Brown, "Shays's Rebellion and the Ratification of the Federal Constitution in Massachusetts," in Richard Beeman et al., eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (1987), 113, 123 n. 28.

50. The number nine emerged very early on at Philadelphia. When Wilson first floated the idea of partial union at the outset of the convention's second week, Charles Pinckney promptly suggested that "nine States" should suffice. *Farrand's Records,* 1:123. Many weeks later, Randolph, in returning to the number nine, reminded his colleagues that it was "a number made familiar by the constitution of the existing Congress." Ibid., 2:469. See also *Elliot's Debates,* 3:28 (Randolph: "Nine states therefore seem to be a most proper number").
51. Thus, Gouverneur Morris found no takers for his suggestion that Article VII should be drafted in "a twofold way, so as to provide for the event of the ratifying States being contiguous which would render a smaller number sufficient, and the event of their being dispersed, which wd require a greater number." *Farrand's Records,* 2:468.

9: MAKING AMENDS

1. It also bears note that several of the veterans of 1789 still in Congress a decade later had not served continuously. For additional data on, and analysis of, early congressional turnover, see the sources cited in Chapter 2, n. 4.
2. For Madison's advocacy of the "No State shall" amendment, see *Annals,* 1:452–55, 784 (June 8 and Aug. 17, 1789). For the House passage of this proposal as amendment number fourteen, see *Senate Journal,* 1:64 (Aug. 24, 1789).
3. See Madison to George Eve, Jan. 2, 1789, in Madison, *Papers,* 11:405 ("it is my sincere opinion that the Constitution ought to be revised, and that the first Congress meeting under it, ought to prepare and recommend to the States for ratification, the most satisfactory provisions for all essential rights").
4. *Elliot's Debates,* 3:37.
5. Ibid., 2:413–14 (New York convention circular letter).
6. *Annals,* 1:446, 462, 466 (June 8, 1789) (Page, Gerry, and Sumter). For similar expressions of concern, see Jefferson to Washington, Nov./Dec. 4, 1788, in Jefferson, *Papers,* 14:328; Madison to Jefferson, Dec. 8, 1788, in Madison, *Papers,* 11:382–83; Jefferson to William Carmichael, Dec. 25, 1788, in Jefferson, *Papers,* 14:385; Madison to George Eve, Jan. 2, 1789, in Madison, *Papers,* 11:405. See generally Edward P. Smith, "The Movement Towards a Second Constitutional Convention in 1788," in J. Franklin Jameson, ed., *Essays in the Constitutional History of the United States in the Formative Period, 1775–1789* (1889), 46–115; Kenneth R. Bowling, " 'A Tub to the Whale': The Founding Fathers and Adoption of the Federal Bill of Rights," *J. of the Early Republic* 8 (1988): 223; Paul Finkelman, "James Madison and the Bill of Rights: A Reluctant Paternity," *Supreme Court Rev.* (1990): 301.
7. In the 1798 case of *Hollingsworth v. Virginia,* 3 U.S. (3 Dall.) 378, the Court

endorsed the permissibility of the practice that had already taken root, under which proposed amendments were not submitted to the president for his signature or veto. Two main theories have been offered to support this result. Some have argued that the two-thirds rule of Article V should be read as creating an implied exception to the usual rule of presentment set forth in Article I, section 7. On this view, since any proposed amendment has already achieved a two-thirds vote of each house, presentment is unnecessary. Others have argued, more directly, that Article V created its own separate higher-lawmaking track above and beyond the presentment-clause rules for ordinary Article I lawmaking. On this view, Article V did not envisage any role for a presidential signature or veto in the case of an amendment proposal emerging from a duly called proposing convention; and an amendment proposal made by Congress should stand on the same footing. In 1861, James Buchanan added his name to the Corwin Amendment (which was never ratified), and four years later Abraham Lincoln appended his own signature to the Thirteenth Amendment. On February 7, 1865, the Senate resolved that Lincoln's signature had been unnecessary and "should not constitute a precedent for the future." *CG,* 38–2:629–31. See generally Herman Ames, *The Proposed Amendments to the Constitution of the United States* (1896), 295–96.

8. *Annals,* 1:449 (June 8, 1789). See also Jefferson to Washington, Nov./Dec. 4, 1788, in Jefferson, *Papers,* 14:328; Madison to Jefferson, Dec. 8, 1788, in Madison, *Papers,* 11:382–83.
9. *Annals,* 1:463, 755 (Gerry, June 8 and Aug. 14, 1789), 948 (Sept. 24, 1789).
10. For more discussion and documentation, see Amar, *Bill of Rights,* 32–41.
11. *Annals,* 1:790 (Aug. 18, 1789). Cf. Articles of Confederation, Article II: "Each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation *expressly* delegated to the United States, in Congress assembled" (emphasis added).
12. Of course, the eventual firstness of the First Amendment—and thus the firstness of this sentence—cannot be said to be part of Congress's original plan. What ultimately became the First Amendment was originally third on Congress's list, and became first only when Congress's first two amendments fell by the wayside in the initial round of ratifications.
13. Cf. *Aymette v. State,* 21 Tenn. (2 Hum.) 154, 161 (1840), where the Tennessee Supreme Court declared that the "bear arms" phrase had "a military sense, and no other. . . . A man in the pursuit of deer, elk and buffaloes, might carry his rifle every day, for forty years, and, yet, it would never be said of him, that he had *borne arms.*" My claim is not that no one at the Founding ever used the phrase "bear arms" outside the military context, but rather that such usages were rare in law and legal literature—the proverbial linguistic exceptions that proved the rule and illustrated the elasticity and metaphoric nature of language generally. For the most prominent nonmilitary use at the Founding, see "The Address and Reasons of Dissent of the Minority of the Conven-