

# THE MADISONIAN MOMENT

FROM:

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FEW BOOKS HAVE CONTRIBUTED more to our understanding of the larger world of ideas within which American constitutionalism took shape than J. G. A. Pocock's *The Machiavellian Moment*. In this influential study of the transmission of republican ideas from sixteenth-century Florence to seventeenth-century England and thence to eighteenth-century America, Pocock gave his title phrase two meanings. "The Machiavellian moment" was, first, the point in historical time when "Machiavellian thought made its appearance"—and why it did so thus deserves explanation. But the term has a second meaning. It is a specific problem not only *in* historical time but also *about* historical time itself, and the way in which Machiavelli and his contemporaries thought about the life cycle of republican polities. It was "the moment in conceptualized time in which the republic was seen as confronting its own temporal finitude, as attempting to remain morally and politically stable in a stream of irrational events conceived as eventually destructive of all systems of secular stability." In this second sense, the problem of the Machiavellian moment was eventually transmitted to the remarkable generation who "founded" the American republic.<sup>1</sup> And they bequeathed it in turn to those who would come after. For the argument that later interpretations of the Constitution should seek either to conform to or restore its original meaning is a much diluted yet still recognizable version of the Machiavellian notion of *ridurre ai principii*.

It was as a Machiavellian (in this sense) that James Madison spoke to his colleagues in Philadelphia on June 26, 1787. "In framing a system which we wish to last for ages, we shd. not lose sight of the changes

which ages will produce," he observed. And whereas Machiavelli was concerned only with the fate of individual republics, Madison was prepared to give his republican project a universalist significance. "[I]t was more than probable we were now digesting a plan which in its operation will decide forever the fate of Republican Govt.," Madison reminded his colleagues—a sentiment which drew a quick second from Alexander Hamilton (even as he "acknowledged himself not to think favorably of Republican Government").<sup>2</sup>

The Madisonian moment of 1787 owed much, as Pocock suggests, to the heritage of Machiavelli and James Harrington, the crucial figure in transmuting Florentine concepts into the language of Anglo-American politics. But 1787 was Madison's moment in a more immediate sense. He had not consciously devoted his life to the goal of constitutional reform with the same ascetic fervor that later revolutionaries brought to their quests for justice (or power). Nor were his ambitions as relentless as those which drove later generations of democratic politicians to seek higher (or lower) office. But Madison went to Philadelphia in the grip of a deep passion, convinced that he had found a complete remedy for the vices of the American political system. Much of the history of the Convention can be written as the story of his efforts to persuade his colleagues that his diagnosis was accurate. By his own rigorous standards and high expectations, that effort fell short. But from the start, it elevated both the substance and the character of the debates well beyond the prevailing expectations.



FOR MADISON, AS FOR SO many of his contemporaries, the experience of revolution involved more than a transfer of political loyalties from Great Britain to the newly independent republic. It was also liberating in a profoundly personal way. On the eve of independence, Madison was a directionless young man with little apparent ambition. After completing his studies at the College of New Jersey in Princeton in 1772, he returned to Montpelier, the family plantation, where he spent his time reading and fretting about his health and his isolation in the Virginia piedmont, while avoiding any choice of vocation. The Revolution changed all that. At first through the influence of his father—the largest landholder in Orange County—and then in his own right, Madison acquired offices that thrust him directly into the Revolutionary struggle. Service in the Provincial Convention that drafted the state constitution in 1776 was followed by a two-year stint as a member of the Virginia Council of State; then, in the

early spring of 1780, he joined the Virginia delegation to Congress. Here Madison spent three and a half years, returning home only when the clause in the Articles of Confederation limiting service to three years out of any six finally brought him back to Montpelier in the fall of 1783. His retirement from politics, however, was brief. In the spring of 1784 he entered the Virginia assembly as a delegate from Orange County, serving three terms until, with his eligibility restored, he returned to Congress in the winter of 1787.<sup>3</sup>

In politics Madison found a fulfillment that the management of a plantation or a law practice could never have provided. Few of his contemporaries shared his single-minded commitment to public life, and this offered a great advantage in an age when politics remained avocational, when officeholders typically saw themselves as discharging unpleasant duties rather than pursuing deeply held ambitions.<sup>4</sup> Short, slender, soft-spoken, and unprepossessing in person, Madison nevertheless exercised enormous influence in both Congress and the Virginia assembly. That influence rested in part on a willingness to take the initiative in lawmaking and an aptitude for the committee work in which so many of the details of legislation were worked out. But it also reflected the quality of mind that enabled Madison to dissect issues and alternatives with a rigor that even his opponents respected. When he was done briefing an issue, it was hard for anyone to avoid perceiving the problem in the terms he had used. Bookish Madison certainly was; he was indeed the very epitome of "the thinking revolutionary."<sup>5</sup> But his political intelligence was eminently pragmatic.

The crucial conclusions he drew about the debilities of the Republic reflected his experiences at both the state and national levels of government. Madison had entered Congress just as it was attempting to shift greater responsibility for sustaining the war effort to the states. His experience in Virginia led him to doubt whether the states were equal to the task, and with British troops operating almost at will in the South in 1780 and 1781, the experiment seemed all the riskier. Rather than rely on the good faith of the states, Madison concluded that Congress needed "coercive powers" to compel them to do their duty. Thus as soon as the Articles of Confederation took effect in March 1781, he drafted an amendment empowering Congress to use its armed forces "to compel" delinquent states "to fulfill their federal engagements." Though neither Congress nor the states were likely to approve so drastic a proposal, Madison remained persuaded that it offered an effective solution to the crucial problem of securing state compliance with national policy.<sup>6</sup>

The American victory at Yorktown in the fall of 1781 shifted congress-

sional attention from problems of supplies to the issue of revenue. Here, again, Madison played an active role in supporting measures to provide Congress with independent sources of revenue. Though less closely associated with the ambitious plans of Robert Morris, the superintendent of finance, than were such colleagues as Alexander Hamilton and James Wilson, Madison generally favored the Morris program until it became clear that neither Congress nor the states could be expected to approve the comprehensive scheme of land, poll, and excise taxes Morris had requested. At this point, Madison broke with the superintendent and introduced the compromise that formed the heart of the revenue system Congress eventually approved in April 1783.<sup>7</sup>

His lengthy service in Congress left Madison a "nationalist" in this sense at least: He was convinced that Congress lacked the authority and resources to carry out even its existing duties under the Articles of Confederation. Whether he privately held more expansive notions of the potential scope of national power is less certain. Because the initial criticism of the Articles arose amid the urgency of the war, the delegates had little time and less incentive to imagine what role Congress would play after independence was secured. Robert Morris, his assistant Gouverneur Morris, and Hamilton may well have looked forward to a national government that could actively influence the development of the economy, but few of their colleagues were prepared to think so far ahead.

Members of Congress *were* the national government, and given the difficulties under which they labored, nearly every delegate ended his term convinced that Congress was too dependent on the states. But as the paid agents of their states, delegates were also repeatedly obliged to balance the demands of national policy against the interests of their constituents. Given the military threats to Virginia in 1780 and 1781, Madison found his dual obligations easy to reconcile. But on another crucial issue—the cession of Virginia's western lands to the Union—he acted as a delegate in the strict sense, faithfully defending the conditions that the state assembly insisted must be met in order for its cession to be completed. On occasion the efforts by other states to challenge the Virginia claims so alarmed Madison that he dared "to presume that the present Union will but little survive the present war."<sup>8</sup> But that bleak forecast marked the low point of his pessimism. Madison never thought that the Union should be dissolved; his deeper concern was to reverse the centrifugal political forces that rendered Congress increasingly impotent.

The recurring need to balance national and state loyalties shaped the development of Madison's political thinking in important ways. When it came to gauging the prospects for reform, he was a political realist who

understood the obstacles that any attempt to amend the Articles would face. Only proposals commanding consensus within Congress could secure unanimous ratification by the states. That consensus could not be built by the scare tactics that Robert Morris had used in 1782 and 1783, when he tried to pressure Congress by fomenting unrest among the public creditors and within the Continental army, and by threatening to resign if his program was not approved. It would require instead a reasoned approach that would involve both accommodations among the interests represented in Congress and a prudent regard for the difficulty of mobilizing support for reform within the states. At the same time, Madison thought "it better to trust to further experience and even distress, for an adequate remedy," than to adopt "temporary" expedients which might prove inadequate to the permanent needs of the Union.<sup>9</sup>

This was the moderate and highly pragmatic strategy that Madison pursued when he framed the revenue plan of April 1783, when he entered the Virginia assembly the next year, and even as late as 1786, when he hoped the Annapolis Convention would provide a new mechanism for forming the Confederation. It was also the strategy that he finally abandoned as he prepared for the Federal Convention in the winter and early spring of 1787. Why he did so can be explained only in terms of his increasingly harsh assessment of the character and course of state politics, an assessment that largely reflected his experience in the Virginia assembly.



AS AN ASSEMBLY DELEGATE from Orange County during the mid-1780s, Madison had two great goals. The first was to inculcate an enlightened sense of national interest in legislators whose political instincts were innately parochial. In practice this meant urging approval of the revenue plan of 1783 and the commercial amendments Congress proposed in 1784, compliance with objectionable provisions of the Treaty of Paris, and levying the taxes necessary to maintain Virginia's contributions to the federal treasury. After 1784 he also grew increasingly concerned about the effect that Spain's closure of the Mississippi to American subjects would have on Virginia's underlying loyalty to the Union.

But the domestic concerns of Virginia seemed no less important. Madison was intent on securing the adoption of the comprehensive revision of the state legal code that a committee composed of Thomas Jefferson, Edmund Pendleton, and George Wythe had prepared in 1779. When the once dominant Anglican church sought public support for its recovery from the ravages of the war through the adoption of a general assessment

that would provide funds for all Christian denominations, Madison led the fight that culminated in its defeat and the subsequent enactment of the Virginia Statute for Religious Freedom. To reduce British control of the state's commerce, Madison also proposed a bill restricting the access of foreign shippers to a small number of Virginia ports.

Madison took special pride in the defeat of the assessment bill and the victory for disestablishment that the Statute for Religious Freedom represented. In 1785 he also made substantial progress on the revised code before legislative fatigue and opposition to particular bills halted further deliberations. Other favored proposals fared less well. The port bill was so thoroughly amended to satisfy local interests that Madison regarded the final act as useless. His plan of court reform, though enacted by the assembly, was never implemented. The record on federal issues was similarly mixed. The assembly did its best to maintain its contributions to the federal treasury, but it balked at complying with the clause of the peace treaty requiring the states to open their courts to suits for the payment of prewar debts owed British merchants. Even the resolution calling the Annapolis Convention was hastily adopted as a weak alternative to the measure Madison originally proposed: a positive grant to Congress of a general power to regulate foreign commerce.

Madison was too seasoned a politician to expect victory on every issue, and he was not surprised that assembly deliberations were often mercurial and inefficient. Yet his frustration with legislative politics ultimately went well beyond the balance sheet of victories and losses or the erratic tenor of debate. More disillusioning than the rejection or dilution of particular measures was his cumulative assessment of the character of his fellow legislators, from his leading opponent, the great demagogue Patrick Henry, to the many backbenchers and one-term members whose votes finally mattered. By 1786 Madison had come to doubt whether most state legislators could ever be relied upon to act responsibly on either state or federal issues.<sup>10</sup>

Madison recorded his unease about the assembly in his letters to Jefferson, George Washington, and James Monroe. But he sent his most revealing early analysis of the problems of republican government to Caleb Wallace, an old college friend now residing in Kentucky, who had asked Madison to recommend "such a Form of Government as you would wish to live under" should he ever join the stream of migrants moving westward into Kentucky (which, though still part of Virginia, was expected to become a separate state in the near future). Madison replied immediately, seizing the occasion to collect his own thoughts about the defects of the Revolutionary constitutions.<sup>11</sup>

The most compelling need, he suggested, was for mechanisms to "give *wisdom* and steadiness to legislation," traits whose absence was "the grievance complained of in all our republics." Madison explained this defect of the constitutions historically, as a natural consequence of the colonists' long-festering resentment of the abuse of executive power under the British crown.<sup>12</sup> Experience since 1776 had exposed the fallacy of this preoccupation. Madison thought the establishment of a well-constructed Senate would provide the most effective check against the danger of faulty legislation. "As a further security against fluctuating & indigested laws," he recommended either a joint executive-judicial council of revision, armed with a limited veto, or at least the appointment of a "standing com[mi]ttee composed of a few select & skilful individuals" to undertake the actual drafting of legislation. The Virginia assembly, he noted, "give almost as many proofs as they pass laws of their need of some such Assistance."

But Madison did not confine his analysis to the failings of lawmakers alone. In suggesting that "some of the ablest Statesmen & soundest Republicans in the U States" favored replacing the sacred principle of the annual election of legislators with three-year terms, he implied that lawmakers would act more wisely if they were insulated from popular pressure. Even more significant, however, was his discussion of suffrage. Here he expressed his mounting fear that rights of property—or rather, the rights of the classes holding the most property—might be imperiled by economic legislation enacted at the behest of the mass of the population. To guard against this danger, Madison proposed setting different suffrage qualifications for the two houses of the legislature, leaving it reasonably broad for the lower house but narrowing it on the basis of property for the upper. "In a general vein," he observed, "I see no reason why the rights of property which chiefly bears the burden of Government & is so much an object of Legislation should not be respected as well as personal rights in the choice of Rulers." In distinguishing the social bases of representation in this way, Madison thus reflected a remarkable transformation in American thinking about property. From being a right attributed to all citizens, property was now increasingly regarded as an interest deserving protection against the envious and unjust designs of the less fortunate.<sup>13</sup>

The duality of Madison's concern with lawmakers and their constituents was also expressed in another noteworthy document of the summer of 1785, his *Memorial and Remonstrance Against Religious Assessments*. Because the *Memorial* was written to muster popular opposition to a bill already pending in the assembly, its most explicitly political passages cast

the question of religious liberty as a struggle between legislators threatening to "exceed the commission from which they derive their authority" and a people who needed to recall that "prudent jealousy [was] the first duty of Citizens, and one of the noblest characteristics of the late Revolution." Such language echoed the rhetoric of the earlier Revolutionary conflict, and thus evoked the conventional image of an ongoing struggle between the power of rulers and the liberties of the ruled. But in his wide-ranging effort to identify all grounds of opposition to the assessment, Madison did not overlook the possibility that the bill might actually command the support of a popular majority. "True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority," Madison conceded; "but it is also true that the majority may trespass on the rights of the minority."<sup>4</sup>

In the summer of 1785, however, it was still the danger of legislative misrule that most alarmed him. In a sense, it seemed easier to think of constitutional remedies and pragmatic reforms that might moderate the exercise of legislative power than to contemplate challenging the fundamental republican principle of majority rule. Yet in the months that followed his victories in the realm of religious legislation, this pregnant concern with the character of popular majorities emerged as the key element driving Madison's thought toward its great creative breakthrough—but only after he began to consider the defects of the Confederation in a more systematic way.



EVEN THE MOST ORIGINAL THINKER can harbor commonplace opinions. Many political leaders shared Madison's criticisms of the Articles of Confederation and the state constitutions. What allowed him to perform the crucial role he assigned himself in the movement for reform was not only the originality of his ideas but also their comprehensiveness. In the year preceding the Federal Convention, his political intelligence proved profoundly integrative, both in his perception of the deeper range of issues the delegates would confront and in his assessment of the political obstacles and opportunities they would encounter.

Madison took the first step in reordering the agenda of reform in the winter and spring of 1786. At home at Montpelier, he undertook a course of reading in the history of "ancient & modern confederacies," drawing upon two trunkloads of books that Jefferson had sent him from Paris. In a general way, he probably hoped this reading would better prepare him

for the fall meeting at Annapolis. But given that the agenda set for Annapolis would be limited to commercial matters alone, it seems more likely that Madison wanted to consider the problems of federalism in a more thoughtful fashion. He closed each section of his notes on this reading with a short but pointed list of the "vices of the constitution" of the particular confederation he had just studied, the peculiar structural and political defects that compromised its strength and vigor.<sup>5</sup>

By the summer of 1786, his concern about the defects of the American confederation was no longer confined to the familiar topics of revenue and commerce. The catalyst propelling Madison's thought was the question of American navigation rights on the Mississippi. From James Monroe, his trusted correspondent in Congress, Madison learned that Secretary of Foreign Affairs John Jay had asked for permission to abjure American claims in the hope of securing a favorable commercial treaty with Spain.<sup>6</sup> What Monroe personally told him of the divisions within Congress over this issue alarmed Madison even further when he visited New York before proceeding to Annapolis. Madison objected to Jay's request for two closely connected reasons. First, as a matter of policy, he opposed any compromise of the American claim as a grave threat to the vital interests of the southern states and the western settlers, and as a potential source of division not only between northern and southern states but also between the existing Union and American settlers flooding into the interior. For the same reason, he also feared that Jay's request would have a disastrous impact not only on efforts to amend the Articles but also on the Union itself. Although the northern states had indeed revised Jay's instructions, they lacked the nine votes required to ratify whatever treaty he managed to conclude. Even an effort to negotiate on this dubious basis would "be fatal," Madison feared, "to an augmentation of the federal authority, if not to the little now existing." Indeed, Jay's initiative made Madison's "personal situation . . . particularly mortifying. Ever since I have been out of Congress," he informed Jefferson, "I have been inculcating on our assembly a confidence in the equal attention of Congress to the rights and interests of every part of the republic and on the western members in particular, the necessity of making the Union respectable by [granting] new powers to Congress if they wished Congress to negotiate with effect for the Mississippi."<sup>7</sup> If that confidence was found to be misplaced, he would be unable to rally his own state to the cause of reform.

As he traveled through the middle states in the summer of 1786, Madison held frequent conversations about politics. It was clear, he wrote Jefferson in mid-August, that "[m]any Gentlemen both within & without Congs. wish to make" the Annapolis meeting

subservient to a Plenipotentiary Convention for amending the Confederation. Tho' my wishes are in favor of such an event, yet I despair so much of its accomplishment at the present crisis that I do not extend my views beyond a Commercial Reform. To speak the truth I almost despair even of this.

But the failure of the Annapolis convention to draw enough members to pursue its prescribed agenda, coupled with the disruptive potential of the Mississippi affair, indicated that time no longer favored a strategy of gradual reform. Thus when Madison returned to Virginia in late October, a sense of urgency at last overcame the caution in his temperament. While continuing to work to neutralize the sectional rift the Mississippi dispute had opened,<sup>18</sup> Madison did not discount the political dangers it represented.

His travels also confirmed his pessimistic observations about the character of state lawmaking throughout the country. He was most troubled by "the general rage for paper money." In his lengthy mid-August letter to Jefferson, he provided a state-by-state survey of this "epidemic malady," which he feared would spare Virginia only if "the failure of the experiments elsewhere" and the presence of that stern republican, George Mason, could dissuade the assembly from its adoption. In fact it was Madison who took the lead in turning back a motion for an emission of paper money at the fall session of the assembly. Heartening as this victory was, he still worried that other states would make their depreciating paper money legal tender for the payment of debts. On this issue, he saw no virtue in moderation. The emission of an unsecured currency amounted to an "unjust" and "unconstitutional" assault on the rights of property; the more popular such measures appeared, the more he fretted that Americans were supporting a policy that would "disgrace Republican Govts. in the eyes of mankind."<sup>19</sup> Given the force of this concern, Madison was prone to suspect that the "great commotions" in Massachusetts were ultimately aimed toward "an abolition of debts public & private, and a new division of property."<sup>20</sup>

From his dual concerns with the politics of the Mississippi issue in Congress and the specter of unjust economic legislation, Madison now formulated the crucial problem that would shape his thinking. "There is no maxim in my opinion which is more likely to be misapplied, and which therefore more needs elucidation," he wrote Monroe on October 5, "than the current one that the interest of the majority is the political standard of right and wrong." That would be true if one took "the word 'interest' as synonymous with 'Ultimate happiness,'" he conceded.

But taking it in the popular sense, as referring to immediate augmentation of property and wealth, nothing can be more false. In the latter sense it would be the interest of the majority in every community to despoil & enslave the minority of individuals; and in a federal community to make a sacrifice of the minority of the component states.

In Madison's thinking, the right of western settlers to enjoy the navigation of the Mississippi was as essential as the right of property holders to be secured from the injustice of paper money. In both cases, decisions respectively favoring northern merchants or debtors stood to elevate "temporary and partial interests over those just & extended maxims of policy which have been so much boasted of among us."<sup>21</sup>

From his alarm over these two distinct problems of national and state policy, Madison began to fashion a powerful criticism of the majoritarian premise of republican government—a criticism he could apply to both Congress and the states. Privately, he continued to revolve the problem of majority misrule during the fall of 1786 and the winter of 1787. But for the time being, he resisted drawing the programmatic conclusions to which his analysis might lead the Philadelphia convention. Before Madison could begin to consider exactly what the Convention should do, the immediate challenge was to ensure that it would be well attended, and that it would assemble under favorable conditions. Satisfying the first of these conditions depended on the separate actions of the state legislatures; the second required preventing the congressional dispute over the Mississippi from inflicting any more damage on the Union itself.

The task of laying the groundwork for the Convention began well when the Virginia assembly unanimously approved the Annapolis recommendation for a second convention, issued a circular letter of invitation to the other states, and appointed an impressive delegation including George Washington, George Mason, Governor Edmund Randolph, the jurist George Wythe, and Madison. "It has been thought advisable to give this subject a very solemn dress," Madison informed Washington, "and all the weight which could be derived from a single state."<sup>22</sup> Madison also secured his own election to Congress, where his presence would strengthen the southern states in their opposition to Jay's foreign policy. Ten days after the assembly adjourned, he set off for New York, armed with a resolution (which he probably drafted) instructing the Virginia delegation in Congress to oppose the surrender of navigation rights on the Mississippi as "a flagrant violation of Justice, a direct contravention of the end for which the federal Government was instituted, and an alarming innovation

of the System of the Union."<sup>33</sup> En route he stopped at Mount Vernon to continue the delicate courtship needed to persuade the general to attend the Convention.

Six other states had appointed delegates to the Convention by the time Madison returned to Congress on February 12, 1787. Nine days later, Congress gave its own approval to the Convention. The delegates were "much divided and embarrassed on the question whether their taking an interest in the measure would impede or promote it," as well as the possible impropriety of endorsing a device for amending the Confederation not mentioned in the Articles themselves.<sup>34</sup> Within days, New York and Massachusetts joined the states electing deputies, and Madison was confident that every state—including Rhode Island, generally regarded as the most retrograde member of the Union—would be represented. The Mississippi issue remained threatening, but a conversation with Gardoqui, the Spanish minister, convinced Madison that "the negotiation is arrested," and he was heartened that the Pennsylvania and New Jersey delegations seemed inclined to support the southern position. It now seemed unlikely that "the Spanish project" would interfere directly with the Convention, though Madison worried that it would still tend "to foment distrusts among the Atlantic states at a crisis when harmony and confidence ought to have been studiously cherished."<sup>35</sup>



WITH CONGRESS MUSTERING too few members to do much business, Madison had time to prepare for the Convention. In early spring, he at last drew together the separate strands of his own political experience and education into a working memorandum analyzing the "[v]ices of the political system of the U. States." Madison opened this remarkable document by summarizing the defects of the Confederation, but he then proceeded to explain how "a compleat remedy" of "the evils which viciate" the Republic required confronting the internal failings of state government. In concurrent letters to Jefferson, Washington, and Randolph, he converted his general conclusions into the program he intended to pursue at Philadelphia.<sup>36</sup> For Madison's preparations were the acts not of "an ingenious theorist" speculating "in his closet or in his imagination," but of a veteran legislator intent on seizing the initiative from the opening moment of debate.<sup>37</sup>

At the most general level, Madison set out to demonstrate that the national government could be organized along republican lines. In doing so, he challenged the venerable association of republican government with

small and homogeneous societies. Quite possibly he found some inspiration for his new position in the writings of David Hume, notably his brief essay "Idea of a Perfect Commonwealth."<sup>38</sup> But if there was a Humean dimension to Madison's thought, it lay less in the formulation of a specific hypothesis about the optimal size of republics than in the way in which Madison sought to derive general rules of politics from the experience of history. That experience certainly included knowledge gained from thoughtful reading in ancient and modern history and in respected treatises on public law and the science of politics. But this history that had to be pondered most carefully was that of the republican experiment of Madison's own era.

One central conviction lay at the heart of his analysis. Experience conclusively proved that neither state legislators nor their constituents could be relied upon to support the general interest of the Union, the true public good of their own communities, or the rights of minorities and individuals. From his perception of the essential parochialism of state politics and politicians, Madison forged a new connection between the distinct problems of federalism and of republican government within the states. The proper task of the Convention was not merely to free the Union from its debilitating dependence on the states but also to seize the occasion of reforming the national government to treat the internal defects of the states. At the same time, his ideas of how the national government should be reconstructed were profoundly influenced by his criticisms of the institutional defects of the state constitutions.

Madison opened his memorandum by surveying the ways in which the states had thwarted and obstructed the Confederation: by failing to comply with the requisitions of Congress, encroaching on its authority, violating treaty obligations, and refusing to grant the Union adequate powers to pursue objects of "common interest." Clearly the Articles lacked "the great vital principles of a Political Cons[ti]tution": the power to compel obedience to its decisions. "From what cause could so fatal an omission have happened?" Madison asked. Again he answered this question historically. The "mistaken confidence" that the framers of the Articles had placed in "the justice, the good faith, the honor, the sound policy" of the assemblies reflected both their own "enthusiastic virtue" and their "inexperience of the crisis" the war brought. It was, that is, the natural product of the heady patriotism that had flourished during the moment of independence.<sup>39</sup>

Madison's survey of the defects of the Articles was thorough but conventional. More important were his efforts to explain why a system resting on the "uniform and punctual obedience of 13 independent bodies

ought not to be calculated on." One could hardly expect the state legislatures to take enlightened views of national affairs, for "the sphere of life from which most of their members are taken, and the circumstances under which their legislative business is carried on," would always militate against it. Nor would thirteen dissimilar states ever be disposed to view national measures in the same way. "Every general act of the Union must necessarily bear unequally hard on some particular member or members of it," Madison noted. The natural "partiality of the members to their own interests and rights," reinforced by the demagoguery of "the Courtiers of popularity," he observed, "will never fail to render federal measures abortive."

Had his analysis of the "vices of the political system" ended here, Madison would already have fashioned a substantial agenda on which the Convention could act. But when he reached the ninth point of his memorandum, his profound disillusion with the character of republican government in the states spurred him to extend his essential argument in a radically innovative way.

In developing the evils which viciate the political system of the U. S. it is proper to include those which are found within the States individually, as well as those which affect the States collectively, since the former class have an indirect influence on the general malady and must not be overlooked in forming a complete remedy.

This quiet transition understated the power of the conclusions that followed. For Madison promptly went on to indict the state legislatures for the "multiplicity," "mutability," and "injustice" of the laws they had enacted in the decade since independence. Of these three marks of a "vicious legislation," he deemed the last the most critical. "If the multiplicity and mutability of laws prove a want of wisdom," he wrote (echoing his 1785 letter to Caleb Wallace),

their injustice betrays a defect still more alarming: more alarming not merely because it is a greater evil in itself, but because it brings more into question the fundamental principle of republican Governments, that the majority who rule in such Governments, are the safest guardians both of public Good and of private rights. To what cause is this evil to be ascribed?

Here at last Madison stood ready to derive a general theory of politics from the historical lessons his own experience had taught. The issue was

no longer merely the "imbecility" of the Confederation or the parochialism of the state legislatures, but rather the majoritarian premises of popular government itself.

With his characteristic fondness for drawing distinctions, Madison traced the sources of unjust legislation to both "the Representative bodies" and "the people themselves." Legislative office was sought for three reasons: "ambition," "personal interest," and a regard for "public good." But experience proved that the first two predominated, with woeful results. Artful legislators "with interested views" could always find ways to sacrifice "the interest, and views, of their Constituents" for their own purposes, and then to have their "base and selfish measures, masked by pretexts of public good and apparent expediency." Even "honest" representatives would often fall prey to "a favorite leader, veiling his selfish views under the professions of public good, and varnishing his sophistical arguments with the glowing colours of popular eloquence."

In a few brief and (for him) unusually pungent sentences, Madison thus drew the bitter lessons he had gained from his own experience in the Virginia assembly and his monitoring of other states. But he now understood better that legislative misrule was itself often only a symptom of problems rooted in the larger society. "A still more fatal if not more frequent cause" of injustice, he wrote, "lies among the people themselves." While orthodox republican theory recognized that the people were often prone to unhealthy enthusiasms, it expected them to resist arbitrary acts of government corrosive of their own liberty. Ultimately it was the civic virtue of the people that would have to prevent republican government from degenerating into a mobocracy. Fearful of trusting human nature too far, previous writers had argued that stable republics could survive only in small and socially homogeneous communities, where the underlying similarity of interests would reduce the temptation one part of the community might feel to exploit another, and thus encourage citizens to exercise the essential virtue of subordinating private interest to public good.

It was this fanciful notion of social homogeneity that Madison now rejected as irrelevant to the American case. "All civilized societies," he wrote, "are divided into different interests and factions, as they happen to be creditors or debtors—Rich or poor—husbandmen, merchants or manufacturers—members of different religious sects—followers of different political leaders—inhabitants of different districts—owners of different kinds of property &c &c." Just as Madison dismissed the restraints on legislative misrule as ineffective, so he now argued that neither "a prudent regard to their own good as involved in the general and permanent good of the community," nor "respect for character," nor even religion



could be relied on to deter popular majorities united by "an apparent interest or passion" from "unjust violations of the rights and interests of the minority, or of individuals." These disparaging judgments rested on an arithmetic logic. Within a small republic—whether the city-states of ancient history or, by implication, the member states of the existing American Union—the wrong kinds of majorities could readily coalesce to pursue their evil purposes, while at the same time growing sufficiently numerous to relax the moral bonds ("respect for character" and religion) that might otherwise "restrain them from injustice."

Taken by itself, this perception of the play of interest and passion on politics was a commonplace of the eighteenth century. Madison's originality instead lay in his efforts to reconcile this image of society with the cause of republican government, to prove that the excesses of popular majorities were as dangerous as the ambitions of elected representatives, and yet to suggest that, "contrary to the prevailing theory," an extended national republic would better secure private rights than the more confined polities of the states. This diagnosis of the multiple causes of political disorder within the states provided the foundation upon which Madison built his entire program of constitutional reform. His ideas of federalism, representation, and the separation of powers—the crucial theoretical issues that the Convention would face—all reflected his disillusion with the failings of state legislators and citizens alike.

His least controversial conclusion concerned the manifest "imbecility" of Congress under the Confederation. The proper solution to its fatal reliance on the states was not to empower Congress to apply force against recalcitrant states—as he had proposed seven years earlier—but rather to create "a system which would operate without the intervention of the states" directly on the people by enacting, executing, and adjudicating its own laws. This single conclusion immediately led to another that was equally momentous: A union acting directly on the population through the processes of law would have to be reconstituted as a government in the normal sense of the term. In place of the anomalous institution of a unicameral Congress as the sole repository of national power, the federal government would have to comprise the three separate branches—including a bicameral legislature—that orthodox constitutional theory demanded.<sup>30</sup>

Madison realized that the deeper problems of federalism would not disappear even after the Union acquired an independent power of legislation. The respective jurisdictions of national and state government could never be neatly distinguished; to some extent the boundary between them

must always remain problematic. Even with the best intentions of all concerned, two governments acting on the same population were bound to come into conflict at one time or another—if, for example, they sought to draw revenue from the same objects of taxation. But good intentions, he firmly believed, would not always prevail. The creation of an extended national republic would not by itself solve the residual problem of misgovernment within the states. There factious majorities would continue to form, and they could be counted upon not only to resist national laws and policies whenever interest dictated but also to enact those unjust laws that so disgusted and alarmed Madison.

It would accordingly not do for the Convention simply to identify the additional powers the Union needed. "Over and above this positive power" of legislation, he wrote Washington,

a negative *in all cases whatsoever* on the legislative acts of the states, as heretofore exercised by the Kingly prerogative, appears to me to be absolutely necessary, and to be the least possible encroachment on the State Jurisdictions. Without this defensive power, every positive power that can be given on paper will be evaded & defeated.

Nothing better illustrated the reactionary quality of Madison's thought than this candid evocation of both the language of the parliamentary Declaratory Act of 1766 and the royal veto which Jefferson had vehemently denounced in the Declaration of Independence. But the most radical aspect of Madison's position was to extend the scope of this veto beyond avowedly national concerns so that it could also serve as a "controul on the internal vicisitudes of State policy; and the aggressions of interested majorities on the rights of minorities and of individuals." In this way, the national government would act as a "disinterested & dispassionate umpire in disputes between different passions & interests in the State"—that is, within the states individually—deciding even "local questions of policy" when they implicated fundamental questions of rights.<sup>31</sup>

So drastic a power could be vested safely in the Union, Madison believed, because the national government would act with a neutrality or disinterestedness that the states could rarely if ever attain. The principal basis of this belief rested on the general theory of faction for which he is best known—especially from his writings in *The Federalist*. At some point, Madison reasoned, the "enlargement of the sphere" of the republic would offset the regression in civic virtue that he associated with the sway of dominant interests or passions among the multitude,

not because the impulse of a common interest or passion is less predominant in this case with the majority; but because a common interest or passion is less apt to be felt and the requisite combinations less easy to be formed by a great than a small number. The Society becomes broken into a greater variety of interests, of pursuits, of passions, which check each other, whilst those who may feel a common sentiment have less opportunity of communication and concert.

This diversity of interests would permit majorities to form only around a broad consensus about the true public good. But as an "auxiliary desideratum," Madison predicted that representation in the national government would involve "such a process of elections as will most certainly extract from the mass of the Society the purest and noblest characters which it contains, such as will at once feel most strongly the motives of their appointment, and be most capable to devise the proper means of attaining it." In contrast to the petty demagogues and untutored novices who gave state assemblies their sorry tone, a national congress could recruit a superior class of lawmakers whose decisions and deliberations would rise far above the corresponding proceedings in the states.<sup>33</sup>

If Madison's attachment to a national veto was tied to his jaundiced view of state lawmakers, his constitutional theory rested on a more profound insight into the nature of legislative power itself. The most striking qualities of legislative power, he now understood, were its plasticity and suppleness, its resistance to neat classification or limitation, and thus its capacity to expand its reach. This insight allowed Madison to approach the distinct issues of federalism and separation of powers as complementary aspects of one fundamental problem.

From the start, Madison conceded that the "consolidation" of the states "into one simple republic would be as inexpedient as it is unattainable." Instead, he "sought for some middle ground, which may at once support a due supremacy of the national authority, and not exclude the local authorities wherever they can be subordinately useful." Therein lay the problem. State officials "will be continually sensible of the abridgment of their power, and be stimulated by ambition to resume the surrendered portion of it." In this effort they would be aided not only by the political support they might muster from their constituents but also by the "impossibility of dividing powers of legislation, in such a manner, as to be free from different constructions by different interests, or even from ambiguity in the judgment of the impartial." The more he examined different types of legislative power or different realms of law, the more Madison was persuaded of the imprecise and hence arbitrary basis of the

nominal distinctions between them. A state intent on thwarting a particular national act could always find a plausible pretext for asserting its own legislative authority in contravention of the Union. That was why the proposed national veto had to reach "all cases whatsoever."<sup>33</sup>

This same insight informed his approach toward the problem of separating powers within the sphere of national government alone. Madison believed that there were core functions of government that could be respectively labeled legislative, executive, and judicial in nature. Yet here, too, the purity of abstract definitions could not describe the nuances one met in practice. "Even the boundaries between the Executive, Legislative & Judiciary Powers," he wrote Jefferson, "though in general so strongly marked in themselves, consist in many instances of mere shades of difference."<sup>34</sup> He put the point even more directly in *Federalist* 37: "Experience has instructed us that no skill in the science of government has yet been able to discriminate and define, with sufficient certainty, its three great provinces, the legislative, executive, and judiciary," he observed. "Questions daily occur in the course of practice, which proves the obscurity which reigns in these subjects, and which puzzles the greatest adepts in political science." In monarchical regimes the chief danger arose from the excesses of the crown, but in a republic that distinction necessarily fell to the legislature. Not only did it enjoy the political advantages that flowed from direct popular election, it could also exploit its formal rule-making authority to circumscribe the discretion of the other branches, override particular decisions to which it objected, or use its power of the purse to make the other departments bend to its will. Nor was this concern merely speculative. Experience demonstrated that "[t]he legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex."<sup>35</sup>

Notwithstanding his hopes that Congress would be a more select body than its counterparts in the states, Madison thus recognized that legislative excess remained the crucial problem of republican constitutionalism. His proposed *institutional* remedies followed his 1785 letter to Wallace: the creation of a true senate, safely insulated from popular pressure, to check the lower house; and the establishment of a joint executive-judicial council of revision, armed with both a limited veto over national legislation and an advisory role in the negative on state laws. Alone, neither the executive nor the judiciary could resist a legislature speaking for the political will of the community; united in the council of revision, they might gain sufficient stature to correct its errors. The benefits this council would provide justified the threat it posed to the axiomatic view that the three powers of government had to be rigidly separated. Involving the

judiciary in lawmaking would improve the quality of national legislation at its source, giving it "the perspicuity, the conciseness, and the systematic character" absent from the law codes of the states.<sup>36</sup> At the same time, Madison hoped that the senate and the council of revision would guard against laws violating particular claims of rights. In this sense, his approach to the separation of powers was tied directly to his theory of faction.

That theory was also directly relevant to the one issue that Madison believed the Convention would have to resolve at the outset. As he formulated his strategy in early spring, Madison decided that "the first step to be taken is I think a change in the principle of representation." In place of the equal state vote required by the Confederation, he insisted that some system for apportioning representation by population should be applied to both houses of Congress, and that this issue must be resolved *before* the Convention determined exactly what powers the new government would exercise. Madison had never doubted the justice of such a change; what was new was his belief that it had now become both "practicable" and necessary. The smallest states would oppose any change, but Madison assumed that in regional terms, apportionment would appeal to both the northern states, because of "the actual superiority of their populousness," and the southern, because of the "expected superiority" they would gain as population movements carried migrants southwest toward the Gulf of Mexico. "And if the majority of the large States concur," he concluded, "the fewer and smaller States must finally bend to them."<sup>37</sup>

In the confrontation that would ensue, Madison believed that the small-state delegates would "yield to the predominant will" once they realized that the large states would accept the changes all desired only if a rule of proportional representation was applied to both houses of Congress. Madison fashioned his general theory of faction in part to provide the rationale with which the large states' delegates could prevail in debate. By proving that an extended republic would protect *all* interests against factious majorities, Madison hoped to demonstrate that the small states could forego the security of an equal vote to protect them against outright domination by the large states.

Beyond explaining why the small states did not need equal representation, Madison's theory of faction further sought to demonstrate why they did not deserve it. To make their case conclusive, the large states would have to refute the claim that states deserved equal representation as the sovereign units of which the Union was originally and immutably composed. That was exactly what the modern image of society that

formed the heart of Madison's theory of faction promised to do. Implicit in its logic lay the recognition that states *as such* were not real interests deserving representation. States possessed interests, but these were rooted in the attributes of individuals: in property, occupation, religion, opinion, and the uneven distribution of human faculties. Moreover, since congeries of interests could be found within any state, however small—witness Rhode Island—the principle of unitary corporate representation was further undercut. The larger a state was, the more complex and diverse its interests would be. Nor, finally, was size itself an interest capable of manifesting itself in any situation other than a constitutional convention, where the rules of voting would first have to be determined. Once government was under way, such disparate aggregates of interests as Virginia, Pennsylvania, and Massachusetts—the three most populous states—would never find common ground again, except, of course, when majorities of able legislators came together in pursuit of the true public good.

Thus little more than a month before the Convention was due to assemble in Philadelphia, James Madison fashioned a powerful and comprehensive analysis of the problems of federalism and republicanism. Much of his intellectual labor synthesized complaints that had been stated and restated throughout the 1780s. But his reassessment of these issues was neither merely intellectual nor merely synthetic. Its originality lay in part in its self-conscious willingness to challenge received wisdom, even if that wisdom often took the form of clichés about small republics and the separation of powers. Its deeper significance, however, was as much political as conceptual. In his grasp of the range and connectedness of the issues the Convention would face, Madison ranged well beyond the commonplace expectations of the postwar years. Rather than amend the Articles by identifying the additional duties the Union might discharge and modestly enhancing its authority over the states, he perceived the necessity and advantages of allowing the national government to act directly upon the population through the power of law. Rather than allow this authority to be vested in an anomalous unicameral Congress, he understood that the Union had to be reconstituted as a government in the normal sense of the term, and further, that the recent history of the individual states provided the critical experimental evidence from which a superior model of a republic could be constructed. And rather than confine the agenda of the Convention to issues of national governance alone, Madison was convinced that federalism also offered a solution to the problem of individual and minority rights. His agenda for the Federal Convention

was not addressed to the woes of the Union alone, but to the underlying vices of the Republic.



IN HIS READING, Madison had often encountered the figure of "the lawgiver" or "the legislator" who loomed so large in both the records of history and the political science of his own era. "As a cultural hero, the legislator provided the Enlightenment's answer to the Christian saint or the Renaissance prince," the historian Harry C. Payne has observed. "Half-mythical, half-historical, the figure of the legislator who shapes and unifies his society dominates the political and historical writings of the philosophes." Nor were these examples confined to the dim mists of ancient history—to Solon, Lycurgus, and Numa Pompilius. In the royal and aristocratic courts of Europe, opportunities sometimes arose for such luminaries as Locke, Voltaire, Diderot, Holbach, and Rousseau to play the part they so admired in antiquity, advising kings and princes on codes of laws to bring their peoples a new measure of "social balance and harmony." Even provincial America could claim one such figure in William Penn, praised as "a true Lycurgus" by no less an authority than Montesquieu.<sup>39</sup> And perhaps there was something of the lawgiver in the project Thomas Jefferson had launched, and Madison had pursued, of revising the statutory code of Virginia to purge it of its unrepublican elements.

Did Madison also envision himself as a lawgiver-legislator as he prepared for the Convention? The thought must have crossed his mind more than once. Yet one crucial condition distinguished the opportunity he hoped to seize in Philadelphia from those that beckoned to the would-be "pragmatic philosophe-kings." In Europe laws could be given to the people through the act of a sovereign monarch relying on nothing more than the advice of his resident sage and the drafting skills of his chancellor. The lawgiver of the Enlightenment was a solitary figure; his legislation was not the product of collective deliberations but an imposition of individual wisdom. But in America whatever new law the Convention proposed would have to be accepted by the people, not given to them. And it would have to be framed, in the first instance, "by the intervention of a deliberative body of citizens."<sup>40</sup> For Madison to succeed as a lawgiver within the field of action the Convention would afford, he would have to use reason to overcome the play of interests he expected to encounter among its members. As much as his strategy for the Convention supposed that reason and justice would prevail, he could not escape regarding the grand meeting in Philadelphia in essentially political terms.

Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago, 1988) 28-39.

31. A good place to begin is Cass Sunstein, "Beyond the Republican Revival," *Yale Law Journal*, 97 (1988-1989), 1539-90 (part of a special issue devoted to a Symposium on the Republican Civic Tradition); for a general summary (and post mortem?) on republicanism, see Daniel T. Rogers, "Republicanism: the Career of a Concept," *Journal of American History*, 79 (1992), 11-38; and see Kalman, *Faith of Our Fathers*, chap. V.

## CHAPTER II THE ROAD TO PHILADELPHIA

1. John Jay to John Adams, New York, Nov. 1, 1786, and Feb. 21, 1787, Adams Family Papers, Massachusetts Historical Society (microfilm reel 368).
2. Dalton to Adams, Boston, July 11, 1786; Stiles to Adams, Yale College, Mar. 10, 1787, Adams Family Papers, Mass. His. Soc. (reel 368).
3. Madison to Jefferson, June 6, 1787, in William T. Hutchinson, William M. E. Rachal, Robert Rutland, et al., eds., *The Papers of James Madison* (Chicago and Charlottesville, 1962-91), X, 29.
4. This chapter summarizes the interpretation of problems of national government that is developed in much greater detail in Jack N. Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York, 1979), 275-399.
5. For divergent accounts of the Morris program and its fate, see *ibid.*, 297-324; E. James Ferguson, *The Power of the Purse: A History of American Public Finance, 1776-1790* (Chapel Hill, 1961), 78-110; Clarence L. Ver Steeg, *Robert Morris: Revolutionary Financier* (Philadelphia, 1954), 125-45; E. Wayne Carp, *To Starve the Army at Pleasure: Continental Army Administration and American Political Culture, 1775-1783* (Chapel Hill, 1984), 189-217; for documentary evidence, see E. James Ferguson et al., eds., *The Papers of Robert Morris, 1781-1784* (Pittsburgh, 1973- ).
6. Worthington C. Ford, ed., *Journals of the Continental Congress, 1774-1789* (Washington, 1904-37), XXIV, 207-9.
7. David Howell to Jonathan Arnold, Feb. 21, 1784, in William R. Staples, ed., *Rhode Island in the Continental Congress* (Providence, 1870), 479.
8. Two excellent overviews of these issues are found in Peter S. Onuf, "Settlers, Settlements, and New States," and James S. Merrell, "Declarations of Independence: Indian-White Relations in the New Nation," both in Jack P. Greene, ed., *The American Revolution: Its Character and Limits* (New York, 1987), 171-223; and see Jack N. Rakove, "Ambiguous Achievement: The Northwest Ordinance," in Frederick D. Williams, ed., *The Northwest Ordinance: Essays on Its Formulation, Provisions, and Legacy* (East Lansing, 1989), 1-19. The turbulence of relations between the Indian "republics" of the Ohio Valley and migrating American republicans is brilliantly examined in Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815* (Cambridge, Eng., 1991), 366-468.
9. Rakove, *Beginnings of National Politics*, 342-52; and for a broader survey of postwar foreign relations, see Frederick W. Marks, III, *Independence on Trial: Foreign Affairs and the Making of the Constitution* (Baton Rouge, La., 1973), 3-95.
10. Postwar economic conditions are surveyed in Richard B. Morris, *The Forging of the Union, 1781-1789* (New York, 1987), 130-61; and Cathy D. Matson and Peter S. Onuf, *A Union of Interests: Political and Economic Thought in Revolutionary America* (Lawrence, Kan., 1990), 67-100.
11. H. James Henderson, *Party Politics in the Continental Congress* (New York, 1974), 387-99; Drew McCoy, "James Madison and Visions of American Nationality in the Con-

ederation Period: A Regional Perspective," in Richard Beeman, Stephen Botwin, and Edward C. Carter II, eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill, 1987), 226-58, locates this critical episode within a broader context of ideas of expansion.

12. The record for this case is reprinted in Julius Goebel, Jr., ed., *The Law Practice of Alexander Hamilton: Documents and Commentary* (New York, 1964), vol. I.
13. Rakove, *Beginnings of National Politics*, 345-52, 361-76.
14. Lawrence D. Cress, "Whither Columbia? Congressional Residence and the Politics of the New Nation, 1776-1787," *WMQ*, 32 (1975), 581-600.
15. Roger H. Brown, *Redeeming the Republic: Federalists, Taxation, and the Origins of the Constitution* (Baltimore and London, 1993).
16. Madison to Jefferson, Sept. 6, and Oct. 24, 1787, *Papers of Madison*, X, 163-64, 212.
17. Wood, *Creation of the American Republic*, 306-467, provides the best analysis of these developments, nicely juxtaposing the limited role that concern about the Confederation played in the general unease of the 1780s with the more pervasive anxiety over state politics.
18. Jay to John Adams, Feb. 21, 1787, Adams Family Papers, Mass. His. Soc. (reel 368); Rakove, *Beginnings of National Politics*, 378-79 and n. 37.
19. Linda Grant De Pauw, *The Eleventh Pillar: New York State and the Federal Constitution* (Ithaca, 1966), 31-42.
20. Madison to James Monroe, and to Jefferson, Jan. 22, 1786, *Papers of Madison*, VIII, 483, 476-77.
21. Madison to Monroe, Mar. 14 and 19, 1786, *ibid.*, 497-98, 505-06.
22. The proceedings are reprinted in Philip Kurland and Ralph Lerner, eds., *The Founders' Constitution* (Chicago, 1987), I, 185-87; Rakove, *Beginnings of National Politics*, 368-75.
23. Madison to Jefferson, Aug. 12, 1786, *Papers of Madison*, IX, 95-97.
24. Jefferson to Madison, Jan. 30, 1787, *ibid.*, 247-48.

## CHAPTER III THE MADISONIAN MOMENT

1. J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, 1975), vii-viii.
2. *Records*, I, 422-24.
3. In this chapter I draw on my short biography of *James Madison and the Creation of the American Republic* (Glenview, Ill., 1990) as well as other essays that I have written about him, including "Mr. Mcese, Meet Mr. Madison," *The Atlantic* (Dec. 1986), 77-86, and "The Madisonian Moment," *University of Chicago Law Review*, 55 (1988), 473-505. Like other Madison scholars, I tend to prefer Ralph Ketcham, *James Madison: A Biography* (New York, 1971) to Irving Brant, *James Madison*, 6 vols. (Indianapolis, 1941-61). There are, of course, numerous interpretations of his political thinking in the 1780s that rely almost exclusively on his contributions to *The Federalist* and his speeches in the Philadelphia and Virginia conventions. But for more historically minded approaches to the development of his ideas in the 1780s, one should consult the following: Charles Hobson, "The Negative on State Laws: James Madison, the Constitution, and the Crisis of Republican Government," *WMQ*, 36 (1979), 215-35; three essays by Lance Banning: "James Madison and the Nationalists, 1780-83," *ibid.*, 40 (1983), 227-55; "The Hamiltonian Madison: A Reconsideration," *Virginia Magazine of History and Biography*, 92 (1984), 3-28; and "The Practicable Sphere of a Republic: James Madison, the Constitutional Convention, and the Emergence of Revolutionary Federalism," in Beeman et al., eds., *Be-*

- yond Confederation, 162-87. John Zvesper, "The Madisonian Systems," *Western Political Quarterly*, 37 (1984), 236-56, is a valuable assessment of the apparent contradictions between the Madison of the 1780s and the 1790s. Drew R. McCoy, *The Last of the Fathers: James Madison and the Republican Legacy* (Cambridge, Eng., 1989) is a wonderful reflection on Madison's retirement, but this sensitive sketch informs our view of his entire life.
4. I discuss this facet of Revolutionary politics in *Beginnings of National Politics*, 216-39.
  5. Here (not for the first time) I borrow a title from Ralph Lerner, whose book *The Thinking Revolutionary* has inspired a few thoughts of my own.
  6. Madison to Jefferson, Apr. 16, 1781, and Proposed Amendment, [Mar. 12, 1781], in *Papers of Madison*, III, 71-72, 17-19. Madison drafted this amendment as a member of a three-man committee appointed to prepare a plan for giving Congress "full and explicit powers for effectually carrying into execution all acts or resolutions passed agreeably to the Articles of Confederation." For general background, see Rakove, *Beginnings of National Politics*, 285-92.
  7. *Ibid.*, 297-324; Banning draws similar conclusions in "The Hamiltonian Madison." For a different interpretation of this episode, see Ferguson, *Power of the Purse*, 109-76.
  8. Madison to Jefferson, Nov. 18, 1781, *Papers of Madison*, III, 308. The best analysis of this issue is Peter S. Onuf, *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1787* (Philadelphia, 1983), 75-102.
  9. Madison to Washington, Dec. 9, 1785, *Papers of Madison*, VIII, 438, discussing measures relating to vesting powers over commerce in Congress.
  10. My conclusions echo the sparkling passage on Madison's disillusionment in Gordon S. Wood, "Interests and Disinterestedness in the Making of the Constitution," in Beeman et al., eds., *Beyond Confederation*, 73-77.
  11. Wallace to Madison, July 12, 1785; and Madison to Wallace, Aug. 23, 1785; *Papers of Madison*, VIII, 321, 350-57.
  12. For the expression of a similar sentiment, see William Livingston to the Baron van der Capellen, Nov. 18, 1783, in Carl E. Prince et al., eds., *The Papers of William Livingston* (New Brunswick, N.J., 1988), V, 56-57.
  13. On this point see especially Wood, *Creation of the American Republic*, 214-22.
  14. The *Memorial* is reprinted in *Papers of Madison*, VIII, 295-306. It has received extensive critical attention from historians and other scholars, in part because of the light it sheds on Madison's understanding of the concept of "an establishment of religion." So, too, the relation between Madison's commitment to religious liberty and the development of his general political ideas has also merited close examination. See, especially, Thomas E. Buckley, S.J., *Church and State in Revolutionary Virginia, 1776-1787* (Charlottesville, 1977); Thomas J. Curry, *The First Freedoms: Church and State in America to the Passage of the First Amendment* (New York, 1986); Leonard W. Levy, *The Establishment Clause: Religion and the First Amendment* (New York, 1986); Lance Banning, "James Madison, the Statute for Religious Freedom, and the Crisis of Republican Convictions," in Merrill D. Peterson and Robert C. Vaughan, eds., *The Virginia Statute for Religious Freedom: Its Evolution and Consequences in American History* (New York, 1988), 109-38; William Lee Miller, *The First Liberty: Religion and the American Republic* (New York, 1986), 77-150; and Robert S. Alley, ed., *James Madison on Religious Liberty* (Buffalo, 1985).
  15. Notes on Ancient and Modern Confederacies, *Papers of Madison*, IX, 3-24; see 22, n. 1, for a discussion of the dating of these notes.
  16. Monroe to Madison, May 31, 1786, *ibid.*, 68-70.
  17. Madison to Jefferson, Aug. 12, 1786; and to James Madison, Sr., Nov. 1, 1786; *ibid.*, 96-97, 154.
  18. Thus Madison sought to use his old friendship with John Witherspoon, president of

- the College at New Jersey, and his association at Annapolis with Abraham Clark, a former New Jersey delegate to Congress, to bring that state to support the southern position on the Mississippi question. See Madison to Monroe, Aug. 12 [11], 1786; and Clark to Madison, Nov. 23, 1786, *ibid.*, 90-91 and n. 3, 177.
19. Madison to Jefferson, Aug. 12, 1786; and see his outline and notes for a speech opposing paper money, ca. Nov. 1, 1786; *ibid.*, 94-95, 156-59.
  20. Madison to James Madison, Sr., Nov. 1, 1786, *ibid.*, 154.
  21. Madison to Monroe, Oct. 5, 1786, *ibid.*, 141.
  22. See Madison's draft of "A Bill for appointing deputies" and his letter to Washington, Nov. 8, 1786, *ibid.*, 163-64, 166.
  23. *Ibid.*, 181-84.
  24. Madison to Washington, Feb. 21, 1787, and Notes of Debates in Congress, same date, *ibid.*, 285, 290-92.
  25. Madison to Jefferson, March 19, 1787, *ibid.*, 319-20. In an autobiographical sketch written much later, Madison recalled that "his main object in returning" to Congress was the "cancelling of the project of Mr Jay for shutting the Mississippi which threatened an alienation of Kentucky, then a part of Virginia, from any increase of federal power, with such an evidence in view of a disposition in those possessing it to make that sacrifice." Douglass Adair, ed., "James Madison's Autobiography," *WMQ*, 2 (1945), 202.
  26. The memorandum is in *Papers of Madison*, IX, 345-57; the crucial letters are to Jefferson, Mar. 19, 1787; to Randolph, Apr. 8, 1787; and to Washington, Apr. 16, 1787; *ibid.*, 318-19, 369-71, 383-85.
  27. The quoted phrases are from *Federalist* 37, *Doc. Hist.*, XV, 348.
  28. On this connection, see the seminal essays of Adair, "The Tenth Federalist Revisited," and "That Politics May Be Reduced to a Science," in Colbourn, ed., *Fame and the Founding Fathers*, 75-106; and Edmund Morgan, "Safety in Numbers: Madison, Hume, and the Tenth Federalist," *Huntington Library Quarterly*, 49 (1986), 95-112.
  29. Quotations in this and the following six paragraphs are taken from the memorandum of April 1787, *Papers of Madison*, IX, 351-57.
  30. Madison to Randolph, Apr. 8, 1787, *ibid.*, 369-70.
  31. Madison to Washington, Apr. 16, 1787, *ibid.*, 383-84.
  32. Vices of the Political System, *ibid.*, 356-57.
  33. Madison to Washington, Apr. 16, 1787, and to Jefferson, Oct. 24, 1787, *ibid.*, IX, 383, X, 211.
  34. *Ibid.*
  35. *Federalist* 37 and 48, *Doc. Hist.*, XV, 346, XVI, 4.
  36. Speech of June 6, 1787, *Papers of Madison*, X, 35.
  37. Madison to Randolph, Apr. 8, 1787, and to Washington, Apr. 16, 1787, *Papers of Madison*, IX, 369-70, 383.
  38. Harry C. Payne, *The Philosophes and the People* (New Haven and London, 1976), 61-62; for the reference to Penn, see Montesquieu, *The Spirit of the Laws*, bk. IV, chap. 6.
  39. Madison reflected on the difference between classical law-giving and the deliberations of the Convention in *Federalist* 38, which is quoted here; *Doc. Hist.*, XV, 353-54.

## CHAPTER IV THE POLITICS OF CONSTITUTION-MAKING

1. A draft of the letter, in the handwriting of Gouverneur Morris, was reported by the committee on style on September 12 and adopted without revision; the official letter was signed by Washington in his capacity as presiding officer. *Records*, II, 583-84 and n. 3a,