

# Mississippi College Law Review

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Volume 31  
Issue 1 *Vol. 31 Iss. 1*

Article 2

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2013

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31 Miss. C. L. Rev. 1 (2012-2013)

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# THE CONSTITUTION AT WORK

*Congressman Alan Nunnelee\**

## I. INTRODUCTION

In November 2010, the winds of change blew across America. The country only two years prior had swept Barack Obama into the White House and had put significant Democrat majorities in the Senate (59-D, 41-R, 1-I) and the House of Representatives (257-D, 178-R). In 2010, Americans had become frustrated with the direction Washington was leading their country. Issues such as the passage of national health care, government stimulus, and a mounting national debt motivated citizen involvement as evidenced by the TEA Party movement.

The Republicans gained 63 new seats in the House of Representatives, giving the GOP a 242-193 majority and the opportunity to elect John Boehner from Ohio as Speaker of the House. This new majority was bolstered by the 87-member freshman Republicans, the largest group of Republican freshmen in our nation's history. In the Senate, the Republicans gained six seats, but the Democrats maintained a 53-47 majority. The result has been a divided 112th Congress and gridlock.

The founders of this nation envisioned a government whose authority, and legitimacy, is granted from the people. A true constitutional republic consists of more than free elections and the peaceful transition of power—it *begins* with “we the people.” It occurs when people from diverging backgrounds, experiences, social classes, economic viewpoints, and political philosophies come together to form a government where, even though every view may not become law, every voice is heard.

## II. A FALSE START

As the Philadelphia Convention began, delegates from across the country could at least agree on one thing—the Articles of Confederation had undoubtedly failed. Its constitutional defects had nearly crippled the fledging American government. By failing to establish an executive branch, forgoing the creation of a national court system, and stripping Congress of the power to regulate both interstate and international commerce, the Articles left the national government weak, ineffective, and subject to the competing demands of the states.<sup>1</sup>

Particularly troublesome was the legislature. Under the Articles, states could send between two and seven delegates to the single-chamber

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1. MELVIN I. UROFSKY & PAUL FINKELMAN, *A MARCH OF LIBERTY* 83 (2d ed. 2002).

Congress, though each state had only one vote.<sup>2</sup> Accordingly, each piece of legislation required delegates to decide amongst themselves just how they would vote.<sup>3</sup> Though intended to promote state equality, the “one state, one vote” system actually undermined national unity and strengthened localism; delegates from the most populated states were often left to wonder why the smallest among them held equal political power.<sup>4</sup>

The passage of legislation also proved difficult. Most matters required only a simple majority vote for approval, though a number of important issues—including those of war, peace, and the expenditure of funds to support the army—required agreement by nine states.<sup>5</sup> Yet no state could vote on the floor of Congress unless at least two delegates were present.<sup>6</sup> Frequently, the difficulties of travel, illness, and weather left a state without the minimum representation needed to vote.<sup>7</sup> Congress often found itself unable to pass any legislation over these matters, given the absence of too many voting delegations.<sup>8</sup> Business stalled.

Amendments to overcome these handicaps proved impossible. A single state had veto power over any proposal.<sup>9</sup> With this stringent requirement of unanimity, the Articles of Confederation were never able to find the support necessary to affect needed structural changes.<sup>10</sup> A recasting of the American government seemed to provide the only solution.

### III. A CONSTITUTIONAL CONVENTION

The Philadelphia Convention immediately set to work on reconfiguring the government, and the eventual Constitution found a healthy audience of both supporters and detractors. Debates over the new Constitution’s ratification provide the clearest illustrations of the conflicting political theories of the era. Advocates of the Convention’s brainchild quickly organized and adopted the label of “federalists.”<sup>11</sup> Those in opposition became known as “antifederalists.”<sup>12</sup>

Notably, Alexander Hamilton, James Madison, and John Jay became the most ardent of federalists.<sup>13</sup> For these, the proposed Constitution remedied the clear defects of the Articles, shifting power away from the states into a central, federal government, compelling them to accept national laws.<sup>14</sup> Although antifederalists agreed in principle with the need for a national government, they most feared the Constitution’s balance of power,

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2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* at 82.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* at 81.

10. *Id.*

11. *Id.* at 109.

12. *Id.*

13. *Id.*

14. *Id.*

believing that only strong state governments could protect individual liberties against the tyranny of a central authority.<sup>15</sup>

For antifederalists, the shadow of the English monarchy loomed heavy. Many antifederalists found the President suspiciously similar to a king, and the Senate, a House of Lords.<sup>16</sup> Elitist, too, was the new House of Representatives.<sup>17</sup> With seats elected every two years rather than annually, as had been the long practice of state legislatures, it seemed far removed from the will of the people as well.<sup>18</sup>

Antifederalists also attempted to downplay the supposed crisis of the Articles, maintaining that the Confederation could solve the nation's existing problems.<sup>19</sup> The anonymous "Letters of the Federal Farmer," famously argued: "It is natural for men, who wish to hasten the adoption of a measure, to tell us, now is the crisis—now is the crucial moment which must be seized, or all will be lost."<sup>20</sup> Far better, antifederalists reasoned, to avoid a rush into a new government which could easily usurp their individual liberties. Unlike a central authority, state governments were kept under close control by their constituents, thereby posing less risk to personal freedoms.<sup>21</sup> The absence, too, of a bill of rights in the new Constitution became one of the antifederalists' chief arguments against the new Constitution; today, it is perhaps their most enduring legacy.<sup>22</sup>

#### IV. BICAMERALISM

In *Federalist No. 39*, Madison stated, "The House of Representatives will derive its powers from the people of America. . . . The Senate, on the other hand, will derive its powers from the States, as political and co-equal societies; and these will be represented on the principle of equality in the Senate."<sup>23</sup>

##### A. *A House for the People and a Senate for the States*

In the midst of redesigning the government, the founders at the Philadelphia Convention were particularly concerned with the legislative branch. Governor Edmund Randolph of Virginia submitted to the Convention the "Virginia Plan," a structural scheme proposing separate executive, legislative, and judicial branches under a strong federal government.<sup>24</sup> Legislative power would vest in a bicameral Congress.<sup>25</sup> The lower house, seated based on population, would be chosen by a popular vote; the upper

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15. *Id.* at 111.

16. *Id.* at 112.

17. *Id.*

18. *Id.*

19. *Id.* at 111.

20. *Id.*

21. *Id.* at 112.

22. *Id.*

23. THE FEDERALIST NO. 39 (James Madison).

24. UROFSKY & FINKELMAN, *supra* note 1, at 96.

25. *Id.*

chamber would then be elected by the lower house through nominations from state legislatures.<sup>26</sup>

Fearing discrimination against smaller states in Randolph's system of population-based representation, delegate William Patterson countered with his "New Jersey Plan."<sup>27</sup> Keeping the existing unicameral structure of Congress, Patterson allowed each state one vote.<sup>28</sup> Notably, however, the new Congress would have the power to impose taxes and regulate commerce—a critical omission of the Articles of Confederation.<sup>29</sup>

Debate between the plans proved divisive, with population-based representation centering as the point of contention. Larger states generally supported the Virginia Plan, while smaller states opposed Randolph's system altogether.<sup>30</sup> Ultimately, Connecticut's Roger Sherman would find the "Great Compromise."<sup>31</sup> Sherman proposed a bicameral legislature in which a House of Representatives would be apportioned according to population.<sup>32</sup> A Senate would allow each state only two votes.<sup>33</sup> Though the plan became the structure we recognize today, some delegates—even James Madison—would never be *fully* satisfied with the scheme, finding equal state representation in the new Senate fundamentally undemocratic.<sup>34</sup>

Ultimately, the House of Representatives was designed to be very close to the people. The terms of Representatives are, of course, two years, and the entire House is subject to election each election cycle. The result of this arrangement is that as changing political winds blow across America, the House will rapidly reflect those changes. Such was the case in 2010.

The Senate is configured differently. Senators serve six-year terms. During the first century of our republic, Senators were elected by the various state Legislatures rather than directly by the people. Now, only one-third of the Senate is subject to election each election cycle. So, the changing political winds must blow longer and stronger to affect a change in the Senate.

### B. Gridlocks

In *Federalist No. 10*, Madison attempted to assuage these fears of government tyranny. What the antifederalists bemoaned, Madison crafted to his political advantage. Rather than insulating the new federal government

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26. *Id.*

27. *Id.* at 97.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* at 98.

32. *Id.*

33. *Id.*

34. *Id.*

from the will of the people, Madison insisted that the large size of the country would instead serve to make it more responsive to its diverse citizens.<sup>35</sup> Interplay among the competing factions would make it impossible for any single interest to create a majority and seize tyrannical control.<sup>36</sup> “Extend the sphere,” he argued, “and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens.”<sup>37</sup> Open competition would force the majority to recognize the minority to gain their support; the Constitutional republic would only be strengthened by the need for adjustment and compromise.<sup>38</sup> Here, perhaps, lies Madison’s legacy—although Congressional gridlock may appear senseless, “give-and-take” is inherent in the very ideals of democracy. The vigorous debate of the current Congress is the fulfillment of his vision.

#### V. CONCLUSION

Each Congress, over 10,000 bills are introduced. Of those, fewer than 500 are signed into law. As ideas are considered, debated, rejected, revised, or advanced, we often find the legislative process has ground to a halt. It appears this gridlock was exactly what Madison foresaw when he crafted two very different bodies for the legislative branch.

The divided Congress may not be pretty to watch, and it is certainly frustrating to be a participant in such gridlock, but it is the Constitution at work.

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35. THE FEDERALIST NO. 10 (James Madison).

36. *Id.*

37. *Id.*

38. *Id.*

