

CHAPTER FOUR

# Vices, Rebellion, and Constitution

*{His reading and study} surely made Madison the most cosmopolitan statesman never to have quit American shores. Indeed, it was often remarked a few years later that Madison was probably the best-read and best-informed member of the Constitutional Convention. — ADRIENNE KOCH*

Just three years since the signing of the Treaty of Paris, which officially ended the American Revolution, the nation's independence was under threat from a post-war economy that was in total shambles. Discontent was rising in all thirteen states, while the Sixth Confederation Congress was safely ensconced in New York City—ineffective, unproductive, and oblivious. Despite the obvious need for serious fiscal and political action, the nation's sole national governing assembly showed a surprising nonchalance, frequently even failing to achieve a simple quorum (the minimum number of delegates necessary to conduct business) because its legislators' attendance at congressional sessions was casual and unpredictable. In Massachusetts, the crisis had finally reached a boiling point, exacerbated by excessively high taxes, farmers' losing their homes, and the lack of a stable currency. To many of the state's citizens, particularly in the westernmost counties, it seemed that their oppressors were no longer residing in London, but rather were domestically born and bred and living in Boston.

Throughout the Commonwealth of Massachusetts in 1786, rebellious mobs acted to close down the state's hated court system, while simultaneously threatening and intimidating lawyers and judges who had callously presided over fore-

closures and imprisoned citizens for non-payment of debt. Even more alarming was an unsuccessful effort by a small group of insurgents led by a former captain in the Continental Army, Daniel Shays, to expand the rebellion by seizing the federal arsenal in Springfield. “Mob-ocracy” and chaos reigned throughout the state, leading one prominent statesman, Elbridge Gerry, to note, “The evils we experience flow from the excess of democracy.”<sup>1</sup>

In October, “Light Horse Harry” Lee contacted James Madison about the ominous events in Massachusetts. Lee was concerned that “Shays’ Rebellion” had the potential to spread to other states, including Virginia. “It is unquestionably true that present appearances portend extensive national calamity,” he wrote. “The contagion will spread and may reach Virginia.” The weakness of the federal government and its failure to respond were primarily responsible for the continuing hostilities. “The objects of the malcontents are alluring to the vulgar and the impotency of government is rather an encouragement to, than a restraint on, the licentious,”<sup>2</sup> Lee observed.

The imminent threat of anarchy frightened Madison. Securing domestic tranquility and protecting private property were among a government’s most basic and fundamental responsibilities, and yet the disorders in Massachusetts led by “internal enemies” threatened the very essence of civil society.<sup>3</sup> If the mob were allowed to use force and coercion, no man or household would be safe. The whim of the masses would effectively replace the rule of law. It was a prescription for a national disaster.

Thomas Jefferson, who was then serving as American minister to France, remained in close correspondence with Madison, who kept him informed about the unfolding events in Massachusetts. While Madison clearly recognized the peril to the existence of the fragile union, Jefferson showed a remarkable proclivity to excuse such radical actions. He wrote to Madison, “I like a little rebellion now and then. It is like a storm in the atmosphere.”<sup>4</sup> After the state militia finally suppressed Shays’ Rebellion, Jefferson cavalierly dismissed the danger, whimsically writing to Madison, “The late rebellion in Massachusetts [sic] has given more alarm than I think it should have done. Calculate that one rebellion in 13 states in the course of 11 years, is but one for each state in a century and a half. No country should be so long without one.”<sup>5</sup> He reiterated his astonishing belief in cyclical uprisings in a letter to William Stephens Smith. “What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure.”<sup>6</sup>

Such observations from afar were wholly out of touch with the serious reality of the American domestic political situation. Madison knew that the internal bedlam was an attestation to the lack of effective governance. The internal disorders were a national disgrace and a delight to the nation's enemies, particularly the British who saw them as evidence that the United States was failing as an independent nation and may yet return to Britannia's empire. Shays' Rebellion, though, did have at least one positive result in that it provided a much-needed catalyst for political change.

Madison had been long aware of the fundamental flaws inherent in the Confederation government. He had already personally served several frustrating terms in Congress as part of the Virginia delegation and was discouraged by the government's structural inefficiency.<sup>7</sup> In September 1786, Madison had optimistically attended the Annapolis Convention, which had been summoned to deal with a wide variety of commercial ailments and to consider reforms of the Articles of Confederation. Despite the obvious need, only five states—Virginia, North Carolina, Delaware, Pennsylvania, and New York—even bothered to show up. Worse, Maryland, the host state, refused to send delegates. The meeting adjourned in abject failure, but the delegates did issue a plaintive call for yet another convention to convene the following year with a mandate “to render the Constitution of the federal government adequate to the exigencies of the Union.”<sup>8</sup>

Madison retreated to Montpelier and there used his time to seriously study the problems with the Articles of Confederation. He began assembling dozens of scholarly books on government that had been provided by the crate load from France by his friend, Thomas Jefferson. He scoured each volume for historical precedents and wisdom by which to reform and remedy the current ills that had beset the American system of government. He compiled his notes under the heading: “Ancient and Modern Confederacies.”<sup>9</sup> After thirty-nine handwritten pages, sometimes notated in Latin and Greek, Madison concluded that all confederation governments were structurally doomed to failure since they lacked a strong, centralized unifying authority.<sup>10</sup>

The Annapolis fiasco had confirmed for Madison virtually all of his theoretical speculations about the innate weaknesses of confederation governments. With the next convention scheduled to convene in Philadelphia in May 1787, Madison began to conduct additional research in preparation for his participation at this vital meeting. Although never intended for publication, his resulting essay, “Vices of the Political System of the United States,” reflected Madi-

son's deliberate and profound analysis about the nature and scope of human government.

In his writings, Madison conceded that the current system of government under the Articles of Confederation had been an utter failure because the Confederation Congress lacked any real power to pass substantive or binding laws. Thus, compliance by the states to congressional requisitions was voluntary and therefore frequently left either ignored or unfulfilled, even during dire times of war or financial crisis. Madison argued that for any statutory law to be effective, a government must have sufficient power to enforce it. "A sanction is essential to the idea of law, as coercion is to that of Government," he explained. "The federal system being destitute of both, wants the great vital principles of a Political Cons[ti]tution."<sup>11</sup>

Madison openly acknowledged that the Articles of Confederation had been created in good faith by well meaning men, but he also recognized that it came "from a mistaken confidence that the justice, the good faith, the honor, the sound policy, of the several legislative assemblies would render superfluous any appeal to the ordinary motives by which the laws secure the obedience of individuals."<sup>12</sup> The idea of voluntary compliance with the law was sheer fancy, since no state legislature would willingly submit to laws imposed by the federal Congress. Sacrifice for the overall general welfare was wishful thinking, Madison thought. "Every general act of the Union must necessarily bear unequally hard on some particular member or members of [the country]."<sup>13</sup>

Under the provisions of the articles, the states retained the vast majority of power, which had the consequence of making the centralized government weak and ineffective. The absence of effective federal power posed a serious threat to the overall health of the nation and even to the individual liberty of its citizens. The various state legislative assemblies were filled with ambitious men who were little more than what Madison derided as "courtiers of popularity." These politicians shamelessly sought to ingratiate themselves with the general population by constantly passing popular laws, but ones of dubious merit. As a result, "every year, almost every session, adds a new volume," Madison noted.<sup>14</sup> These copious and frivolous laws had little to do with the welfare of the people.

*As far as laws are necessary, to mark with precision the duties of those who are to obey them, and to take from those who are to administer them a discretion, which might be abused, their number is the price of liberty. As far as the laws exceed this limit, they are a nuisance: a nuisance of the most pestilent kind.<sup>15</sup>*

The dangers of a tyranny of the majority were far more likely on the state and local level, where personal interests were far more parochial.

It was during this critical period, immediately prior to the Constitutional Convention, that Madison developed his sophisticated views on the need to create a new, modern republican form of government. It had to be a carefully devised system, through which power would be delegated and diffused, and where elections would “extract from the mass of the Society the purest and noblest characters” who would selflessly serve the public good.<sup>16</sup>

Madison arrived early in Philadelphia on May 5, 1787. He duly noted in his meteorological journal that the temperature that day reached a high of sixty-eight degrees and that the “air [was] thick” and the “sky muddy.” Two days later, as he patiently awaited the coming of his fellow delegates, he observed that the “humming birds [were] frequent” and “the wood bine in blossom.”<sup>17</sup> The other members of the Virginian delegation, slowed by perilous roads and poor transportation, arrived separately over the ensuing two weeks. They were collectively an impressive assemblage of talent and brilliance. From Gunston Hall in Fairfax County was the author of the Virginia Declaration of Rights, George Mason; from Richmond, came the renowned lawyer and professor, George Wythe; and finally, there was the governor of the commonwealth, Edmund Randolph.<sup>18</sup> The most important delegate from Virginia, George Washington, once again left his peaceful retirement at Mount Vernon to answer his nation’s call to duty during a perilous time of crisis.<sup>19</sup> The fame, honor, and dignity of the American Cincinnatus would immediately provide a sense of legitimacy to the convention’s proceedings. In a letter to Thomas Jefferson, Madison noted that “Genl. Washington who arrived on Sunday evening amidst the acclamations of the people, as well as more sober marks of the affection and veneration which continues to be felt for his character.”<sup>20</sup>

Ultimately, fifty-five men would attend the Philadelphia convention, including Benjamin Franklin and Alexander Hamilton. Some notable absences, however, included Thomas Jefferson and John Adams, who were serving the government abroad. Madison’s great concern was the nonattendance of Patrick Henry, who allegedly refused to attend the convention because “he smelt a rat.”<sup>21</sup> In an earlier letter to George Washington, Madison had explained that Henry could ultimately become the leader of any opposition that may arise to the convention’s final outcome.

*I hear from Richmond with much concern that Mr. Henry has positively declined his mission to Philada. Besides the loss of his services on that theatre,*

*there is danger I fear that this step has proceeded from a wish to leave his conduct unfettered on another theatre where the result of the Convention will receive its destiny from his omnipotence.*<sup>22</sup>

A quorum was finally achieved on Friday, May 25, when twenty-nine delegates from nine states gathered at the Pennsylvania State House.<sup>23</sup> Notably absent were New Hampshire, Maryland, and Connecticut, but their delegations would eventually arrive. Rhode Island, on the other hand, obstinately refused to participate in any efforts to modify the articles and boycotted the entire convention process.<sup>24</sup>

Delegate Robert Morris began the official business by nominating George Washington to serve as the assembly's president. The motion was quickly seconded and agreed to by unanimous consent.<sup>25</sup> It would be the last time that the delegates would be in complete agreement.

The diminutive James Madison, sitting "in front of the presiding member, with the other members on my right and left hand," recorded it all, taking detailed notes of the proceedings.<sup>26</sup>



INDEPENDENCE NATIONAL HISTORICAL PARK

The Assembly Room at the Pennsylvania State House. Here the delegates to the Constitutional Convention met during the summer of 1787. Eventually fifty-five men would attend the proceedings, during which much of the debate centered around the Virginia Plan written by James Madison and proposed by Governor Edmund Randolph.

*The nomination [of George Washington] came with particular grace from Penna. As Doct Franklin alone could have been thought of as a competitor. The Doc[tor] was himself to have made the nomination of General Washington, but the state of the weather and of his health confined him to his house.<sup>27</sup>*

Madison grasped the momentous nature of the convention more than most, conscientiously attending every session and taking copious notes. His written record of the proceedings, which would not be published until after his death in 1836, constitutes the most comprehensive documentation of the Constitutional Convention's historic debates and subsequent actions.

More state delegates arrived over the weekend, and the next session of the convention took place on Monday, May 28. It dealt primarily with establishing the various rules and the mundane procedures necessary to conduct orderly business. The members agreed that each of the states would have a single vote regardless of population or geographical size, mirroring the existing structure of the Confederation Congress under the Articles. Moreover, all of the convention's sessions were agreed to be conducted in private with the attending delegates sworn to secrecy in order to allow for an open and unfettered debate.<sup>28</sup> This self-imposed code of silence would effectively allow the various members the luxury of being able to express themselves freely and without fear of public censure. It had the additional benefit of providing them the autonomy to change their minds and alter their positions based upon persuasion or political necessity.

The Philadelphia Convention brought together the collective wisdom of some of the greatest political thinkers in the United States. They also brought with them their existing prejudices, personal self-interest, and human fallibility. Over the course of the ensuing three months, the representatives would argue, discuss, cajole, compromise, and complain. It remains one of the few times in human history that there was substantive and consequential debate concerning essential questions about governance and human freedom. What is the nature of government? How does a government maximize rights and liberty? What are the obligations and responsibilities of citizens? How is it possible to limit power and prevent tyranny?

After a tranquil beginning, the contentious debates began on May 29, when Virginia Governor Edmund Randolph first introduced the Virginia Plan.<sup>29</sup> The document had been conceived and written by James Madison and served to frame the course of subsequent discussions. Its fifteen resolutions called for a fundamental and radical alteration of the existing form of government and included provisions for the creation of a national two-house legislature. Madison insisted

that state representation in this bicameral body be proportional, based upon the size of an individual state's population. Likewise, the Virginia Resolution called for the creation of a chief executive, the establishment of a national judiciary, and a systematic process of amendment.<sup>30</sup>

Objections to Virginia's proposal began almost immediately. Charles Pinckney of South Carolina wondered if the centralized system would abolish state governments.<sup>31</sup> Fellow South Carolinian, Edmund Rutledge, questioned whether the chief executive would have too much power, establishing a *de facto* monarchy in the United States.<sup>32</sup> But clearly the biggest obstacle to the plan came from the strong opposition of the small states, who demanded equality of representation in a national legislature. The delegates from these jurisdictions had just reason to be concerned. They feared that under the proposed system the small states would become irrelevant, at the mercy of the population titans—Virginia, Pennsylvania, and Massachusetts.<sup>33</sup> Luther Martin of Maryland dismissed the entire idea of proportional representation in Congress as little more than a “system of slavery.”<sup>34</sup>

Further complicating the already tense situation was the insistence of southern delegates that slaves be included in any formula used for determining representation in the new Congress. This would, in effect, greatly inflate the region's influence in any national legislature, something that Gouverneur Morris of Pennsylvania exposed as preposterous.

*Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them Citizens and let them vote. Are they property? Why then is no other property included? The Houses in this city [Philadelphia] are worth more than all the wretched slaves which cover the rice swamps of South Carolina. The admission of slaves into the Representation when fairly explained comes to this: that the inhabitant of Georgia and S. C. who goes to the Coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections & damns them to the most cruel bondages, shall have more votes in a Govt instituted for protection of the rights of mankind, than the Citizen of Pa. or N. Jersey who views with a laudable horror, so nefarious a practice.<sup>35</sup>*

Despite significant opposition, ultimately a compromise was agreed to by which slaves would be counted as three-fifths of a person for purposes not only for representation but also for taxation.<sup>36</sup> This decision on slavery would have



profound consequences for the nation and American history, but it would be deferred for future generations to solve.

On June 15, New Jersey responded and formally countered Virginia by introducing its own plan. Introduced by William Paterson, it called for the creation of a national, unicameral legislature with equal voting representation for all states, albeit with more power than that of the Confederation Congress.<sup>37</sup> James Madison argued effectively against what became known as the “small state” plan and was able to orchestrate its initial defeat by assembling a fragile coalition of southern and large states, but it was becoming obvious that the convention was rapidly teetering towards disaster. On July 16, when the time came for a final decision on the original proportional plan for the legislature, the vote was deadlocked. “So it was lost,”<sup>38</sup> a dismayed Madison wrote in his *Notes*. William Paterson quickly declared “that it was high time for the Convention to adjourn that the rule of secrecy ought to be rescinded and that our Constituents should be consulted.”<sup>39</sup> There would be no concessions by the small states on the fundamental principle of equality.

Fortunately, cooler heads prevailed. Roger Sherman of Connecticut used the opportunity to reintroduce his previously rejected compromise proposal whereby the legislative branch would consist of a lower house—the House of Representatives—with representation based upon population and an upper house—the Senate—with the states equally represented. The motion miraculously passed by a single vote, pacifying both sides and saving the convention from dissolving into chaos.

As the new Constitution gradually began to take form, Madison’s vision for an American republic became more apparent. Power under the federal system would be defused to prevent tyranny. Only the House of Representatives would be directly elected by the people and as such, it would be the more volatile assembly and subject to popular passions. The Senate would be appointed by the state legislatures with members serving six-year terms. Ideally, it would serve as the more deliberative and thoughtful body. As Madison explained, “The use of the Senate is to consist in its proceedings with more coolness, with more system, and with more wisdom, than the popular branch.”<sup>40</sup> Finally, the executive would be chosen by electors appointed by the states and the judiciary appointed by the president and confirmed by the Senate. It was hoped by Madison that the government would thus be populated with the “purest and noblest characters” of American society.<sup>41</sup>

As the hot, miserable summer of 1787 drew to a close, the convention neared completion. A final version of the draft Constitution had been prepared and presented on September 12, when Elbridge Gerry and George Mason shocked the exhausted delegates by demanding the inclusion of a Bill of Rights. Mason claimed that this matter could be accomplished in a mere “few hours,” but after weeks of agonizing debate, painful negotiation, and compromise, the other frustrated delegates disagreed. Besides, the Constitution as written had been carefully constructed with specific and clearly delineated powers; there was no need for a declaration of rights when these were already structurally secure. To add one would be dangerous since it would imply powers that the federal government clearly did not have. The vote against the proposal was unanimous, which further annoyed Gerry and Mason.<sup>42</sup>

Governor Edmund Randolph joined the two disgruntled delegates in their opposition to the final document. As the critical vote approached, Mason contentiously demanded that an entirely new convention be called and the entire process begun anew. “This Constitution had been formed without the knowledge or idea of the people,” he said. “A second Convention will know more of the sense of the people, and be able to provide a system more consonant to it.”<sup>43</sup> All such last-minute proposals were soundly defeated, and the Constitution was approved as written and ordered engrossed.

On Monday, September 17, 1787, the delegates gathered for the last time in the convention hall. After the Constitution was read to the assembly, an elderly Benjamin Franklin asked to be recognized. Realizing that some of the members still harbored ill-feelings, Franklin eloquently urged them to put aside their disagreements and support the new Constitution.

*Mr. President*

*I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others ...*

*From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confi-*



The Virginia Signers of the Constitution. James Madison and John Blair signed for Virginia, while George Washington signed as president of the Convention. George Mason and Edmund Randolph, however, refused to sign due to the document's failure to include an explicit Bill of Rights.

*dence to hear that our councils are confounded like those of the Builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die ...*

*On the whole, Sir, I can not help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.*<sup>44</sup>

Despite his persuasive appeal for unanimity, Elbridge Gerry, George Mason, and Edmund Randolph still refused to sign the Constitution without the addition of a Bill of Rights. They would leave Philadelphia determined to orchestrate the Constitution's defeat during the forthcoming state ratification debates.<sup>45</sup> As James Madison noted in a letter to Thomas Jefferson, "Col. Mason left Philada. in an exceedingly ill humour indeed ... He considers the want of a Bill of Rights as a fatal objection."<sup>46</sup>

George Washington, as the president of the convention, was the first member to sign the new Constitution. Ultimately thirty-nine men would attach their names to the historic document, including James Madison and John Blair from Virginia. Alexander Hamilton was the lone delegate from New York to sign, while Benjamin Franklin was one of eight signatories from Pennsylvania.<sup>47</sup> As he observed the other delegates signing the historic document, Franklin mused.

*Looking towards the Presidents Chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters had*

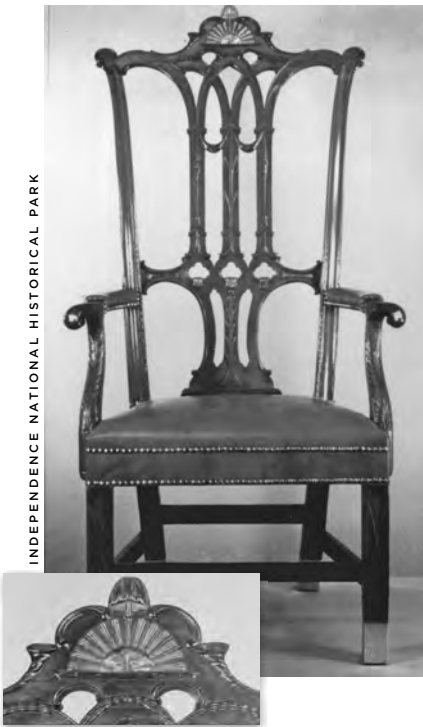
*found it difficult to distinguish in their art a rising from a setting sun. I have said he, often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting Sun.*<sup>48</sup>

With the business finally concluded, Madison ended his extensive notes by recording simply that “the Convention dissolved itself by Adjournment *sine die*.”<sup>49</sup> There would, however, be no time for congratulations or celebration, since Article VII mandated that the states call special ratification conventions to approve the document. The magic number for approval was nine of the thirteen states, although the fate of the new government truly rested with the critical states of Massachusetts, Pennsylvania, New York, and Virginia.

Rather than return home to Virginia, James Madison instead travelled to New York to report to the Confederation Congress and to prepare for the ratification process. It proved to be a fortuitous decision, since opposition to the Constitution was already beginning to coalesce. The fragile nation’s newspapers were filled with letters from its angry opponents, many making outlandish accusations and renewing demands that a new convention be convened.

Alexander Hamilton realized that the ultimate success and ratification of the document in his home state of New York was in serious jeopardy unless a reasoned and lucid response was rapidly organized. On October 27, 1787, writing under the pseudonym Publius, Hamilton published the first of what would become known as the *Federalist Papers*. These detailed explanations of the philosophy and structure of the Constitution were intended for the “People of the State of New York,” but the articles were circulated and republished in several news-

George Washington’s chair from the Constitutional Convention. Benjamin Franklin observed that the ornamentation on the chair was a rising sun, symbolic of the political birth of the new republic.



papers throughout the United States, thus expanding their political impact.<sup>50</sup> In just three weeks, Hamilton prolifically published seven of his sophisticated political essays and was successfully able to enlist Madison's help in contributing to this vital political endeavor.<sup>51</sup> Madison's first essay, "The Federalist No. 10," appeared in the newspapers on November 21.<sup>52</sup>

Since the veil of secrecy had finally been lifted from the delegates, Madison felt that it was his duty to inform Thomas Jefferson about the Convention's outcome, fully aware that his old friend may well oppose in theory the final document. In a long and extended seventeen-page letter, Madison attempted to reassure Jefferson that the Convention had been nothing "less than a miracle."<sup>53</sup> Its political remedy was desperately needed, but Jefferson, having lived abroad for four years and isolated from the domestic turmoil, failed to fully grasp the continuing damage being done to the nation by the want of effective government. Although Jefferson was a great theorist and brilliant thinker, he regularly failed to appreciate the stark realities of the political world or the darker side of human nature. Madison would later excuse these notable lapses by explaining that "allowances ought to be made for a Habit in Mr. Jefferson as in others of great Genius in expressing in strong and round Terms, impressions of the moment."<sup>54</sup>

As expected, Jefferson's response to the new Constitution was tepid. His return letter to Madison listed his extensive objections along with the caveat, "I am not a friend to a very energetic government. It is always oppressive."<sup>55</sup> He also sided with the cantankerous George Mason on the need for the inclusion of a Bill of Rights. "A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference."<sup>56</sup> He ended his discourse by expressing his preference for the will of the majority.

*After all, it is my principle that the will of the Majority should always prevail. If they approve the proposed Convention in all it's [sic] parts, I shall concur in it cheerfully, in hopes that they will amend it whenever they shall find it work wrong. I think our governments will remain virtuous for many centuries; as long as they are chiefly agricultural; and this will be as long as there shall be vacant lands in any part of America. When they get piled upon one another in large cities, as in Europe, they will become corrupt as in Europe. Above all things I hope the education of the common people will be attended to; convinced*

*that on their good sense we may rely with the most security for the preservation of a due degree of liberty.*<sup>57</sup>

Over the next several months, Jefferson's considerable musings would often be used by the anti-federalist opponents of the Constitution to justify their positions. Still, Madison continued to carefully and methodically explain the principles of the new, republican government in his ongoing contributions to the *Federalist Papers*. In "The Federalist No. 49," he explained that the proposed government would have an elaborate system of checks and balances that would help prevent abuse. Furthermore, by structurally dividing power between the three branches of government, this would help thwart tyrannical impulses. Madison recognized the absolute necessity of creating a government of limited and defined powers to ameliorate the effects of the public's propensity to promote its self interests over the nation's general welfare. In an ideal world, Madison wrote, reasoned judgment along with a "reverence for the laws would be sufficiently inculcated by the voice of an enlightened reason." This was sheer fantasy since "a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato."<sup>58</sup> His most famous essay, "The Federalist No. 51," went even further.

*But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.*<sup>59</sup>

Several of the state ratifying conventions had already met by early spring 1788 and the Constitution had passed easily in all but Massachusetts, where the vote was a razor-thin 187-168 in favor.<sup>60</sup> The true test of the document, though, would come in Virginia and New York, where there was considerable opposition, and the ratifying conventions would not meet until June.

The Virginia Convention assembled in Richmond on June 2, 1788. James Madison had been elected as a delegate from Orange County, while both Patrick Henry and George Mason had been selected to represent their constituencies. Edmund Pendleton was voted to serve as the chairman.<sup>61</sup>

The delegates agreed that they would discuss the Constitution clause by clause, a tactic that clearly favored Madison and his encyclopedic knowledge of the document.<sup>62</sup> But it was Patrick Henry who fired the opening salvo of the debate with

his typically compelling oratory. He challenged the very legitimacy of the Constitution Convention, contending that it was an insidious effort aimed at destroying the existing states.

*Have they said, We, the states? Have they made a proposal of a compact between states? If they had, this would be a confederation. It is otherwise most clearly a consolidated government. The question turns, sir, on that poor little thing—the expression. We, the people, instead of the states, of America. I need not take much pains to show that the principles of this system are extremely pernicious, impolitic, and dangerous. . . . Here is a resolution as radical as that which separated us from Great Britain. It is radical in this transition; our rights and privileges are endangered, and the sovereignty of the states will be relinquished.*<sup>63</sup>

Ignoring the decision of the convention to deal with the specifics of the document, Henry continued to use generalities and assertions to question the principles and philosophy of the new government. He demanded that substantive, structural amendments be added to the original document, but alleged that if the new Constitution were adopted, it precluded the states from asserting their power to do so.

*The necessity of amendments is universally admitted. I ask, if amendments be necessary, from whence can they be so properly proposed as from this state? The example of Virginia is a powerful thing, particularly with respect to North Carolina, whose supplies must come through Virginia. Every possible opportunity of procuring amendments is gone, our power and political salvation are gone, if we ratify unconditionally.*<sup>64</sup>

Madison stoically endured Henry's tirades until it was finally his time to respond. He knew that to effectively counter Henry's eloquence, Madison would have to persuade the Virginia delegates with logic and facts. He urged the members of the convention to avoid being emotionally swayed by oratory and rhetoric and instead

*examine the Constitution on its own merits solely: we are to inquire whether it will promote the public happiness: its aptitude to produce this desirable object ought to be the exclusive subject of our present researches. In this pursuit, we ought not to address our arguments to the feelings and passions, but to those*

*understandings and judgments which were selected by the people of this country, to decide this great question by a calm and rational investigation.*<sup>65</sup>

Over the next several days of heated debate, Madison spoke regularly, sometimes delivering as many as seven speeches in a single day. John Marshall later observed that “Mr. Henry had without the greatest power to persuade. Mr. Madison had the greatest power to convince.”<sup>66</sup>

It had been a strategic decision not to allow the ratification conventions to alter the Constitution. The document would have to be either accepted or rejected as a whole to ensure that all of the states were considering the same document. As Alexander Hamilton later wrote, “The Constitution requires an adoption *in toto*, and *for ever*.”<sup>67</sup> Madison was forced to concede that the first Congress would consider amendments, but this would only occur after the government had been approved and was functional. The Henry faction was livid and unwilling to trust the good intentions of the Constitution’s supporters. Henry again questioned, “Do you enter into a compact first, and afterwards settle the terms of the government?”<sup>68</sup>

After three weeks of heated discussions, the final vote on ratification in Virginia was eighty-nine in favor with seventy-nine opposed. George Wythe’s committee added a caveat to the approval, expressing the delegates’ expectation that the new Congress should add a bill of rights, and provided a list of suggested amendments.

New Hampshire had become the ninth state to ratify the Constitution a few days earlier, which technically fulfilled the requirement for the new document to go into effect, but the Virginia decision was far more important. It had a direct influence on the outcome of the vote in New York, where the document passed the following month by a slim thirty to twenty-seven vote in favor. Although North Carolina and Rhode Island would not ratify until later, and hence would not participate in the first federal elections, the remaining ratifying states began preparations for the meeting of the new government in 1789.

Madison once again returned to New York and wrote to Thomas Jefferson about the final positive outcome of the ratification debates. Jefferson responded graciously, but again gently reminded Madison of the need for the inclusion of a Bill of Rights. “I sincerely rejoice at the acceptance of our new constitution by nine states. It is a good canvas, on which some strokes only want retouching.”<sup>69</sup>

Madison responded to Jefferson’s letter by outlining his hopes that a predominantly federalist government would soon be elected and which would be





The Preamble from the United States Constitution. The phrase “We the People” indicated the founders’ belief that the document derived its sovereignty from the nation’s citizens rather than from the state governments.

committed to the implementation of the new federal Constitution. Madison himself would be elected to the first House of Representatives, and George Washington’s election as the nation’s first president was a foregone conclusion, Madison explained.

*Notwithstanding the formidable opposition made to the new federal government, first in order to prevent its adoption, and since in order to place its administration in the hands of disaffected men, there is now both a certainty of its peaceable commencement in March next, and a flattering prospect that it will be administ[ered] by men who will give it a fair trial. General Washington will certainly be called to the Executive department. Mr. Adams who is pledged to support him will probably be the vice president.*<sup>70</sup>

The successful ratification of the U.S. Constitution was, in many ways, the final chapter of the American Revolution. The new republican structure provided a remarkably practical and stable government that guaranteed the theoretical rights that had ostensibly been won on the battlefield. Near the end of his life, Madison would marvel, “The happy union of these States is a wonder: their Constitution a miracle: their example the hope of Liberty throughout the World.”<sup>71</sup>

## ENDNOTES

Epigraph: Adrienne Koch quoted in William Lee Miller, *The Business of Next May: James Madison and the Founding* (Charlottesville: University of Virginia Press, 1992), 15.

<sup>1</sup> Elbridge Gerry quoted in Leonard L. Richards, *Shay’s Rebellion: The American Revolution’s Final Battle* (Philadelphia: University of Pennsylvania Press, 2002), 134.

<sup>2</sup> Light Horse Harry Lee to James Madison, October 25, 1786, in R.A. Rutland, *The Papers of James Madison: 9 April 1786-24 May 1787*, (Chicago: University of Chicago Press, 1975), 145.

<sup>3</sup> Madison in Rutland, *Papers of James Madison: 10 March 1784-28 March 1786*, 278.

<sup>4</sup> Thomas Jefferson quoted in Peterson, 102.

<sup>5</sup> Thomas Jefferson to James Madison, December 20, 1787 in James Morton Smith, 514.

<sup>6</sup> Thomas Jefferson to William Stephens Smith, November 13, 1787, in Bernard Bailyn, ed., *The Debate on the Constitution: Federalists and Antifederalist Speeches during the Struggle over Ratification* (New York: Library of America, 1993), 310.

<sup>7</sup> Under the provisions of the Articles, each state had one vote in the national legislature but could send

a delegation consisting of between two and seven delegates.

<sup>8</sup> Ketcham, *James Madison: A Biography*, 185.

<sup>9</sup> Madison's notes on "Ancient and Modern Confederacies" are reprinted in their entirety in Robert A. Rutland, ed., *The Papers of James Madison: 9 April 1786-24 May 1787* (Chicago: University of Chicago Press, 1975), 4-24.

<sup>10</sup> Rutland, *9 April 1786-24 May 1787*, p. 4.

<sup>11</sup> Madison, "Vices of the Political System of the United States," quoted in Rutland, *9 April 1786-24 May 1787*, 350.

<sup>12</sup> *Ibid.*, 350.

<sup>13</sup> *Ibid.*, 351-352.

<sup>14</sup> *Ibid.*, 353.

<sup>15</sup> *Ibid.*, 353.

<sup>16</sup> *Ibid.*, 357.

<sup>17</sup> *Ibid.*, 422.

<sup>18</sup> William Lee Miller, *Business of Next May*, 61. The entire six-member Virginia delegation comprised John Blair, James Madison, James McClurg, George Mason, George Washington, and George Wythe.

<sup>19</sup> Washington was known as an American "Cincinnatus." In 457 BC, Lucius Quinctius Cincinnatus was called out of retirement to save Rome from an enemy tribe. He left his farm to take up the sword in the defense of his country. Once the enemy was defeated, Cincinnatus willingly gave up power and returned to his farm rather than become the permanent dictator of Rome. The analogy of Washington and his service in the American Revolution was apropos.

<sup>20</sup> Madison to Thomas Jefferson, May 15, 1787, quoted in Rutland, *9 April 1786-24 May 1787*, 415.

<sup>21</sup> Mayer, *Son of Thunder*, 370.

<sup>22</sup> Madison to George Washington, March 18, 1787, quoted in Rutland, *9 April 1786-24 May 1787*, 316.

<sup>23</sup> It would be decided in a subsequent session that a quorum would consist of seven states.

<sup>24</sup> David O. Stewart, *The Summer of 1787: The Men Who Invented the Constitution* (New York: Simon & Schuster, 2007), 47.

<sup>25</sup> See James Madison's notes on the Constitutional Convention republished in a modern edition by Adrienne Koch, *Notes of Debates in the Federal Convention of 1787 Reported by James Madison*, (Athens: Ohio University Press, 1984), 23.

<sup>26</sup> Madison quoted in Stewart, 48.

<sup>27</sup> Madison, *Notes*, 24.

<sup>28</sup> *Ibid.*, 24-27.

<sup>29</sup> Bailyn, 1047-1048.

<sup>30</sup> *Ibid.*, 30-33. The actual document (the Virginia Plan) can be viewed at the National Archives in Washington, D.C. It is available digitally at: <http://www.archives.gov/historical-docs/>

<sup>31</sup> *Ibid.*, 34.

<sup>32</sup> *Ibid.*, 67.

<sup>33</sup> *Ibid.*, 95.

<sup>34</sup> Luther Martin quoted in Stewart, 102.

<sup>35</sup> Gouverneur Morris quoted in Madison, 411.

<sup>36</sup> See Article I, Section 2 of the United States Constitution.

<sup>37</sup> Madison, *Notes*, 117.

<sup>38</sup> *Ibid.*, 299.

<sup>39</sup> William Paterson quoted in Madison, 299.

<sup>40</sup> Madison, *Notes*, 83.

<sup>41</sup> See The Federalist No. 10.

<sup>42</sup> Madison, *Notes*, 630.

<sup>43</sup> *Ibid.*, 651.

<sup>44</sup> Franklin's speech to the Convention quoted by Madison, *Notes*, 653-654.

<sup>45</sup> Stewart, 240.

<sup>46</sup> Madison to Thomas Jefferson, October 24, 1787, quoted in Bailyn, p. 203.

<sup>47</sup> New Hampshire had two signatories; Massachusetts—two; Connecticut—two; New York—one; New Jersey—four; Pennsylvania—eight; Delaware—five; Maryland—three; Virginia—three including George Wash-

ington; North Carolina—three; South Carolina—four; and Georgia—two. Rhode Island would not ratify the Constitution until 1790.

<sup>48</sup> Franklin quoted by Madison, *Notes*, 659.

<sup>49</sup> Madison, *Notes*, 659.

<sup>50</sup> Syrett and Cooke, *Papers of Alexander Hamilton*, 287-288.

<sup>51</sup> John Jay also contributed to *The Federalist Papers*. According to historian Adrienne Koch, "Jay's contribution of eight numbers, none of them first-rate, hardly justifies giving him a full share in the collaboration." Koch, *Jefferson and Madison: The Great Collaboration*, 48. The authorship of some of the papers remains in doubt. Most historians credit Madison with writing twenty-nine essays, Hamilton fifty-one, and Jay five. Ketcham, *James Madison: A Biography*, 239.

<sup>52</sup> Ketcham, *James Madison: A Biography*, 239.

<sup>53</sup> Madison quoted in James Morton Smith, 446.

<sup>54</sup> Madison to James Robertson, April 20, 1831, available at: [http://www.jmu.edu/madison/center/main\\_pages/madison\\_archives/quotes/great/constitution.htm](http://www.jmu.edu/madison/center/main_pages/madison_archives/quotes/great/constitution.htm).

<sup>55</sup> Thomas Jefferson quoted in James Morton Smith, 450.

<sup>56</sup> Jefferson quoted in James Morton Smith, 451.

<sup>57</sup> Thomas Jefferson to James Madison, December 20, 1787, in James Morton Smith, 514.

<sup>58</sup> *The Federalist Papers* are readily available online from a variety of sources including the Avalon Project at the Yale Law School. See *The Federalist No. 49* available at: <http://www.yale.edu/lawweb/avalon/federal/fed.htm>.

<sup>59</sup> *The Federalist No. 51*.

<sup>60</sup> In December 1788, Delaware, Pennsylvania, and New Jersey had ratified the Constitution. Georgia and Connecticut approved the document in January, followed by Massachusetts in February. By the time the Virginia, New York, and New Hampshire conventions began in June, eight states had approved the document.

<sup>61</sup> Ketchum, 253.

<sup>62</sup> *Ibid.*, 254.

<sup>63</sup> Patrick Henry quoted in Richard D. Brown, *Major Problems in the Era of the American Revolution: 1760-1791*, Major Problems in American History. New York, Houghton-Mifflin Company, 2000), 456.

<sup>64</sup> Henry quoted in Brown, 457.

<sup>65</sup> Madison quoted in Peterson, 157.

<sup>66</sup> John Marshall quoted in Joseph Ellis, *American Creation: Triumphs and Tragedies at the Founding of the Republic* (New York: Alfred A. Knopf, 2007), 121.

<sup>67</sup> James Madison quoted in Robert Morton Smith, 521.

<sup>68</sup> Patrick Henry quoted in Peterson, 161.

<sup>69</sup> Thomas Jefferson to James Madison, July 31, 1788, in Robert Morton Smith, 545.

<sup>70</sup> James Madison to Thomas Jefferson, December 8, 1788, in Robert Morton Smith, 579.

<sup>71</sup> David B. Mattern, ed., *James Madison's "Advice to My Country"*. Charlottesville, University Press of Virginia, 1997).