

From Mount Vernon, Madison rode straight to Richmond for the fall session of the legislature. He quickly moved a bill to appoint delegates to the proposed convention and invite the other states to do so as well. It passed unanimously. The next step was to appoint delegates. "It has been thought advisable to give this subject a very solemn dress, and all the weight which could be derived from a single state," Madison wrote to Washington. "You will infer our earnestness on this point from the liberty which will be used of placing your name at the head of them." Madison had not raised that point at Mount Vernon, and Washington could not possibly reply in time to ward off election. His only consolation was that he could later decide whether to attend, as circumstances dictated. The rest of the delegation was nearly as distinguished, including George Wythe, George Mason, Governor Edmund Randolph, and (of course) James Madison.

Washington's initial reply was discouraging. He had already told the Society of the Cincinnati—the fraternity of Continental army officers founded in 1784, amid great controversy over its "aristocratic" pretensions—that he would not attend their annual May meeting in Philadelphia. How could he attend this other convention, Washington fretted, "without giving offence" to his fellow officers? That was not a fatal objection. The society would hardly protest if he now chose to honor them with his presence. Still, the general needed to be courted as well as consulted. Madison had occasion to visit Washington again when the Virginia legislature sent him back to Congress (his three years of ineligibility having expired). Passing Princeton, he ran straight into a nor'easter blizzard and was soon crossing rivers "clogged with Ice, and a half congealed mixture of snow & water which was more in the way than the Ice itself."

Madison was in no hurry to get to Congress, which could barely muster a quorum and had little business to transact—with one exception. On February 21, 1787, nine days after his arrival, it voted its approval of the coming convention. Obtaining this endorsement removed a critical obstacle to the convention. By now seven states had agreed to attend. But among the six yet to act there were mixed opinions as to whether Congress could properly approve a meeting unknown to the Confederation from which its own authority derived. Once Congress acted, the other states fell into line, save Rhode Island. But its lone absence would prove a blessing. A state that would not even send a del-

egation to Philadelphia was unlikely to approve anything done there, and that provided a further incentive to abandon the rule of unanimous state ratification that had thwarted the previous efforts to amend the Articles of Confederation.

Promising as these developments were, they hardly guaranteed that the convention would be able to agree on a plan of reform. Perhaps the most to be expected "from the Measure," John Jay wrote to John Adams, was "that it will tend to approximate the public Mind to the Change which ought to take place." Madison hovered between cautious optimism and prudent skepticism. The prospects for the convention remained "among the other arcana of futurity," he wrote in late February, "and almost as inscrutable as any of them." As late as April 15 he still worried whether Washington should "postpone his actual attendance, until some judgment can be made of the result of the meeting." Yet undeniably an opportunity now existed to rethink the basic premises of the Union, to imagine it as something more than a loose federation of sovereign states. But what form might its reconstitution take? That was the question Madison set out to answer in the late winter and early spring of 1787, in an exercise in applied political thinking for which the history he had studied offered neither precedents nor guidance.

Madison recorded the progress of his thinking in three letters to trusted Virginia correspondents (Jefferson, Randolph, and Washington) and a fourteen-page memorandum, "The Vices of the Political System of the United States," which he originally wrote solely for his own use. The letters laid out his agenda for Philadelphia, but the real intellectual breakthroughs appear in the memorandum, which reveals its provisional nature in the ample space for further jotting that Madison left between its twelve subheadings. Scholars rightly read "The Vices" as a first draft of the famous *Federalist* No. 10. But it is also much more: the visible evidence of how Madison thought his way through a complicated set of problems to fashion a diagnosis of the political evils besetting the republic. No other document in American history is quite like it.

To grasp the significance of these texts, it is essential to recall that the agenda of federal constitutional reform *before* 1787 had been defined solely in terms of adding a limited number of additional powers—pri-

marily over revenue and trade—to those that the Confederation already vested in Congress. There was little discussion of changing the structure of national government or empowering Congress to enact laws binding the American people as individuals. The existing unicameral Congress would remain “a diplomatic assembly”—as John Adams described it in his *Defence of the Constitutions of the United States*, published in London just as the delegates were preparing their journeys to Philadelphia—in which each state cast a single vote (even though its members voted as individuals, not unified delegations).

Madison’s analysis of the vices of the political system radically transformed this agenda in several ways:

First, rather than dwell on the familiar weaknesses of Congress and the formal limitations of the Confederation, Madison directed the brunt of his criticism against the failings of the states for their lapses in political judgment and pursuit of short-sighted policies. Asking what was wrong with Congress, he implied, was the wrong question. The real issue should be what was the matter with the states.

Second, in a single brilliant passage (item 7 in the memorandum), Madison devastated the foundational principle of the Confederation: the idea that the states could be trusted to implement national decisions in good faith while pragmatically adjusting congressional directives to local circumstances. Any federal system that relied on the states’ voluntary compliance with national measures was bound to fail, he concluded. National government had to operate not by recommendations or requisitions addressed to the states but by *laws* binding individuals.

Third, the convention should not limit its agenda to the manifest problems of national government under the Confederation. It also needed to deal with “those which are found within the states individually,” in particular with the “evils” arising from the “multiplicity,” the “mutability,” and worst, the “injustice of the laws of [the] States.”

From this diagnosis of the vices afflicting the *states*, Madison then derived the broad principles that guided his constitutional project for the *nation* and ultimately shaped the agenda of the convention.

First, and perhaps most idealistically, ways had to be found to improve the quality of deliberation and decision making at the national level of government, so that its quest to identify and pursue the public good would reduce the play of interest, opinion, and passion that seemed so prevalent within the states. The deep goal of constitution

making was not simply to assign powers and duties to institutions. It was also to foster the best deliberation possible. That required insulating the people’s elected representatives from the erratic currents of popular feeling that seemed to surge and swirl all too forcefully within the states. It also meant protecting the weaker branches of the executive and judiciary against the “impetuous vortex” of legislative domination.

Second, and arguably most important for the agenda of the convention, if the federal Union was to operate by real laws and not by mere recommendations, it had to be reconstituted as a government in the normal sense of the term, with the same bicameral legislature and independent executive and judicial departments that sound republicans expected any well-balanced regime to possess.

Third, and potentially most radically, if the convention also presented an opportunity to correct the injustice of state legislation, then the national government had to enjoy some power to oversee the state legislatures. The most provocative proposal that Madison carried with him to Philadelphia thus became the idea that it was “absolutely necessary” to arm the national government with “a negative *in all cases whatsoever* on the legislative acts of the States, as heretofore exercised by the Kingly prerogative” to veto provincial laws. The italicized phrase (emphasis Madison’s) exactly echoed the detested parliamentary Declaratory Act of 1766, and thus marked the radical—or reactionary—turn of Madison’s mind.

The reasoning supporting this drastic measure rested on the same argument that he would publicize eight months later in *Federalist* No. 10. “Contrary to the prevailing Theory,” Madison observed, in a phrase that illustrated his sense of discovery, smaller republics were more likely to enact unjust laws than larger ones were. Why? Because the constitution writers of 1776, and advocates of republican government more generally, had erred in thinking that the best security for a republic lay in the civic virtue of its citizens. That expectation was wholly naive, for most citizens acted on opinions and passions dictated by their private interests and fallible judgments. “Whenever therefore an apparent interest or common passion unites a majority,” Madison asked, “what is to restrain them from unjust violations of the rights and interests of the minority, or of individuals?” The short answer was nothing—not a “prudent regard” for the public good, not “respect for

character," not even religion. A better solution, he hypothesized, was "an enlargement of the sphere"—a larger republic that would embrace a greater array of interests, in which the "requisite combinations" would prove far more difficult to form than in the smaller compass of the states. This extended national republic would be entrusted with the authority to veto the unjust laws that state-based majorities would still enact.

Accounting for the public vices of the political system, then, required taking a healthy but realistic measure of the private vices of Americans. Unlike the constitution makers of 1776, Madison no longer presumed that his countrymen possessed heroic stocks of civic virtue. Yet his hypothesis about the advantages of large republics also reflected his particular commitments and experiences. The sweeping critique of state legislatures and legislation clearly drew upon his disillusionment with the petty ambitions of his fellow Virginia assemblymen. His belief that the real problem of rights was not to shield the people as a whole against arbitrary acts of government, but instead to protect minorities and even individuals from the democratic acts of popular majorities, was rooted in his early impassioned commitment to freedom of conscience: the one right that placed the greatest value on an individual's sovereign capacity to think and act for herself. That commitment was further strengthened by Madison's abhorrence of the paper money and debtor relief legislation that so many states seemed poised to enact in the mid-1780s. If popular majorities of small farmers, tenants, and artisans thought they would gain by such measures, no moral concern or political obligation could restrain their unjust conduct. What was to stop such self-interested majorities from eventually redistributing property in other ways?

These are the famous concerns and propositions that students in American history and government courses are expected to master. Madison certainly thought they marked a major shift in the received political wisdom of his age. He was obviously proud of the challenge he was posing to the orthodox views of leading writers such as "the celebrated Montesquieu," the author most associated with the idea that a stable republic could safely operate only in small homogeneous societies, where citizens' personal knowledge of their common interests would promote the virtue that Madison now deemed unattainable. And the proposed national veto on state laws was a critical feature of his

larger plan of reform: "the least possible encroachment on the State jurisdictions" the convention could make.

Yet for all the attention these elements of Madison's program have attracted, the greater transformation in the agenda he was preparing for Philadelphia stemmed from his critique of the dynamics of federalism. Perhaps no other passage in his six decades of political observations better illustrates his distinctive qualities of mind than the single-paragraph seventh item of "The Vices," which he subtitled "Want of sanction to the laws, and of coercion in the Government of the Confederacy." Madison packed more analytical force into this paragraph than most writers capture in whole treatises.

Madison opened his analysis with two simple historical observations. First, "the compilers" of the Articles of Confederation were not to be faulted for failing to give Congress the power to compel or coerce the states to do their federal duty. The dominant republican assumptions of the mid-1770s imbued them with "a mistaken confidence that the justice, the good faith, the honor, the sound policy" of the state legislatures would be enough. They shared "the enthusiastic virtue" that was the reigning value of the mid-1770s and that "the inexperience of the crisis" only reinforced.

Thus far Madison was reasoning like an academic historian, asking, Why did people in the past act as they did? His second observation was less academic but still historical: What have we learned since the Articles were written? A simple lesson: "Even during the war, when external danger supplied in some degree the defect of legal & coercive sanctions, how imperfectly did the States fulfil their obligations to the Union?" Since the peace, compliance had naturally grown even feebler.

From this point his thinking shifted in a very different direction, away from lessons of the past and toward a line of reasoning that looks very much like modern game theory, which studies how strategic choices affect a wide array of human actions. Now Madison considered the Confederation not as a historian asking what went wrong, but rather as a social scientist probing its basic structure. This analysis viewed American federalism as a continuing cooperative game in which different players—the state legislatures—would repeatedly ask whether it was in their interest to enforce or shirk their federal duties.

The starting point for this analysis was the deceptively simple question Madison posed after noting how badly the states had performed

since 1783: "How indeed could it be otherwise?" In rapid succession he delivered three answers to this question:

In the first place, Every general act of the Union must necessarily bear unequally hard on some particular member or members of it. Secondly the partiality of the members to their own interests and rights, a partiality which will be fostered by the Courtiers of popularity, will naturally exaggerate the inequality where it exists, and even suspect it where it has no existence. Thirdly a distrust of the voluntary compliance of each other may prevent the compliance of any, although it should be the latent disposition of all. Here are causes & pretexts which will never fail to render federal measures abortive.

Translated into the language of game theory, Madison's three answers could be restated as follows. A system of federalism requiring the voluntary compliance of the states with national measures will never work,

first, because states have different interests, and thus different incentives to execute, support, or shirk any particular measure; second, because some set of politicians in every state will always have personal incentives to oppose national measures in order to increase their own influence; and third, because even where the states do recognize common interests, doubts about each other's likelihood of complying will discourage every one from stepping forward to do the right thing (why should any state go first if it doubts whether others will act at all?).

Perhaps these conditions would not operate with equal force on every occasion. But they would do so often enough to foster a crippling attitude of "distrust" that could only worsen over time. The federal game Americans were currently playing would *always* expose the Union to the whims and interests of the member states.

It was this capacity to think like a historian and predict like a social scientist that led Madison to the radical conclusion that the Articles of Confederation had to be abandoned, not amended. The Union would have to be reconstituted on a completely different principle: as a government that would act by law, and not on states but on citizens. To do that it would have to be empowered to enact, execute, and adjudicate its own laws, and that meant replacing the single constitutional institution of a unicameral Continental Congress with the three independent

departments that any well-constructed republican government should possess. To create such a government, the convention would have to consider all the political and constitutional lessons Americans had been compiling since 1776—the same lessons that Madison had elaborated on in his letter to Caleb Wallace.

So Madison spent the early spring of 1787 reviewing his notes on ancient and modern confederacies, reflecting on his experience in state and national government, and doing political theory in the most creative sense of the term—all with the calculated intention of setting the agenda he believed the convention would need to follow. That agenda included one other critical calculation, which Madison described to his three Virginia correspondents as "the ground work" for everything else: "that a change be made in the principle of representation." Here too the Articles had to be abandoned, not modified. The equal state vote, which had been the rule since 1774, would give way to a rule of proportional representation. It would certainly apply to the lower house of the new legislature, and probably to the upper house as well—though Madison was toying with the notion that this future senate might not really be a representative body at all, but just a deliberative chamber where the nation's political wisdom could be concentrated.

Madison saw this change in the principle of representation as a matter of simple justice. Representation was about citizens, not governments, and thus it was important to design a national government that would act directly on the people, not through the states. As Madison calculated the chances of getting the convention to take this radical step, he thought he saw a way to prevail over the predicted objections of the smaller states. The change should appeal to the northern states because of "their present populousness; to the Southern by their expected advantage" in the future. As for the less populous states, they "must in every event yield to the predominant will." But the most important calculation was that the larger states would never make "the necessary concessions of power" unless this fundamental change took effect.

So Madison spent the final weeks before the convention simultaneously doing political theory as an applied art and making political calculations grounded in his theory. Just turned thirty-six, he embraced politics as his true vocation, though he and Monroe still had plans for becoming New York landlords. Madison did not share Jefferson's

yearnings for private happiness nor the goad of vanity that gnawed at John Adams. Perhaps the convention would have taken a different course had either or both of those luminaries been available to attend it. In their European absence, Madison was free to take the lead. A decade of public service had taught him the advantages of seizing the initiative that less industrious colleagues would be happy to yield, and distinctive faculties of mind left him uniquely qualified to frame an unprecedented debate.

As at Annapolis, Madison was first on the scene. He left New York on May 2, 1787, and reached Philadelphia on the fifth. Nine days later he was happy to hear the city bells chime in honor of Washington's arrival. Washington had kept busy at Mount Vernon until the last moment, supervising spring planting and instructing his trusted nephew George Augustine Washington what to do in his absence. The ride north was marred by "a violent headache & sick stomach" south of Baltimore and a choppy crossing of the Susquehanna. At Grays Ferry on the Schuylkill he traversed the same bridge his men had used en route to Yorktown in 1781. Washington meant to take rooms at the boarding-house where Madison was staying. But as soon as he "alighted" there, he was "warmly and kindly pressed by Mr. & Mrs. Rob. Morris to lodge with them I did so and had my baggage removed thither" — three doors down.

The general arrived just as the convention was scheduled to begin—except that Virginia and Pennsylvania were the only states whose delegates were present on the appointed day, May 14. If America's greatest man could be punctual, Madison must have wondered, could not others be so as well? The general was not amused. "These delays greatly impede public measures," he grumbled on May 20, while they were still awaiting a quorum, "and serve to sour the temper of the punctual members, who do not like to idle away their time." In one respect, though, delay proved a boon to Madison. It freed the Virginians to meet "two or three hours a day, in order to form a proper correspondence of sentiments." Their meetings produced the eleven-article Virginia Plan that Governor Randolph, as titular head of the delegation, introduced on Tuesday, May 29, four days after a quorum of seven states finally appeared. Had the other states been punctual, the convention might well have meandered into discussing general goals and prin-

ciples or naming a committee to shape an agenda before finally getting down to deliberation.

Instead, Madison's spring labors provided the basis for the Virginia Plan, and that plan in turn enabled the delegates to get to work right away. Once Randolph spoke, they realized that their task was not limited to amending the Articles of Confederation. True, the first resolution benignly stated that the Articles "ought to be so corrected & enlarged as to accomplish the objects proposed by their institution." But as Randolph went on, the delegates sensed that "corrected & enlarged" really meant "altered and transformed." Succeeding articles proposed creating a bicameral legislature, with a lower house elected by the people and an upper house elected by the lower. Beyond the powers the Continental Congress already enjoyed, this legislature could "legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation," as well as "negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union." There would be a national executive and judiciary, and an executive-judicial council of revision with a limited negative over acts of the legislature.

For the next fortnight the Virginia Plan provided the framework for discussion. The convention first sat as a committee of the whole, sparing Washington from presiding over the initial debates. (Nathaniel Gorham took the chair instead, honoring Massachusetts as the second-oldest province.) The convention met in the same main-floor assembly room of the State House where Congress had sat from 1775 to 1783. Like Congress, its deliberations were secret. Windows and doors were shut, and the air grew stale as the hours passed. But the weather that summer was moderate, not exceptionally hot, and the delegates were used to the humidity. Most of the fifty-five who attended sat silently, day after day, showing no ambition to be memorialized in the notes they saw Madison compiling from his front-and-center seat. The active speakers numbered no more than fifteen, but the engaged listeners embraced the entire company. There were moments when attention wandered, eyelids drooped, and perhaps a few doodles scratched their way across parchments lost to the archives. Then there was Luther Martin's numbing defense of states' rights on June 27–28, "delivered with much diffuseness & considerable vehemence," Madison noted, a polite