



A former teacher and educational policy consultant and researcher, **Cynthia Levinson** holds degrees from Wellesley College and Harvard University and also attended the Lyndon B. Johnson School of Public Affairs. She is the author of several books for young readers, including *We've Got a Job: The 1963 Birmingham Children's March*; *Watch Out for Flying Kids! How Two Circuses, Two Countries, and Nine Kids Confront Conflict and Build Community*; and *Hillary Rodham Clinton: Do All the Good You Can*.

www.cynthialevinson.com

Sanford Levinson is an American legal scholar and a professor at the University of Texas Law School. He holds degrees from Duke, Stanford, and Harvard universities and is the author of several adult works of nonfiction, including *An Argument Open to All: Reading "The Federalist" in the 21st Century* and *Framed: America's 51 Constitutions and the Crisis of Governance*.

The Levinsons divide their time between Austin, Texas, and Boston, Massachusetts.

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FAULT LINES IN THE CONSTITUTION

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THE FRAMERS,
THEIR FIGHTS,
AND THE FLAWS THAT
AFFECT US TODAY

CYNTHIA LEVINSON &
SANFORD LEVINSON

\$19.95

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Gridlock!
Gerrymandering!
The Electoral College!
How did our government get
so complicated?

As it turns out, many of the issues we struggle with today have their roots in the creation of the United States Constitution. Husband-and-wife team Cynthia Levinson and Sanford Levinson take us back to the beginnings of this document and show how these fault lines were first introduced—and how their unintended consequences continue to affect us today.

The Framers of the Constitution, they remind us, faced many of the same challenges and disputes that we do in the twenty-first century. Sometimes there was conflict, sometimes compromise—and the Framers met most of the challenges with great skill and foresight. Some issues, however, were just too complex or controversial to settle in such a brief time. Today we are still suffering from the consequences of disputes and decisions made in an overheated room in 1787, as a new form of government for our country was being created.

FAULT LINES IN THE CONSTITUTION



**THE FRAMERS,
THEIR FIGHTS,
AND THE FLAWS THAT
AFFECT US TODAY**

Fault Lines in the Constitution was printed in June 2017.
Issues and information addressed in this book will inevitably
evolve. Updates and what they mean for the Constitution
and the US government will be posted on the blog
www.faultlinesintheconstitution.com.
Please join the conversation.

To Rebecca, Ella, Sarah, and Eli,
with hopes they grow up in a more perfect Union.



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FAULT LINES **IN THE** **CONSTITUTION**



**THE FRAMERS,
THEIR FIGHTS,
AND THE FLAWS THAT
AFFECT US TODAY**

WRITTEN BY CYNTHIA LEVINSON AND SANFORD LEVINSON

“The Convention, ’tho comprising so many distinguished characters,
could not be expected to make a faultless Government.”

—George Mason,
delegate to the Constitutional Convention from Virginia

“Manners and opinions change with the change of circumstances,
institutions must advance also, and keep pace with the times.”

—Thomas Jefferson,
former president of the United States

Introduction

About This Book

Most Americans take pride in the constitution that established our system of self-government. But in 1787 the men—called Framers—who crafted it at the Constitutional Convention weren't at all certain about the decisions they were making. They debated heatedly, each predicting the frightful results of the others' ideas. Then they negotiated, hoping that their compromises would head off disaster and provide stable ways to govern their new country.

In some cases, though, the structures of our government—the parts that the Framers hardwired into the Constitution—can cause havoc in real life. Some of the crises we've faced since 1787 have

resulted from—or were helped along by—limitations, ambiguities, and flatly bad ideas in the Constitution.

It might be appealing to believe that, because the Constitution and our country have survived this long, they'll always do so. But the Framers were not so confident. Perhaps you shouldn't be, either.

What Is a Constitution?

Why Have One?

A constitution is an agreement that describes how an organization is governed. It is different from a collection of laws. The purpose of a constitution is to determine who *makes* the laws, how those decision makers are chosen, how

long they serve, and what powers they have.

Constitutions can be broad outlines or detailed rules about how to make laws. They can emerge through discussion or by force.

Almost all countries, except Britain, New Zealand, and Israel, have written constitutions. So do all fifty states, Puerto Rico, most American Indian Nations, and many organizations, including civic groups, clubs, and schools.

Regardless of how it is developed and what it contains, a constitution is intended to help a group of people accept leadership and reduce friction. That's the idea, at any rate.

From Independence to a Constitutional Convention

In the Declaration of Independence, issued on July 4, 1776, “the thirteen united States of America” pronounced themselves

“Free and Independent States...
[with] full Power to levy War, conclude
Peace, contract Alliances, establish
Commerce, and to do all other Acts
and Things which Independent States
may of right do.”

—The Declaration of Independence

But their independence was about the only thing these states could agree on. Did you notice that “united” isn’t capitalized in “united States” in some versions of the Declaration? The term was merely a vague and not very accurate description.

The states were Free and Independent not only from Britain but also from each other. Thirteen disjointed minirepublics were strung along the Atlantic seaboard, not really part of a cohesive country under a single government. Each state had its own political system, money, and constitution.

The people living in these states did not think of themselves as Americans.



“Virginia, Sir, is my country.”

—Thomas Jefferson

“Massachusetts is our country.”

—John Adams



Without a king to order them around, the states had to figure out how to get along with each other and how to reach decisions everyone would abide by, even when some states objected to them.



“It is the first instance, from the creation of the world...that free inhabitants have been seen deliberating on a form of government.”

—James Madison



Each state sent delegates to a sort of governing body, the Confederation Congress. There, all together in one room, they tried to resolve such disputes as borderlines, especially on the

endless-seeming western frontier, and how much money to cough up to pay for the war they were fighting—and, after 1781, had won.

The separate states operated under a set of rules or treaties called the Articles of Confederation and Perpetual Union. These had been devised in 1777 to carry out the war, though they didn’t go into effect until 1781. The Articles set up a “league of friendship,” as the states described their alliance.

Severe problems surfaced almost immediately. Every state was allotted one vote in this Congress, regardless of its size. But big states with large populations, such as Virginia, argued that they were entitled to more votes than little ones, such as Rhode Island. Furthermore, the delegates often didn’t show up and, when they did, they spent much of their time bickering, after which they went home empty-handed and frustrated.

There was a limit to what the delegates could accomplish. The Articles had given Congress few powers beyond making treaties with other countries

AMERICA'S FIRST PRESIDENT

The Articles of Confederation established the office of the presidency, with each appointed executive serving one year. So America's first president was not George Washington but John Hanson, a public official and revolutionary from Maryland. As explained at the One and Only Presidential Museum in Williamsfield, Ohio, Washington was our ninth! However, not one of the first eight presidents had any real power.

and printing money, which turned out to be nearly worthless. Probably worst of all, the national government was not allowed to tax the citizenry. All it could do was issue requests, called requisitions, for money from the states, which often ignored them. Consequently, the treasury didn't have enough money even to pay the soldiers who had fought—and won—the Revolutionary War.

In June 1783, four hundred of those soldiers stormed Congress's headquarters in Philadelphia, clamoring for their back pay, and locked the delegates

inside. When the officials were finally released, they had to run for their lives. They stayed a step ahead of the soldiers, conducting business in a series of temporary quarters in Maryland, New Jersey, and New York.

In 1786, Congress tried to requisition \$3.8 million—worth about \$100 million today—to pay off war debts, including soldiers' back pay. The states forked over a measly \$663. It wasn't long before Alexander Hamilton referred to the "imbecility" of the Articles of Confederation.

Meanwhile, states imposed their own taxes on residents—taxes so high that many farmers lost their land and were thrown into paupers' prisons. In Massachusetts, a band of two thousand men rebelled. Armed with pitchforks and led by Daniel Shays, a former captain of the Continental Army, they executed hit-and-run vigilante raids on munitions depots, surrounded courthouses, and mobbed sheriffs to protest their rising debts.

Both the national government and

the states were in turmoil. Neither the Articles of Confederation nor the states' own constitutions provided a solution.

George Washington despaired. "I predict the worst consequences from a half-starved, limping government, always moving upon crutches and tottering at every step," he lamented.

His friend General Henry Lee begged Washington to use his influence to quell the uprising. Realizing that the crises went far beyond rampaging farmers, Washington responded, "Influence is not government. Let us have one by which our lives, liberties, and properties will be secured."

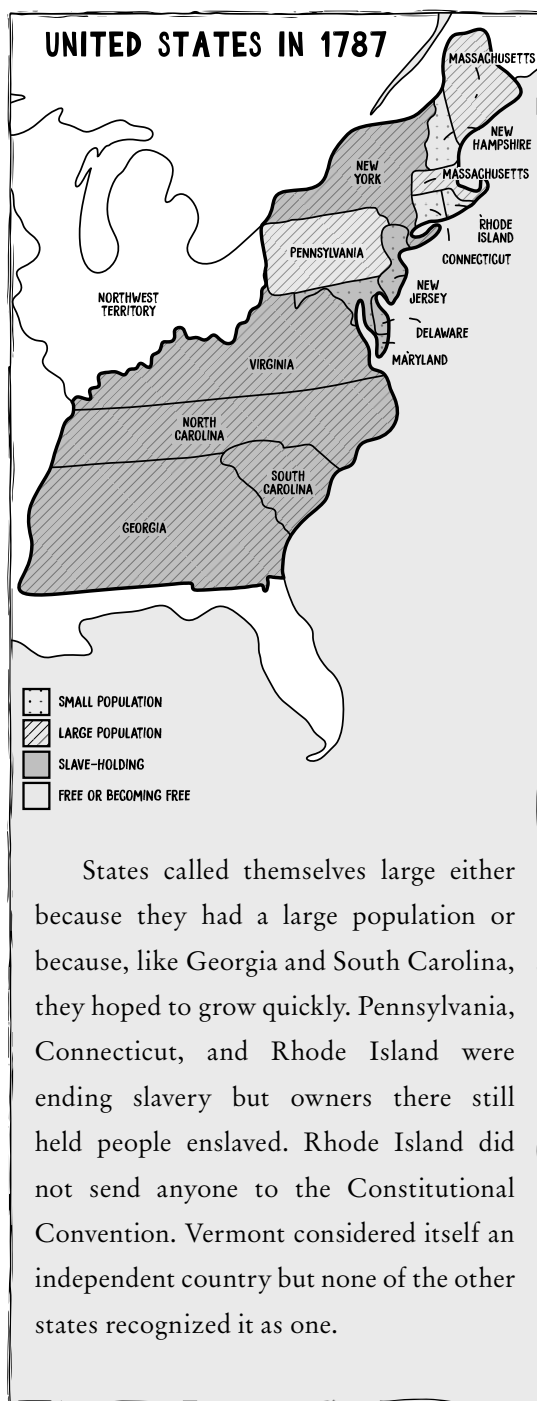
Monumental change was needed, and quickly, if the "united States" were to survive as a genuine union. A likely alternative might be dissolving into several separate, sparring countries. To prevent such chaos, Congress called for a convention of delegates from the states to convene in Philadelphia on May 13, 1787.

Distinguished Characters

At first, hardly anyone showed up. Many dreaded abandoning their families, farms, and businesses to make the tiresome, jarring trek by stagecoach or horseback. The city had never seen as much rain as it did that spring, and the roads were clogged with mud.

But by May 25, enough people had gathered in the Assembly Room at the State House to begin deliberations. Selected by their state legislatures, the delegates came from large states, small ones, slave-owning and free.

Most were prominent men of means—yes, all fifty-five delegates who attended at various times were men—lawyers, doctors, or merchants. Many were young. Twenty-six-year-old Jonathan Dayton of New Jersey, who had fought in the Revolutionary War when he was only sixteen, was the youngest. James Madison, later described as the "father" of the Constitution, was thirty-four. Hamilton was also in his early thirties.



The oldest delegate—eighty-one-year-old author, statesman, inventor, and diplomat Benjamin Franklin—arrived in a sedan chair carried by prisoners.

Yet no one was more important than Washington. Admirers gathered outside the State House to greet him with applause and cheers. The delegates elected him President of the Constitutional Convention. He sat quietly at the front of the room in a wooden chair.

Thomas Jefferson, then the American ambassador to France, later called these leaders “an assembly of demi-gods.”

Congress had instructed the delegates to revise the Articles of Confederation, but they knew that much more than mere revision was needed. Working for just under four months at tables for two fitted out with quill pens and candlesticks, in a stifling room behind barred doors and latched windows, they concocted an entirely new and daring kind of government, faults and all.

IF IT WAS SECRET, HOW DO WE KNOW WHAT HAPPENED?

One of the first decisions the Framers made was to keep their proceedings secret. That way, they could speak—and change—their minds without worrying about being embarrassed in public.

As a matter of personal honor, they kept their promise even when they vehemently disagreed with each other. The Convention's secretary, William Jackson, destroyed drafts of the delegates' work, keeping only an account of proposed resolutions and the tally of votes.

James Madison sat in the front row and took detailed notes on the debates, though these were not published until 1840, four years after his death. Scholars now know that, over the years, he edited his notes for political purposes, so they are not completely accurate.

Several other Framers also occasionally made notes. We have a pretty good idea of the general arguments presented in Philadelphia, but we don't always know who made them or exactly what the delegates said.