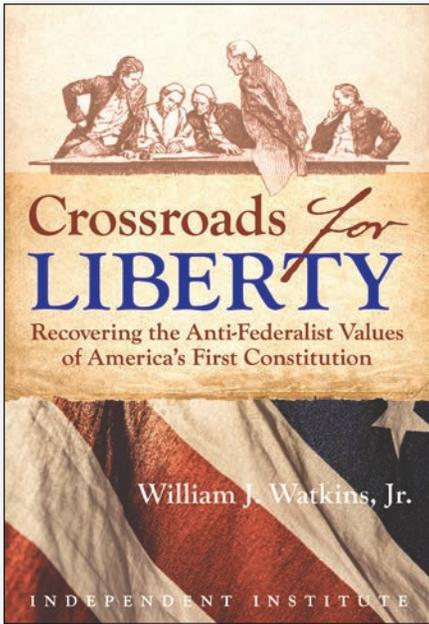


CROSSROADS FOR LIBERTY

Recovering the Anti-Federalist Values of America's First Constitution

BY WILLIAM J. WATKINS, JR.

Book Highlights



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- **American government today faces serious problems best remedied by implementing ideas reflected in the nation's first charter and championed by the statesmen who doubted that the U.S. Constitution was an improvement.** The Articles of Confederation (1781–1787) were not perfect, but they and the Anti-Federalist skeptics of the Constitution offered provisions that would have prevented the rise of a gargantuan national debt, the undue influence of special interests, and a Congress far removed from the concerns of ordinary people. Amendments dealing with such issues were proposed in the state ratification conventions, but they were never considered by the first Congress. Americans seeking fundamental government reform should consider making the adoption of similar amendments a top priority.
- **Although despised by modern historians, the Articles of Confederation better express the principles of 1776 than does the Constitution.** The driving force behind the American Revolution was the right of self-government: the right of the people of each state to control their own affairs, rather than rule by a distant Parliament unfamiliar with local circumstances. The Articles of Confederations merit veneration because they preserved the rights of the people of the several states to make their own laws and enabled Americans to claim victory over the superpower that was Great Britain.
- **The Anti-Federalists were not “men of little faith” in representative government, but instead were men of exceptional vision who strongly believed that the “American experiment” could succeed.** Their north star, however, was a concept of republicanism that is alien to us today. They championed the principles of decentralization embodied in the Articles. They believed that republican liberty had the best chance of survival in small units in which the people participated actively. Representatives, they reasoned, should reflect the interests of their constituents, mix with them, and be amenable to their wishes. This type of government, they held, could exist only on a small scale. Once a unit of government reached a certain size, representatives would be alien to their constituents and work with a centralized bureaucratic apparatus to impose rule from above.
- **The Founders would be shocked to see how far removed from the federal government the American people have become.** Based on the 2010 census, each of the 435 members of the House of Representatives is chosen from an average district of 710,767 persons. This ratio would have shocked the Framers of the Constitution and the Anti-Federalists. Under accepted understandings of representation, such a body as our current House of Representatives would have been anathema to the revolutionary generation. Allowing only one House member for a supersized district of 710,767 persons contradicts the fundamentals of meaningful representation.
- **The Anti-Federalists were remarkably accurate in their predictions of how powerful and pushy the national government would grow under the Constitution.** Over and over they predicted the inevitability of a puissant federal government under the Constitution. *The Federalist Papers* is celebrated for insights of political theory, but James Madison, Alexander Hamilton, and John Jay missed the mark more often than they hit it. In contrast, Thomas Jefferson revealed keen insight when he criticized the Constitution for its lack of term limits for delegates—known in the Articles as “rotation in office.”

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Synopsis

The last place most Americans would look for ideas for reforming the U.S. government is the Articles of Confederation, which perished only six years after the nation won its independence from Britain. Our first national constitution, we have been taught, was an unsalvageable disaster unworthy of study, let alone emulation. Such views are

greatly mistaken, and we hold them to our detriment. The Articles have much to tell us—if only we would listen.

In *Crossroads for Liberty: Recovering the Anti-Federalist Values of America's First Constitution*, attorney and author William J. Watkins, Jr. (*Reclaiming the American Revolution*) contends that the Articles better express the principles of 1776 than does the Constitution that replaced them. Moreover, he claims, they can serve as guideposts for solving contemporary problems that plague American government, including runaway federal spending, inadequate representation, and crass cronyism.

Both a work of historical narrative and a call to rediscover the lost values of republicanism, *Crossroads for Liberty* reveals the wisdom of practical statesmen who anticipated many of the challenges facing America today—and shows its usefulness for addressing some of our most troubling national dilemmas.

Independence and Confederation

Crossroads for Liberty begins on the eve of the American Revolution, as the continental congresses and their delegates' responded to Parliament's encroachments on colonial rights. The delegates, who were independence-minded but respectful of the reconciliationists in their midst, agreed to issue petitions and impose economic sanctions. They believed, however, that a British government claiming the right to legislate for the colonies would provide the spark to ignite the powder of revolution.

The Declaration of Independence was a *de jure* observation of a *de facto* truth: Americans had come to regard themselves as sovereign. Once independence was declared, Congress began work on a formal plan of confederation. A proposed amendment to the first draft, offered by Thomas Burke of North Carolina, clarified the locus of sovereignty. The Articles of Confederation, it said, "held up the principle, that all sovereign power was in the States separately." Except when the Articles specifically permitted Congress to act, state power would be supreme and controlled only by state constitutions.

Congress approved Burke's amendment along with other measures to limit the new confederation's government. These revisions

ensured that Congress would have no authority to transgress on the rights of the people and the states.

The ultimate version of the Articles gave Congress the tools needed to defeat the British superpower. Congress raised an army, borrowed money, entered into foreign alliances, and obtained funding from the several states. The system accomplished the task at hand: the government operating under the Articles reached the goal of political independence from England.

Although the United States won the revolutionary war, the new system of government was far from perfect. Any amendment of the Articles of Confederation required the approval of all thirteen states—a provision that proved to be the Achilles' heel of the new government. Unable to reach unanimity, Congress could not secure an independent source of revenue. The Philadelphia convention was charged with revising the Articles, but ultimately it abandoned the confederation model.

The plan of government that emerged from the convention was described as partly federal and partly national: measures signed into law would operate directly on individuals, rather than states; but the states were to retain full sovereignty over all matters not delegated to the national government. On some issues the national and state governments would possess concurrent jurisdiction.

Federalists and Anti-Federalists

For the new Constitution to be ratified, nine of the thirteen states had to agree to its terms. A great debate arose across the country on the merits and dangers of this new document of government. The Constitution's friends—the Federalists—claimed that the new government's powers were "few and defined," and would be exercised on external objects such as foreign affairs and foreign commerce. The Constitution's opponents—the Anti-Federalists—challenged the claims that the new plan of government was a mild antidote for the ills of the Confederation.

The Anti-Federalists were not easily assuaged. They believed that all important powers were becoming concentrated in a centralized government and that this distant body would be controlled by a small number of men. They predicted that the Constitu-

tion would render the states mere administrative subdivisions of the center and leave the people at the mercy of the national government. Sovereignty, they asserted, could not be shared.

With astonishing perspicacity, the Anti-Federalists foresaw how the national government would use the Constitution to aggrandize itself at the expense of the states and the people. Fears the Anti-Federalists expressed about the proper scale of republican government, meaningful representation, and consolidation of power have come to pass.

Outwitting the Anti-Federalists

After the Constitution was ratified, an opportunity arose to correct many of the flaws identified by the Anti-Federalists during the ratification debates. The state ratifying conventions suggested more than 200 amendments and were promised that the new federal Congress would entertain these amendments early on. Proposed amendments concerned a variety of matters, such as representation, taxation, term limits, government borrowing, suspension of habeas corpus, and deployment of troops. Virginia and New York went so far as to call for a new constitutional convention to consider the suggested amendments.

The first Congress took up amendments and sent a bill of rights to the states for ratification. However, none of the amendments altered the structure of the new government. Rather than a great bulwark of liberty, the Bill of Rights was merely a ruse to silence Anti-Federalist calls for a new convention. Valuable rights were declared, but the powers that remained were sufficient to nullify broad promises of individual liberty and state autonomy.

Could the Articles Have Been Salvaged?

The failure of the Constitution and Bill of Rights to create a truly limited national government invites provocative questions: What would have happened had America kept the Articles of Confederation? Could the Articles have been revised to meet the exigencies of the union without destroying the self-government won in the Revolution? Thomas Jefferson and other republicans thought so. Writing in 1786, Jefferson described the Articles as a “wonderfully perfect

instrument, considering the circumstances under which it was formed.” He believed that three or four new articles could have been added to address the palpable defects of America’s first constitution.

Based on Jefferson’s writings and his 1783 draft constitution for Virginia, *Crossroads for Liberty* contends that the United States would have been better off had the Articles been revised. America could have thrived under the Articles provided that (1) Congress had been given full authority over trade and duties placed on imported goods; (2) the Confederation government had been divided on separation of powers principles; (3) a Confederation court had been established, subject to strict congressional oversight, to handle disputes between the states and the government of the union; and (4) the unanimity requirement for amendments had been modified so that one recalcitrant state could not block needed reform.

Lessons for Today

The Articles of Confederation and the Anti-Federalists are not merely of historical interest. The final chapters of *Crossroads for Liberty* apply their insights to major current problems: a huge national debt, weak political representation, and an entrenched political class cut off from the concerns of everyday people.

The Articles anticipated the problem of excessive government spending and sought to prevent it from arising by imposing a requisition system on Congress. The Constitution of 1787 sought a different remedy, by providing Congress with the power to tax as well as to spend for enumerated purposes. The Anti-Federalists, however, worried that its lack of a requisition system invited profligate spending.

To allay this concern, the New York ratifying convention called for an amendment that, had it been adopted, would have required spending measures to win the approval of two-thirds of both houses of Congress. If a similar supermajority provision were adopted today, *Crossroads for Liberty* argues, senators and representatives would likely become more fiscally responsible.

The American commonwealth also suffers from weak political representation. The Constitution stipulates that “The number of representatives shall not exceed one for every 30,000.” In other words, no district should be smaller than 30,000 individuals.

The Constitution is silent, however, on how large a district can be. Today, each of the 435 House members “represents” an average of 710,767 persons. Such massive numbers would have shocked the Anti-Federalists.

In their view, a representative should be one of “the people”—someone who worships alongside ordinary constituents, engages in commerce with them, and socially mingles with them. To abide by the precepts of meaningful representation, the size of the House could be gradually expanded to create districts closer to the human scale than what we have today.

The modern Congress is also largely composed of careerist legislators. As the enormity of the national debt indicates, longevity in office does not correlate with sound decision-making. To limit congressional power, the Articles of Confederation imposed “rotation in office.” Under Article V, “no person shall be capable of being a delegate for more than three years in any term of six years.” This provision, it was hoped, would thwart the establishment of a ruling aristocracy and encourage public service by men equally talented as (or perhaps more so than) the old guard.

A provision for rotation never made it into the Constitution, however, and Thomas Jefferson considered its absence a grave defect. If the omission were remedied today through the adoption of term limits, the ideal of the citizen-legislator might at last be realized.

Conclusion

America cannot return to the rural and agrarian world of 1776, but we can still aspire to govern ourselves in local communities—or wards, as Thomas Jefferson called them. Not every problem must rise to the level of a national issue requiring presidential task forces and congressional legislation. The states and their subdivisions, serving as laboratories of democracy, should be allowed to experiment with a variety of solutions based on local circumstances and resources.

The U.S. government today is approaching bankruptcy and few, if any, human activities are beyond its control. Reformers seeking to tame the federal beast would do well to revisit the republican tradition of the Articles of Confederation and the Anti-Federalist opponents of the Constitution of 1787.

Praise for *Crossroads for Liberty*

“With *Crossroads for Liberty* and in an era when we are increasingly coming to realize that we live in a time of government gone amok, Watkins has produced a splendidly inspiring look at the Anti-Federalists, who were able presciently to warn us of the perils to come.”

—**Stephen B. Presser**, Raoul Berger Professor of Legal History Emeritus, Pritzker School of Law, Northwestern University ; author, *The American Constitutional Order; Recapturing the Constitution, Individual Rights and the Constitution; The Original Misunderstanding: The English, the Americans and the Dialectic of Federalist Jurisprudence*; and other books

“At a time in our history when most people take it as an article of faith that the federal government must provide a solution to every major problem, from education to terrorism to economic downturn, the indispensable book *Crossroads for Liberty* advances the notion that our massive federal government is the problem, and that the solution lies in ideas that have lain dormant for over two centuries.”

—**Alex A. Kozinski**, Judge, U.S. Court of Appeals for the Ninth Circuit

“In his important book, *Crossroads for Liberty*, William Watkins astutely urges us to study the Framers, but not merely the Federalists. Close attention should be paid to the Anti-Federalists and the contemporary weakening of separation of powers and checks and balances. Instead of a system of self-government, political power has shifted in ever greater degree to the President and the Supreme Court. The results should concern us all.”

—**Louis Fisher**, Scholar in Residence, The Constitution Project; author of *Presidential War Power, The Law of the Executive Branch, Constitutional Conflicts Between Congress and the President*, and other books

“In the compelling book *Crossroads for Liberty* William J. Watkins, Jr. recounts the rarely examined history of lost liberty in America’s infancy. In a truly eye-opening historical examination, *Crossroads* explains how the principal goal of the American Revolution in 1776—the removal of centralized power in favor of diverse and independent local and state governance, in which individual Americans could select the level and severity of the governance they wished for themselves—was abandoned in just eleven years. If you yearn, as I do, for minimal government and maximum individual liberty, you need to understand how the monster federal government came about. *Crossroads* is that well-told but sad story.”

—**Andrew P. Napolitano**, Senior Judicial Analyst, Fox News Channel; Distinguished Visiting Professor of Law, Brooklyn Law School; author, *The Constitution in Exile, Constitutional Chaos, Suicide Pact, Dred Scott’s Revenge*, and other books



About the Author

WILLIAM J. WATKINS, JR. is an author, speaker, and Research Fellow at the Independent Institute. He is a former law clerk to Judge William B. Traxler, Jr. of the U.S. Court of Appeals for the Fourth Circuit. He has served as a prosecutor and defense lawyer, and has practiced in various state and federal courts.

His books include *Judicial Monarchs: The Case for Restoring Popular Sovereignty in the United States* and the Independent Institute books, *Reclaiming the American Revolution: The Kentucky and Virginia Resolutions and Their Legacy* and *Patent Trolls: Predatory Litigation and the Smothering of Innovation*. His scholarly articles have appeared in the *South Carolina Law Review*, *The Independent Review*, *Duke Journal of Constitutional Law and*

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Mr. Watkins has been a Humane Studies Fellow at the Institute for Humane Studies at George Mason University. He is the recipient of the R. Glen Ayers Award for Historical Writing from Clemson University. His popular articles have appeared in the *Christian Science Monitor*, *Forbes*, *Daily Caller*, *USA Today*, *Washington Times*, *Austin American-Statesman*, *San Jose Mercury News*, *Washington Examiner*, *Denver Post*, *Fort Worth Star-Telegram*, *Sacramento Bee*, *San Francisco Examiner*, *Human Events*, and *Chronicles*.

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