The United States Constitution has become the primary text of America’s civil religion. As a nation lacking a common religion, “We the People” have come to worship our Constitution as the scripture that holds us together. In virtually all of the public opinion polls conducted on the subject, Americans not only express their reverence for the Constitution, but also their strong opinions about its meaning. Indeed, many Americans—whether Tea Party members, left-wing critics of growing inequality in America, Democrats or Republicans in Congress, and (with particular impact) justices of the United States Supreme Court—feel so passionately about our founding documents that they claim that they and they alone are the true defenders of the ideas expressed in them; and that their opponents are not only mistaken and misguided, but in some cases, downright “un-American.” But in fact, whatever their passion or reverence for America’s Constitution, most Americans lack even a minimal historical understanding of it. (In one recent survey, for example, 71 percent of Americans believed that the phrase “all men are created equal” appeared in the Constitution, not in the Declaration of the Independence. Even more amazing, in another poll, a third of American expressed the belief that the Declaration of Independence was written after the Civil War!)

This brief, introductory essay on the “Interactive Constitution” will focus on the efforts of the fifty-five men who gathered in Philadelphia in the Assembly Room of the Pennsylvania State House (much later to be known as Independence Hall) in the summer of 1787 to draft the four parchment pages of the original Constitution. But it is impossible to begin even a brief essay on the Constitution and the Founding Fathers of 1787 without saying a few words about the document, drafted eleven years earlier, without which Americans could not be engaged in defining the character of their new nation: the Declaration of Independence.

The Beginning of an “American Identity.”

America’s Declaration of Independence, drafted by the young but rapidly-rising revolutionary leader Thomas Jefferson, and adopted by the revolutionary Continental Congress on July 4, 1776, marks the first attempt by the “united States” of America not only to justify their decision to separate themselves from the Empire of Great Britain, but also to define some of the “unalienable rights” on which their revolutionary action was based. Included in the opening paragraphs of the Declaration of Independence is perhaps the most important statement of American ideals ever articulated:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness—that to secure these rights, Governments are instituted among Men, deriving their powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

Those ideas of the equality of mankind; that governments are based on the consent of the governed; that it is the fundamental obligation of a government to serve the needs of the people it governs; and, indeed, that it is the right of the people to abolish a government that does not serve those ends, has formed the basis of American government and society from that time forward.

As a part of their decision for independence, the “united States” moved forward to create the first written constitutions in the world’s history. Most of those state constitutions, in addition to crafting specific outlines of the way in which their new state governments should function, included “declarations of rights.” These
declarations articulated in specific fashion the nature of the “unalienable rights” referred to in the Declaration of Independence—rights such as freedom of speech, freedom of religion, the right of trial by jury, the right to bear arms in the context of a “citizens militia,” and many, many others. These state constitutions were bold revolutionary experiments, and in many cases, because they were the first time state political leaders sought to write down the way their governments should function, they were far from perfect. But they were an important step forward in the notion that the purpose of governments was to serve the public interest while at the same time protecting individual liberty.

Shortly thereafter, the thirteen soon-to-be independent states created an “Articles of Confederation.” Although some regard it as America’s first “federal” constitution, in fact, it gave so few powers to the central American government that it was more like a treaty among the thirteen independent states than a constitution for a new nation. It amounted to little more than a “league of friendship,” in which “each state retain[ed] its sovereignty, freedom, and independence.” Although it gave to the central government substantial responsibilities—including the “common defence, the security of their liberties and their mutual and general welfare”—it denied to the government most of the powers necessary to carry out those responsibilities—including the power to tax and to regulate commerce among the independent states. Moreover, the Articles of Confederation failed to provide for a chief executive capable of giving energy and focus to the new central government.

By the fall of 1786, the combination of a financial crisis suffered by the newly-created confederation government and disorder threatened by dissatisfied farmers in western Massachusetts, led a group of “nationalist” politicians, meeting in Annapolis on September 22, 1786, to propose that the Continental Congress in New York call a “general convention” in Philadelphia. Congress delaying until February 21, 1787, reluctantly agreed to that convention, but limited any change to the mere “revising” of the existing Articles of Confederation. The fifty-five delegates who met in Philadelphia between May 25 and September 17, 1787, would not only reject the Articles of Confederation altogether, but they would produce the first written constitution for any nation in the history of the world.

Those gathered in the Assembly Room of the Pennsylvania State House during the summer of 1787 faced a formidable task. The thirteen “united States” seemed at that moment remarkably disunited. Yet somehow, in the space of slightly less than four months, they managed to pull off an extraordinary accomplishment. The Constitution they drafted has been successful for most of U.S. history in striking the difficult balance between the maintenance of public order and security, on the one hand, and the nurturing and protection of personal liberty, on the other. And it has brought remarkable stability to one of the most tumultuous forms of political activity: popular democracy. The challenge that all nations in the world have faced not only in drafting a constitution, but also creating a form of government that both provides stability to its nation and sufficient civic responsibility and liberty to its people, is enormous. Indeed, among the more than 150 constitutions presently operating in the world today, few have been as successful in creating that delicate balance between governmental power and personal liberty among the citizens ruled by their government.

The Launching of a New American Constitution

The remarkable achievement of the fifty-five men gathered in Philadelphia during the summer of 1787 was by no means inevitable. Looking back on their work that summer, we can identify a few factors that enabled them to achieve their success. Certainly among the most important was the quality of leadership among those most committed to strengthening the American government. The ringleader was the thirty-seven-year-old James Madison. Standing only a few inches over five-feet tall, scrawny, suffering from a combination of poor physical health and hypochondria, and painfully awkward in any public forum, Madison nevertheless possessed a combination of intellect, energy, and political savvy that would mobilize the effort to create an entirely new form of continental union.
Madison was joined in his effort by a group of delegates from Virginia and Pennsylvania who, in a series of meetings before the Convention formally began its business on May 25, combined to concoct a plan not merely to “amend” the Articles of Confederation, but to set the proceedings of the Convention on a far more ambitious course. The first gathering of these reform-minded delegates took place on the evening of May 16, in the home of Benjamin Franklin (where dinner was served in his impressive new dining room along with a “cask of Porter,” which, Franklin reported, received “the most cordial and universal approbation” of all those assembled). The Pennsylvania and Virginia delegates then met frequently during the days leading up to May 25. The presence of Ben Franklin and General George Washington gave the group both dignity and prestige, but it was James Madison, James Wilson and Gouverneur Morris of Pennsylvania who provided much of the intellectual leadership and who shared a commitment to creating a truly “national” government based on the consent of the people, not the individual states. Together these men would forge a radical new plan, the Virginia Plan, which would shape the course of events during that summer of 1787.

By seizing the initiative, this small group of nationalist-minded politicians was able to set the terms of debate during the initial stages of the Convention—gearing the discussion toward not whether, but how—a vastly strengthened continental government would be constructed. On May 28, 1787, the state delegations unanimously agreed to a proposal that would prove invaluable in allowing men like Madison, Wilson, and Morris to move their plan forward. Importantly, to prevent the “licentious publication of their proceedings,” the delegates agreed to observe a strict rule of secrecy, with “nothing spoken in the house to be printed or otherwise published or communicated.” In our twenty-first century world, this manner of proceeding on a matter of such monumental importance would be instantly rejected as unacceptably pretentious and undemocratic. But the rule of secrecy gave to delegates the freedom to disagree, sometimes vehemently, on important issues, and to do so without the posturing and pandering to public opinion that so often marks political debate today. And it also gave delegates the freedom to change their minds; on many occasion, after an evening of convivial entertainment with one another, the delegates would return the following morning or even the following week or month, and find ways to reach agreement on issues that had previously divided them. The rule of secrecy helped make the Constitutional Convention a civil and deliberative body, rather than a partisan one. It helped make compromise an attribute of statesmanship rather than a sign of weakness.

As the details of the Virginia Plan came under discussion, it became clear that it was not a mere revision of the Articles of Confederation, but rather a bold plan for an entirely new kind of government—a government with a vastly more powerful “national” legislature and, unlike the Articles of Confederation, with a powerful chief executive. It also became immediately clear that, however bold and innovative the plan may have been, there were many delegates in the room who had grave misgivings about some aspects of it. For nearly four months, the delegates attempted to work through, and resolve, their disagreements. The most divisive of those issues—those involving the apportionment of representation in the national legislature, the powers and mode of election of the chief executive, and the place of the institution of slavery in the new continental body politic—would change in fundamental ways the shape of the document that would eventually emerge on September 17, 1787.

The Founding Fathers and Federalism

The delegates haggled over how to apportion representation in the legislature off and on for more than six weeks between May 30 and July 16. Those from large, populous states such as Virginia and Pennsylvania—supporters of the Virginia Plan—argued that representation in both houses of the proposed new congress should be based on population, while those from smaller states such as New Jersey and Delaware—supporters of the New Jersey Plan—argued for equal representation for each state. The compromise that eventually emerged, one championed most energetically by the delegates from Connecticut, was obvious:
representation in the House of Representatives would be apportioned according to population, with each state receiving equal representation in the Senate. In the final vote on the so-called Connecticut Compromise on July 16, five states supported the proposal; four opposed, including Virginia and Pennsylvania; and one state—Massachusetts—was divided. James Madison and many of his nationalist colleagues were disconsolate, convinced that the compromise would destroy the very character of the national government they hoped to create. But in the end, recognizing the folly of allowing their desire for their “perfect” plan to become the enemy of the good, they acceded to the Connecticut Compromise. And, interestingly, during the subsequent popular vote on ratification of the Constitution in the thirteen states, Madison would use his “defeat” in the controversy over representation to fashion an entirely new definition of federalism. In *The Federalist No. 39* he defended the proposed new Constitution against its critics by praising the different modes of representation in the House and Senate—with the House representing the people of the nation at large and the Senate representing the residual sovereignty of the states—as one of the features that made the new government “part national” and “part federal.” No one at that time knew how that new definition of federalism would work in practice, and it would remain a source of contention for the rest of the nation’s history, including today. In this, as in so many areas, the so-called original meaning of the Constitution was not at all self-evident—even to the Framers of the Constitution themselves.

**Creating an American President**

The debate among the delegates over the nature of the American presidency was more high-toned and more protracted than that over representation in the Congress. At one extreme, nationalists like James Wilson and Gouverneur Morris argued forcefully for a strong, independent executive capable of giving “energy, dispatch, and responsibility” to the government. They urged their fellow delegates to give the president an absolute veto over congressional legislation. At the other end of the spectrum, Roger Sherman, a plainly dressed, plainspoken delegate from Connecticut who would prove to be one of the most influential members of the Convention, spoke for many delegates when he declared that the “Executive magistracy” was “nothing more than an institution for carrying the will of the Legislature into effect.” This led Sherman to the conclusion that the president should be removable from office “at pleasure” any time a majority in the legislature disagreed with him on an important issue. In the end, it was compromise that once again won the day—the delegates agreed to give the President a limited veto power, but one which could be over-ridden by a vote of two-thirds of both houses of Congress.

Most of the delegates initially thought that the executive should be elected by the national legislature; still others thought the executive should be elected by the state legislatures or even by the governors of the states. James Wilson was virtually the only delegate who proposed direct election of the president by the people. He believed that it was only through some form of popular election that the executive branch could be given both energy and independence. But realizing that his idea of popular election of the president was gaining no favor, Wilson proposed a compromise by which the President would be elected by a group of “electors” chosen either by the state legislatures or by the people of their individual states. The delegates didn’t like that proposal any more than they liked his proposal for direct popular election, voting it down overwhelmingly at that point. They voted against some version of the proposal on numerous occasions between early June and early September of 1787, only agreeing to the version contained in our modern Constitution (modified slightly by the Twelfth Amendment) grudgingly and out of a sense of desperation, as the least problematic of the alternatives before them.

It has often been observed that the Framers’ difficulty in deciding how to elect the president was the result of their misgivings about democracy—their fear that the people of the nation could not be trusted to make a wise choice for their chief executive. In fact, it was not so much that America’s Founding Fathers distrusted the
inherent intelligence of the people but, rather, that they had a realistic concern about the provincialism of the people of the thirteen “independent” states. America’s vast landscape, the poor state of its communications, and the diversity of its cultural character and economic interests would make it extremely difficult for any single candidate for chief executive to gain a majority of the popular vote. There was one obvious exception to this—General George Washington, sitting in the front of the Assembly Room as President of the Convention—but aside from America’s hero, how could a voter in Georgia know the merits of a candidate in New York, or vice versa? The other obvious solution—election by members of a national Congress whose perspective was likely to be continental rather than provincial—was ultimately rejected because of the problems it created with respect to the doctrine of separation of powers: the president, it was feared, would be overly beholden to, and therefore dependent upon, the Congress for his election. The creation of an electoral college was a middle ground, and while many delegates feared that locally-selected presidential electors would be subject to the same sort of provincial thinking as ordinary citizens, they reluctantly came to the conclusion that it was the best they could do while still preserving an adequate separation of power between the executive and legislative branches. It was a highly imperfect solution to a real problem, but, in the context of the times—perhaps until today—there may well have been no better alternative.

The Founding Fathers and Slavery

The delegates’ commitment to principles of equality as articulated in the Declaration of Independence was, even in the case of free white adult males, a limited one. For example, most of the delegates supported the imposition of property qualifications for voters in their individual states. But nowhere are those limitations more obvious than during the debates relating to the subject of slavery. In 1787, slavery America was in a state of decline, but it remained a significant part of the social and economic fabric in five of the states represented in the Convention. In their quest for “compromise,” the delegates exacerbated the existing contradiction in their nation regarding the core values of liberty and equality on which America had declared its independence. Indeed, they enshrined the institution of slavery within their new Constitution.

Although neither the word “slave” nor “slavery” is mentioned anywhere in the body of the Constitution, contention over slavery pervaded the Convention’s debates. It was impossible to discuss questions relating to the apportionment of representation without confronting the fact that the slave population of the South—whether conceived of as residents or property—would affect the calculations for representation. The delegates argued about the proper formula for how to “count” slaves through much of the summer. The final resolution of that issue—the Three-Fifths Compromise, a formula by which slaves would be counted as three-fifths of a person in apportioning both representation and taxation—was a purely mechanical and amoral calculation designed to produce harmony among conflicting interests within the Convention. As many disgruntled delegates pointed out, it had little basis either in logic or morality, but in the end, the need for a consensus on the issue, however fragile that compromise might be, outweighed all other considerations.

The debate over the future of the international slave trade was in many respects even more depressing than that which culminated in the Three-Fifths Compromise. Only the delegates from South Carolina and Georgia were determined to continue what most other delegates believed to be an iniquitous trade, yet their insistence that the trade continue for at least another twenty years carried the day. However troubled delegates from the other states may have been, their concern for harmony within the Convention was much stronger than their concern for the fate of those Africans whose lives and labor would be sacrificed by the continuation of the slave trade. Between 1788 and 1808 the number of African slaves imported into the United States exceeded 200,000, only about 50,000 fewer than the total number of slaves imported to America in the preceding 170 years!

Finally, the delegates adopted without dissent a provision requiring that any “Person held to Service or Labour in one State . . . [and] escaping into another, . . . shall be delivered up on Claim of the Party to whom such
Service or Labour may be due.” By means of that tortured language, and without mentioning either the word “slaves” or “slavery,” the delegates made a fugitive-slave clause an integral part of our federal compact. It was the one act of the Convention that not only signaled the delegates’ grudging acceptance of slavery but also made the states that had moved either to abolish or gradually eliminate slavery in the aftermath of the Revolution actively complicit in their support of that institution.

The Absence of a Bill of Rights

On September 12, just five days before the Convention was to adjourn, George Mason, the author of the Virginia Declaration of Rights, proposed that the nearly-completed draft of the Constitution be “prefaced with a Bill of Rights.” It would, he said, “give great quiet to the people.” But the delegates did not embrace Mason’s proposal; indeed, when the matter was put to a vote, not a single state delegation supported Mason’s proposal. That decision would prove to be one of the most serious mistakes made by the men who drafted the Constitution. When Thomas Jefferson—then serving as ambassador to France—received a copy of the completed Constitution from James Madison, he was unable to contain his unhappiness at the absence of a bill of rights. “The omission of a bill of rights, providing clearly and without the aid of sophisms, for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by jury in all matters,” was, Jefferson wrote in dismay to his friend, a grievous error.

When the final draft of the Constitution was submitted to the people of the states for their approval, the absence of a bill of rights quickly emerged as one of the most serious objections to the proposed plan of union. If many of the supporters of the Constitution subsequently had not promised that they would quickly work to add a bill of rights to the Constitution once the new government commenced operation, it is likely that the document would have failed to gain the approval of the nine states necessary for its ratification. Fortunately, the First Federal Congress of the new government of the United States fulfilled that promise, and in one of its first actions added that bill of rights, making the “more perfect union” devised by the Framers still more perfect. Ironically, the person who took the lead in drafting a bill of rights in the first Congress was James Madison, who had opposed adding a bill of rights not only during the Convention, but also during the debate over ratification in his state of Virginia.

Nor was that the only occasion when the American people, acting through their representatives both in Congress and in their states, sought to further perfect the American union. “We the People” have added another seventeen amendments to the Constitution after the addition of the original bill of rights. The United States Constitution, which initially consisted of some 4,500 words on four parchments pages, is now a document with nearly 8,000 words, some of which advance the notion of equality not only for former slaves through the Reconstruction Amendments enacted after the Civil War, but also for women through the Nineteenth Amendment of 1920.

“Approaching So Near to Perfection”

As the Convention prepared to adjourn, the delegates were hardly of one mind about many of the specifics of the Constitution they had created. But whatever their differences, nearly all of the them, true to their revolutionary heritage, had tried to create a government of limited powers which nevertheless had the requisite “energy” to do all the things promised in the Constitution’s preamble: “to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty.” This was a tall order, especially when they were pledging at the same time to create a government that divided power between the states and the nation in such a way as to allay people’s fears of an
overbearing central power. As the delegates made their decisions about whether to sign the Constitution on September 17, 1787, there was little certainty among them about how this balancing act would work in practice, but they had at least made a start in creating a framework within which issues of state and national power could be negotiated.

On that final day of the Constitutional Convention, it was left to the Convention’s oldest delegate, eighty-one-year-old Benjamin Franklin, to sum up the nearly four months of debate, disagreement, and occasional outbursts of ill temper that had marked the proceedings of that summer. Franklin observed that whenever “you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected?” The wonder of it all, Franklin asserted, was that the delegates had managed to create a system of government “approaching so near to perfection as it does.”

Franklin acknowledged that there were “several parts of this Constitution which I do not at present approve,” but, he added, “the older I grow the more apt I am to doubt my own judgment and pay more respect to the judgment of others.” Franklin concluded by asking each of his fellow delegates to “doubt a little of his own infallibility” and step forward to sign the Constitution. In that spirit of humility, thirty-nine of the forty-two delegates present on that last day would take that important step forward and, in the process, move America one step forward in achieving a “more perfect Union.” If there is any one lesson that American citizens, and their political representatives, might most profitably learn from the Framers of the Constitution, it is that injunction from the sagacious Dr. Franklin: our own body politic would function more effectively, and with a greater degree of civility, if all of us could occasionally put aside our own sense of “infallibility” and engage in the political process with the same spirit of compromise that guided the Founding Fathers of 1787.