Patrick Henry’s imposing figure and confident voice commanded his fellow delegates’ attention. Standing six feet tall and possessing flashing blue eyes, the fifty-two-year-old, self-taught lawyer had already earned a reputation in the state as a powerful speaker. As Virginia’s leaders gathered in 1788 to consider ratification of the Constitution, Henry’s opposition echoed through the hall. He warned that approval of the document would create a too-powerful central government that would eventually degenerate into a tyranny. “Away with your president!” Henry thundered. “We shall have a king: the army will salute him monarch; your militia will leave you, and assist in making him king, and fight against you: and what have you to oppose this force? What will then become of you and your rights? Will not absolute despotism ensue?” Henry’s words were passionate and powerful, so much so that one delegate confessed that he felt imaginary iron shackles close around his hands as Henry spoke his warning.

Background

By all accounts, Patrick Henry was not a hard worker. Thomas Jefferson once called him “the laziest man in reading I ever knew.” Born in 1736 in Hanover County, Virginia, he was schooled mostly by his father, who expected him to be a farmer. Henry had little interest in either academics or farming. He was spellbound, however, by the revivalist Christian preachers who came to his town during the 1740s and 1750s. Their fiery oratory had a lasting effect on the young Henry.

When he was twenty-one years old, Henry and his brother became the owners of a general store that their father had established for them. But the brothers were poor businessmen. Within a year, the store had gone bankrupt. Henry married and tried his hand at farming and, for a second time, at storekeeping. Neither venture was successful. He then decided to teach himself the law. After studying for only a few weeks, Henry was admitted to the Virginia bar in 1760 at the age of twenty-three.

The Parson’s Cause

Three years later, Henry argued a case that became known as the “Parson’s Cause.” In 1758, the Virginia House of Burgesses had passed the Two-Penny Act. This law had the effect of lowering drastically the salaries of the Virginia clergy, which were paid by wealthy Virginia planters. When the parsons protested to the king, the British government repealed the Two-Penny Act.

Several clergymen filed lawsuits to collect the money they had lost since the passage of the Two-Penny Act. They won their cases. In the Parson’s Cause of 1763, Henry was hired by a group of planters to argue their side when a jury was deciding the amount of money owed to a parson. Henry took advantage of the opportunity to make an hour-long speech denouncing the king’s repeal of the Two-Penny Act as “an instance of misrule” and perhaps tyranny. The king, he declared, should not interfere with Virginia’s right to make its own laws.

Patrick Henry

PATRICK HENRY (1736–1799)
Henry’s bold speech caused some in the courtroom to whisper that the lawyer’s words were treasonous. But Henry’s words persuaded the jury, who awarded the parson a mere penny in damages. After court was adjourned, most observers, who resented the king’s interference in Virginia’s affairs, cheered Henry. Several men hoisted Henry onto their shoulders and carried him to a local tavern, where they celebrated the victory for American liberty with vast amounts of liquor. In the course of an hour, Henry had made a name for himself in Virginia.

Tyranny and Revolution

In 1765, Henry was elected to the Virginia House of Burgesses. There he added to his fame by opposing the Stamp Act of 1765. Passed by the British Parliament, this law in effect placed a tax on legal documents, newspapers, and playing cards produced in the colonies. Henry introduced a series of resolutions to the House, one of which asserted that “the General Assembly of this Colony have the only and sole exclusive Right & Power to lay . . . taxes upon the Inhabitants of this Colony.” Again, Henry was not afraid of being labeled a traitor. “If this be treason,” he thundered, “make the most of it!”

By the 1770s, Henry had emerged as one of the most radical leaders of the opposition to British tyranny. In 1774, he represented Virginia at the First Continental Congress. The following year, Henry attended the second Virginia Convention. At St. John’s Church in Richmond, he urgently advised his fellow Virginians to take arms against the British. “Gentlemen may cry ‘Peace! Peace!’ but there is no peace,” Henry intoned. “The war is actually begun!” He closed his speech with the now legendary words: “I know not what course others may take; but as for me, give me liberty or give me death.”

Henry’s call to arms succeeded in drowning out the voices of those reluctant to go to war. Governor Lord Dunmore so feared the discontented colonists that he ordered the removal of the gunpowder from the Williamsburg Magazine and had it loaded onto a British ship. In response, Henry threatened to use the Virginia militia to reclaim Virginia’s property. In the end, the governor paid the colony for the powder.

In 1776, Virginia and the other colonies declared their independence from Great Britain. Henry served as the first governor of Virginia from 1776 to 1779. He then served in the Virginia House of Delegates from 1780 to 1784. As a member of the legislature, he championed a bill that would have required a tax for the general support of the Christian religion. But James Madison, also a member of the legislature, succeeded in defeating the proposal and winning passage of the Statute for Religious Freedom. This act provided for the separation of church and state in Virginia. In 1784, Henry was elected again to the governorship for a two-year term.

The Virginia Convention

In 1787, Henry received an invitation to participate in a convention whose purpose was to revise the Articles of Confederation. Saying he “smelled a rat,” Henry refused to attend what became the Constitutional Convention. He feared that the meeting was a plot by the powerful to construct a strong central government of which they would be the masters.

When the new Constitution was sent to Virginia for ratification in 1788, Henry was one of its most outspoken critics. Deeming liberty the “direct end and foundation” of government, Henry warned that the new Constitution would create a “consolidated” government in which power would be concentrated in the hands of a few. The document did not provide for adequate checks and balances and therefore did not protect the people against evil rulers. Henry was concerned that the Constitution also gave the central government the power of direct taxation. It also created a standing army, which Henry feared a power-hungry president could use to awe the people into submission.
Henry wondered aloud why the Constitution did not include a bill of rights. “Is it because it will consume too much paper?” he asked sarcastically. Henry believed that the absence of a bill of rights was part of the attempt by the few to amass power. The arguments of Henry and other Anti-Federalists compelled Madison, the leader of the Virginia Federalists (supporters of adoption of the Constitution), to promise the addition of a bill of rights to the Constitution once the document was approved. But Henry warned his Anti-Federalist allies that Madison’s promise was an empty one. Henry’s passionate appeals, however, failed to sway the convention. After twenty-five days of heated debate, on June 26, 1788, Virginia became the tenth state to ratify the Constitution.

A Respected Statesman
Henry refused to serve in the new government. “Some of its leading principles,” he told a friend, “are subversive of those to which I am forever attached.” But Henry did not give up the fight for liberty. He continued to call for a bill of rights, and his efforts forced Madison, who was a candidate for a congressional seat, to promise voters that he would work to add a bill of rights to the Constitution.

In 1789, the first Congress of the United States sent a list of twelve amendments to the states. Henry believed that these amendments did not adequately safeguard the rights of the people and the states. He therefore did not support them, instead calling for a new convention to revise the Constitution. Nevertheless, Virginia approved all twelve amendments, and ten of these were ratified by the required number of states and added to the Constitution in 1791. These ten amendments became known as the Bill of Rights.

Thwarted in his efforts to put together a second Constitutional convention, Henry returned to his plantation at Red Hill, Virginia. There he resumed his law practice. Unlike most former Anti-Federalists, Henry did not join the Republican Party formed by Thomas Jefferson and James Madison in the 1790s. He disliked both men and, as a devout Christian, was disgusted by the enthusiasm of many Republicans for the atheistic French Revolution.

Nor did Henry immediately ally himself with the new Federalist Party, which included most members of the Washington administration. In 1795 and 1796, Henry turned down offers from George Washington first to serve as secretary of state and then chief justice of the supreme court. President Washington, however, did persuade Henry to run for election for a seat in the Virginia legislature in 1799. Henry won the election but died before the legislature formally convened.

Reading Comprehension Questions
1. Why did Henry refuse to attend the Constitutional Convention in 1787?
2. What were Henry’s objections to the Constitution?
3. Why did Henry, unlike most former Anti-Federalists, refuse to join the Republican Party?

Critical Thinking Questions
4. In what way are the arguments made by Henry in the Parson’s Cause and in his resolutions against the Stamp Act similar?
5. Some have referred to Henry’s “Give Me Liberty or Give Me Death” speech of 1775 as “the first shot” of the Revolutionary War. Why?
Answer the following questions.

a. When was this document written?
b. Where was this document written?
c. Who wrote this document?
d. What type of document is this?
e. What was the purpose of this document?
f. Who was the audience for this document?
Excerpts from Patrick Henry’s Speech of June 5, 1788, in the Virginia Ratifying Convention

Directions: Each group should paraphrase its assigned passage in one to two sentences that convey Henry’s main idea. Below each passage of Henry’s speech are aids for understanding the document.

1. Majority Rule

This, sir, is the language of democracy—that a majority of the community have a right to alter government when found to be oppressive. But how different is the genius of your new Constitution from this! How different from the sentiments of freemen that a contemptible minority can prevent the good of the majority! . . . If, sir, amendments are left to the twentieth, or tenth part of the people of America, your liberty is gone for ever. . . . It will be easily contrived to procure the opposition of the one-tenth of the people to any alteration, however judicious. . . .

Vocabulary:
   a. genius = nature
   b. contemptible = disgraceful
   c. contrived = arranged
   d. procure = obtain
   e. alteration = change
   f. judicious = sensible

Relevant Section(s) of the Constitution:
   Article V: Amendment Process

Clues to Understanding the Passage:
   The amendment process states that the approval of three fourths of the states is necessary for any proposed amendment to be enacted. In a union of thirteen states, an amendment would require the approval of ten states. The opposition of any four states—even those with small populations—would kill an amendment.

Excerpts from Patrick Henry's Speech of June 5, 1788, in the Virginia Ratifying Convention

2. A Standing Army

A standing army we shall have, also, to execute the execrable commands of tyranny; and how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your mace-bearer be a match for a disciplined regiment? In what situation are we to be? The clause before you gives... an exclusive power of legislation, in all cases whatsoever, for ten miles square, and over all places purchased for the erection of forts, magazines, arsenals, dockyards, etc. What resistance could be made? The attempt would be madness... . . .

Vocabulary:

a. execrable = repulsive
b. mace = a primitive weapon
c. regiment = a unit of soldiers in the army
d. arsenal = place where weapons are stored

Relevant Section(s) of the Constitution:

• Article I, Section 8, Clause 12: “[The Congress shall have the power] to raise and support armies.”
• Article I, Section 8, Clause 17: “[The Congress shall have the power] to exercise exclusive legislation in all cases whatsoever, over . . . the seat of the government of the United States.”

Clues to Understanding the Passage:

Americans traditionally feared a “standing army,” a permanent force consisting of professional, paid soldiers. Instead, most Americans favored defending their country with militia, part-time citizen-soldiers.

Excerpts from Patrick Henry's Speech of June 5, 1788, in the Virginia Ratifying Convention

3. Liberty vs. Empire

If we admit this consolidated government, it will be because we like a great, splendid one. Some way or other we must be a great and mighty empire; we must have an army, and a navy, and a number of things. When the American spirit was in its youth, the language of America was different; liberty, sir, was then the primary object. . . . But now, sir, the American spirit, assisted by the ropes and chains of consolidation, is about to convert this country into a powerful and mighty empire. If you make the citizens of this country agree to become the subjects of one great consolidated empire of America, your government will not have sufficient energy to keep them together. Such a government is incompatible with the genius of republicanism. . . .

Vocabulary:

a. consolidated = powerful
b. splendid = magnificent
c. convert = change
d. sufficient = enough
e. incompatible = unable to coexist
f. genius = nature

Relevant Section(s) of the Constitution:

Henry is referring to many passages of the Constitution, and in particular to the following clauses:

• Article I, Section 8, Clause 12: “[The Congress shall have the power] to raise and support armies.”
• Article I, Section 8, Clause 13: “[The Congress shall have the power] to provide and maintain a navy.”

Clues to Understanding the Passage:

Opponents of the Constitution often charged that the document would create a consolidated government—one in which too much power would be concentrated in the central government and too little power would be given to the states. Henry voiced the concerns of many Americans that liberty and empire were incompatible. (Note that in the second sentence Henry is being sarcastic.)

Excerpts from Patrick Henry's Speech of June 5, 1788, in the Virginia Ratifying Convention

4. Good and Bad Rulers

This Constitution is said to have beautiful features; but when I come to examine these features, sir, they appear to me horribly frightful. . . . It is on a supposition that your American governors shall be honest that all the good qualities of this government are founded; but its defective and imperfect construction puts it in their power to perpetrate the worst of mischiefs should they be bad men; and, sir, would not all the world blame our distracted folly in resting our rights upon the contingency of our rulers being good or bad? Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men without a consequent loss of liberty! I say that the loss of that dearest privilege has ever followed, with absolute certainty, every such mad attempt.

Vocabulary:

a. supposition = assumption
b. perpetrate = commit
c. mischiefs = harm
d. distracted folly = unthinking foolishness
e. contingency = possibility
f. consequent = resulting

Relevant Section(s) of the Constitution:

Henry is referring in general to the powers given to members of the legislative, executive, and judicial branches in Articles I, II, and III, respectively.

Clues to Understanding the Passage:

Opponents of the Constitution charged that the document did not include enough checks on the powers of those who held federal office.

Excerpts from Patrick Henry’s Speech of June 5, 1788, in the
Virginia Ratifying Convention

5. The President, a Tyrant

If your American chief be a man of ambition and abilities, how easy is it for him to
render himself absolute! . . . If we make a king we may prescribe the rules by which he
shall rule his people, and interpose such checks as shall prevent him from infringing
them; but the president, in the field, at the head of his army, can prescribe the terms on
which he shall reign master. . . . Can he not, at the head of his army, beat down every
opposition? Away with your president! We shall have a king: the army will salute him
monarch; your militia will leave you, and assist in making him king, and fight against
you: and what have you to oppose this force? What will then become of you and your
rights? Will not absolute despotism ensue?

Vocabulary:

a. ambition = determination to have fame or power
b. render = make
c. absolute = total
d. prescribe = set down
e. interpose = to put between
f. infringing = violating
g. reign = rule as
h. despotism = tyranny
i. ensue = follow, develop

Relevant Section(s) of the Constitution:

Henry is referring to the powers given to the president in Article II and particularly to
the following passage:

• Article II, Section 2, Clause 1: “The President shall be Commander-in-Chief of
  the Army and Navy of the United States, and of the militia of the several States,
  when called into the actual service of the United States.”

Clues to Understanding the Passage:

Many opponents of the Constitution feared that the president would become a king.

<http://theamericanrevolution.org/ippeople/phenry/phenryspeech1.asp>. 
By the time the delegates to the Constitutional Convention had gathered in Philadelphia in 1787, the American people had been accustomed for more than one hundred and fifty years to having most of their affairs managed first within the colonies and then in independent states. It was not surprising that the Articles of Confederation, the initial constitutional system for “The United States of America,” affirmed in its first article the general “sovereignty, freedom and independence” of the states. Beyond historical precedence, the commitment to state sovereignty drew support from sixteenth- and seventeenth-century theorists such as Jean Jacques Rousseau who argued that the habits and virtues needed by a self-governing people can be cultivated only in small republics. In short, history and theory seemed to be on the side of a confederation of small American republics or states.

If the American people were inclined to favor state sovereignty, they also were interested in comfortable preservation—that is, in the enjoyment of both “safety and happiness,” to borrow from the Declaration of Independence. By the mid-1780s, it was clear to many Americans that state sovereignty created obstacles to comfortable preservation, not the least being the impediments to a smooth-functioning commercial system. Concerns about the effects on the country of competing fiscal and commercial policies in the different states led to the Annapolis Convention of 1786. While the delegates to this convention did not come up with a specific plan for fixing the commercial system, they petitioned the confederation congress to arrange for a constitutional convention that would reconsider the Articles of Confederation with the aim of improving interstate commerce.

James Madison, one of seven delegates chosen to represent Virginia at the Constitutional Convention of 1787, prepared a document on the history of confederacies during the months preceding the meeting. Events such as Shays’s Rebellion in Massachusetts and disputes over the commercial use of the Potomac River, along with his study of history, convinced him that a system based on state sovereignty was destined to fail. Madison worked with other members of the Virginia delegation on a plan for a basically national, rather than confederal, system of government. In addition to provisions for separate legislative, executive, and judicial branches, the “Virginia Plan” would have empowered Congress “to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the articles thereof.” The Virginia Plan proposed a national government that would be legally and functionally supreme over the states.

According to Madison, only a national system would be capable of protecting the fundamental interests and rights of the American people. Other delegates at the convention disagreed. Roger Sherman of Connecticut, for example, argued that “the objects of Union . . . were few” and that “the people are more happy [sic] in small than in large States.” Sherman was not alone in preferring a confederation of small republics to a national or unitary political system. Madison understood that he had to expose the weaknesses of the confederal model to save the Virginia Plan. Sherman helped him out on June 6 by conceding that some states were too small and, hence, subject to factious violence. Madison seized upon this argument. He responded that “faction & oppression” had “prevailed in the largest as well as the smallest” states, although less in the former than the latter.

The teaching for Madison was clear: large republics are more likely to provide “security for private rights, and the steady dispensation of Justice,” than small republics. This argument hit home with the delegates. Madison convinced them that what they wanted most from government, that is, protection for rights or republican liberty, could
best be achieved in a national system. Small republics, he argued, were actually bad for republican liberty, being hotbeds of factious division and violence. He summed up his position bluntly: “The only remedy is to enlarge the sphere, & thereby divide the community into so great a number of interests & parties, that in the 1st. place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the 2d. place, that in case they shd. have such an interest, they may not be apt to unite in the pursuit of it.” Here was the outline of the famous defense of the large republic that appears in Madison’s Federalist Paper No. 10.

In the end, the delegates at the Constitutional Convention settled on a plan that combined national and confederal elements. To quote Federalist Paper No. 39: the proposed system “in strictness” was “neither national nor a federal Constitution, but a composition of both.” Madison’s June 6 speech, however, insured that the new “compound” republic would have a national as opposed to a confederal tilt. This innovative governmental model, what came to be called the “federal” model, represented one of America’s great contributions to the science of politics according to Madison. The model’s national elements were evident not only in the creation of separate executive and judicial departments as well as proportional representation in the House of Representatives, but in the supremacy clause that affirmed that the Constitution as well as national laws enacted under its authority would constitute the supreme law of the land. The confederal elements appeared in the provision for equal state representation in the United States Senate (a feature especially desired by the small states) and state participation in the ratification of amendments. The addition of the 10th Amendment in 1791 provided added protection for state interests (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”).

The defenders of the confederal model continued their attacks on the new system during the ratification debates that followed the convention. Patrick Henry of Virginia, for example, accused the delegates to the Federal Convention of violating their authorization by proposing to establish a “consolidated” government based on the consent of the people, rather than the states. For Henry, the new constitutional system would endanger the rights and privileges of the people along with the “sovereignty” of the states. Richard Henry Lee, one of the Anti-Federalists, shared Henry’s fear that a large republic would not be hospitable to liberty and natural rights. Like many other opponents of the Constitution, Lee also argued that republican liberty can be preserved only by a virtuous citizenry and that only small republics are capable of nurturing civic and moral virtues.

The fact that the document that issued from the Federal Convention did not include a bill of rights seemed to lend support to the charge by Patrick Henry and others that the proposed governmental system would promote neither the happiness nor the liberty of the people. In fact, several delegates to the convention, including George Mason of Virginia and Eldridge Gerry of Massachusetts, were sufficiently troubled by the absence of a bill of rights that they departed without adding their signatures to the document. Gerry also worried that the new government would not adequately represent the people and that its powers were not well defined. When it was clear that the opponents of the plan would not accept the argument that the framework set out by the delegates provided for a limited government of enumerated powers that would be incapable of emasculating natural rights and liberties, an agreement was reached during the ratification period to add amendments that would guarantee, among other things, freedom of speech and religion, trial by one’s peers, and protection against unreasonable searches and seizures.

The federal system or compound republic crafted by the Framers was an ingenious response to the demand for both effective or competent government on the one side, and rights-sensitive government on the other. The decision to divide power among (federalism) and within (checks and balances) several governments positioned the American people to enjoy the benefits of a large republic (e.g., strong defense against foreign encroachments, national system of commerce, etc.) while still retaining significant control over their day-to-day affairs within the states. The states, and not the national government, were entrusted with the “police powers,” that is, the
authority to protect the health, morals, safety and welfare of the people. It is worth noting that Madison was quite content to entrust the police powers to the states—he never desired that the United States have a unitary system of government.

Ratification of the Constitution in 1791 hardly put an end to the debate between the advocates of state sovereignty or small republicanism and the proponents of national sovereignty and the large republic. The concerns of James Madison and Patrick Henry, for example, are never far from the surface of contemporary debates about the power of the federal government to impose regulations on the states under the Constitution’s commerce clause or the Fourteenth Amendment. There is considerable evidence, however, that the tension between these positions not only adds vitality to the constitutional system, but has been critically important to the advancement of both national security and equality in the enjoyment of fundamental rights. The federal arrangement that was crafted by the delegates at the Federal Convention of 1787 has long been recognized as one of the principal models of a modern democratic system of government.

David E. Marion, Ph.D.
Hampden-Sydney College

Suggestions for Further Reading
A sound understanding of the United States requires an appreciation of the historical commitment of the American people to certain fundamental liberties. High on the list of these liberties is freedom of religion. The image of brave seventeenth-century English Puritans making the difficult journey across the Atlantic to American shores in pursuit of the freedom to live according to their faith is a powerful part of the American myth. Less remembered, however, is the fact that the commonwealth established by the Puritans was as intolerant as Anglican England, from which they had fled. Indeed, the road to achieving full religious liberty in the United States was long and arduous. By the time of the writing of the United States Constitution in 1787, Americans were committed to the principle of religious tolerance (or, to use the term of the time, “toleration”) and the idea of separation of church and state, but only to a limited degree. It would be another five decades before all states granted broad religious liberty to their citizens and provided for the complete separation of church and state.

Modern ideas about freedom of religion were developed in the wake of the Protestant Reformation of the sixteenth century, which shattered the unity of Christendom and plunged Europe into political and religious conflict. Though some European states remained religiously homogeneous, either retaining the traditional faith of Roman Catholicism or adopting some brand of Protestantism, religious division within many countries led to discord and bloodshed. In England, the church established in the mid-sixteenth century by King Henry VIII (who reigned from 1509 to 1547) faced stiff resistance, first from the many Catholics who refused to abandon the faith of their ancestors, and then from the Puritans who opposed the rule of bishops and wanted to purify the church so that it included only the elect.

Henry VIII’s successors, Elizabeth I (1558–1603) and James I (1603–1625), successfully quelled opposition to the Church of England (the Anglican Church), largely through harsh persecution of dissenters. In 1642, however, England was engulfed by religious civil war, from which the Puritans emerged victorious. The Puritan Commonwealth established by Oliver Cromwell ruthlessly persecuted Anglicans and Catholics. But Puritan rule was short-lived. An Anglican monarch, Charles II, was restored to the throne in 1660. This “settlement” of the religious crisis, however, was threatened by the accession of a Catholic, James II, to the throne in 1685. Anxious Protestants conspired and invited a foreigner, William of Orange, to assume the kingship of England. William invaded England, drove James into exile, assumed the throne, and reestablished the Church of England as the national church.

In this contentious atmosphere some English political thinkers, such as John Locke, began to advocate a policy of religious tolerance. Locke’s ideas reflected a key assumption of Enlightenment thought—that religious belief, like political theory, is a matter of opinion, not absolute truth. “The business of laws,” Locke wrote in his Letter on Toleration (1689), “is not to provide for the truth of opinions, but for the safety and security of the commonwealth and of every particular man’s goods and person.” Public security was in no way dependent on a uniformity of religious belief among the citizenry. “If a Jew do not believe the New Testament to be the Word of God,” Locke stated, “he does not thereby alter anything in men’s civil rights.” Rather, intolerance led to “discord and war,” and Locke warned that “no peace and security” could be “preserved amongst men so long as this opinion prevails . . . that religion is to be propagated by force of arms.” Religious belief, in Locke’s view, was a matter of individual choice, a matter for society, not for government.

Locke’s views on religious liberty had a profound influence on American thinking in the next century. Other writings, however, particularly the Bible, had at least as great an impact on American political theory. Indeed, the American experiment in religious toleration began years before the publication of...
Locke’s treatise, though the early history of Puritan Massachusetts Bay was hardly indicative of the course that toleration would take in America. Established by John Winthrop in 1630, Massachusetts was a repressive place where church and state were one and where religious dissent was ruthlessly stamped out. Dissenters had few options: they could be silent, suffer persecution, or leave the colony. Roger Williams, a freethinking preacher, was forced to choose this last option, leaving Massachusetts in 1636 to establish the colony of Rhode Island.

In Rhode Island, Williams instituted toleration for all people, and his new colony quickly became a refuge for persecuted groups like Quakers and Baptists. Williams’s case for toleration was at least as radical as Locke’s. Basing his arguments on the Bible, Williams insisted that the Jews, Muslims, and atheists were also deserving of religious liberty. The only “sword” to be used in fighting their opinions was scripture itself. Intolerance was an offense to God. “An enforced uniformity of religion throughout a nation or civil state,” Williams wrote in The Bloudy Tenent of Persecution (1644), “denies the principles of Christianity.” Williams argued that forced belief was not only a violation of God’s law but also an unwise policy. “Enforced uniformity (sooner or later) is the greatest occasion of civil war, ravishing of conscience, persecution of Christ Jesus in his servants, and of the hypocrisy and destruction of millions of souls.”

Two years before the founding of Rhode Island, Cecil Calvert founded the colony of Maryland and proclaimed toleration for all Christians. Calvert himself was a Catholic, but he knew that the viability of his colony depended on luring enough Protestant settlers to make it an economic success. A policy of toleration, he hoped, would serve this purpose. In setting up Pennsylvania in the 1680s, William Penn, a Quaker, followed a similar course, making his colony a haven not only for his fellow coreligionists, but, like Rhode Island, a refuge for people of all religious sects.

Pennsylvania and Rhode Island would preserve uninterrupted their traditions of religious liberty, but in Maryland, freedom of religion would be curtailed for Catholics once Protestants came to power in the last decade of the seventeenth century. Still, the idea that some degree of religious liberty was a healthful policy for government became firmly rooted in America by the eighteenth century. Americans learned from the example of seventeenth-century England that religious persecution was ultimately detrimental to the political, social, and economic welfare of the nation. In America, where the Christian sects were more numerous than in England, the repercussions of religious intolerance would be especially adverse to the nation’s prospects. Americans’ devotion to religious freedom, then, was a product of necessity and experience as well as reason.

The crisis of empire during the 1760s and 1770s served to strengthen the American commitment to religious liberty. It was not only the intrusive economic measures passed by Parliament during these years that alarmed Americans. Patriot leaders also warned of the danger of the Anglican Church’s interference in American religious affairs. There was much talk that the British government would install a bishop in America who would become the instrument of tyranny. This idea that political and religious liberty went hand in hand was reflected in the New York Constitution of 1776, which explicitly connected “civil tyranny” with “spiritual oppression and intolerance.”

Nearly all the state constitutions written during the American independence movement reflected a commitment to some degree of religious liberty. The Massachusetts Constitution of 1780 promised that “no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience.” The Virginia Declaration of Rights of 1776, authored by George Mason, proclaimed “That Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence.” Mason’s ideas mirrored Locke’s belief that government should not intrude upon the concerns of society.

But many states limited religious liberty to Christians in general, or to Protestants in particular. The North Carolina Constitution of 1776 decreed “That no person, who shall deny the being of God or the truth of the Protestant religion . . . shall be capable of holding any office or place of trust or profit in the civil department within this State.” Similarly, the New Jersey Constitution of the same year declared that “there

Locke warned that “no peace and security” could be “preserved amongst men so long as this opinion prevails . . . that religion is to be propagated by force of arms.”
shall be no establishment of any one religious sect in this Province, in preference to another," but promised Protestants alone full civil rights. Thanks largely to the efforts of Charles Carroll of Carrollton, a Roman Catholic, Maryland’s Revolutionary Constitution was more liberal in its guarantee of religious liberty to “all persons, professing the Christian religion.”

The Protestant majority in America was indeed particularly concerned about the Catholic minority in its midst. Catholics constituted the largest non-Protestant creed in the country, and it was believed that Catholicism demanded loyalty to the pope above devotion to country. The connection between Catholicism and absolutism was deeply ingrained in the American Protestant mind and was a legacy of the Reformation, which Protestants saw as a period of liberation from the ignorance, superstition, and tyranny of the Roman Catholic Church. During the crisis with England, a wave of religious hysteria swept over American Protestants, who worried that the pope would personally lead the Catholics of Canada in a military assault on American forces. “Much more is to be dreaded from the growth of Popery in America,” patriot leader Samuel Adams asserted in 1768, “than from Stamp-Acts or any other acts destructive of men’s civil rights.” This bigotry caused Roman Catholics to become outspoken proponents of religious toleration and the separation of church and state. In a country dominated by Protestants, this was the only realistic course for them.

All thirteen states at the time of American independence, then, acknowledged to some degree in their constitutions the principle of religious liberty. Most also provided for some degree of separation of church and state. Several states went so far as to prohibit clergymen from holding state office, a restriction in the Georgia Constitution of 1777 that the Reverend John Witherspoon of New Jersey would famously protest. But few states provided for a complete separation of church and state, for it was believed that the government should give some support to religion in general. Though a substantial number of American elites in the late eighteenth century were not church-going Christians, nearly all believed in the God of the Old Testament, and all recognized the practical value of Christianity as a check on antisocial behavior. Many of the state constitutions written in the era of independence, therefore, required that government give some support to Christianity. Though the Massachusetts Constitution guaranteed that “no subordination of any one sect or denomination to another shall ever be established by law,” it also permitted the legislature to levy taxes “for the support and maintenance of public protestant teachers of piety, religion and morality.” Similarly, the Maryland Constitution of 1776 permitted the legislature to “lay a general and equal tax for the support of the Christian religion.”

There were, however, calls for complete religious disestablishment at the state level. In Virginia, James Madison and Thomas Jefferson were two of the most prominent advocates of a strict separation of church and state. Their ideas about religious liberty were clearly influenced by John Locke and fellow Virginian George Mason. In 1785, the Virginia legislature considered a bill that would provide for public funding of Christian instruction. The measure was backed by several prominent statesmen, including Patrick Henry. But James Madison, then a member of the legislature, took the lead in opposing the bill, reminding Virginians that “torrents of blood have been spilt in the old world, by vain attempts of the secular arm, to extinguish Religious discord, by proscribing all difference in Religious opinion.” The bill was defeated, and the following year, Jefferson introduced “A Bill for Establishing Religious Freedom,” which attempted to enshrine in law the idea “that no man shall be compelled to frequent or support any religious Worship place or Ministry whatsoever.” The bill passed with minor changes.

By the time of the Constitutional Convention of 1787, there was a broad consensus regarding the proper relationship between the national government and religion: first, that the government ought not to give support to any religious sect; second, that the government ought not to require a religious test for office; third, that the government ought not to interfere with private religious practice; and fourth, that the government ought not to interfere with the right of the states to do as they wished in regard to religious establishment and religious liberty. These points of consensus were reflected in both the body of the United States Constitution and in the First Amendment, which was ratified in 1791 as part of the Bill of Rights. Article VI of the Constitution explicitly stated that
“no religious test shall ever be required as a qualification to any office or public trust under the United States.” The First Amendment declared that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

The right of the states to set their own policy in regard to religion was implicitly acknowledged in Article I of the Constitution, which stipulated that to be eligible to vote in elections for the United States House of Representatives, “the elector in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.” Several states at the time mandated a religious test as a requirement for the franchise, and the Constitution therefore tacitly approved such tests. In addition, the First Amendment’s prohibition against religious establishment applied explicitly to the national Congress alone. Indeed, it was not until after the American Civil War, in the incorporation cases, that the United States Supreme Court ruled that some of the restrictions placed on the federal government by the amendments also applied to the state governments.

By 1800, then, there was a broad consensus among Americans that religious freedom was essential to political liberty and the well-being of the nation. During the next two centuries, the definition of freedom of religion would be broadened, as states abandoned religious tests and achieved complete disestablishment and as state and federal courts ruled that various subtle forms of government encouragement of religion were unconstitutional. Shortly after the dawn of the nineteenth century, in a letter to a Baptist congregation in Danbury, Connecticut, Thomas Jefferson asserted that the First Amendment created “a wall of separation between church and state.” What Jefferson meant by this term is a subject of great debate. But there is no doubt that his words have become part of the American political creed and a rallying cry for those who seek to expand the definition of religious liberty, even to mean that religion should be removed from public life altogether.

Stephen M. Klugewicz, Ph.D.
Bill of Rights Institute

Suggestions for Further Reading
Thomas Jefferson accurately represented the convictions of his fellow colonists when he observed in the Declaration of Independence that a government, to be considered legitimate, must be based on the consent of the people and respect their natural rights to “life, liberty and the pursuit of happiness.” Along with other leading members of the founding generation, Jefferson understood that these principles dictated that the government be given only limited powers that, ideally, are carefully described in written charters or constitutions.

Modern theorists like John Locke and the Baron de Montesquieu had been making the case for limited government and separation of powers during the century prior to the American Revolution. Colonial Americans were quite familiar with Locke’s argument from his *Two Treatises of Government* that “Absolute Arbitrary Power, or Governing without settled standing Laws, can neither of them consist with the ends of Society and Government. . . .” Locke added that the reason people “quit the freedom of the state of Nature [is] to preserve their Lives, Liberties and Fortunes.” Civil society has no higher end than to provide for the safety and happiness of the people, and this is best done under a system of known rules or laws that apply equally to “the Rich and Poor, . . . the Favorite at Court, and the Country Man at plough.” For his part, Montesquieu argued that only where governmental power is limited in scope, and then parceled out among different departments, will people be free from oppression. Constitutional government, for modern natural rights theorists, should be limited government dedicated to the comfortable preservation of the people—that is, to their security, freedom, and prosperity.

John Adams echoed the beliefs of many Americans when he argued that only by creating a balance of forces within the government could the people hope to escape despotism and misery. An unchecked legislature, he observed, would be capable not only of making tyrannical laws, but of executing them in a tyrannical manner as well. In his famous draft of a constitution for the commonwealth of Massachusetts, Adams declared that the “legislative, executive and judicial power shall be placed in separate departments, to the end that it might be a government of laws, and not of men.” This document, along with his *Defence of the Constitutions of Government of the United States of America*, containing a strong case for checks and balances in government, were well known to the delegates who attended the Constitutional Convention of 1787.

James Wilson, one of the foremost legal scholars of the founding period and a delegate from Pennsylvania at the Constitutional Convention, agreed with Adams’ insistence that the power of government should be divided to the end of advancing the peace and happiness of the people. In the words of Wilson, “In government, the perfection of the whole depends on the balance of the parts, and the balance of the parts consists in the independent exercise of their separate powers, and, when their powers are separately exercised, then in their mutual influence and operation on one another. Each part acts and is acted upon, supports and is supported, regulates and is regulated by the rest.”

Both the Articles of Confederation and the Constitution of the United States provided for governments with limited powers. As John Jay had discovered as America’s secretary of foreign affairs, the power of the central government was severely limited under the Articles and, hence, could be trusted to a unitary legislative department. Fear of governmental tyranny and a desire to preserve the power enjoyed by the new states resulted in the creation of a central government that could not effectively oversee interstate commerce or do other things that were critical to ensuring the safety and happiness of the people. In a letter to Edmund Randolph at the end of 1786, George Washington bemoaned the “awful situation of our affairs” which he attributed to “the want of sufficient power...
in the federal head.” Washington quickly joined the movement to create a new governmental system that was equal to “the exigencies of Union,” to quote from the instructions given the delegates to the Constitutional Convention of 1787.

The Constitution of 1787 grew out of a plan drafted largely by James Madison during the winter and spring before the Convention. The “Virginia Plan” proposed a central government that was supreme over the states. Evidence that the national government was to be entrusted with considerable power could be found in the provisions for a bicameral legislature and independent executive and judicial departments.

The delegates who attended the Constitutional Convention were sufficiently versed in modern political theory to understand that they would have to divide the power of the national government if they intended to entrust it with real authority over the lives of the people and the states. They understood the dangers of imparting considerable political power to a unitary sovereign. In this connection, there was never any doubt in their minds that they should create a government of “delegated and enumerated” powers, that is, that the government should only be entrusted with specified (enumerated) powers that derived directly from the people. While they worried about the “turbulence and follies” of democracy, they recognized that government had to be based on the consent of the people to be legitimate.

The Virginia Plan anticipated the bicameral legislature and independent executive and judicial departments found in the United States Constitution today. Building on Madison’s model, the delegates assigned responsibilities to the departments based on their peculiar characteristics. The six-year term of senators, for example, seemed to make this a proper institution to involve in foreign policy (e.g., ratification of treaties) since senators would have more time than members of the House of Representatives to acquaint themselves with international affairs and their longer terms and larger constituencies (entire states) also would give them more freedom to attend to matters other than the immediate interests of constituents back home. The House of Representatives was entrusted with the important power to initiate revenue (taxation) bills precisely because the members of this chamber are tied so closely to the people by short terms and small districts.

In addition to matching powers and governmental responsibilities, the delegates were careful to position each department to “check and balance” the other departments. Examples are the executive’s veto power, the congressional impeachment power, and the judicial review power entrusted to the Supreme Court, the only national court formally established by the Constitution. Although in good Lockean fashion the legislative department was designed to be the preeminent department, it was still subjected to checks by the other branches of the government. Separation of powers as well as the system of checks and balances were devices for reducing the threat of governmental tyranny, not excluding legislative tyranny.

However, the constitutional arrangement, put into its final wording by Gouverneur Morris, was not driven entirely by a desire to eliminate the threat of tyrannical government. The system of separated and divided powers also was intended to promote competence in government. The president can employ his veto not only to check legislative action that he considers irresponsible, but to provoke Congress to improve a legislative enactment. The Senate can use its authority to ratify presidential nominations of cabinet officers or judges to ensure that qualified candidates are named to fill these positions.

Writing in Federalist No. 9, Alexander Hamilton identified the principle of separated and divided powers, along with checks and balances, as among the inventions of the new science of politics that had made republican government defensible. Madison described in Federalist No. 51 the benefits of the governmental arrangement represented in the new Constitution: “In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.” Significantly, Anti-Federalists as well as Federalists agreed that governmental powers should be limited and that these powers should be subject to internal as well as external checks.

Limited Government
It is important to emphasize that the Framers settled on an arrangement that divided yet blended the legislative, executive, and judicial powers. This facilitates interdepartmental checking while promoting mature deliberation. Their aim was to create a decent and competent democracy, something beyond mere non-tyrannical government. They placed the whole of the government, and even the people, under constitutional limitations. The Constitution is the supreme law of the land, not the enactments of Congress or the order of the president or the momentary will of the people. As Chief Justice Marshall declared in Marbury v. Madison (1803), “The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation.” Even the desires of the people are held in check by the Constitution. The political system still meets the criteria of democratic government, however, since the people hold the power, through their representatives, to amend the Constitution.

The paradigm of constitutional government embraced by the American people in 1787, that is, limited government based on the consent of the people and committed to the protection of fundamental rights, has become the dominant model throughout the world. The rhetoric of rights, whether couched in the language of natural rights or human rights, is universally appealing. Also universally accepted is the argument that rights are most secure when governmental powers are limited in scope and subject to internal and external checks.

David E. Marion, Ph.D.  
Hampden-Sydney College

Suggestions for Further Reading