution created a sound governmental structure which has nonetheless proved open to change and improvement. *The Founders' Constitution* breathes life into this important historical accomplishment by presenting the reasoning, the arguments, and the dreams of its creators.

—Jennifer Newton

"*The Founders' Constitution*"/Morris Philipson/University of Chicago, IL/  
\$34,206 OR; \$90,000 FM/1985-88/  
Reference Materials

acts, from Magna Carta through the Securities Exchange Act and the Hyde Amendment; and biographical articles on the constitutional thought and influence of almost 450 people, from the most famous figures—John Jay, Oliver Wendell Holmes, Jr., Earl Warren—to the relatively obscure, such as Ebenezer R. Hoar and Bushrod Washington.

An obvious major topic such as the First Amendment will be the subject of a 6,000-word essay, with other important issues related to the

history and judicial interpretation of the amendment—freedom of the press, religious liberty—treated in separate 6,000-word essays.

Historical articles of about 1,500 words will provide summaries of constitutional events according to periods, for instance the colonial and Federal period, as well as eras in the history of the Supreme Court, such as the Marshall or the Taney Court.

Legal terms—*stare decisis*, McNabb rule, class action—are defined in a

sentence or two.

The legal profession accounts for 141 contributors; the rest are equally divided between historians and political scientists, among whom C. Vann Woodward, John Hope Franklin, and Henry Steele Commager are only three of a long list of preeminent scholars.

Macmillan will first publish a four-volume library edition, with a second, less expensive edition to appear in 1989, the bicentennial of the ratification of the Constitution.

Portraits of  
Gouverneur Morris,  
John Marshall, and  
James Wilson:  
National Portrait Gal-  
lery, Smithsonian In-  
stitution. Drawings of  
Patrick Henry and  
Alexander Hamilton  
by Leonard Baskin,  
courtesy of the Na-  
tional Park Service.



# Dateline 1787

The Assembly Room of the State House (Independence Hall), site of the framing of the U.S. Constitution. A delegate to the Convention described the room at the time as "neat but not elegant."



National Park Service

After a wet, windy spring, marked by confusion over currency, cut-throat competition for trade, and armed rebellion in Massachusetts, the summer of 1787 opened like an oven in Philadelphia, where delegates from twelve of the thirteen states had come to revise the Articles of Confederation. The loose alliance of states under the Articles was, in George Washington's words, "a half-starved, limping government, always moving upon crutches and tottering at every step."

Washington presided over a sweltering, small room in the State House. Doubt and distrust made the air even thicker as the delegates wondered whether their enterprise was the beginning of a great republican experiment or merely the end of the revolutionary dream.

These doubts begin *Dateline 1787*, a series of dramatized radio broadcasts "reporting" the Constitutional Convention. Produced by Chicago's National Radio Theatre and supported by NEH, the thirteen-part series of weekly half-hour newscasts will be aired in 1987 to commemorate the bicentennial of the Convention. The series will be offered free to all public radio stations and will be available on cassette to schools and libraries.

Of course, the press was excluded from the secret meetings of the 1787 Convention, but with the aid of twentieth-century technology, extensive scholarship, and imagination,

*Dateline 1787* will cover the Convention as if it were a modern news event, reporting developments "as they happen." Actors will play historical figures, actual broadcasters will play anchorman and reporters, and two scholars will act as commentators.

Broadcast techniques such as interviews, profiles, and *ad lib* commentary make radio an excellent format for a historical event that is primarily deliberation and debate, according to Yuri Rasovsky, the producer-director of National Radio Theatre and cowriter and director of *Dateline 1787*. Background features "such as Philadelphia's Fourth of July parade and investigative reports on the personal affairs of the delegates place the historical events in a necessary context," Rasovsky says.

"The participants at the Convention were exceptional people. Everyone did something extraordinary," says Rasovsky, "Even Luther Martin, who was continually drunk and the butt of everyone's jokes, came up with an important proposal."

Personality issues tend to diminish in importance as time passes. Yet, the social dynamic was all-important in the debate and compromise at the Convention. How these men, despite deep philosophical and personal differences, created a Constitution that has endured for 200 years is the dramatic thrust of *Dateline 1787*.

As the program opens, James

Madison, one of the key figures, has just finished speaking from the Convention floor. In the soundbooth, anchorman Alan Bickley and commentators William B. Allen of Harvey Mudd College and Jack Rakove of Stanford University are discussing Madison's argument on the merits of a large extended republic. The scripts for the program were written from historical information supplied by a group of scholars who outlined the key issues and personalities and advised on matters of accuracy and emphasis throughout the development of the series. On the air, Allen and Rakove's commentary not only defines issues and interprets events, but shapes the human dimensions of the various historical figures.

The commentators note that Madison is not a good speaker. "He sometimes mumbles," says Rakove. "And his voice drops. You can't always pick up everything he is saying. Yet when you look around the convention floor you have the sense that everyone is listening. He is so rigorous and thorough and methodical about laying out the alternatives that he and his colleagues must confront that everyone realizes that Madison is on top of the issues."

James Madison was one of the first to arrive in Philadelphia. He used the time to his advantage, preparing his arguments advocating the Virginia Plan. If this plan, proposed by Edmund Randolph and drafted by Madison, were adopted, the Articles of Confederation would be replaced with a powerful national government based on proportional representation.

In a corridor interview with a *Dateline* reporter, delegate William Paterson responds to the Virginia Plan.

"If the states were to confederate under the plan before us, New Jersey would be swallowed up! I would rather submit to a monarch, to a despot, than such a fate."

The commentators point out that the opponents of the Virginia Plan, led by Paterson, realize that any revision of the Articles of Confederation must result in a stronger centralizing power. But they wish to keep the states as the ultimate source of authority. Delegates from the smaller states of New Jersey, Delaware, New York, Connecticut, and Maryland have the most to lose



from proportional representation advanced by the Virginia Plan. They present their own alternative: the New Jersey Plan.

Alexander Hamilton, only thirty-two years old, begins to argue that both the Virginia and New Jersey plans have defects. "The British system is best," he declares.

His speech is puzzling, the broadcasters agree. "It's always hard to know what Hamilton is up to. He is a complex and contradictory character."

Hamilton's diminutive stature and boyish good looks belie his sophistication and first-rate intellect. But he has been described variously as arrogant, high principled, and temperamental. During the Revolutionary War, he served as Washington's aide but resigned after suffering what he thought was an affront to his honor. He would, in time, walk out of this Convention.

Hamilton's motives, one commentator speculates, may be to frighten New Jersey into accepting the Virginia Plan now rather than facing a more powerful centralizing plan later.

During Hamilton's speech, Madison, who has been taking copious notes throughout the proceedings, frowns at Hamilton's remark describing the differences between the two plans as one only of "sauce."

"Madison doesn't seem to have much of a sense of humor," says Bickley. "How flexible will he be? It will take more than scholarship to

get more than a narrow majority of votes."

The issue of representation threatens to divide the Convention irrevocably. There is speculation that the advocates of the New Jersey Plan are refusing to endorse the concept of the Virginia Plan until they are assured that their interests will be protected.

On June 19, 1787, after four days of intense debate, Madison pre-empted the floor and recapitulates his earlier arguments for the Virginia Plan. *Dateline* broadcasts the roll call vote live.

It is all over in less than a minute. The Virginia Plan carries: seven for, three against, and one divided.

"Either Madison's arguments were decisive in themselves or else private discussion over a fine Madeira had revealed that the delegates were not prepared to accept the New Jersey Plan, which was inherently weak," says Rakove. "I would love to know what happened on the evening of the eighteenth."

Throughout the Convention, "there was a lot of caucusing and politicking for which we have no records," says Rasovsky. In the interest of truth, "we invented a scene in which some of the delegates get together at an inn after hours."

*Dateline 1787* does not present the opponents of Madison's scheme as merely obstructionists, says Rasovsky. "The contributions of delegates like James Lansing of New York, William Paterson of New Jersey, and Luther Martin of Maryland

added significantly to the Constitution's final form."

Three more months of debate and compromise would follow after the adoption of the Virginia Plan. As the delegates decided how the power of the new government would be divided and balanced, one of the most painful issues that arose was that of slavery.

Slavery was the Banquo's ghost of the proceedings, always threatening to break in upon the carefully maintained cordiality. "The word 'slavery' is never mentioned in the Constitution but is referred to by indirection and euphemism," says Rasovsky. "It was an issue that was never resolved at the Convention and would be settled eighty years later on the battlefield."

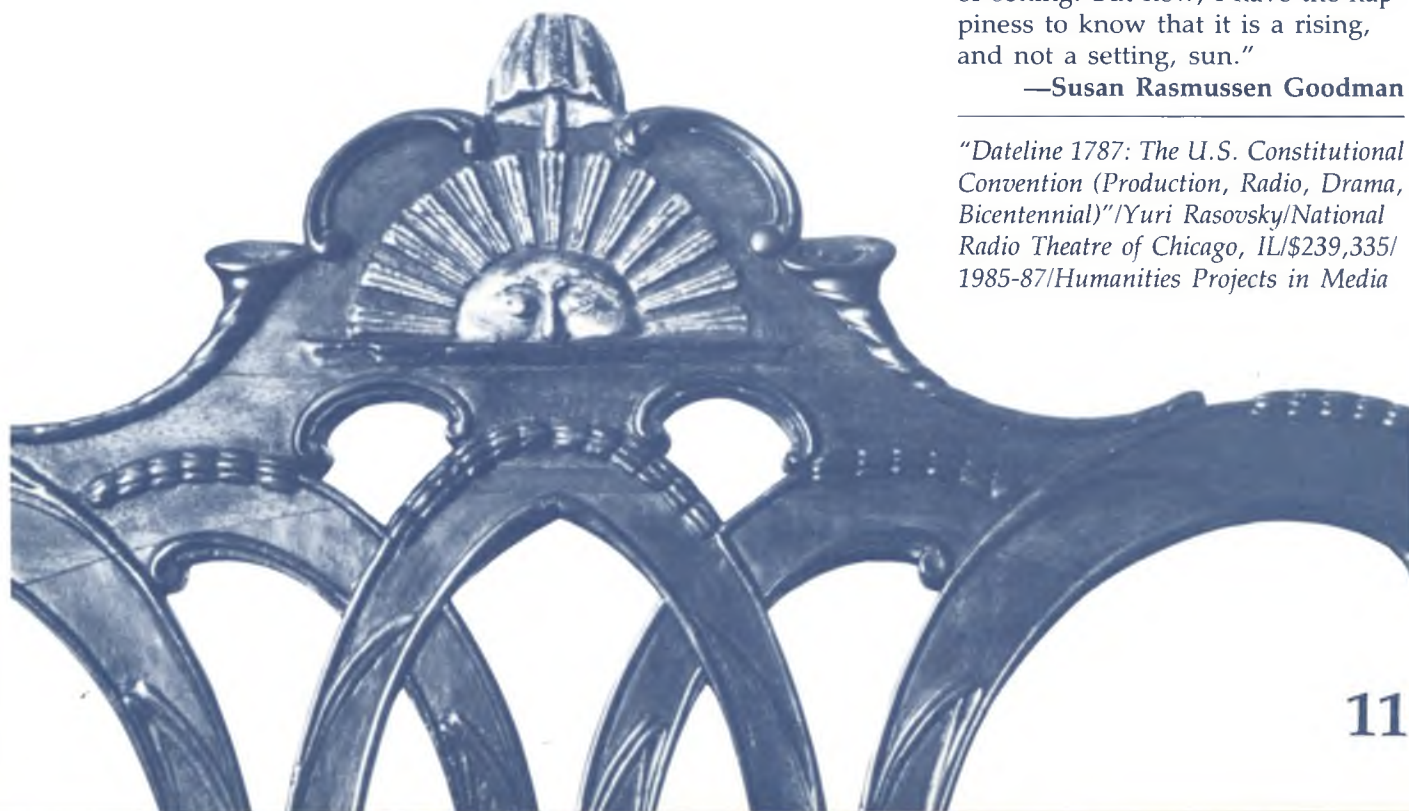
A dramatic structure was not imposed on the history of the Convention, says Rasovsky, and yet *Dateline 1787* has numerous moments of drama. On the final day of the Convention, not everyone was satisfied with the Constitution. Several delegates refused to sign. Benjamin Franklin, too weak to stand and deliver his closing speech, gave his reason for endorsing the document. "I consent, Sir, to this Constitution because I expect no better, and because I am not sure it is not the best."

As the delegates came up, one by one, to sign the document, Franklin said, "I have often in the course of the session . . . looked at that sun behind the General's chair without being able to tell whether it was rising or setting. But now, I have the happiness to know that it is a rising, and not a setting, sun."

—Susan Rasmussen Goodman

"*Dateline 1787: The U.S. Constitutional Convention (Production, Radio, Drama, Bicentennial)*" / Yuri Rasovsky / National Radio Theatre of Chicago, IL / \$239,335 / 1985-87 / Humanities Projects in Media

The rising sun on the back of the chair used by George Washington at the 1787 Convention was to Benjamin Franklin a symbol of the beginning of a successful constitutional government. The chair was designed and worked in mahogany by Philadelphia cabinet maker John Folwell in 1779.





# THE ANCESTRY OF AMERICAN REPUBLICANISM



*John Locke, 1632-1704*



*David Hume, 1711-1776*



*Montesquieu, 1689-1755*



In order to appreciate properly what the Founders saw to be the most fundamental of all their achievements, we must try to recover their view of the most fundamental or serious problem they faced. James Wilson, in his speech presenting the Constitution to the Pennsylvania Ratifying Convention, states that problem clearly. He indicates that there existed, among thoughtful Americans at the time of the founding, a widespread skepticism about the very possibility of a large-scale republic. The doubt was being voiced most insistently by the Anti-Federalists, but it had been vividly entertained by almost all the members of the Convention as well, and remained an agonizing question. The strength of the doubt was due to the powerful empirical evidence and august authority that was marshalled in its favor.

Let us first glance at the empirical evidence. The fact is that prior to the American founding there is no example in history of a successful republic encompassing more than a single city or a small confederation of a few cities and territories. Wherever we find republics attempting to expand beyond such modest limits, we find (in cases like Rome, Venice, Sparta, and Athens) that the republic first becomes a tyrannical empire and then either collapses into anarchy or else becomes corrupted into some sort of military or oligarchic despotism.

But even more challenging are the arguments and analyses of the political philosophers down through the ages. Those arguments the Founders and their opponents found formulated with unrivaled precision and depth in Montesquieu's *Spirit of the Laws*. Montesquieu begins from the assumption that what we mean by a "republic" is a regime in which the people at large holds in its own hands the reins of power. Now if this is to be so, then the society must remain small, the government close to the people and truly of and by, as well as for, the people. But mere smallness is only one among several key preconditions for republicanism.

A system where the responsibility rests directly with the people is a system that requires in its citizens an intense "virtue": a passionate patriotism or dedication of each individ-

ual to the whole. The patriotism Montesquieu has in mind is not properly understood either as nationalism, or as devotion to "ideology," or as allegiance to the "state." "Virtue" here means fraternity, a sense of brotherhood that genuinely unites the citizens; and authentic brotherhood requires kinship, similarity, even homogeneity in the ways of life of the citizenry. A sound republic must regulate religion, morals, family life, and above all economic status so as to prevent the development of diversity and private interest. A sound republic necessarily implies, then, a closed and illiberal or intolerant society—a society whose freedom is radically different from the freedom of a commercial, individualistic, and growth-oriented society.

The form of government that, in contrast to republics, allows its subjects considerable individual or private liberty is, according to Montesquieu, limited monarchy, such as is found above all in England. There political power is checked and balanced by being distributed among several permanently distinct and competing classes or "estates" (the king and his court, the established Church, the military nobility of various regions, the bourgeoisie who dominate the cities, the farming gentry). Monarchy requires very little civic virtue; the spring of this kind of system is "honor," or a rather competitive, watchful pride of place and attachment to one's region, patron, and class. Accordingly, monarchy can be much more permissive and much more tolerant of wide diversity. Above all, monarchy can permit or even encourage commercialism and the amazing benefits economic growth brings: prosperity, scientific and technological enlightenment, and the softening or humanizing of harsh barbarian mores.

Montesquieu admired and even extolled the classical republics, but he rejected them, in the final analysis, because they demanded a degree of self-sacrifice and of stern repression of the passions that were contrary to human nature. Now the conception of human nature and its deepest needs to which Montesquieu appealed in making this basic judgment is one that he took from his great teacher, John Locke; and it is to Locke that we must turn in or-

der to see the deepest foundations of Montesquieu's, and the Framers', political theory.

Locke is the principal source of the "State of Nature" teaching. According to this doctrine, human beings are not—as the Aristotelian and Christian-Aristotelian tradition has erroneously taught—political animals by nature. Politics or government is not natural to humankind, but is the result of social conventions or inventions devised by human beings to overcome the disorder in which they naturally live. By the natural tendencies of their passions, human beings are self-centered *individuals* who live in no stable social structures and are endowed with no single goal or source of happiness and fulfillment. Human beings are naturally prone to drift in and out of temporary, fragile relationships in which they are compelled by economic scarcity and induced by the love of dominion to threaten and injure one another.

Men achieve an ordered existence only by using their reasoning power to invent and enforce artificial, binding contracts—especially the marriage contract and the contract to form a government. Although men have no agreed-upon ultimate goal, or notion of happiness, they can and do come to agree that they all desperately need physical and economic security—life, liberty, and property—in order to "pursue happiness" (Locke's famous phrase). In fact, human nature is such that human beings have no choice; they cannot exist without striving for life, liberty, and property, without "pursuing happiness"; they have therefore, as Locke puts it, a "natural right" to these essential ingredients of human existence. Government based on this rational insight into human nature has, then, a very limited legitimate end: the securing of these natural rights. Government has no business trying to elevate citizens to other goals, or trying to make politics (self-government) an end in itself, or trying to tell anyone what happiness they should pursue or what god they should worship.

As I have indicated, this basic Lockean conception of the human situation was shared almost universally at the time of the founding—by Anti-Federalists as well as Federalists. To be sure, there were few



strict Lockean. In almost every mind, the dominant influence of Locke and of the subsequent thinkers he had inspired—like Hume and Montesquieu and Adam Smith—was muted and diluted by older, countervailing influences stemming from the Bible on the one hand and the classical republican tradition on the other. And some Americans penetrated more deeply the full implications of the modern, Lockean outlook.

Among these most farseeing Americans were Madison and Hamilton, the authors of *The Federalist Papers*. Their framework of analysis was essentially the same as Montesquieu's, but they departed from the teaching of *The Spirit of the Laws* in crucial secondary ways. Following the lead of David Hume, they were much more openly and severely critical of the Greco-Roman republics and accepted with fewer hesitations or reservations the superiority of commercial society. But in opposition to both Hume and Montesquieu, they rejected the English political system as a model. More precisely, they and the other Framers proposed a new, republican version of the kind of checking and balancing system Montesquieu had associated with monarchy, or with a society divided into permanent class and social distinctions.

What the Anti-Federalists failed to grasp, the Federalists insisted, was just this: the fact that neither of the great Montesquieuian alternatives would fit the American situation; the fact that a new kind of political system was needed, such as the world had not seen before. What are the key elements of this new version, or new application, of Montesquieu's and Hume's political science?

First is the conception of a healthy society put forward in Madison's Tenth Federalist. In place of the solidarity of the classical republic and the balance of power among competing classes in limited monarchy, the new system substitutes the fostering of a multitude of more petty, mutable, and shifting interests and factions—religious, political, regional, ethnic, and above all economic. The diversity of cross-cutting interests makes the formation of an oppressive majority faction less likely and promotes the formation of coalitions based on compromise. But this process will function reliably

only if it is channeled and refined by appropriate governmental institutions, which are *representative*.

In a representative system, the popular will is almost never allowed direct access to the levers of political power; rather it is filtered through delegates who may be expected to possess an above-average level of education, public spirit, and long-range vision. But the Federalists were far from being partisans of an aristocratic regime and were anxious to insure that the representatives would be both answerable to the people through frequent, contested elections, and hemmed in by numerous institutional restrictions and limitations.

The most massive check of this kind is the federal system, conceived in a spirit very different from the federalism described by Montesquieu. For Montesquieu had developed the federal idea as a way of giving greater international security to small, virtuous republics: He had thought of a confederation whose central government would have very little say in domestic affairs, and no clear sovereignty over the member states. Something like the Montesquieuian notion had been tried in the original American Articles of Confederation. In the new American federalism, the Founders conceived of federalism as a way of using the national government to police and restrict the power of state governments. Here again they insisted that the Anti-Federalists failed to grasp a source of dire threats to individual liberties. The Anti-Federalists talked all the time about keeping power in the states, close to the people; they failed to recognize that the states were already so large as to be far beyond the bounds of a quasi-classical republic where a large portion of the citizenry participated in the government. They further failed to reckon with the desire among Americans for a private, personal, and economic freedom that would not compel them to spend long hours participating in government. Hence they did not discern how likely it was that state governments, if left inadequately supervised, would fall prey to oligarchies or come under the sway of temporary majority tyrannies whipped up by demagogues. It was the national government that would be most likely to reflect a

broad consensus arising from the compromises of the diverse society taken as a whole. The Federalists, and Madison in particular, were therefore disappointed that they had not been able to give the national government even greater preponderance over the states.

Precisely because they expected the national government to predominate, the Federalists were especially attentive to institutional checks and balances within the central government. And here they adopted and adapted Montesquieu's famous teaching on the separation of powers. But in Montesquieu's version, the separate and competing institutions (e.g., House of Lords, House of Commons, King, Judiciary) reflected distinct classes; in the classless American model, the distinctions were to be much more artificial, in the sense of being much more purely institutional. Thus Senators would be put in competition—for power, fame, and responsibility—with the chief executive and with the lower house of Congress not so much because they came from distinct family backgrounds but because their interests as members of the Senate and their different sort of constituency placed them in a position of tension with representatives in other institutions.

The one branch of government that is clearly not limited by being representative and that therefore has an independence, as well as a secrecy in its operations, that may at first seem most to justify the Anti-Federalist fear of a future aristocratic or oligarchic subversion of the republic is the Supreme Court. But Hamilton, echoing Montesquieu, insisted that the Judiciary was the "least dangerous branch" because it had direct control over neither the budget nor the military. As the late Herbert Storing pointed out, it is a great paradox that what has endowed the modern Supreme Court with a power far greater than that envisioned by the Federalists—a power far closer to what the Anti-Federalists warned of—is the addition to the original Constitution of the Bill of Rights. For the Bill of Rights was opposed by the Federalists, and by *The Federalist Papers*, and insisted upon by the Anti-Federalists (together with Jefferson).

Indeed, the Anti-Federalists' cam-



campaign for the addition of a Bill of Rights would seem to indicate their rather uncertain grasp of the essential issues at stake in the ratification debates. By adding a Bill of Rights, they in effect conceded that it was the responsibility of the national government and the federal courts to stand guard over those rights whose protection was the highest purpose of government; they conceded, or at least opened the way to, the supremacy of the national government over the states in the most important respect; they helped make possible the supremacy of distant and even unrepresentative institutions over state and local governments close to the people.

On the other hand, the Federalists' opposition to a Bill of Rights seems to indicate some limitation in their understanding of the full implications of the system they had created. It is true that the Federalists' opposition to a Bill of Rights was only half-hearted. The Federalists tended to think that a Bill of Rights was unnecessary, because, as some put it, "the Constitution is itself a Bill of Rights." In other words, they thought that the institutional mechanisms of the Constitution were quite adequate to the protection of individual rights from the national government, and they thought the national government (along with sound features of the state governments) could keep the state governments from overstepping their legitimate bounds. What they seem not to have heeded enough was a consideration the Anti-Federalists from time to time wisely stressed: the future educational benefits of a permanent, solemn statement of those individual rights and liberties for the sake of which the entire system was brought into being. More generally, one may wonder whether the debate over the Bill of Rights does not reveal a blind spot in the Founders' vision—their failure to pay enough attention to the moral education required to ensure the future production of vigilant citizens and wise leaders.

—Thomas L. Pangle

*Mr. Pangle is professor of political science at the University of Toronto and the author of Montesquieu's Philosophy of Liberalism and of a forthcoming study of the philosophic influences on the American Founders.*







## Teaching Constitutional Ideas

Could the ideas of John Locke possibly interest a high school junior who finds himself at odds with restrictions imposed by institutionalized education? Yes, they could, in the opinion of William Hatcher, curriculum specialist for a summer teachers' institute, "Understanding the Constitution Through Seventeenth- and Eighteenth-Century Political Philosophy."

"Once Locke's thoughts on social contract theory have been abridged and simplified so that students can understand them, Locke can really be fun to deal with," he has found. "Ask students to think about the rules they are asked to follow. The average high school population is around 1,800, the size of many small towns. The age span is broad, and laws to protect thirteen-year-olds must also be fair to eighteen-year-olds who have difficulty understanding rules at all. It is a practical exercise for students in a history or government class to ask, in light of Locke's reasoning, questions such as why students are not allowed to smoke in the school or why the campus is closed to outsiders."

★ ★ ★

The institute offered at California State College in Bakersfield during the summer of 1984 brought the ideas of Locke and of other political philosophers to high school teachers

of American history and government. Many had had little or no formal training in American political theory and its European foundations. The program included lectures, discussions, oral presentations by the teacher-students, and an introduction to the original documents of American constitutional history, many of which could be studied at the nearby Huntington and Clark libraries. Eight additional sessions, held between January and May 1985, traced the development of American constitutional history through the nineteenth century. These sessions enabled participants to work with a master teacher in adapting material from the institute for use in their own classrooms.

Hatcher, who taught social studies for seventeen years, is now an assistant principal in charge of instruction at East Bakersfield High School; he also serves as district coordinator of social studies. He points out that ordinarily, after teachers have completed their formal education, the only support offered them is designed to improve their methods of instruction, not to increase their knowledge of subject matter.

The Bakersfield institute was undertaken in part because of a concern that many teachers lack familiarity with the substance of the courses they are asked to teach. Pro-

fessor Ray Geigle, the institute's director and the chairman of the political science department at California State, saw the need for the institute while serving as a consultant to a neighboring high school district during an evaluation of the social science curriculum. The evaluation placed in ironic perspective the fact that at a time when graduation requirements in American history and government were being increased, most of those assigned to teach these courses had little university preparation for the assignment. (Although this will not be possible for teachers entering the system after 1984, many instructors now in the system are certified to teach in areas for which they have not trained.) Coincidentally, the college, a primary institution for training teachers in California, had recently modified its own requirements in American history and government to place greater emphasis on the formation of American political ideas and how they have affected our system. Thus the summer project made available to high school teachers the resources of the college at a time when it was broadening its concept of constitutional history.

The institute began with brief readings from the classical philosophers who influenced seventeenth- and eighteenth-century European

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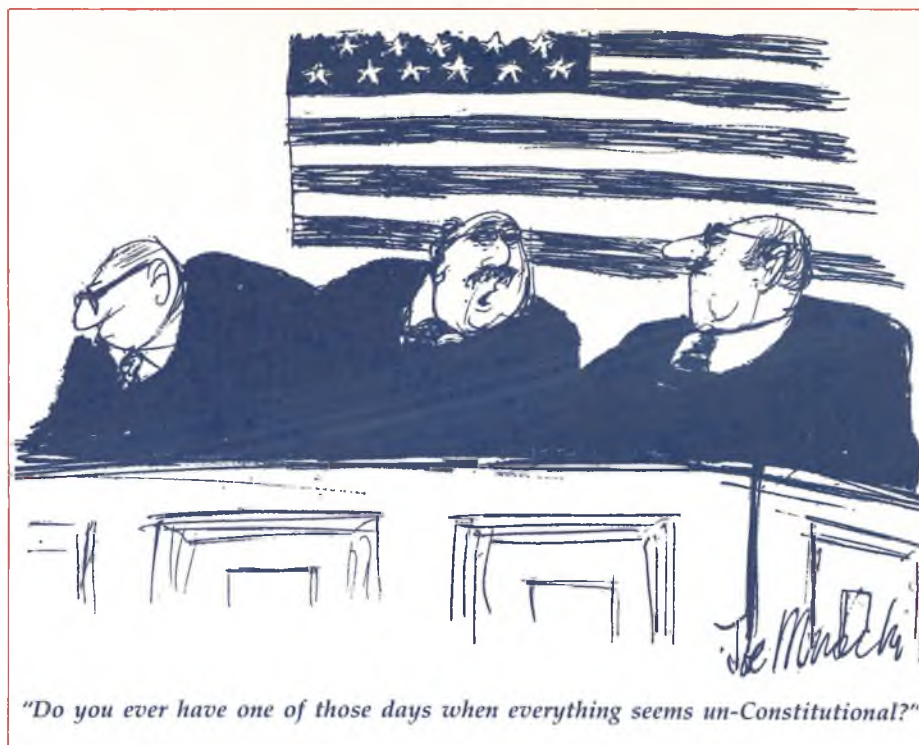
political thinkers—Plato, Aristotle, and Cicero. The teachers also read short selections from writings of the Levelers, an extremist sect, very advanced in its thinking, which, at the time of the Puritan revolution, advocated a written constitution and abolition of the monarchy and of noble privilege.

With this background the teachers turned to America's more immediate European heritage: Hobbes on the nature of man and the origin of government; Locke and Rousseau on the nature of man and society; Burke on law and limited government; and Locke and Burke on the justification of dissent and revolution and on republican government and the nature of representation.

Mornings were devoted to lectures and discussions; afternoons were reserved for reading and for "active learning" in small groups. One afternoon was spent in a debate on limited government in which one teacher defended Burke's stand on the power of government against a colleague who argued Locke's position. On other afternoons, several teachers engaged in role playing, either written or oral, expounding for instance on the issues raised by the American Revolution from the standpoint of Whig politicians in England.

During the third week of the institute, the group visited the libraries at USC and UCLA as well as the Huntington and Clark libraries. After receiving guidance on how to use research facilities at the libraries, the teachers began their own projects. Each chose an issue from the first two weeks' readings, such as equality or natural rights, then searched among treatises written in America at the time of the Revolution for materials addressing those issues.

Of special interest was the relatively untapped collection of election sermons at the Huntington Library. Many active figures in colonial history were ministers who used the



"Do you ever have one of those days when everything seems un-Constitutional?"

Drawing by Joe Mirachi 1974 The New Yorker Magazine, Inc.

churches as a forum for propagating ideas and stimulating discussions among parishioners. Election sermons took on a new meaning, according to Geigle. "There are seventy-five to a hundred sermons that I have seen—and there must be a lot more—dealing solely with the question of whether it is justifiable for a God-fearing people to take revolutionary action against the Crown. You would have heard that discussion on almost any Sunday in New England churches and in some churches in the South. The sermons show how English and Continental ideas were received by the elite here and how they filtered down to become a part of the political culture of the period."

Besides providing an opportunity to look at original papers, Geigle believes, the library experience enabled teachers to look beyond the accounts of American historians to determine for themselves what European ideas meant in the American context.

In the final two weeks of the institute, teachers traced these ideas to America to determine how colonial politicians discussed and adapted them. The teachers focused on the writings of Jefferson, Madison, and Hamilton, but they also consulted brief works of lesser figures. Exploring the themes of resistance, protest, and civil disobedience, one teacher wrote in the persona of a slave justifying participation in a revolt. Another wrote as a Quaker explaining

his refusal to serve in the military forces during the Civil War.

The twenty-three teachers were so stimulated by the institute they requested follow-up sessions. Many experimented with ways to teach the new materials. Abraham Trop, a veteran teacher, has shifted the emphasis in his classroom from learning "which amendment did what" to arousing interest in constitutional ideas. He keeps a paperback library in the classroom, and a few of his students read the second Essay on Civil Government as Locke wrote it.

During the first college quarter this year, Geigle noticed that one freshman in his class would volunteer whenever there was a discussion of representation, to contrast Madisonian, Hamiltonian, and Jeffersonian notions of the subject. He later found that the freshman had been a student of one of the institute participants who had revised her lesson plans to include the political philosophers. The student had been fascinated by the ideas he encountered in her class and so, immediately on entering college, he had elected a course in government.

—Anita Mintz

*"Institute on Understanding the Constitution Through 17th and 18th Century Political Philosophy"/Ray A. Geigle/California State College, Bakersfield/\$74,979/1984-85/Humanities Instruction in Elementary and Secondary Schools*



# New Pieces in the Constitutional Puzzle

Among the major events of 1987—the bicentennial of the American Constitution—will be the publication of a supplementary volume to Max Farrand's *Records of the Federal Convention of 1787*. Since 1937, when Yale University Press reprinted the two original 1911 volumes of the records with a small supplement, documents have been discovered that contain important information about the discussions that took place among the participants during the time of the Convention.

The primary source for studying those discussions, referred to frequently by constitutional scholars and adjudicators, has been Farrand's work: a compendium of the Convention proceedings, which includes the notes of James Madison, Robert Yates, Rufus King, William Paterson, and briefer documentation by Alexander Hamilton, James McHenry, George Mason, and others.

The first two volumes of the original Farrand cover chronologically the entire Convention period. Volume III contains a group of letters and reminiscences of those who attended the Convention.

Among materials that have been uncovered for the new volume are some sixty pages of notes, plans, and drafts by John Dickinson; approximately ten pages of similar materials by Pierce Butler of South Carolina; fragmentary notes of Robert Yates; approximately one hundred pages of notes on debates in the Convention kept by John Lansing, Jr., of New York; Convention documents of Rufus King and Elbridge Gerry; George Mason's notes; several annotated copies of the Committee of Detail Report; and several annotated copies of the Committee of Style report.

Although fragments of some of these documents have been published in separate journals, many

have been buried away in manuscript collections in public repositories and private holdings across the country. Few researchers have the time, nor can they afford the expense, of ferreting out this essential material. And few consider it expedient to comb through large collections that may or may not contain valuable items. But an NEH grant to Project '87, the cooperative group formed by the American Historical Association and the American Political Science Association to plan scholarly and educational commemorations of the approaching bicentennial, made possible the research for the new volume, which presents in one reference essential material that has been scattered before now.

Among scholars who have been interested in seeing the new volume produced is Leonard Rapport, an archivist who for the past twenty-five years has searched for constitutional documentation with a view toward a supplementary volume of this kind. He surrendered all his accumulated documents when he began collecting materials for Project '87.

Rapport estimates that he has explored seventy repositories in the original thirteen states, traveling in excess of 8,000 miles, mostly, he said, in a 1952 DeSoto.

"I know it's not relevant, and a bit romantic, but out on the roads through North and South Carolina and Georgia, I frequently thought of Hernando de Soto. As a Spanish explorer, you'll recall, he visited those areas in his quest for gold. I felt that in my DeSoto, I, too, was hunting for treasure."

The editor of the new volume is James Hutson, chief of the manuscripts division of the Library of Congress, and a specialist in eighteenth-century America. Hutson has had extensive experience as an archivist and editor, including

editing publications at the Institute for Early American History and Culture, in Williamsburg, Virginia.

Hutson, who also has searched several years on his own for constitutional documents, intends to continue Farrand's methodology of selecting from the hundreds of items discovered only those that are relevant to understanding the Constitution. Copyediting will be limited to punctuation in order to preserve clarity of meaning for modern readers. Spelling and capitalization will be retained as in the original.

After annotating the entries, Hutson will write an introduction to the supplementary volume, discussing the significance of the new information that the documents reveal, assessing the current state of documentary evidence, and describing what has not surfaced but what might be found in the future.

From the content of certain letters, Hutson is able to establish what is missing. "Very simply, because a member of the Convention will have received a letter from an associate who wrote to the effect, 'I received your letter of X date,' we know that such a document should exist. Although we do not have it in hand, it may still be available.

"The secretary of the Convention, William Jackson, kept an official journal, as he was obliged, which we have. But we know he also kept some notes on the debates which he was preparing to publish in the late 1820s. Those notes exist somewhere and yet have not been found."

Of the approximately 250 items to be added to the new compilation, about 150 are "fresh." As Hutson's essay will explain, these cannot be categorized into subject areas because they cover virtually everything that occurred during the Convention, including parts of debates and letters to friends and relatives re-



vealing what people were saying about various issues. They furnish an explanation about how and why and at whose instigation certain clauses appear in the Constitution.

For instance, there are documents related to clauses establishing the regulation of commerce, which show that this clause was composed to assuage the fears of the Maryland delegation who believed the Virginia delegation, along with some of the larger states, might attempt to close the Chesapeake Bay to shipping in Baltimore.

"The results so far have surpassed my expectations," commented Hutson. "Just the sheer bulk of the work now is far greater than I thought it would ever be. And that, of course, means we have found more documents than I thought would turn up."

"I think the most important discovery, probably, concerns the notes of Robert Yates, the New York delegate. Previously, they have been called the second most important source. Yet we realize now they are virtually unreliable because of the editing done to them for partisan purposes."

Leonard Rapport added, "Yates's notes were copied by his colleague Lansing, also an anti-Federalist, after Yates died. I found an excellent letter in which Lansing tells of his involvement in an 'editing' project with 'Citizen' Genet, son-in-law of George Clinton, a vice-presidential candidate in 1792 against John Adams. Genet was very active in politics, and was very much anti-Madison. And he apparently revised those notes a good deal, particularly to make Madison look bad."

Not all the material that has been uncovered will be appropriate for inclusion in the new Volume IV. Some has no relevance to the making of the Constitution itself, such as those documents discussing social conditions at the time. Because the items are of a general historical interest, however, they will be kept in the Library of Congress under Hutson's direction.

As an illustration, Leonard Rapport recounted, "In a Philadelphia library, I found letters from Rufus King and Luther Martin—Martin was considered a sourpuss, you know. Both had borrowed books from the American Philosophical So-

ciety and hadn't returned them. They both replied in about the same way. One said he thought the servants had returned them; the other responded that the books might still be at the boarding house where he lodged during the Convention.

"King had checked out three volumes about travel in France. And Luther Martin had borrowed a book entitled 'Jones' Chinese Poems.' Now, you just don't think of somebody at the Federal Convention reading Chinese poems. You'd think he would be reading Montesquieu and Locke.

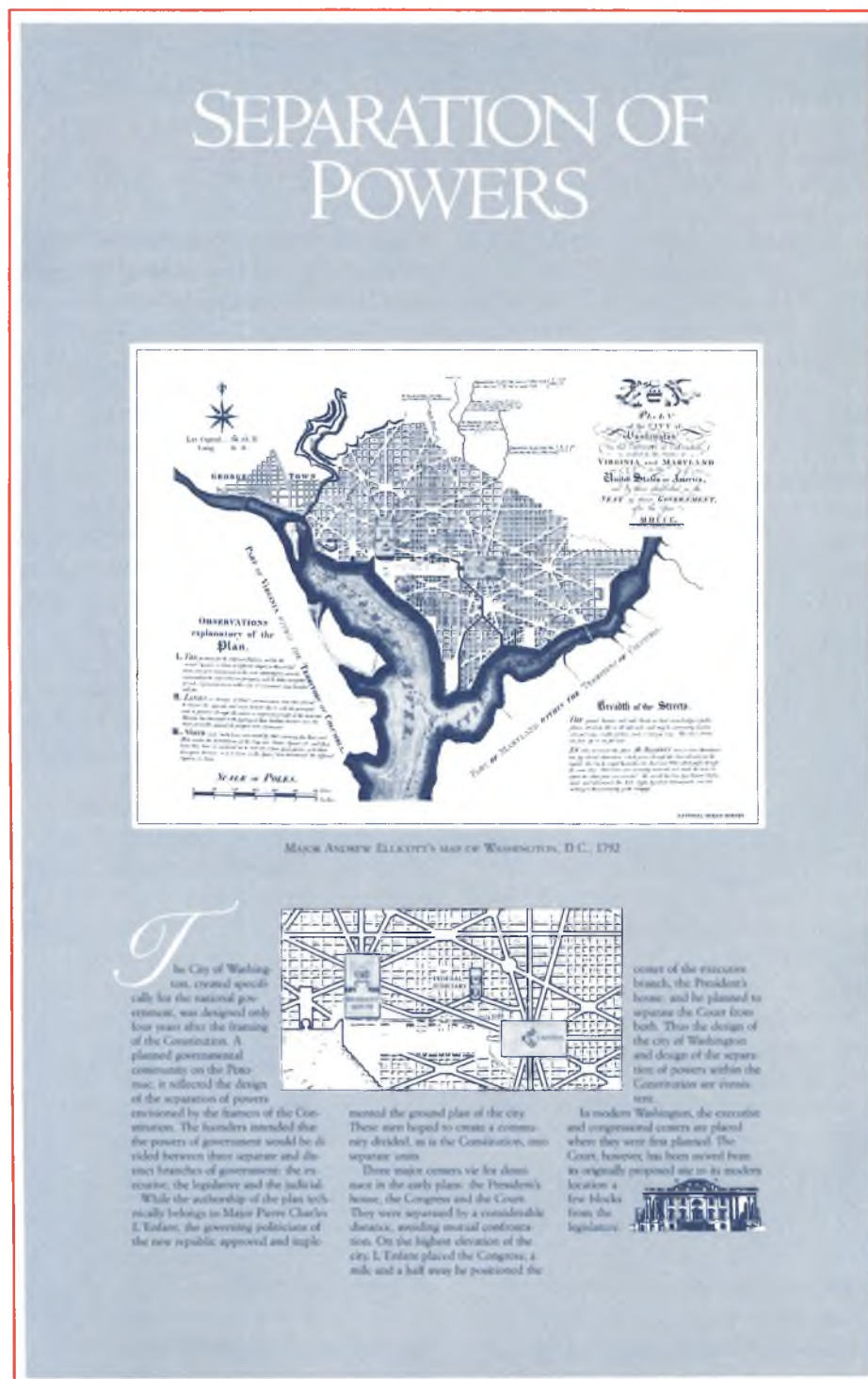
"It is not an important discovery,

and probably will not find its way into the new volume. But it's an example of the hundreds of sidelights we've come across."

As Hutson and Rapport explained, this is not a venture of sensationalism, but a project to produce objective documentation, devoid of editorial interpretation.

—F. Peter Wigginton

"A supplement to The Records of the Federal Convention of 1787"/Jamil Zainaldin/American Historical Association, Washington, D.C./\$48,566/1984-85/Editions



One of a series of posters commissioned by Project '87 to be distributed this year for display in libraries and schools by the Smithsonian Institution Traveling Exhibition Service. The posters highlight the Constitutional Convention and the history of the ratification of the document and will be accompanied by a users' guide and materials for teachers.





A 1787 woodcut shows Daniel Shays with Jacob Shattuck.

## THE GREAT DEBATES

In August 1786, hundreds of farmers seized their muskets and surrounded a courthouse in Springfield, Massachusetts, aiming to prevent the court from foreclosing on their debt-ridden farms and throwing them into prison.

Most of the insurgents, including their leader, Captain Daniel Shays, were veterans of the Revolutionary War, which had ended only three years before. The veterans thought they had been fighting a war for true independence. But now they believed the enemy from London had been replaced by one from eastern Massachusetts—their own state government, dominated by wealthy eastern merchants.

Eager to retire the country's national debt and to protect their own investments, the mercantilists had raised taxes to unprecedented levels and demanded that all private debts be paid in specie, or hard-coin money.

Squeezed by a collapsing agricultural market and a serious scarcity of hard money, the farmers were unable to meet the demands of both state and creditors. And when the courts dismissed their petitions for relief, the farm mob decided it was time to take the law into their own hands.

So was born the farmers' revolt, which came to be known as Shays' Rebellion. After six months of bloody skirmishes, the desperate

farmers were finally subdued by the mercantilist-sponsored militia in early 1787. By then, however, wealthy property owners throughout the former British colonies were haunted by fears of other, bigger rebellions. One of the wealthiest aristocrats, former General George Washington, was so shaken, as his correspondence with James Madison indicates, that he emerged from private life with a call for a strong central government "by which our lives, liberties and properties will be secured."

Washington's plea galvanized a 1787 national convention in Philadelphia, where the delegates wrote a new plan of government.

As the Constitution nears its bicentennial, UCLA Extension's Department of Humanities and Social Sciences is trying to recreate the drama of Shays' Rebellion and other controversies that helped produce the crucial document, which British Prime Minister W.E. Gladstone later described as "the most wonderful work ever struck off by the brain and purpose of man." With help from NEH, UCLA is staging a two-year series of twenty-two public debates between scholars, who will use actual constitutional arguments to explain the origins and development of the Constitution.

"Our aim is to introduce people to the historical circumstances surrounding the writing of the Consti-

tution," says UCLA project coordinator Elizabeth Brooks. "It was not just a lot of wise men sitting around in a room, but the product of a great deal of conflict and confrontation." UCLA history professor Gary Nash helped devise the debate format. "We want to bring that era alive—to let people know its drama," Nash says.

After the former colonies had won freedom from King George III, they faced even more turbulent problems of peacetime government. Under the governing Articles of Confederation, each state functioned almost as if it were an independent country: The states circulated a dozen different currencies, most of which had little value; neighboring states taxed each others' goods; most states faced the spectre of large public debts. There were unprecedented foreign-policy problems; notably, how to deal with imperialist nations and restive Indians.

This unsettled era, the backdrop for Captain Shays' uprising, became the focus of the first UCLA debate last September. "We thought it was appropriate to start with this incident because it was an example of impending rebellion and anarchy," says Brooks. "It's what really showed there was a need for the Constitution."

Unlike Shays' Rebellion, there was no blood shed during the first UCLA debate. But verbal bullets ricocheted through a UCLA auditorium for several hours, as more than 200 spectators listened to an intellectual reenactment of Shays' dilemma.

In a clash that provided the model for future sessions in the debate series, project consultant Gary Nash played the role of a Shaysite rebel. He argued that farmers should be given some debt relief in order to remain in business and keep the rural economy from plunging into chaos.

But those ideas came under fire from Professor William Allen of Harvey Mudd College in Claremont, California, who took on the role of a wealthy Massachusetts mercantilist. Private property must be protected by the government, he argued, and so must the sanctity of contracts. "We were really trying to recreate the positions as they were at the time," says Nash, "not just trying to interpret them."

After making opening statements,



each debator was subjected to probing questions by a moderator. "We just went after each other tooth and nail for forty-five minutes," recalls Nash. Following a brief break, the duel resumed as members of the audience were allowed to question the scholarly opponents. "Even the audience began to take opposing points of view," notes Nash. "One lady in her seventies argued that the governor of Massachusetts should have given the farmers a grace period—that it was no surprise they revolted. But then someone else jumped up and said, 'What about fiscal integrity?'"

Altogether, six such debates were held in the fall of 1985, with six more scheduled during the spring term of 1986. The topics run the gamut of conflicts that reverberated through the Philadelphia Convention and the Constitution's subsequent ratification: What sort of federal legislature should be set up? Where should political power reside—in the states, or the new federal government? What was the new president's role? And how should the thorny question of slavery be resolved?

On this last point, notes Nash, the Framers of the Constitution demonstrated they were "pragmatic, compromising politicians" rather than idealistic "wise men." For while they were solemnly extolling "inalienable rights," the Framers also were condemning 20 percent of the colonial population to another century of human bondage.

The UCLA debate explained how this apparent hypocrisy came to pass. Many of the convention's northern delegates were vehemently opposed to continuing what they viewed as the morally repugnant slave trade. But nineteen of the Convention's fifty-five delegates—most of them southerners—were slaveholders, and the southerners threatened to bolt from the Convention unless slavery were protected. In a political tradeoff that would set a precedent for many subsequent North-South Congressional deals—for example, price supports for southern-grown tobacco in return for urban aid—the Framers tacitly endorsed slavery in return for southern delegate support for federal primacy over interstate commerce. "What was morally wrong was politically right," says Nash.

But, Nash also believes, if the Framers coldly bartered away the rights of black Americans, they may have been naive when structuring the national legislature.

James Madison started with a certain assumption about the future nature of the country, Nash says. "He believed it would become a nation more and more of people with no property. And so to guard against what he thought might be an irresponsible majority, he tried to isolate them in the House, while envisioning the Senate as the guardian of property." The aging Benjamin Franklin, who argued for a more democratic unicameral legislature, lost out to Madison and Hamilton

(who said the "people are turbulent and changing; they seldom judge or determine right").

In an effort to stimulate further examination and debate of American constitutional heritage, the UCLA project is sponsoring a series of group discussions that follow the debates, and is publishing anthologies of supplementary reading materials consisting of historical documents from the constitutional period.

In one of the documents, a letter from George Washington to James Madison, Washington asks, "If there exists not a power to check [Shays' rebels], what security has a man of life, liberty and property?" In another, a report to the Maryland legislature, Maryland delegate Luther Martin explains that the Framers omitted any mention of the word "slave" because "they anxiously sought to avoid the admission of expressions which might be odious in the ears of Americans, although they were willing to admit into their system those things which expressions signified." Muses Nash: "These documents will give people food for thought—it's hard to improve on the words of the original."

(Continued on page 35)

*Broadsides like this one were posted at court-houses and other public meeting places after the clash between Shays' insurgents and Massachusetts troops led by Major General Benjamin Lincoln. Lincoln recommended clemency for almost all of the farmers, but the Massachusetts courts and legislature disregarded his advice.*



giance and Duty, could they hope for a Pardon

*To all such I declare, That if they will come in, surrender their*

Arm

r



and subscribe the Oath of Allegiance to this Com-

will be recommended to a Pardon.

**B. L I N C O L N.**

*Dated at Head-Quarters, Pittsfield, February 19, 1787.*



# Original Intent and the Constitution



Robert H. Bork

**T**he phrase "original intent" has suddenly become the focus of national controversy, and none too soon. The controversy swirls around the question whether judges, who undertake to strike down laws and executive actions in the name of the Constitution, must do so only in accordance with the intentions of those who wrote, proposed, and ratified the Constitution's various provisions. This philosophy of originalism comports with what must people assume judges are, and should be, doing. But it is not what most academic constitutional specialists want of judges and it is apparently not what some judges conceive their function to be. They have evolved a philosophy of non-originalism according to which judges should create individual rights that supersede democratic decisions. These rights are by no stretch of the words of the document or the historical materials to be found in the Constitution but are, nonetheless, to be laid down as a constitutional command. It is appar-

*Ed. note: Public debate over the meaning of the U.S. Constitution began when the document was offered to the states for ratification and has con-*

*tinued throughout its two-hundred-year history. In this tradition of debate, Humanities invited two constitutional experts to present their*

ent, then, that the debate over original intent is a debate about how much of our lives—how much of our morality, our social and economic arrangements—is to be governed by judges and how much by the people operating through the institutions of democracy.

It is surprising that this controversy, whose outcome is critical to the future of the American form of constitutional democracy, is just now receiving public attention. For a quarter of a century the debate about originalism and non-originalism has remained cloistered, raging in the law schools and in legal literature, but virtually unknown to the general public and even to many lawyers and to intellectuals interested in public policy.

The cloistered nature of the legal debate did not mean that it was without influence. In any complex society, much governing is necessarily done by elites acting without broad citizen participation. In America, courts, lawyers, and law professors form an especially powerful and pervasive elite. That fact is not dangerous but rather beneficial, provided that the elite operates according to principles that are both known and legitimate. The teaching of non-originalism in the law schools meant that generations of lawyers were trained to believe that the philosophy was entirely respectable. Indeed, since a majority of professors engaged in the debate denigrated originalism, many students came to think that judicial power far greater than anything the Framers intended, and greater than anything hitherto practiced in the United States, is desirable and legitimate. Judging from arguments now regularly advanced in litigation, this teaching has had an effect upon courts and lawyers.

It is for this reason that the recent eruption of the originalist/non-originalist debate into the public arena seems a healthy development. Courts are not supposed to follow popular views of the Constitution, but the public ought to know if courts are applying their own moral, social, and philosophical predilections in place of the Constitution. To the extent that judges become persuaded of the non-originalist philosophy, that is precisely what they will be doing and, in the process, usurping authority that properly belongs to the people and their elected representatives. Courts must be vigorous in defending the rights of individuals but they must also be scrupulous not to invade and diminish the majority's legitimate right to govern. How can that be done? How can courts distinguish between individual and majority rights?

Any legitimate theory of constitutional adjudication begins from the premise that the Constitution is law. That proposition sounds so obvious that most Americans would regard the premise as a tautology, yet it is a proposition that is energetically denied by a number of constitutional theorists. What does it mean to say that the words of a document are law? One of the things it means is that the words constrain not only behavior but judgment. The Constitution then controls judges every bit as much as it controls legislators, executives, bureaucrats, and citizens. If the Constitution is not law in this sense, law that with the usual areas of uncertainty at the edges, nevertheless with tolerable definiteness, tells judges both what they are to do and what they are not to do, what authorizes judges to set at naught the majority judgment of the repre-

*(Continued on page 26)*





## The Holy Grail of Original Intent

arguments in the most significant and hard-fought constitutional debate today, that over the knowability and relevance of the original intentions of

the Framers. As with all essays published in *Humanities*, these opinions are those of the authors and do not reflect the policies of the Endowment.

From our nation's beginning, historicism has played an important role in defining the path of American constitutional law. For Justice Oliver Wendell Holmes, the epistemologically liberating force of history lay in the recognition that "[t]he rational study of law is still to a large extent the study of history . . . because it is the first step toward an enlightened skepticism." In 1921 the United States Supreme Court declared its belief that "a page of history is worth a volume of logic."

Over the past year, however, history has been invoked to serve a very different interpretive purpose. In today's highly visible and notably politicized constitutional discourse, a particular version of "history"—what some confidently claim to know our country's Founders and our Constitution's Framers "originally intended"—is offered as the only relevant, and indeed the definitive, source of the true meaning of each provision in the constitutional text. But, by standing on its head Santayana's injunction that those who forget the past are condemned to repeat it, these new "originalists" are busily *inventing* a particular past that might *dictate* our constitutional future. In doing so, they are claiming for history a decisive authority that is incompatible with the limits of what we can know and false to the nature of the Constitution itself.

As a nation blessed with a written constitution, we of course must be bound by its words, must presume that they have meaning, and must understand that meaning in light of how those words were used by their authors. But our Constitution does not, like a cookbook, specify which ingredients, combined in what or-

ders and amounts, will yield "liberty," "due process," or "equal protection of the laws." In many instances, the Constitution's majestic phrases are, standing alone, teasingly opaque. Nor is that an accident. The reason, quite plainly, is that our Founding Fathers sought to produce a document that would, in the deathless phrase of Chief Justice John Marshall (a member of the Virginia ratifying convention), "endure for ages to come and . . . adapt[] to the crises of human affairs." With that vision of an enduring *Constitution* firmly in mind, the Framers, in the words of historian Henry Steele Commager, deliberately selected "language flexible enough to anticipate an ever-changing society, economy, and political crises." They left "to future generations the duty to adapt its particular words to its magisterial purposes." The important task for judges, and for all of us as citizens, is thus one of construing those larger "purposes"—*not* one of divining, as a puzzle of hypothetical history, what the Framers would have said had today's problems been put to them as an original matter.

Imagining what they would have said is, in fact, an often sterile and all but meaningless exercise. Too much has changed. As Edmund Burke rightly observed, "we may as well think of rocking a grown man in the cradle of an infant." Consider, for example, the matter of governmental endorsement of school prayer. As Justice Sandra Day O'Connor recognized in joining the Supreme Court's recent invalidation of Alabama's "moment of silence" statute on the ground that its manifest aim was to endorse and encourage prayer in the public schools, the explication of constitutional intent



Laurence H. Tribe

and purpose on issues such as these cannot stop with inquiries into what the Framers—in whose world "free public education was virtually nonexistent"—had to say, or would have said if asked, about the challenged practice. Their world was not one in which the issue could have been framed so as to have the significance it properly has today.

As Judge Bork, a strong and thoughtful judicial ally in the originalists' campaign, has recognized, courts must adapt their views when new technologies or new social or legal developments burden such constitutional treasures as political discourse or individual privacy in new ways. In such circumstances, Judge Bork observes, it is "appropriate to adjust constitutional doctrine to continue to serve the same values" that earlier doctrinal formulations served. Against the accusation that even such limited innovation entails judicial creation of rights ungrounded in the Constitution, it must be said that the basic values whose preservation calls forth such judicial adjustment must themselves



been ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, or by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without the Consent of the Senate.

## Article VI.

All Treaties made, or which shall be made, under the Authority of the United States, shall be as valid against the United States as the Law of the Land.

All Treaties made, or which shall be made, under the Authority of the United States, shall be as valid against the United States as the Law of the Land.

All Treaties made, or which shall be made, under the Authority of the United States, shall be as valid against the United States as the Law of the Land.

(above and opposite) The U.S. Constitution, detail.

be derived not from the judge's personal philosophy but from the judge's best understanding of the Constitution—its text, its structure, the principles it evinces, the history of its framing, and the evolution of its interpretation by the legal and political community. Ideally, debate should focus on what those basic constitutional values are—how they should be described and conceived—rather than on which judges are most entitled to proclaim themselves the true heirs of what the Framers intended.

Those disputants who, like Judge Bork, define the values they deem themselves bound to protect in such a way as to reflect narrowly the specific practices and concrete concerns that moved the founding generation have made a choice to reject a higher level of abstraction and generality. For them, "liberty" is more likely to represent a catalogue of freedoms from particular abuses feared by the Framers than a general concept of personal autonomy. That is a choice that may be either attacked or defended, but it is by no means a choice mandated by what the Constitution expressly says, by what its authors and ratifiers demonstrably meant, or even by the virtue of confining the discretion of unelected judges.

To begin with, the very generality of many of the terms the Framers used—such as "liberty," "due process," and "equal protection"—strongly suggests an intent not to confine their meaning to the specific outcomes and contexts that occurred to those who first used them, but to invite the development of meanings in light of the needs and insights of succeeding generations. There is considerable evidence that this was

indeed the premise on which the Constitution, as amended, was written and ratified. In 1796, for example, James Madison cautioned that the individual remarks and particular assumptions of the Framers at Philadelphia should never be deemed "the oracular guide in expounding the Constitution." In addition, as Justice John Paul Stevens recently observed, whatever those Framers may have intended, historical accounts will be woefully incomplete unless they address the fundamental changes intended by the framers of the post-Civil War amendments to the Constitution. Thus those who urge us to give eighteenth-century remarks and assumptions—the "original intentions," narrowly defined—controlling significance bear a heavy burden of justification in the face of the basic "original intent" that the document be read in a more evolutionary and adaptable way. Justice Brennan was surely right when he said that "[i]nterpretation must account for the transformative purpose of the text"—for the fact that "[o]ur Constitution was not intended to preserve a preexisting society but to make a new one. . . ."

The originalists must accordingly persuade us that their own departure from that overarching original intent is justified—and that it may be coherently pursued despite the often conflicting things that the many who wrote, or voted to ratify, the Constitution's provisions had in mind. And they must, in addition, convince us that their program will succeed in its proclaimed objective of placing the interpretive enterprise beyond the reach of personal predilection and subjective judgment.

For my part, I gravely doubt that

the program can come even close to succeeding. Consider the justices who wrote in *Dred Scott* that slaves are mere property, the justices who wrote in *Plessy* that racial separation by law need not deny equality, and the justices who wrote in *Lochner* that laws regulating hours and wages invade "freedom of contract." All of them invoked "original intent" with considerable conviction and plausibility—more, it seems to me, than such originalists as Attorney General Edwin P. Meese today achieve with the claim that those same justices had in fact "strayed" and that Mr. Meese's version of the original intent, which he says would have required the opposite result in those three infamous cases, is more faithful to the historical truth. If one wants to say—as I do, and as both Mr. Meese and Judge Bork seem to—that those cases were wrongly decided, one must do much better than the originalists have yet done to explain away the awkward facts of history that weighed in on the wrong side of those disputes. Nor can the program of the originalists avoid the charge of subjective and even politically motivated selectivity and manipulation when those who advocate it so readily support the constitutionality of eminently sensible and currently indispensable policies that would certainly have shocked those who framed the Constitution and the Bill of Rights—such as "stop and frisk" practices by police in urban areas, the extraction of coerced testimony in response to promises of immunity, and the authorization of police searches for mere evidence of crime as opposed to contraband. Finally, the originalist project can hardly succeed when even its most ardent proponents



counsel that some constitutional decisions, even if originally wrong by their own test of the Framers' intent, have become so deeply rooted that it would be neither prudent nor necessary to roll back the clock. Are not such bursts of prudence clear proof that *no* sensitive judge could avoid at least partly subjective choices in deciding when various notions of original intent are to give way to overriding concerns of judicial statecraft?

The truth, as Charles Black of Yale once put it, is that a judge's interpretations of the Constitution, and a judge's constructions of its intent, are necessarily "influenced and formed by his whole lifetime, by his economic and political comprehensions, and by his sense . . . of where justice lies in respect of the great issues of his time." No oath of loyalty to what the Constitution's Framers intended can wipe out this irreducible dependence of each judge's vision on that judge's premises and past. As Senator Joseph R. Biden put it in a recent public address, constitutional interpretation cannot honestly aspire "to be wholly objective or wholly subjective—it must be both."

The major difference between those who insist that they are passively discerning and enforcing the specific intentions of the Framers, and those who concede that they are of necessity doing something more, is likely to come down to this: The originalists seek to deny their own responsibility for the choices they are making—and imposing upon the rest of us—whereas their opponents, for better or worse, accept such responsibility as inescapably theirs. Neither group has a monopoly on candor, insight, or wisdom; both may at times be guilty of all manner

of judicial sins; each should, in my view, admit that it has no assured pipeline to revealed constitutional truth.

To insist, as I would, that all judicial choices ought to be seriously constrained by constitutional text, structure, and tradition indeed requires one to confess that such choices are never merely the passive products of a single "original intent" existing in history and waiting to be discovered. The danger that judges might wield power in the name of the Constitution but in the service of

their origin and the line of their growth," in a common-law process that treats history more as an evolving set of possibilities and limitations than as a fixed and decisive source of answers. Far from liberating judges to impose purely personal values on the rest of us, this view of history and its indeterminacy calls upon judges to *explain* their conclusions, and the reasons underlying them, in ways that are accessible to professional and lay critique—and invites judges to measure the legitimacy and success

*The danger that judges might wield power in the name of the Constitution but in the service of nothing beyond their personal moral predilections is heightened, not reduced, by the habit of couching judicial determinations in the form of ineluctable readings of a purely external reality.*

nothing beyond their personal moral predilections is heightened, not reduced, by the habit of couching judicial determinations in the form of ineluctable readings of a purely external reality. However adorned by scholarly references to history, such claims are far less subject to meaningful dispute, and hence far less constrained by the requirements of persuasion, than are the more modest claims of those who admittedly base their constitutional arguments on a more eclectic, less determinate mix of appeals to language, precedent, and legal philosophy.

This may be what Justice Holmes meant when he described the phrases of our Constitution as "organic, living institutions"—their enduring significance not "to be gathered simply by taking the words and a dictionary, but by considering

of their enterprise by the power of their explanations, over time, to convince others. In this way, the candid confession that judges are engaged in more than the passive observation of history can assist them, in interpreting the Constitution, to speak, as Justice Brennan so aptly put it, "for their community, not for themselves alone." A candid avowal of the limits of originalism can open the process of constitutional interpretation to the full public debate without which it partakes only of miracle, mystery, and unquestioned authority.

—Laurence H. Tribe

Mr. Tribe is the Tyler Professor of Constitutional Law at Harvard Law School and the author of *Constitutional Choices* (Harvard University Press, 1985) and *God Save this Honorable Court* (Random House, 1985).

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Secretary

Delaware

George

in Convention by the Unanimous Consent of the States present the

Day of September in the Year of our Lord one thousand seven hundred and Eighty

of the Independance of the United States of America the Twelfth

We have hereunto subscribed our Names,

John Dickinson  
Richard Bassett  
Jacob Broom

New Hampshire  
Nicholas Gilman  
Rufus King

Massachusetts  
Nathaniel Gorham

and Deputy from  
John Langdon

National Archives



*If the Constitution is not law in this sense, law that with the usual areas of uncertainty at the edges, nevertheless with tolerable definiteness, tells judges both what they are to do and what they are not to do, what authorizes judges to set at naught the majority judgment of the representatives of the American people? No answer exists. Only law gives a judge any mandate to govern.*

(BORK, continued from page 22)

representatives of the American people? No answer exists. Only law gives a judge any mandate to govern.

The Bill of Rights and the Civil War amendments, which are the primary subjects of controversy, specify a variety of crucial liberties possessed by individuals. Taken in terms of original intent, that specification both empowers and limits judges. To specify something is simultaneously to give it not only content but, by the same process, to give it limits. The First Amendment, for example, specifies freedom of speech. That, obviously, requires judges to protect speech but, by clear implication, it also forbids them to use the speech clause to protect sexual freedom or the freedom to rig prices or a thousand other freedoms outside the category of speech. The fact of limits means that the judge's authority is constrained so that, outside the guarantees that the Constitution designates, democratic institutions govern.

Interpreting the Constitution's general language according to our best understanding of the original intent of the Framers is the only way in which the Constitution can be law in the sense just discussed. No other method of constitutional adjudication can accomplish that.

It is argued by some legal theorists that the Constitution's meaning should evolve and that the course of evolution should be determined by moral and political philosophy. It is not entirely clear why this method of changing the document's meaning, if it is legitimate, should be confined to individual freedoms, found primarily in the Bill of Rights and the Civil War amendments. It could as well be applied to the interpretation of the powers and structures of

government laid out in the first three articles of the Constitution. That is rarely, if ever, proposed, probably because it would make embarrassingly clear that the professors are asking judges to remake our form of government. Yet one form of judicial creativity is no more illegitimate than the other. But the problem with the argument goes deeper. There is no single philosophy or method of philosophic reasoning upon which all Americans agree. If judges attempt to recreate the Constitution in this fashion, they will produce rights against the majority judgment that no one is bound to regard as legitimate. Those rights will rest upon nothing firmer than the predilections of a majority of judges who happen to be sitting at any given moment. Worse than that, the varieties and methods of philosophy are so diverse that judges would in no way be constrained. They could reach any result, set aside any majority judgment on any topic, they wished. It is, incidentally, preposterous to think that busy judges, who must decide hundreds of cases and motions a year, could find the time to become competent in any variety of philosophy or to apply philosophical reasoning to a constant flow of complex matters.

Perhaps recognizing these difficulties, other constitutional theorists would have judges apply not philosophical analysis but something more akin to a sense, almost intuitive, of what "our evolving morality" demands at the moment. This idea rests upon the correct observation that a society's morality does evolve and that the American morality of today differs in a number of respects from the American morality of the late eighteenth century. All quite true, but inadequate to support the conclusion. The Constitu-

tion's guarantees—freedom of speech, press, and religion; freedom from unreasonable searches and seizures; freedom from required self-incrimination; and much more—remain highly relevant today. Any free society must respect them. No theorist, to my knowledge, suggests that, if American morality evolves so that these freedoms are disliked, judges should abandon them—yet that is what would seem to be required by this approach. Again, however, the trouble goes deeper. To the degree that the morality that is evolving deserves the name of "our morality," it will be embodied in legislation and executive action. There will be no need for judges to tell the society what the society's morality is. Judges who undertake to apply "our evolving morality" to invalidate democratically enacted law will, in truth, be enforcing their own morality upon the rest of us and calling it the Constitution.

These considerations seem to me to leave only the method of original intent as a legitimate means of applying the Constitution. Only that can give us law that is something other than, and superior to, the judge's will. It is objected that the process of discerning the Framers' intentions can be manipulated and that, in any event, it is impossible to know what the Framers would have done in specific cases. Those things are true and, if they are insuperable objections, the only conclusion left is that the Constitution can never be law and judicial review should be abandoned. The objections are by no means fatal, however.

Any system of argument which is complex and involves questions of degree and of judgment is manipulable. Certainly, it will be easier to detect manipulation of historical materials than of philosophic concepts or subjective estimates of contemporary morality. The only ultimate solution is the selection of intellectually honest judges.

The objection that we can never know what the Framers would have done about specific modern situations is entirely beside the point. The originalist attempts to discern the principles the Framers enacted, the values they sought to protect. All that the philosophy of original intention requires is that the text, structure, and history of the Consti-



tution provide the judge not with a conclusion about a specific case but with a premise from which to begin reasoning about that case. For instance, while the Fourth Amendment, when framed, envisioned protection only against unwarranted searches and seizures by physical invasion, its intended prohibition of unreasonable intrusions by the state against the individual can certainly be applied in the context of electronic surveillance. The originalist judge must protect the constitutional freedom or process the Framers intended to preserve in circumstances the Framers could not foresee. This is not an impossible task; indeed, it is one courts perform daily when they apply a statute, a contract, a will, or a Supreme Court opinion to

circumstances the framers of those documents did not foresee.

We can understand the liberties the Framers intended to guarantee sufficiently well so that, for example, we can apply the First Amendment's guarantee of freedom of the press not only to thwart censorship of the print media but to increase the freedom of the electronic media and to frame new doctrine to cope with changes in libel law that threaten the functions of a free press.

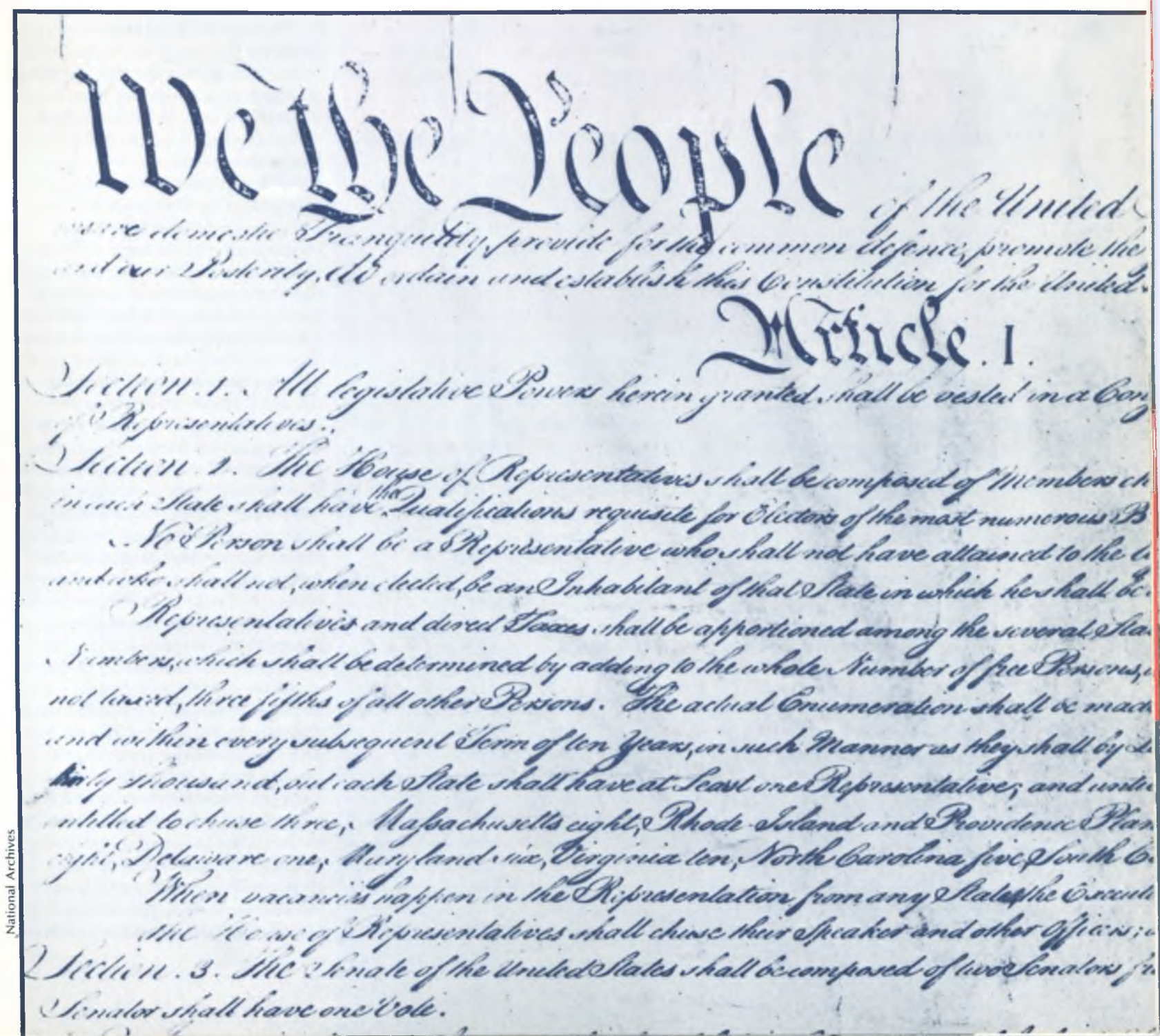
Adherence to a philosophy of searching for original intent does not mean that judges will invariably decide cases the way the Framers would have, though many cases will be decided that way. At the very least, the originalist philosophy con-

fines judges to areas the Framers assigned to them and reserves to democratic processes those areas of life the Framers placed there. That much is indispensable if judges are not to usurp the legitimate freedom of the people to govern themselves, and no philosophy other than that of original intent can provide that safeguard.

—Robert H. Bork

Judge Bork is Circuit Judge, U.S. Court of Appeals for the District of Columbia Circuit, and the former solicitor general of the United States. Previously the Alexander M. Bickel professor of public law at Yale Law School, he is the author of *The Antitrust Paradox: A Policy at War with Itself* (1978) and a fellow of the American Academy of Arts and Sciences.

*The U.S. Constitution, detail.*





The seal of the  
state of  
Pennsylvania



## The Constitutional Legacy

James Wilson, a member of the Pennsylvania delegation to the Constitutional Convention and an outstanding legal theorist of late eighteenth-century America, conceived the idea of an electoral college when it became apparent that a large majority of the Convention would not support popular election of the president. So strong, in fact, was the feeling against giving too much power to the people that even the popular election of presidential electors was defeated by a majority of one. The Convention finally approved a system decreeing that electors should be chosen in each state as its legislature might direct, and that the electors would be equal in number to the state's representation in both houses of Congress.

There was dissatisfaction with the electoral system almost from the beginning. As early as 1796, Congressman William Smith of South Carolina introduced a resolution

providing for a constitutional amendment changing the way the president is elected. Over the years, more than 500 amendments to revise or abolish the electoral college have been brought before Congress, yet none has been adopted.

According to historian John Turner of West Chester University, "Most people don't understand the electoral college, or, if they think about it at all, don't approve of it." In "One Vote for the Electoral College," a lecture that Turner has delivered in libraries, schools, and public meetings around Pennsylvania, he gives the history of the institution, pointing out that the last constitutional change in the electoral college occurred in 1804, when, as a result of the tie vote between Thomas Jefferson and Aaron Burr in the election of 1800, Congress passed the Twelfth Amendment, requiring separate votes for president and vice president.

Turner's lecture is part of a series of programs, sponsored by the Pennsylvania Humanities Council, that are renewing discussion of such topics as delegation of power and representative government, commemorating the great debates over these issues that took place in Philadelphia almost 200 years ago. The council is sponsoring lectures, discussion groups, exhibits, and publications in order to "involve citizens in a thoughtful study of the basic structure of the American government." Craig Eisendrath, executive director of the Pennsylvania council, says, "Pennsylvanians should *know*, and not merely know about, the events leading up to the Convention, the actions that took place in Philadelphia in 1787, and the development of the Constitution in the nineteenth and twentieth centuries."

In order to improve public understanding of complexities like the electoral college, the council held a series of workshops in 1984 for college and high school teachers interested in exploring classroom applications for "The Constitution: That Delicate Balance," a television course prepared under the direction of Fred Friendly. During the course of these workshops, it became apparent that many teachers lacked a good understanding of the Constitution.

This experience confirmed the council's opinion that more programs were needed on the subject. With an award from the National Endowment for the Humanities, the state council made a major effort to broaden its public education program by conducting a series of reading and discussion groups on the history and meaning of the Constitution. In the fall of 1985, under the direction of professors of history, government, political science, and jurisprudence, thirty study groups of twenty members each met in libraries in various towns and cities throughout the state to discuss the history and development of the Constitution. The audience consisted of teachers, members of civic groups, and other people interested in the Constitution who had learned about the program through brochures and letters disseminated by the library or historical society that hosted the sessions or from state-



wide publicity initiated by the council through such channels as the League of Women Voters, the state department of education, and state associations of teachers.

The fifty-five men who appeared at the Convention in Philadelphia in May 1787, were mostly lawyers and statesmen, with the mercantile and landed classes well represented. On the other hand, the present-day Pennsylvanians who studied the Constitution in the fall of 1985 were a "real mix, from blue-collar workers to lawyers," says Joseph Kelly, who administered the program for the council.

Each participant was supplied with a 250-page anthology of readings that ranged from the Magna Carta, Hobbes, and Locke to such Supreme Court decisions as *A.L.A. Schechter Poultry Corporation et al. v. United States*, and *Regents of the University of California v. Bakke*. During the six two-hour sessions, participants examined the chronological development of the Constitution, from its historical roots to contemporary Supreme Court decisions.

The series was so successful that even the suggestions for improvements were implied compliments. A frequent comment was that there were not enough sessions. Another criticism was that the librarians made everyone leave at closing time, forcing discussions to continue on the sidewalk. The council asked participants to return the anthologies, but many wanted to keep them—a sure indication that they found the sessions worthwhile and the books valuable for future reference.

Eugene Slaski, associate professor of history at the Allentown campus of Pennsylvania State University, led a discussion group in Easton. He brought in extra readings on the revolutionary period, and asked each member of the group to read about and report on one subject a week. A question and discussion period followed. All the participants in his group read the Constitution and its amendments and certain issues of *The Federalist*. Slaski says he tried to make it clear that "the men who wrote the Constitution were not super-human beings, but mere mortals."

Because of the success of the study groups, the state committee is planning a second round in the

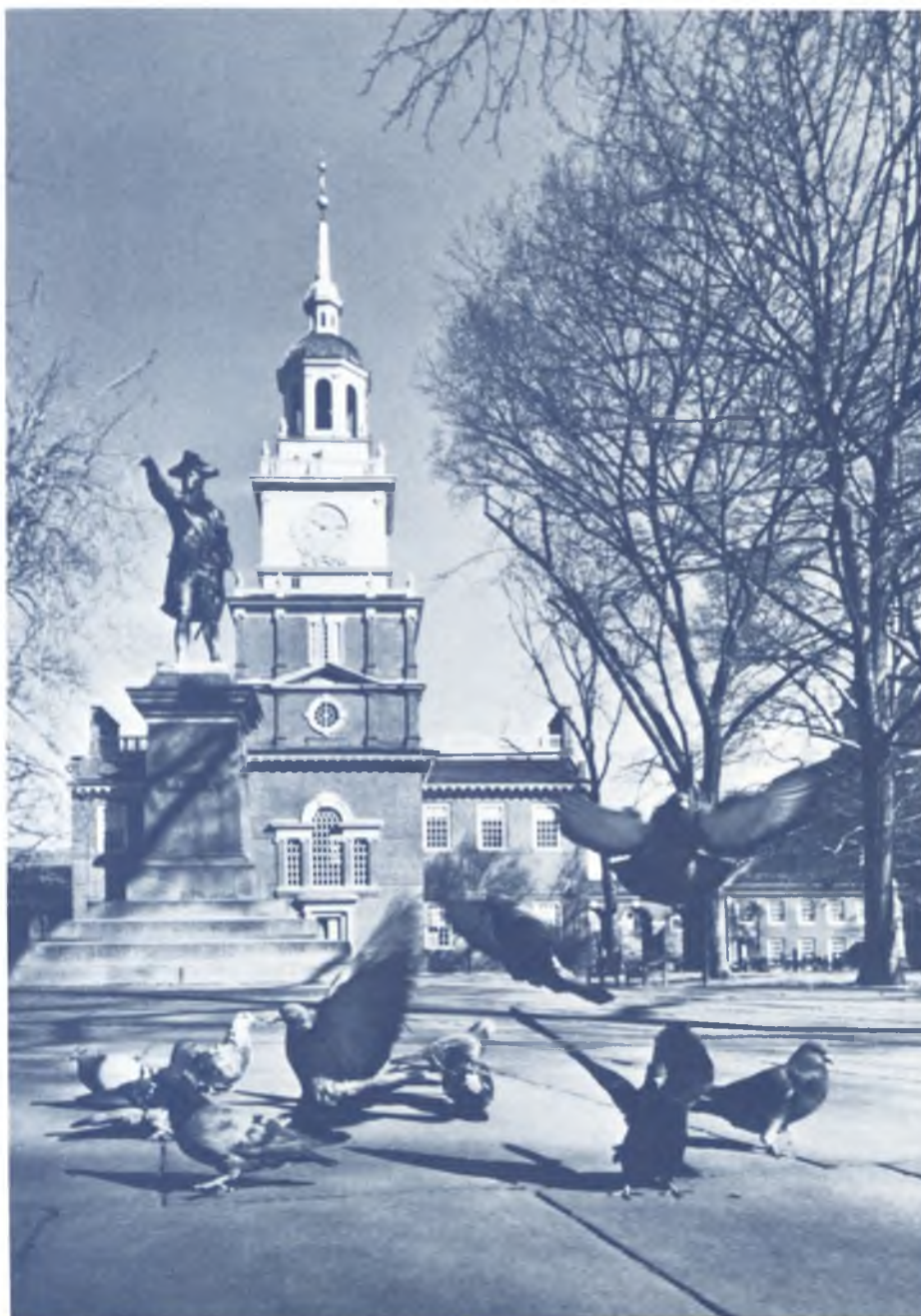
spring. Three groups for teachers are being planned in the Pittsburgh area, and the Pennsylvania Department of Aging is hoping to hold intergenerational discussion groups in three locations.

In another effort to improve understanding of the Constitution, 200 participants—leaders in government, business and labor, education, religion, the media, and groups and individuals interested in civil rights—are expected to attend a seminar on the Constitution in early summer this year in the Harrisburg area. The focus will be on the Constitution as it is interpreted today. After a plenary session, participants will attend smaller discussions on such constitutional issues as separation of church and state and freedom of the press. Kelly hopes informing leaders in key fields about the constitutional issues that affect them will motivate them to promote

discussion of the Constitution during and after the bicentennial period.

The Pennsylvania Humanities Council will furnish schools with an exhibit of portraits of the principal members of the Constitutional Convention, drawn by noted artist Leonard Baskin. Explanatory material will accompany this exhibit. The council also has plans for two supplements on the Constitution that will appear in the *Philadelphia Inquirer* and perhaps in other Pennsylvania newspapers during the spring and fall of 1987. These supplements will be distributed with the regular run of the newspapers and will also be used as an educational tool for schools.

Henry Steele Commager and E.L. Doctorow will be the first two speakers in a Distinguished Lecture series, to be held at Independence National Historic Park in Philadelphia in May



U.S. Department of the Interior Photographer: Richard Frear

Independence Hall, Philadelphia, Pennsylvania



and September of 1986 and 1987. The series will commemorate the opening and closing dates of the Convention.

Now that the Pennsylvania council has fanned interest in the Constitution, it has scheduled more speakers for the lecture circuit of civic groups, nonprofit organizations, and educational institutions. John Turner will continue to lecture in 1986 and to field questions about the electoral college: Why do we need an institution coming between the people and their choice for president? Isn't the United States a democracy?

Turner admits to his audiences that there are flaws in the electoral system. There have been a few electors over the years who have voted their consciences rather than reflecting the popular vote. There is the possibility that a presidential candidate with a popular plurality or even a majority can lose in the electoral college. This happened in 1824, 1876, and 1881. Because the candi-

date receiving the popular plurality in a state receives all of that state's electoral votes, thus "wasting" the popular votes of the losers within the state, the result can be a president who does not have a popular plurality.

The electoral system has occasionally malfunctioned, throwing the election into the House of Representatives, where each state has only one vote, further diluting the popular will. In 1800 and 1824, the House elected the president, and in 1836 the vice president was chosen by the Senate. The electoral college vote allots a disproportionate weight to voters in some states and geographic areas. Finally, the electoral system is inconsistent with the accepted democratic principle of "one person, one vote."

But Turner and other defenders of the electoral college contend that its existence, intended by the Founding Fathers to be insulated from party and faction, actually encouraged the

growth of a stable two-party system, each party tending to choose moderate candidates who appeal to great numbers of people in a large and diverse country. Turner states, "Since the gulf between the parties is not too vast, the transfer of power is accomplished without social convulsion." The peculiar institution of the electoral college stands because there is a prudent fear of tinkering with an election system that, on the whole, works very well. Turner quotes John F. Kennedy on the subject: "It is not only the unit vote for president we are talking about, but a whole solar system of government power. If it is proposed to change the balance of power of one of the elements of the solar system, it is necessary to consider the others."

Through its array of bicentennial programs, the Pennsylvania Humanities Council is giving the people of Pennsylvania the opportunity to consider the whole solar system.

—Ellen Marsh



Corcoran Gallery of Art

*Election Scene, Catonsville, Baltimore County, Maryland, by Alfred Jacob Miller, ca. 1869.*



# The Creation of American Humor



If humor can be defined as the frank enjoyment of the imperfect, America's early settlers must have found an abundance of opportunities for amusement. The imperfections that they faced—food scarcities, extreme temperatures, threats from Indians and wildlife, shortages in clothing and money, and later, burdensome taxes levied by a government far removed from the realities of colonial life—gave rise to the dominant forms of American humor.

How American humor sprang from these early circumstances is the subject of research being conducted by J.A. Leo Lemay, professor of English at the University of Delaware. According to Lemay, American humor first found expression in travel literature, which documented major recurring travelers' stories, usually exaggerating and lying about the travelers' experiences; in promotion literature, which encompassed correspondence and reports filled with glowing exaggerations of the "good life" in the colonies; in British satires that mocked American promotion literature; and in American replies to the anti-promotion literature of the British.

Accounts of the malaria and starvation that decimated early settlers are missing from Captain John Smith's *Map of Virginia* (1612), which gives this rather selective description of the new country: "The mildnesse of the aire, the fertility of the soile, and the situation of the rivers are so propitious to the nature and use of man as no place is more convenient for pleasure, profit, and mans sustenance."

What began as a sincere attempt

to promote America to potential immigrants eventually became so exaggerated that many such accounts were viewed as nothing more than tall tales. In fact, one of these reports had brought colonists to New England in 1621 without sufficient food to provide for the sailors' return voyage.

Many early settlers returned to England, bringing with them stories that emphasized the more negative aspects of life in the colonies. They had expected a fertile, unspoiled country with a mild climate and Indians who would be happy to work for them. Instead, they found a dangerous wilderness, a climate that was hotter—and colder—than they were accustomed to, malaria and other deadly diseases, and Indians more inclined to kill than work for them. Even the blessings of pure water were lost on the early settlers, who were accustomed to drinking beer rather than the polluted water of England. But in Virginia there was no beer to drink, and the adventurers were miserable.

Captain John Smith attempted to add a note of realism in his promotion of Virginia in what might be the first version of a "good news/bad news" story: "Though there be fish in the Sea, fowles in the ayre, and Beasts in the woods, their bounds are so large, they so wilde, and we so weake and ignorant, we cannot much trouble them."

The damage to credibility had been done, however, and the British were quick to satirize promotion literature in stories and ballads like "New England Described" (1661), which invites Puritans and other

"rabble rout" to emigrate to New England where "There Milk from Springs, like Rivers, flows." The song's last verse bids good riddance to emigrants:

Let Amsterdam send forth her Brats,  
Her fugitives and Runnagates:  
Let Bedlam, Newgate, and the Clink  
Disgorge themselves unto this sink;  
Let Bridewell and the stews be

swept,  
And all sent hither to be kept,  
So may our Church be cleans'd  
and pure  
Keep both it self and state secure.

The most familiar American reply to such anti-promotion literature is "Yankee Doodle," says Lemay. Although the song was thought for many years to have been written by a British officer to ridicule the colonial American militia, Lemay's research suggests that the song was written by an American as a self-deprecating form of anti-promotion literature. One illustration is a group of pre-Revolutionary stanzas, which describes the ignorance and cowardice of the American militia at Cape Breton:

Brother Ephraim sold his Cow and  
bought him a Commission  
and then he went to Canada to fight  
for the Nation

But when Ephraim he came home  
he prov'd an arrant Coward  
He wou'dn't fight the Frenchmen  
there for fear of being devour'd.

Aminadab is just come Home, His  
Eyes all greas'd with Bacon  
And all the news that he cou'd tell Is  
Cape Breton is taken.

*Political cartoon engraved by Paul Revere for Royal American Magazine, Boston 1774. The caption reads, "The Able Doctor or America Swallowing the Bitter Draft."*



The Americans found humor in the third stanza because they knew Cape Breton was taken in the summer, and yet the fact that "his Eyes [were] all greas'd with Bacon" to protect against the cold meant that the yokel returned in the winter with no news but old news.

"Although these stanzas were no doubt popular with the British soldiers and probably originally caused them to adopt 'Yankee Doodle' as their anti-American war song of the Revolution," says Lemay, "no one who knew anything about the militia or about the Americans could really believe that someone would be able to buy a commission by selling a cow. . . . This [stanza] really satirizes the British system whereby commissions were bought and sold, but the colonists elected their militia officers."

If anything can be said to differentiate American humor from that of other nationalities, says Lemay, it would be the enjoyment Americans had—and still have—in the "put-on." In this form of humor, the "Yankee Doodle"-type yokel is the apparent butt of a joke, but he usually gets the last laugh. And the Americans certainly had the last laugh with "Yankee Doodle" at the battles of Concord and Lexington. According to a newspaper account of the battle, "When the second

[British] brigade marched out of Boston to reinforce the first, nothing was played by the fifes and drums but *Yankee Doodle*. . . . Upon their return to Boston, one asked his brother officer how he liked the tune now,—'D— them! returned he, *they made us dance it till we were tired*.'— Since which *Yankee Doodle* sounds less sweet to their ears."

Because Americans felt British condescension from the very beginning of colonization until at least after World War I, the put-on was used widely in American literature and humor. "I think if that type of humor ever did disappear, it only did so after the Second World War," says Lemay, "so that has been a constant characteristic of American humor. Of course, it's found in provincial English, Irish, Scottish, and Welsh humor as well."

In addition to Americans as cowards and yokels, Lemay identifies several other early images of America and Americans that served much the same purpose then as mother-in-law or blind-date images do for today's humorist. America as Eden, as a Puritan refuge, and as wilderness, and Americans as convicts and rogues, as subjects of the English crown, as Indians, and as degenerates provided rich material for jokes among the colonists. Lemay plans to include these images in a book that will explain how images of America evolved, how Americans reacted to these negative images, and how contemporary writers used humor to combat the images.

For example, for a chapter on "Americans as Cowardly Soldiers," Lemay has found quotations illustrating how this widespread eighteenth-century British belief grew out of British frustration at the Americans' practice of fighting like Indians, using stealth and surprise attacks, rather than traditional military maneuvers. Ironically, Lemay points out, the seventeenth-century Americans had the same opinion of the Indians as cowardly soldiers—and for the same reasons.

Another typically American use of humor that finds its fully developed expression much later in the works of Samuel Clemens is the adventure tale—the tale of improbabilities—where the adventure may be real or imaginary. The one great early

American example, says Lemay, is "shooting on the wing." This variation of the fish story makes incredible claims about the abundant game and the deadly efficiency of killing great numbers with a single shot. "Perhaps you would have a buck and a deer and then a bear all slain with one shot," says Lemay, "or perhaps one shot from a shotgun killed seventy-five geese at once." With weapons in use at that time, it was extremely difficult to shoot even one bird on the wing; therefore, the phrase "shooting on the wing" signified the almost impossible shot. The colonial American who "shot on the wing" has several modern descendants who "shoot from the hip."

Lemay is most interested in determining which forms of humor are more characteristically American and how they were created. "I've been surprised at how American Captain John Smith was in his attitudes," says Lemay. "Although every bit an Englishman, Smith very early on projects an American identity and writes about this American identity as an abstract and then himself tries to fulfill it through his life." Lemay also found an example of frontier black humor in Smith's description of the period when many of his fellow settlers starved to death. "Writing from London, Smith shows an appreciation of the bitter ironies in cannibalism among the men: 'Such a dish as powdered wife I've never heard of,' he says."

Today's world offers other imperfections for our frank enjoyment. Yet the thread of humor that links modern Americans to their earliest heritage remains strong. Today's soldier laments, "The biscuits in the Army they say are mighty fine. One rolled off the table and killed a friend of mine." His ancestors had a similar complaint:

We have pumpkin at morning and  
pumpkin at noon;  
If it was not for pumpkins we  
should be undone.

—Caroline Taylor

*"The Creation of American Humor, 1607-1800: A Study in the Origins of American Culture"/J.A. Leo Lemay/ University of Delaware, Newark/ \$25,000/1983-84/Fellowships for Independent Study and Research*

*Yankee Doodle, one of the original targets of American humor, from a 1778 engraving.*



John Carter Brown Library



# Spreading the Revolutionary Word

"This destruction of the tea is so bold, so daring, so firm, intrepid and inflexible, and it must have so important consequences, and so lasting, that I can't but consider it as an epoch in history!" John Adams wrote these words in his diary of December 17, 1773, the day after the Boston Tea Party. Adams's intense interest in public affairs and his readiness to locate a current event on the vast stage of history mark him as a rarity among Americans of his time.

Far more typical was the reaction of most people to the ratification debates over the Constitution. "What impresses me most about the public's response to these debates," says historian Richard D. Brown, who is studying how information was dispersed before and after the Revolution, "is that the range of the population interested seems quite small. In every state, of course, there was an elite core that was keenly aware, composed of merchants and the few lawyers of the time. However, if we say that Lincoln's death is a 10 on the scale of public awareness and Washington's death a 9, then the battles of Lexington and Concord equal about 7.5 and ratification of the Constitution is maybe a 2. It was not a sensational event but a drawn-out, complicated process involving a dozen states. Then as now, it is the sensational event that has a powerful appeal to the public."

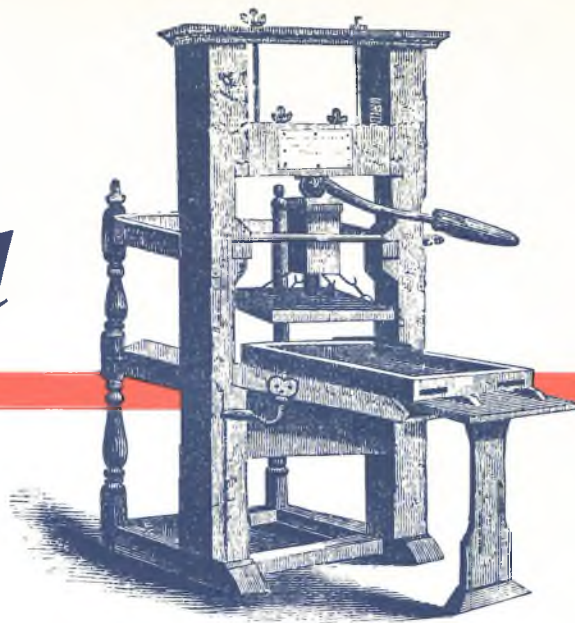
The ratification debates also parallel the present in the power of political stereotyping as a way of dealing with complex information. In Massachusetts, Brown has found, many vigorously opposed the Constitution primarily because the commercial establishment in the eastern part of the state embraced the new system of government.

These insights are developed in Brown's work-in-progress, *The Diffu-*

*sion of Information in Early America, 1700-1865*, a comprehensive study, to be published by Oxford University Press, of how people made use of different networks of communication. Supported by a fellowship from NEH, Brown's study of early American communication grows out of his two previous books: one on the role of the Boston Committee of Correspondence before the Revolution and the broader *Modernization: The Transformation of American Life, 1600-1865* (Hill and Wang, 1976).

Since 1977 Brown, a professor of history at the University of Connecticut, has been reading through diaries from the various social strata. Most of these diaries have been used by historians only to gauge reactions to a specific event—how the scholar-clergyman William Bentley felt about Shays' Rebellion, for example—and few have been studied closely. Brown's perspective is much wider. Among his eleven chapters are discussions of declining isolation among Yankee farmers, the development of the legal profession as seen through the careers of John Adams and Robert Treat Paine, and the flow of information among merchants and mariners in port cities. Each group had distinct patterns of communication.

Diaries are the best sources for this type of inquiry, according to Brown, because they enable one "to see a person whole, to see how print and oral communication fit together in a person's life, to determine which is more important and exactly how both are used." Up to this point, scholars of journalism have written the history of communications, and they have tended to focus on particular forms, such as how newspapers developed from a primitive state to the present. Brown's methods are closer to those of Rhys Isaac, who wrote *The Transformation*



*of Virginia, 1740-1790*, a Pulitzer Prize-winning history that draws wide-ranging connections among social structure, communications networks, and political authority.

Brown finds long diaries like that kept by Boston judge Samuel Sewall from 1685 until 1729 especially valuable because they provide a constant against which changing mores can be examined over time. "For the first part of Sewall's diary," Brown says, "there are no newspapers in America. When the first newspaper is published, he gets one. So you can trace the effect of newspapers in Sewall's life over the next twenty-five years, and you see that they didn't make a whole lot of difference for him. People in Sewall's time did not read newspapers for news. Word-of-mouth was much faster. What newspapers did provide was the text of official documents, such as laws or treaties, and the speeches of high officials."

Because keeping a diary was a good deal more common during the eighteenth and nineteenth centuries than at present, Brown had to choose from the multitude available in university libraries and historical societies. The vast majority, being of the line-a-day or weather-report variety, were clearly of little interest. He also avoided the atypical experiences found in battle or travel diaries and screened out the many diaries concerned chiefly with the writer's spiritual health, concentrating instead on those that offer a reasonably full record of the author's experiences over at least a year. In particular, Brown sought



out generic types—ordinary folk like farmers, merchants, women, artisans—rather than notables. There were, however, a few major figures—Sewall, Bentley, John Adams, William Byrd II—whose diaries, while frequently studied, were so revealing about patterns of social intercourse that they could not be ignored.

Based on a full reading of these diaries, about eighty altogether, Brown has revised some of his preconceptions about the movement of information. "Initially, I thought I would see successive stages in an information revolution over the period," he recalls. "During much of the eighteenth century, information was a scarce commodity, and its dispersal was hierarchical: A community's leaders controlled important communications and diffused them by word of mouth to other people. Then, with the Revolution and the explosion of printing in the 1780s and 1790s, came a much more egalitarian flow of information.

"Instead of this rather simple model of one system being supplanted by another, however, I found a picture of overlap and layering. Things were different in the 1800s not because the old face-to-face ways had been erased but because new developments had multiplied ways of diffusing information.

"The radical difference between the America of 1700 and 1850 was the extraordinary abundance of information. People gradually became selectors of information according to their individual temperament, their

occupation, their social class. For example, a New England farmer thought that it was far more important to be informed about the land in his area than about the Constitution. In these farmers' diaries, one can see a tremendous information network that had very little to do with print. Every time they left the farm they spoke with all sorts of people about local matters—the marriage market for their daughters, births and deaths, the availability of land. In short, people acquire the information pertinent to their lives."

The chapter on women's diaries reinforces that principle. Reading the diary of a midwife on the Maine frontier between 1770 and 1790, Brown found that it focused almost exclusively on her work—where she went and whom she saw—with little attention to any written matter. Such diaries indicate that women had their own sphere of information: birth, death, illness, domestic management, and church. Major public events in their diaries usually went by unnoted. Yet the advent of cheap printing had a powerful impact on women. "Confined to the home with their access to public information limited, women found print a great raiser of horizons," Brown says. "By 1810-1820, specialized family publications aimed at women and children began to appear. Women became more involved than men in reading literature, although at that time they still didn't read much history or politics."

Brown did find one strong trend countering this splintering of infor-

mation: the concept of the "informed citizen," which began with the Revolution and developed further during the nineteenth century. The elite of the eighteenth century, he points out, were expected to be widely informed on many subjects; such knowledge was a badge of high culture. His chapter on lawyers makes the point that at the beginning of their careers in the 1750s, John Adams and Robert Treat Paine used their broad reading and university education to distinguish themselves from the uneducated "pettifoggers" with whom they competed for legal clients.

"By the nineteenth century a dramatic change had occurred," Brown says. "The ideology of the Revolution required that the people—that is, all sorts of people, who run the nation in a democracy—be well-informed. It was the beginning of the idea that we should worry if a high percentage of people don't know who their congressman is. This notion had many implications: It led to the public-school movement, the founding of academies, the rise of the lecture circuit, all aimed at upgrading the knowledge of the average citizen."

Particularly striking in this regard is Brown's chapter on the 1840s. The four diaries studied—those of a businessman, a lawyer, an engraver, and a cabinetmaker—show that while there were differences in what they read, all four took pleasure in improving themselves through reading newspapers, talking with others, and attending public lectures, sermons, or the theater. Brown writes:

This "democratization of gentility," as Gordon Wood so aptly phrased it, helps to account for the popularity of Lord Chesterfield on the art of conversation, and the need to speak knowledgeably about Cromwell and Napoleon that an engraver such as Weaver felt. The alternative, to live outside the communications revolution—to stay away from lectures and public meetings, to eschew books and newsprint—meant confining oneself to disreputable, boorish ignorance.

—George Clack

"The Diffusion of Information in Early America, 1700-1865"/Richard D. Brown/University of Connecticut, Storrs/\$25,000/1985/Fellowships for Independent Study and Research

## S U P P L E M E N T

T O T H E

### Independent Journal,

New-York, July 2, 1788.

*In our Independent Journal of this Morning, we announced the Ratification of the New Constitution by the Convention of Virginia: For the gratification of our Readers, we publish the following particulars, received by this day's post:—*

**Ratification of the New Constitution, by the Convention of Virginia, on Wednesday last, by a Majority of 10:--88 for it, 78 against it.**

**W**E the delegates of the people of Virginia, duly elected, in pursuance of a recommendation of the General Assembly, and now met in Convention, having fully and fairly investigated and discussed the proceedings of the Federal

With these impressions, with a solemn appeal to the searcher of hearts for the purity of our intentions, and under the conviction, that whatsoever imperfections may exist in the Constitution, ought rather to be examined in the mode prescribed



## DEBATES, Continued from page 21

The UCLA program's second semester of debates will examine such vital topics as the Bill of Rights, sought by Virginia delegate George Mason, who refused to sign the original Constitution on the grounds that it would vest too much power in the "aristocracy."

UCLA plans ten additional debates in 1986-87, tracing the development of the Constitution through the nineteenth and twentieth centuries, as courts tried to interpret such topics as the rights of the criminally accused and the power of the president to wage war.

The debate series seems particularly suited to its California location—the politically active home of the tax-cutting Proposition 13, which many political analysts have termed the start of the "Second American Revolution."

"We have a very literate public here," says UCLA's Nash. "They understand the connection between the past and the present."

—Francis J. O'Donnell

*"The Great Constitutional Debates: Public Dialogue"/Lois Smith-Buff/University of California, Los Angeles/\$86,001/1984-87/Bicentennial Projects*

## Coming in the next issue of Humanities:

Leszek Kolakowski,

the fifteenth

Jefferson Lecturer

in the Humanities



## Project '87

The commemoration of the opening of the Constitutional Convention in Independence National Park on May 25, 1987 will also mark a decade of bicentennial plans and programs involving Project '87, the joint undertaking of the American Historical Association and the American Political Science Association to promote public understanding of the U.S. Constitution.

Under the direction of a joint committee of historians and political scientists, chaired by Richard B. Morris of Columbia University and James MacGregor Burns of Williams College, the NEH-supported project began in 1977, the year after the bicentennial celebration of the Declaration of Independence made clear the importance of scholarly involvement in the commemoration of historic events.

Accordingly, the project's first priority was the encouragement of research and scholarly exchanges on the Constitution. The project has awarded fifty-one research grants and fellowships and has supported five major scholarly conferences on various aspects of the Constitution, and has assisted in the production of scholarly reference works, such as the supplement to Max Farrand's *Records of the Federal Convention*, described on page 18 of this issue.

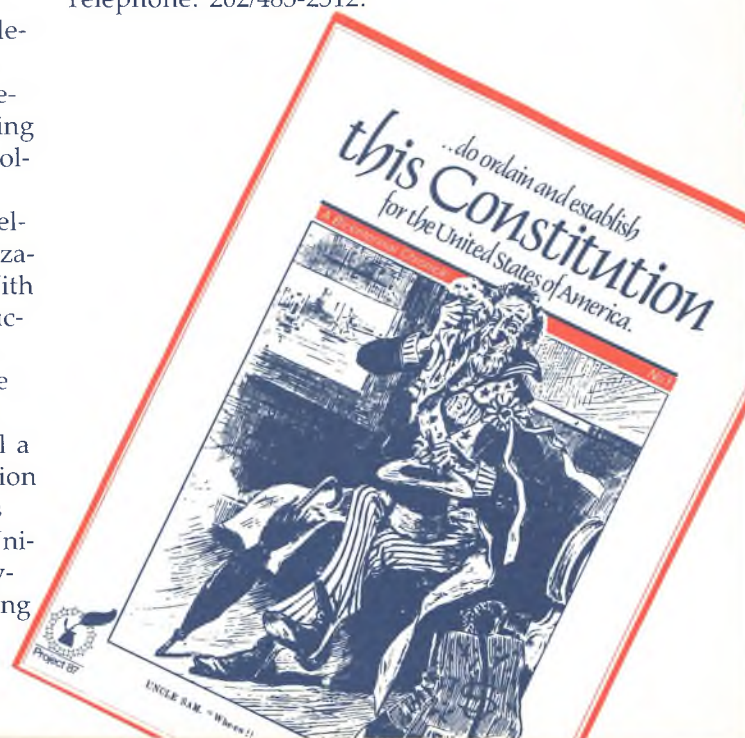
A second phase of activities, begun in 1980, has focused on teaching the Constitution in schools and colleges. Two television-assisted instructional series are being developed in collaboration with organizations experienced in this field. With Project '87, the Agency for Instructional Technology is creating in-school television programs on the Constitution for seventh, eighth, and ninth graders, in order to fill a gap in materials on the Constitution for this age group. The project is working with the International University Consortium and the Maryland Center for Public Broadcasting

to produce a television-assisted college course for distant learners.

Members of the project are now directing their attention to a third area of activities, public programs that will increase awareness of the Constitution and provoke informed discussion of constitutional issues. Toward this end, the project began publishing in 1983 a quarterly magazine to chronicle the bicentennial of the Constitution. The magazine, *this Constitution*, is offered free to organizations that are planning bicentennial events. It contains essays by scholars and public figures on constitutional issues, annotated original documents, and a gazette recording information about bicentennial grants, activities, events, publications, and media programs.

A collection of essays that have appeared in *this Constitution* since 1984, by such scholars as Gordon S. Wood, Michael Kammen, Peter Onuf, and Thomas Pangle will be published this year by the Congressional Quarterly Press.

For copies of *this Constitution*, or other information related to bicentennial events, write: Project '87, 1527 New Hampshire Avenue, N.W., Washington, D.C. 20036. Telephone: 202/483-2512.





National Museum of American History

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# The Humanities GUIDE

for those who are  
thinking of applying  
for an NEH grant

## Understanding America

The National Endowment for the Humanities, under its new *Understanding America* initiative, is encouraging projects to increase knowledge of American history and culture. Funding is available for scholarly research and projects to improve teaching, as well as for conferences, museum exhibitions, library programs, and television and radio productions. Topics can be drawn from the whole gamut of American studies—history, politics, sociology, literature, linguistics, music, art, drama, and film—however, all proposals should relate the broad narrative of the American experience rather than focus on narrow topics. Such projects may be intended for students at any level of schooling or for a general audience.

NEH launched this initiative last fall with a dual purpose: to celebrate the twentieth anniversary of the agency and to respond to pre-

liminary findings of a study of high school seniors made by the National Assessment of Educational Progress, which found that a significant number of students do not know important facts about their country's history and culture. For instance, two-thirds of the students in the pilot study could not place the Civil War in the correct half-century; a third did not know that the Declaration of Independence was signed between 1750 and 1800; and half could not identify the half-century in which World War I occurred. Three-fourths of the seniors did not know who Walt Whitman, Thoreau, or Carl Sandburg were.

Although no additional funds have been allocated for the initiative, all divisions of the Endowment are accepting proposals. Applicants should call or write the division whose guidelines seem most appropriate to the character of the proposed project.

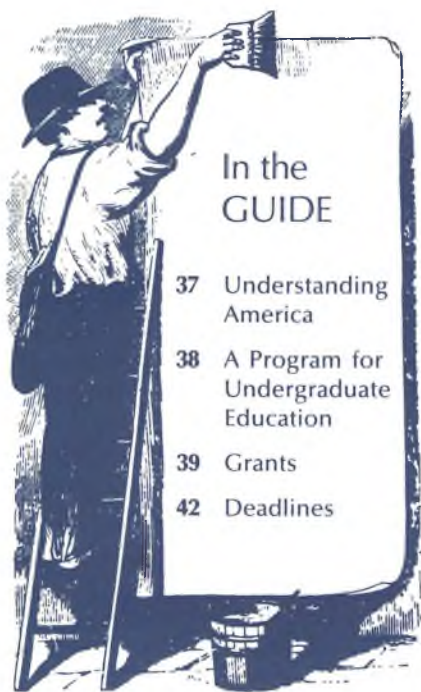
• **The Division of Education Programs** supports projects that improve humanities education at all levels of schooling, public and private. Under the *Understanding America* initiative, the division is seeking to fund projects that, for example, restructure course offerings in colleges and universities so that future teachers will have sufficient knowledge to impart the whole story of American history and literature, or that strengthen American history courses so that history is taught as a discrete subject in a school or school system rather than part of an amorphous social studies curriculum.

• **The Division of Fellowships and Seminars** offers grants that support individual scholarship in the hu-

manities and seminars for college and secondary school teachers. To implement the *Understanding America* initiative, the division has created a new category called "Fellowships in the Foundations of American Society," which supports scholarly work on the history, literature, and founding principles of this country. Proposals may deal directly with the founding period or may study events, periods, movements, schools of thought, and works that contribute significantly to the understanding of the American experience. The division is also interested in receiving proposals for textbooks, anthologies, and special editions of American writings on the high school or undergraduate level.

• **The Division of General Programs** supports projects that increase public understanding and appreciation of the humanities, including exhibitions at museums and historical organizations, reading and discussion groups in libraries, production of humanities programs for television and radio, and lectures, conferences, and symposia. Examples of *Understanding America* proposals submitted to this division would be a project to produce a major film series on the founding of the American colonies, or a proposal by a historical museum to mount an exhibition on the theme of "becoming a nation."

• **The Division of Research Programs** provides support for long-term and collaborative projects in the humanities, the preparation of reference works and editions, the organization of research materials, and the subvention of publication expenses. Projects such as the editing of the collected works of a major American writer, or the prep-



PROPOSALS

DEADLINES

GRANTS

GUIDE



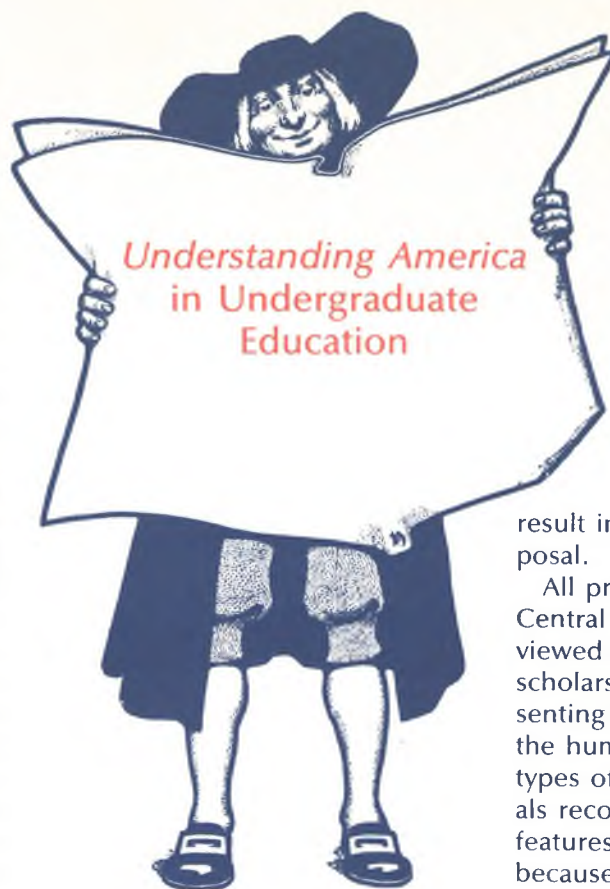
aration of a historical atlas of America at the time of the Louisiana Purchase should be sent to this division

• **The Division of State Programs** gives grants to state humanities councils to be used for locally initiated humanities projects. In each state, as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, humanities councils fund projects that are of special interest to the people of that state. Seminars in American history for secondary school teachers, traveling exhibitions related to state and local history, or film treatments of local events that had national, historic significance, such as a documentary dramatization of Shays' rebellion supported by the Massachusetts Foundation for the Humanities and Public Policy, are examples of projects appropriate for state funding. Many states have sponsored library reading programs offering adults who may not have the opportunity for formal study of literature the chance to discuss with scholars a selection of books related to a certain theme. Such programs focused on major works of American literature would be welcome under the new initiative.

• **The Office of Challenge Grants** welcomes applications that meet the objectives of the new initiative, such as a proposal for an endowed position in American history, or an endowment to support faculty and curriculum development in American literature.

• **The Office of Preservation** will review initiative-related proposals that are aimed at preserving humanities resources on paper, film, and tape.

For further information on the *Understanding America* initiative, or for help in selecting the proper division or office to evaluate your proposal, write or call Jeffrey Thomas, Room 403, NEH, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/786-0420. An informational brochure about the initiative and specific program guidelines may be obtained from the NEH Public Affairs Office, Room 409, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/786-0438. Deadlines for the submission of proposals to each program are found on pages 42-43 of this issue of *Humanities*.



Through its *Understanding America* initiative, the NEH encourages projects for curriculum and faculty development that will strengthen undergraduate instruction in American history and culture. Such projects are supported by the Central Disciplines in Undergraduate Education Program, which seeks to improve the teaching of humanities disciplines to undergraduates and which offers support in three categories: Improving Introductory Courses, Promoting Excellence in a Field, and Fostering Coherence Throughout an Institution.

The staff who administer these categories (names and telephone numbers are listed on page 42) are willing to discuss with prospective applicants the various activities that NEH supports to strengthen the undergraduate programs in the study of America. Institutions have received funding for faculty development projects such as workshops and institutes, for visiting scholars programs, and for released time for faculty to develop or revise courses. The kind of project proposed usually depends on the specific needs and strengths of the applying institution.

Before submitting a formal proposal, a college or university should discuss its proposed project with NEH staff. Such discussions usually

result in a more competitive proposal.

All proposals submitted to the Central Disciplines program are reviewed by a panel of educators, scholars, and administrators representing the various disciplines of the humanities as well as different types of institutions. Those proposals recommended for funding have features that may seem obvious. But because they are at the heart of all successful applications, they are worth noting:

- A clear statement of the intellectual rationale for the project. (This statement should be specific about the educational goals of the project and should answer the following questions: Why does the project matter? How will the project increase the rigor and effectiveness with which the humanities are taught?)
- A coherent plan of activities supported by a staff prepared to carry them out. (The NEH is flexible about an institution's means of achieving its educational goals but requires these means to be described in the proposal.)
- An account of the difference the project will make to both student and faculty learning.
- A commitment to cost sharing during the project and to sustaining the project after Endowment support ends.

The proposal should show that an institution is clear about its priorities and that the project fits in with those priorities. In other words, NEH funding should be used to help an institution do better or more efficiently what it intends to do anyway. An NEH grant provides the advantages of speed, thoroughness, and greater visibility as the institution accomplishes its objectives.



# RECENT NEH GRANT AWARDS

Some of the items in this list are offers, not final awards.

## Archaeology & Anthropology

**Bethel College**, North Newton, KS; John M. Janzen: \$150,000. To implement a permanent exhibition on the Mennonites of the Central Plains. *GM*

**Indiana U.**, Bloomington; Hasan M. El-Shamy: \$70,000. To produce an index of the types of tales of the Arab world that would include such ethnic groups as Berbers, Nubians, and Kurds, and would provide a valuable source of classification for students of world oral literatures and folk narrative scholars. *RT*

**Museum of New Mexico**, Santa Fe; Claire Munzenrider: \$39,722. To conduct conservation treatment for approximately 300 ethnographic objects from the Museum of New Mexico's Southwest Indian collection. *GM*

**New York Folklore Society**, NYC; Steven J. Zeitlin: \$100,000 OR; \$10,000 FM. To implement a traveling exhibition on the way traditional games and play reveal a changing human response to the urban environment. *GM*

**Ohio Historical Society**, Columbus; Michael E. Moseley: \$38,300. To publish a catalogue that illustrates and interprets 400 artifacts from the Hopewell earthworks complex of Ohio, one of the most important prehistoric sites in North America. *GM*

**Rochester Museum and Science Center**, NY; Richard C. Shultz: \$150,000. To implement a major permanent exhibition examining cultural continuity and change among the Seneca Iroquois of Western New York State from 1550 to the present. *GM*

**SUNY Research Foundation/Albany**, NY; Peter T. Furst: \$30,000 OR; \$2,000 FM. To translate a three-volume work of ethnographic analysis by the German linguist and cultural anthropologist, Leonhard Schultze-Jena. *RL*

**U. of New Mexico**, Albuquerque; Peter Walch: \$74,000 OR; \$26,000 FM. To implement an exhibition, catalogue, and related educational programs examining how artistic representations, scholarly studies, and popular ideas about the ancient Maya varied in focus and content as Western attitudes changed over the last four centuries. *GM*

**Walters Art Gallery**, Baltimore, MD; Ellen R. Williams: \$50,000. To implement a traveling temporary exhibition consisting of 300 objects from archaeological sites and museums in Syria that explore the region's role as a cultural crossroads from prehistoric times through the Islamic Period. *GM*

## Arts—History and Criticism

**Art Institute of Chicago**, IL; John R. Zukowsky: \$20,000 OR; \$10,000 FM. To implement a permanent installation of architectural fragments, plus related catalogue, brochure, and

panel series showing the development of Chicago architecture in the 19th and 20th centuries. *GM*

**Asia Society, Inc.**, NYC; Andrew Pekarik: \$60,000. To implement an exhibition, catalogue, and other educational programs examining an important social, cultural, and artistic movement in India at the court of Akbar from 1571 to 1585. *GM*

**Baltimore Museum of Art**, MD; Brenda Richardson: \$40,000. To prepare an interpretive catalogue to accompany a traveling exhibition of the art of Oskar Schlemmer. *GM*

**Brooklyn Museum**, NY; Amy G. Poster: \$92,000. To implement a temporary exhibition of 125 terra-cotta sculptures from India and other regions in Western Asia dating from 2300 B.C. to the present. *GM*

**Annemarie Weyl Carr**, Dallas, TX: \$3,300. To prepare camera-ready copy for a monograph and catalogue of 12th- and 13th-century Byzantine illuminated manuscripts. *RT*

**Center for the Study of Japanese Prints**, Woodacre, CA; Roger S. Keyes: \$80,555 OR; \$56,325 FM. To prepare a *catalogue raisonné* of the woodblock prints of Katsushika Hokusai (1760-1849). *RT*

**Founders Society, Detroit Institute of Arts**, MI; Suzanne W. Mitchell: \$36,000. To plan the first comprehensive exhibition of the art of the late Sung Dynasty (1100-1279) in the West. *GM*

**Metropolitan Museum of Art**, NYC; William D. Wixom: \$100,000. To implement a temporary exhibition that focuses on the art and culture of Nuremberg, one of Europe's most important urban centers from the 14th through the first half of the 16th century. *GM*

**Museum of Fine Arts**, Boston, MA; Jonathan L. Fairbanks: \$125,000 OR; \$50,000 FM. To implement a traveling exhibition and catalogue exploring the impact of the Arts and Crafts movement on American life by examining it in its social and intellectual contexts. *GM*

**Philadelphia Museum of Art**, PA; Diane Karp: \$75,000. To implement an exhibition and catalogue of 130 prints, drawings, and photographs from the Museum's *Ars Medica* collection interpreting crucial aspects of the history of medicine and attitudes toward disease, healing, and the stages of human life. *GM*

**Princeton U.**, NJ; Robert Mark: \$94,625. To conduct a summer workshop for 15 college and university teachers who wish to explore the relationships between building technology and architectural history with emphasis on Greco-Roman, medieval French, and Renaissance Italian monuments. *EH*

**Rhode Island School of Design**, Providence; Deborah J. Johnson: \$16,107. To implement an interpretive exhibition of 70 British 19th-century books from New England museums focusing on the history of illumination and exploring how these books express the 19th-century British search for links with the standards and values of their cultural past. *GM*

**Ripon College**, WI; Evelyn M. Kain: \$30,000 OR; \$5,000 FM. To translate the art historical

work, "Problems of Style: Foundation for a History of Ornament" (1893), by the Viennese historian Aloise Riegl. *RL*

**Stanford U.**, CA; Albert Cohen: \$58,835. To continue the establishment of a microfilm archive of the primary sources necessary to prepare a critical edition of the works of the 17th-century French composer Jean Baptiste Lully. *RE*

**Toledo Museum of Art**, OH; Kurt L. Luckner: \$40,000. To implement a temporary traveling exhibition that uses approximately 70 ancient Greek vases by the Amasis Painter to explore the life and culture of ancient Athens at a time when Greek civilization dominated the Mediterranean world. *GM*

**U. of Chicago**, IL; Philip Gossett: \$74,540. To continue the preparation of critical editions of six operas in "The Works of Giuseppe Verdi." *RE*

**U. of Maryland**, College Park; Rachel W. Wade: \$119,317 OR; \$5,000 FM. To continue the preparation of an edition of the complete works of Carl Philipp Emanuel Bach, a major 18th-century composer and son of Johann Sebastian Bach. *RE*

**U. of Pennsylvania**, Philadelphia; Timothy R. Tomlinson: \$25,000. To plan a cluster of temporary exhibitions and related programs marking the centenary of Compton, the public garden of the Morris Arboretum, which was designed in 1887 in the tradition of English Victorian landscape gardens. *GM*

**U. of Pennsylvania**, Philadelphia; Michael W. Meister: \$125,994. To continue preparation for the "Encyclopedia of Indian Temple Architecture," the first comprehensive presentation of Indian temple architecture covering a period of a thousand years. *RT*

**Washington U.**, St. Louis, MO; Gerald D. Bolas: \$75,000. To implement an exhibition, an interpretive catalogue, and an international symposium that analyze the transformations in Japanese culture resulting from the experience of Japanese artists in Paris and their contacts with French art during the late 19th and early 20th century. *GM*

**Winterthur Museum**, DE; Karol A. Schmigel: \$3,964. To plan the computerized documentation of Winterthur's 70,000 objects in the decorative arts collections. *GM*

## Classics

**Bowdoin College**, Brunswick, ME; John W. Ambrose, Jr.: \$127,539. To conduct a four-week institute on Greek and related studies for 40 New England teachers of Latin, Greek literature in translation, and ancient history. *ES*

**Columbia U.**, NYC; Leonardo Taran: \$30,500. To prepare a new edition of Simplicius' commentary on Aristotle's *Physics*. *RE*

**Miami U.**, Oxford, OH; Robert M. Wilhelm: \$147,070 OR; \$2,900 FM. To conduct a four-week institute and a series of follow-up activities for forty teachers of grades K through 6 who will study Vergil's *Aeneid* and related aspects of ancient Roman history and culture.



ES

**U. of Georgia**, Athens; Richard A. LaFleur: \$250,000. To conduct a two-year project in the Latin language and Roman history and culture, focusing on the period of the late Republic and early Empire, for 25 teachers of Latin who lack sufficient preparation in the field. *ES*

## History—Non-U.S.

**Harvard U.**, Cambridge, MA; Alexander P. Kazhdan: \$200,000 OR; \$75,000 FM. To continue the preparation of the "Dictionary of Byzantium." An innovative feature of this dictionary will be the emphasis placed on everyday life and technical terminology, but it will also include such traditional areas as political history, iconography, and prosopography. *RT*

**U. of Wisconsin**, Madison; David Woodward: \$150,000 OR; \$298,936 FM. To continue the preparation of Volumes 2, 3, and 4 of "A History of Cartography." These volumes cover the period from the Renaissance to ca. 1780. The six-volume series will survey the rise and development of cartography from earliest times to the present. *RT*

## History—U.S.

**American U.**, Washington, DC; Charles McLaughlin: \$72,232 OR; \$72,232 FM. To continue work on an edition of the papers of Frederick Law Olmsted, the 19th-century travel writer, social critic, landscape architect, and city planner. *RE*

**College of William and Mary**, Williamsburg, VA; Philip D. Morgan: \$45,000. To prepare a detailed analytical index to, and statistical analysis of, the diaries, commonplace books, and family sketches written by Thomas Thistlewood, an Anglo-Jamaican plantation owner, from 1748 through 1786. *RT*

**CUNY Research Foundation/La Guardia Community College**, Long Island City, NY; Richard K. Lieberman: \$24,839. To document the 3,500-image LaGuardia photographic collection, making it more accessible for use in public programs and exhibitions. *GM*

**Dartmouth College**, Hanover, NH; Charles M. Wiltse: \$25,000. To continue the completion of the edition of the papers of Daniel Webster. *RE*

**Historical Society of Pennsylvania**, Philadelphia; Richard S. Dunn: \$50,000 OR; \$7,500 FM. To complete the edition of "The Papers of William Penn" in five volumes. *RE*

**Ohio Historical Society**, Columbus; Martha G. Hayes: \$10,070. To conduct conservation treatment for two 18th-century folk portraits by Winthrop Chandler, which enhance interpretation of settlement history of the Northwest Territory in an NEH-funded permanent exhibition at the Campus Martius Museum. *GM*

**Old Sturbridge Village**, MA; Theresa R. Percy: \$22,084. To conduct conservation treatment of 45 maps created in the 18th and early 19th centuries, which illustrate the social and economic patterns of the surveyed communities in New England, and which serve as the basis for educational programs and interpretive exhibits at Old Sturbridge Village. *GM*

**Rutgers U.**, New Brunswick, NJ; Reese V. Jenkins: \$15,000. To plan an exhibition of Edison drawings and artifacts demonstrating the relationship of his technological creativity to the art and culture of the period. *GM*

**South Carolina State Museum**, Columbia; Overton G. Ganong: \$10,000. To conduct a

conservation survey for artifacts scheduled for use in a major long-term exhibition on South Carolina history. *GM*

**Strong Museum**, Rochester, NY; Harvey Green: \$125,000. To implement a traveling exhibition examining the ways Americans thought about their health and how they behaved to preserve, alter, or regain it between 1830 and 1940 within the context of American social and cultural history. *GM*

**Strong Museum**, Rochester, NY; Lynne F. Poirier: \$4,845. To enter the museum's collection of documentary and advertising material on paper into a video disc, explore the specific needs of scholars and the public, and determine an appropriate method of organizing the collection. *GM*

**U. of Maryland**, College Park; Stuart B. Kaufman: \$95,000 OR; \$25,000 FM. To continue preparation of an edition, in three microfilm series and 12 volumes of selected documents, of the papers of Samuel Gompers, the first president of the American Federation of Labor. *RE*

**U. of Michigan**, Ann Arbor; Jerome M. Clubb: \$100,000. To continue work on a computer-readable data base encompassing family life and conditions in the United States, 1888-1936. It constitutes not only a means to inquire into family characteristics but a basis as well for research into living conditions and style of life, preferences, tastes, and values. *RT*

**U. of Nebraska**, Lincoln; Gary E. Mouton: \$96,000 OR; \$20,132 FM. To continue the preparation of the edition of the journals of the Lewis and Clark expedition in 11 volumes. *RE*

**U. of Virginia**, Charlottesville; J.C. Levenson: \$75,000. To complete a comprehensive edition of the letters of Henry Adams. *RE*

**U. of Wisconsin**, Madison; John P. Kaminski: \$110,500 OR; \$50,479 FM. To continue the preparation of two editions: a documentary history of the ratification of the Constitution and the Bill of Rights (in 18 volumes), and a documentary history of the first federal elections (in four volumes). *RE*

## Interdisciplinary

**African American Museums Association**, Washington, DC; Spencer R. Crew: \$54,088 OR; \$15,000 FM. To implement a traveling exhibition, catalogue, and educational resource kits about the migration of southern rural blacks to northern urban areas and the resulting social, economic, and cultural changes. *GM*

**American Association of Community & Junior Colleges**, Washington, DC; James Gollatscheck: \$30,000. To conduct a humanities round table of community college presidents and faculty who will discuss the report *To Reclaim a Legacy*, (an evaluation of the humanities in higher education) and publish the proceedings. *EH*

**American Library Association**, Chicago, IL; Evelyn F. Shaeval: \$227,284. To conduct a series of four regional workshops to enhance the skills and intellectual approach of librarians and scholars in designing and implementing humanities programs for young adults from 12 to 18 years old. *GL*

**Asian Cultural Council**, NYC; Ted M.G. Tanen: \$100,000 OR; \$40,000 FM. To conduct a series of programs on the historical, religious, and cultural contexts in which Indian art was created. Visiting scholars will speak at locations throughout the country, and events will be timed to coincide with the traveling exhibitions and performances organized by the Festival of India. *GP*

**Columbia, U.**, NYC; William T. deBary:

\$297,895 OR; \$40,000 FM. To conduct a variety of activities to foster the teaching of Asia in undergraduate humanities courses: an institute on the literary masterworks for 20 college and university teachers, a workshop on Asian civilizations for 15 teachers, and a series of new or revised guides for teachers. *EH*

**Dartmouth College**, Hanover, NH; Tamara Northern: \$29,060. To plan a traveling exhibition and catalogue on the masking traditions of the Fang of Gabon, Africa. *GM*

**Harvard U.**, Cambridge, MA; Sheila C. Geary: \$150,000. To implement three interpretive guidebooks which will present the resources of the Arboretum's historic and well-documented collection of trees and shrubs to a broad public audience. *GM*

**Harvard U.**, Cambridge, MA; Clifford C. Lamberg-Karlovsky: \$20,000. To plan a permanent exhibition and catalogue examining the role that existing traditions in native American culture played in the adoption of new ideas or material traits from Western civilization. *GM*

**Japanese-American Citizens League**, San Francisco, CA; Lynne Horiuchi: \$140,000. To implement a traveling exhibition on amateur photography as a cultural enterprise using two representative Japanese-American families as examples. *GM*

**Lushootseed Research**, Seattle, WA; Thomas M. Hess: \$60,000. To prepare a dictionary, supplemented by texts and concordances, of Lushootseed, a native American language of the Puget Sound area. *RT*

**National Consortium of Arts and Letters for Historically Black Colleges and Universities**, Washington, DC; Richard A. Long: \$10,000. To plan a conference for a project at historically black institutions aimed at increasing enrollments in humanities courses and at stimulating interest in the humanities among current and prospective students. *EH*

**Princeton U.**, NJ; Bernard Lewis: \$43,031 OR; \$13,000 FM. To continue the preparation of the "Encyclopedia of Islam." *RT*

**Southern Illinois U.**, Carbondale; Jo Ann Boydston: \$110,000 OR; \$100,000 FM. To continue the editing of Volumes 9-16 of "The Later Works of John Dewey" in *The Collected Works of John Dewey*. *RE*

**Queens College**, Flushing, NY; Max A. Eckstein: \$99,274. To conduct a comparative study of humanities in secondary school curricula of the United States and several industrialized nations. *OP*

**State Historical Society of Colorado**, Denver; Eric L. Paddock: \$22,810. To document the collection of more than 9,000 original negatives and 3,000 vintage photographic or photomechanical prints, catalogues, and negative registers included in the W.H. Jackson photography collection at the State Historical Society of Colorado. *GM*

**Texas Historical Commission**, Austin; Cindy L. Sherrell-Leo: \$37,460. To conduct the Winedale interpretive skills workshops for museum and historical society staff members in the mountain plains region. *GM*

**U. of Florida**, Gainesville; Jerald T. Milanich: \$35,955. To plan a traveling exhibition, catalogue, and video components on the Spanish empire's expansion into the New World. *GM*

**U. of Hawaii at Manoa**; Donald Topping: \$20,000. To complete language dictionaries of the two Salish Indian languages, Klallum and Tillamook. *RT*

**U. of New Mexico**, Albuquerque; Gilbert W. Merx: \$119,218. To conduct an institute for 20 college and university Latin American specialists on Brazilian culture, including intensive instruction in the Portuguese language. *EH*

**U. of Rochester**, NY; Ann C. Fehn: \$67,833. To plan a program to increase the role of the



humanities in the education of students majoring in the sciences, through the refinement of existing linked courses and the development of new humanities courses within the university's "Ventures" sequences. *EK*

## Language & Linguistics

**Bowdoin College**, Brunswick, ME; Burke O. Long: \$6,465. To conduct a survey of need for a new series of *Translations of Ancient Near Eastern Documents*. *RL*

**Columbia U.**, NYC; Marvin I. Herzog: \$250,000 OR; \$290,000 FM. To continue the "Great Dictionary of the Yiddish Language," which will record the Yiddish lexicon from written and oral sources and will comprehend data from the earliest 10th-century communities along the Rhine to the 20th-century dispersion of Yiddish speakers to all continents. *RT*

**Elmhurst College**, IL; Theodore K. Lerud: \$20,854. To complete a "Handbook of the Linguistic Atlas of the Middle and South Atlantic States." The handbook will be used as a guide to the phonetic data (more than one million individual responses) transcribed by LAMSAS fieldworkers and now available on microfilm. *RT*

**George Washington U.**, Washington, DC; Irene Thompson: \$58,630. To develop and test the field of a proficiency-based reader for first- and second-year Russian. *EH*

**Kansas State U.**, Manhattan; Harriet Ottenheimer: \$45,000. To prepare a Shizwani-English dictionary and an English-Shizwani Finding Index. The language is spoken in the Comoro Islands in the western Indian Ocean. *RT*

**Wolf Leslau**, Los Angeles, CA: \$55,000. To prepare a "Handbook of the Semitic Ethiopian Languages." Grammatical outlines of each of the eight Semitic languages in Ethiopia will be included, as well as texts and a comparative study of Semitic Ethiopic. *RT*

**Phillips U.**, Enid, OK; Glenn E. Doyle: \$120,000. To add a full-time faculty position in Spanish and prepare and implement oral proficiency testing in the French, Spanish, and German language curricula. *EL*

**Southern Illinois U.**, Carbondale; Dinh H. Nguyen: \$19,400. To prepare camera-ready copy for an English-Vietnamese dictionary. *RT*

**SUNY Research Foundation/College at Potsdam**, NY; Maureen Regan: \$110,785. To conduct a four-week institute and a series of follow-up activities focused on the French language and medieval France, for teams of elementary and secondary school teachers of French with participation by administrators. *ES*

**U. of California, Berkeley**; James A. Matisoff: \$16,036. To prepare camera-ready copy for a dictionary of Lahu, a Sino-Tibetan language of the Loloish group, which is closely related to Burmese and distantly related to Chinese and Tibetan. *RT*

**U. of Chicago, IL**; Erica Reiner: \$200,000 OR; \$150,000 FM. To continue work on the "Chicago Assyrian Dictionary," an encyclopedic repository of the material culture, the legal, social, economic and political institutions, and the technical, medical, and scientific heritage of ancient Mesopotamia. *RT*

**U. of Chicago, IL**; Harry A. Hoffner: \$150,000 OR; \$116,000 FM. To continue the preparation of the "Hittite Dictionary." *RT*

**U. of Michigan**, Ann Arbor; Jay L. Robinson: \$551,770. To continue work on the "Middle English Dictionary." *RT*

**U. of Nigeria**, Nsukka Anambra; Robert G.

Armstrong: \$50,000. To prepare a dictionary of the Idoma language, one of the principal languages of Nigeria. *RT*

**U. of Wisconsin**, Madison; Lloyd Kasten: \$251,196 OR; \$71,000 FM. To complete the Dictionary of Alfonsine Prose, the first published stage of the dictionary of the old Spanish language. The Alfonsine prose texts represent the largest single corpus of written Spanish in the early medieval period. *RT*

## Literature

**Appalachian Consortium, Inc.**, Boone, NC; Barry M. Buxton: \$105,382. To conduct a series of three summer institutes on American literature, with extensive follow-up activities, for English teachers in the Appalachian region. *ES*

**Clark U.**, Worcester, MA; James F. Beard, Jr.: \$46,750. To continue the preparation of the authoritative edition of "The Writings of James Fenimore Cooper." *RE*

**Cleveland State U.**, OH; David A. Richardson: \$114,000 OR; \$24,094 FM. To continue the preparation of "The Spenser Encyclopedia." *RT*

**Columbia U.**, NYC; John H. Middendorf: \$48,100 OR; \$4,000 FM. To continue work on the edition of the works of Samuel Johnson. *RE*

**Dartmouth College**, Hanover, NH; William C. Scott: \$103,000. To conduct a summer institute on classical Greek tragedy for 30 college and university teachers who are nonclassicists. *EH*

**District of Columbia Public Schools**, Washington, DC; Marion E. Hines: \$155,000. To conduct a four-week institute and follow-up activities on the treatment of the child in literary texts from France, Spain, West Africa, the Caribbean, and Latin America. *ES*

**George Washington U.**, Washington, DC; Philip H. Highfill, Jr.: \$70,000. To complete the final six volumes of *A Biographical Dictionary of Actors, Actresses, Musicians, Dancers, Managers, and other Stage Personnel in London, 1660-1800*. *RT*

**Philip Kelley**, Winfield, KS: \$181,863. To continue work on an edition of the correspondence of Robert and Elizabeth Barrett Browning. *RE*

**Eugene B. Murray**, St. Louis, MO: \$1,500. To prepare a facsimile edition of a manuscript notebook of Percy B. Shelley's poems and prose writings. *RE*

**Ohio State U.** Research Foundation, Columbus; Thomas Woodson: \$35,000. To continue the completion of the volumes of correspondence in the centenary edition of the works of Nathaniel Hawthorne. *RE*

**Pennsylvania State U.**, University Park; Robert N. Hudspeth: \$58,000. To continue preparation of the edition of the letters of the American writer Margaret Fuller. *RE*

**Pennsylvania State U.**, University Park; Alan E. Knight: \$75,000. To prepare a critical edition of a recently discovered manuscript collection of 15th-century pageant plays of northern France. *RE*

**Simon Fraser U.**, Burnaby, Canada; Jared R. Curtis: \$30,666. To continue the preparation of an edition of William Wordsworth's early poetry as part of the Cornell Wordsworth series. *RE*

**U. of Colorado**, Boulder; Donald C. Baker: \$88,626. To complete a computer-based archive of all early English dramatic texts and to produce a six-volume set of concordances to those texts. *RT*

**U. of Illinois**, Urbana; Philip Kolb: \$77,000. To continue work on a critical, annotated edition of the letters of Marcel Proust. *RE*

**U. of Illinois**, Urbana; Brian Dutton: \$90,000.

To continue updating the *Catalogue Index of 15th-century Spanish Cancionero Poetry* and prepare diplomatic editions of all except the long poems in machine-readable form. *RT*

**U. of Oregon**, Eugene; Robert M. Berdahl: \$126,428. To conduct a three-week summer institute and follow-up activities for 25 principals who will study the treatment of heroes and heroines in classic and contemporary texts. *ES*

**U. of Virginia**, Charlottesville; Cecil Y. Lang: \$61,312. To prepare a complete edition of the letters of Matthew Arnold. *RE*

## Philosophy

**Indiana U.**, Indianapolis; Christian J. Kloesel: \$128,635 OR; \$15,000 FM. To continue work on an edition of the writings of Charles S. Peirce (1839-1914), the American philosopher, scientist, mathematician, and logician. *RE*

**Purdue U.**, West Lafayette, IN; Calvin O. Schrag: \$94,667. To conduct an institute on selected topics in 20th-century Continental philosophy for 25 college and university teachers. *EH*

**Saint Bonaventure U.**, St. Bonaventure, NY; Girard J. Etzkorn: \$85,790. To continue the preparation of critical editions of two medieval Latin scholastic texts: Duns Scotus's philosophical commentary *Questions on the Metaphysics* and Adam Wodeham's *Lectura Secunda*. *RE*

**U. of Washington**, Seattle; Karl H. Potter: \$55,000. To prepare two volumes of the series, "The Encyclopedia of Indian Philosophies," which will deal specifically with Mahayana philosophy. *RT*

Capital letters following each grant amount have the following meanings: *FM* Federal Match; *OR* Outright Funds. Capital letters following each grant show the division and the program through which the grant was made.

### Division of Education Programs

- EB* Central Disciplines in Undergraduate Education
- EK* Improving Introductory Courses
- EL* Promoting Excellence in a Field
- EM* Fostering Coherence Throughout an Institution
- ES* Humanities Instruction in Elementary and Secondary Schools
- EH* Exemplary Projects in Undergraduate and Graduate Education
- EG* Humanities Programs for Nontraditional Learners

### Division of General Programs

- GN* Humanities Projects in Media
- GM* Humanities Projects in Museums and Historical Organizations
- GP* Humanities Programs for Adults
- GL* Humanities Programs in Libraries
- GZ* Youth Projects
- GY* Younger Scholars Program

### Division of Research Programs

- RO* Interpretive Research Projects
- RD* Conferences
- RH* Humanities, Science, and Technology
- RP* Publication Subvention
- RA* Centers for Advanced Study
- RI* Regrants for International Research
- RT* Tools
- RE* Editions
- RT* Translations
- RC* Access

### Office of Preservation

- RV* Preservation
- RN* U.S. Newspaper Program







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Deadlines in  
boldface

For projects  
beginning after

## Division of General Programs—Donald Gibson, Director 786-0267

Humanities Projects in Media—James Dougherty 786-0278	<b>March 20, 1986</b>	October 1, 1986
Humanities Projects in Museums and Historical Organizations—Sally Yerkovich 786-0284	<b>June 13, 1986</b>	January 1, 1987
Public Humanities Projects—Malcolm Richardson 786-0271	<b>March 21, 1986</b>	October 1, 1986
Humanities Projects in Libraries—Thomas Phelps 786-0271	<b>March 21, 1986</b>	October 1, 1986

## Division of Research Programs—Richard Ekman, Director 786-0200

Texts—Margot Backas 786-0207		
Editions—Margot Backas, Kathy Fuller, David Nichols 786-0207	<b>June 1, 1986</b>	April 1, 1987
Translations—Susan Mango, Sharon Cohen 786-0207	<b>June 1, 1986</b>	April 1, 1987
Publication Subvention—Margot Backas, Kathy Fuller 786-0207	<b>April 1, 1986</b>	October 1, 1986
Reference Materials—John Williams 786-0358		
Tools—Helen Aguera, Anne Woodard 786-0358	<b>November 1, 1986</b>	July 1, 1987
Access—Marcella Grendler, Patricia Shadle, William Maher 786-0358	<b>November 1, 1986</b>	July 1, 1987
Interpretive Research—Dorothy Wartenberg 786-0210		
Projects—David Wise, Charlotte Morford, Robert Bledsoe 786-0210	<b>October 1, 1986</b>	July 1, 1987
Humanities, Science and Technology—Daniel Jones, Elizabeth Arndt 786-0210	<b>October 1, 1986</b>	July 1, 1987
Regrants—Eugene Sterud 786-0204		
Conferences—Crale Hopkins 786-0204	<b>February 15, 1986</b>	October 1, 1986
Centers for Advanced Study—David Coder 786-0204	<b>December 1, 1986</b>	July 1, 1987
Regrants for International Research—Eugene Sterud 786-0204	<b>February 15, 1986</b>	October 1, 1986
Regrants in Selected Areas—Eugene Sterud 786-0204	<b>February 15, 1986</b>	October 1, 1986

## Division of State Programs—Marjorie Berlincourt, Director 786-0254

Each state humanities council establishes its own grant guidelines and application deadlines. Addresses and telephone numbers of these state programs may be obtained from the division.

## Office of Challenge Grants—James Blessing, Director 786-0361

**May 1, 1986**      December 1, 1985

## Office of Preservation—Harold C. Cannon, Director 786-0570

Preservation—Steven Mansbach 786-0570	<b>June 1, 1986</b>	January 1, 1987
U.S. Newspaper Program—Jeffrey Field 786-0570	<b>June 1, 1986</b>	January 1, 1987

Guidelines are available from the Public Affairs Office two months in advance of the application deadline.  
Telecommunications Device for the Deaf: 786-0282

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