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# James Madison's Doctrine of National Sovereignty at the Constitutional Convention of 1787

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JAMES MADISON'S DOCTRINE OF NATIONAL  
SOVEREIGNTY AT THE CONSTITUTIONAL  
CONVENTION OF 1787

by

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## LIFE

Edward Patrick Echlin, S.J., was born in Detroit, Michigan, on January 15, 1930.

He attended Hally and Gesu Primary Schools, graduating from the latter in June, 1944. He entered the University of Detroit High School, in September, 1944, and was graduated in June, 1948.

In the summer of 1948, he entered the Jesuit Novitiate of the Sacred Heart, Milford, Ohio, a Division of Xavier University, Cincinnati, Ohio. In the summer of 1952, he was transferred to West Baden College, West Baden Springs, Indiana, an affiliate of Loyola University. He received his Degree of Bachelor of Arts, from Loyola, in June, 1953. He entered the Graduate School of Arts and Sciences, of Loyola University, in the winter of 1954, pursuing Courses for the Degree of Master of Arts in History.

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## CHAPTER I

### BACKGROUND

During the Revolutionary War, our original thirteen States had the common bonds of ardent patriotism, and a foreign enemy to give them a semblance of unity. As soon as the muskets stopped their deadly chatter, and the harassed red-coats retired to their Island across the sea, these common bonds vanished. With imminent danger of National destruction no longer confronting them, the States turned to petty quarrels among themselves.<sup>1</sup>

The American States, immediately after the War, were still loosely bound by the Articles of Confederation. When the War ravaged the sea-coast, these Articles seemed to suffice; once the War was terminated, their inherent weaknesses became apparent. Not only did the victorious Americans fear monarchy, itself,<sup>2</sup> but many eschewed any sovereign power that even reminded them of monarchy. With such fear of strong government prevalent in all the States, it is understandable that the executive power should be, at best,

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<sup>1</sup>Alexis de Tocqueville, Democracy in America (New York, 1945), I, p. 113.

<sup>2</sup>Breckinridge Long, Genesis of the Constitution of the United States of America (New York, 1926), p. 213.

almost impotent under the Articles. This fear of monarchy was responsible for the many executive committees.<sup>3</sup>

Since no power of taxation was granted to the government, Congress was forced to request funds from the States. The dereliction of the States, in their refusal to contribute to the government, left the central government on the verge of bankruptcy. Under the Articles, the States seemed more conscious of this freedom, than of their obligation to the inchoate Nation as a whole.<sup>4</sup>

The States considered themselves sovereign. The Articles provided for extradition, a practice that was usual between sovereign Nations. Moreover, the central government was forced to rely on the States for revenue, and the enforcing of rights, titles, and interests in State Courts. Unfortunately, for the government, the States failed to send sufficient revenue, while in their State Courts, they recognized only such laws as obtained in their respective States.

With such handicaps, the National government was unable to conduct a vigorous foreign policy, or even to command the respect of observant European Nations. Foreign Countries felt no assurance whatever that the States would fulfill the agreements made by the central government. No foreign Country relishes treaties with a Nation, whose component parts ignored their obligations under the

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<sup>3</sup>Ibid. 212-213.

<sup>4</sup>Andrew C. McLaughlin, A Constitutional History of the United States (New York, 1935), pp. 139-141.



Treaty of 1783.<sup>5</sup> Until the Articles were discarded in 1787, England lived in the hope of regaining all she had lost in the War. At one time, it appeared that England's hopes were not in vain. As Professor McLaughlin notes, it seemed that the States, once the fighting was over, could not reconcile themselves to their mutual inter-dependence. As the days went by, "disorganization rather than integration," seemed to gather head-way, so that men like George Washington, and James Madison, feared for their Country.<sup>6</sup>

Sound currency was unavailable. Rhode Island flooded the Country with worthless paper, while States enacted laws forcing their citizens to accept payment in worthless tender.

Under the Articles, the Legislature was further hampered by the provision that nine States must cast an affirmative vote to pass an Act. This stipulation made it possible for the small States to block any legislation they deemed contrary to their interests.<sup>7</sup> An absent State voted negatively. Amendment of the manifold flaws in the government was impossible, since consent of all States was requisite for an Amendment. Pressure exerted by the delegates to the Annapolis Convention, for another gathering at Philadelphia, coerced Congress to acquiesce in the Constitutional Convention.

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<sup>5</sup> Alfred H. Kelly, and Winfred A. Harbison, The American Constitution (New York, 1948), pp. 106, 108-109.

<sup>6</sup> McLaughlin, p. 138.

<sup>7</sup> Ibid. 140-141.

While Congress strove to mould the States into a powerful Nation, American leaders expressed concern over the dismal situation. As early as 1783, George Washington feared for the future of his Country. He desired sweeping Amendments in the Articles, or even a new Constitution. He found Congress inept, and the States woefully selfish.<sup>8</sup>

In 1786, Washington urged that adequate powers be given to Congress for the good of the whole Nation. Those standing in the way of strengthening the National government, were either ignorant or designing.<sup>9</sup> Although he wished to remain aloof from the "sea of troubles," it seems that Washington realized action could and would be taken. He could "not conceive" how the United States could survive without some Federal power that would pervade the whole Union with an authority like that of the individual State governments over their citizens.<sup>10</sup>

John Jay wrote to Gouverneur Morris, expressing his fears for the National welfare: "The present ministry are duped by an opinion of our not having union and energy to retaliate their restrictions. No time is to be lost in raising and maintaining the Confederacy as to all general purposes....In a word, everything conducive to Union and Constitutional energy should be cultivated,

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<sup>8</sup> Carl Van Doren, The Great Rehearsal (New York, 1948), p. 6.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

cherished, and protected."<sup>11</sup>

No one, save Madison, realized the weaknesses of the government, and the need for a powerful National authority more acutely than did Alexander Hamilton, of New York. "There is hardly a man," he said, "who will not acknowledge the Confederation unequal to a vigorous prosecution of the War, or to the preservation of the Union in peace. The Federal government....will continually grow weaker."<sup>12</sup>

Hamilton adamantly insisted on the need of strong government. "The separate exertions of the States will never suffice. Nothing but a well-proportioned exertion of the resources for the whole, under the direction of a Common Council, with power sufficient to give efficacy, can preserve us from being a conquered people." In a letter to another financier, Robert Morris, Hamilton uses typically strong language. He proposed "a Convention of all the States, with full power to alter and amend, finally and irrevocably, the present futile and senseless Confederation."<sup>13</sup>

In 1781, William Barton wrote a vigorous pamphlet, in which he insisted that Congress should "not be left with the mere shadow of sovereign authority, without the right of exacting obedience to their Ordinances, and destitute of the means of executing their

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<sup>11</sup>George Bancroft, History of the Constitution (New York, 1885), I, p. 64.

<sup>12</sup>Ibid.

<sup>13</sup>Ibid. 32.

resolves."<sup>14</sup>

James Madison, of Virginia, perhaps more clearly than all the others, realized and lamented the weakness of the Articles. Like Hamilton, he devoted himself to the cause of strengthening the government.<sup>15</sup> Indeed, from the moment the Articles were proclaimed, Madison foresaw the inevitable friction that would harass both State and National governments. As early as March, 1781, young James Madison addressed Congress, manifesting his keen perception of the latent flaws in the Articles: "The Articles of Confederation, which declare that every State shall abide by the determinations of Congress, imply a general power vested in Congress to enforce them, to carry them into effect. The United States in Congress assembled, being desirous, as far as possible, to cement and invigorate the Federal Union, recommend to the Legislature of every State, to give authority to employ the force of the United States, as well by sea as by land, to compel the States to fulfill their Federal engagements."<sup>16</sup>

After the War, Madison also deplored another defect in the government, namely, that of loyalty to the State, taking preced-

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<sup>14</sup>Ibid. 24.

<sup>15</sup>From his knowledge of history and political science, Madison saw the problems that would arise. Hamilton was ever anxious to model the new government on the English monarchy. Thus, Hamilton was a little out of step with others who wished a stronger government, but more along Republican lines.

<sup>16</sup>Bancroft, p. 23.

ence over loyalty to the Nation. In January, 1783, he and a future ally at the Convention, the talented James Wilson, of Pennsylvania, asked better cooperation from the States on Congressional requests for finances. He and Wilson declared that loyalty to the Nation superseded loyalty to States and constituents. Angry at Virginia's failure to share his sentiments, Madison firmly expressed his own convictions and admonished his colleagues and their Legislatures.<sup>17</sup>

As the Country staggered into the depths of disunity, Madison, Washington, Hamilton, and others, saw the necessity for a Convention, that would, at least, amend the Articles. Madison frequently reported to the former Commander in Chief, now in temporary retirement at his beloved Mount Vernon. Both feared that Congress would balk at any attempt to amend the Articles, and forge a "chain of iron." Madison wrote Washington, from New York: "Congress has been much divided....On one side, it has been urged that some of the backward States have scruples against acceding to it without some Constitutional sanction; on the other, that some States will consider any interference of Congress as proceeding from the same views which have hitherto aroused their jealousies."<sup>18</sup>

Madison was prudent in his campaign for a radical change in

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<sup>17</sup>Ibid. 32.

<sup>18</sup>James Madison, Letters (New York, 1884), I, p. 277.

the American government. He counseled Hamilton, and others, who strained at the leash to move slowly, lest their chances be scuttled by aroused reactionaries. Although Madison lamented the petty trade wars among the States, the jealousy of State governments, and the paper money systems that deluged the land with low value green-backs, he cautiously awaited favorable occasions to stress governmental revision. Ask for little when there was little chance of obtaining even that, seek more as the sense of disaster begins to grow, and as the pace of National anarchy surpasses the feeble remedies acquiesced in, others, too, will see the light.<sup>19</sup>

Patiently, Madison fostered sentiment for a radical change in the government. First, he worked for a simple power of Congress to tax imports. Defeated in that, he sought general Congressional control over commerce, next to secure Virginia's call for the Annapolis Convention, and, finally, to seek another Convention with broader objectives than those of Annapolis. When Shay's rebellion jolted even the Conservatives out of their complacency, Madison was ready for the bold course proposed to Washington.<sup>20</sup>

By 1786, it seemed to Europeans, and many Americans, that the United States was a failure, destined to prove once and for all that Republican government was only a dream. Washington fretted at Mount Vernon, fearing that the Country he loved, and for which

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<sup>19</sup>Irving Brant, James Madison Father of the Constitution (New York, 1950), p. 15.

<sup>20</sup>Ibid. 16.

he had devoted the best years of his life, was slowly strangling itself. The National Treasury was utterly empty, and the States were engaged in petty trade wars. Decentralization had been achieved when the Colonies broke from the Empire. Now it was necessary to draft a Constitution that would entitle the central government to suppress internal rebellions, to regulate trade, and to control the actions of the various State governments.

Congress, still deftly avoiding a Convention, again attempted Amendment of the Articles of Confederation, appointing a "Grand-Committee" to report such recommendations as they thought necessary. This Committee recommended only that Congress be given power to regulate commerce, and to collect duties on imports. Sanctions would be imposed on States, defaulting in paying their requisitions promptly. Congress, however, was so moribund at the time, that no action was taken on the proposals.

Inexorably, Madison, and others, steered the Country toward the Philadelphia Convention. In 1785, Virginia and Maryland had signed an amicable agreement, settling their perennial disputes over control of the Potomac. So much did this inter-state agreement please the two States, that another commercial gathering was called, this time including Pennsylvania and Delaware. Then, Virginia suggested that the other States be invited too, and that the Convention consider a common inter-state policy.

The famous Annapolis Convention met at Annapolis, Maryland, September, 1786. Although but seven States attended, Madison and

Hamilton used the meeting as a spring-board for calling a new Convention. Hamilton's now famous words bespoke the purpose of the proposed Convention: "to devise such further provisions as shall appear to them necessary to render the Constitution of the Foederal [sic] Government adequate to the exigencies of the Union."<sup>21</sup>

Hamilton's words could be taken to mean a revision of the Articles of Confederation, although it is doubtful if the New Yorker ever hoped for less than a new Constitution.

Congress feared that the meeting would further weaken the government. Nevertheless, in November, 1786, Virginia boldly adopted a resolution, calling upon the other States to send delegates to Philadelphia. By February, four States had responded, so that a diffident Congress, perceiving the inevitable, saved face with a similar recommendation for a Convention. Soon all the States, obdurate Rhode Island alone refraining, had elected delegates to amend the Articles.

With this stamp of Congressional approval upon the Convention, the dream of Madison, Washington, and Hamilton, was fulfilled. James Madison was the first delegate to arrive at the City of Brotherly Love, the following May. This was only natural in the man who had so ardently desired this gathering, and hoped to present a plan embodying his ideas on the new Constitution. As the other delegates trickled into the City, Madison, and the Virginia

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<sup>21</sup> Van Doren, p. 7.



group labored over the Virginia Plan, which in large part, would emerge as our finished Constitution.<sup>22</sup>

Besides Madison, fifty-five other delegates participated in the gathering at Philadelphia. Of these fifty-five, the major part of the drafting was done by a dozen men. Of this dozen, Madison was foremost. A mediocre speaker, and of almost colorless appearance, he possessed a keen mind, and a wealth of scholarly erudition. He has been called the "Father of the Constitution" because of the dominant role he played in forging a strong National government, with authority not from thirteen testy sovereignties, but from the people of America.<sup>23</sup> This idea of a strong central government resting not on the States, but on the people of the land, was the conviction for which Madison fought throughout the Convention.

The Constitution of the United States has outlasted any similar document known to history. This same Constitution succeeded, where the Articles of Confederation failed because it established strong National government, founded on the American people. Of all the men who contributed to the Philadelphia Convention, one alone deserves the title of "Father of the Constitution." It is for this reason that this study traces James Madison's doctrine of

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<sup>22</sup> Andrew G. McLaughlin, The Confederation and the Constitution (New York, 1905), pp. 121-122.

<sup>23</sup> Edward McNall Burns, James Madison, Philosopher of the Constitution (New Brunswick, 1938), p. 10.

National sovereignty as he expressed it in Philadelphia, that historic summer of 1787.

Before following Madison through the Convention, it is necessary to set the stage upon which this American drama was enacted, to study the immortal actors, who joined Madison, in framing our Constitution. In any study of the Convention, we are eternally indebted to two of the delegates for the notes they left to posterity. First, we are indebted to James Madison, for his notes on the debates, drafted diligently during the days of the Convention, and published posthumously for the benefit of scholars and patriots. Secondly, we are indebted to a delegate from Georgia, one William Pierce.<sup>24</sup>

Pierce left us brief and concise sketches of the important men who were outstanding in moulding our Constitution. About his own character, Pierce is silent, and prefers to leave those who choose, to speculate on it. He claims for himself only the distinction of a military record, loyal service to State, and Country, as a Congressman, and, finally, his short sketches of the men who took part in the Great Debate. We now summarize the sketches of Madison, and his more important colleagues.

James Madison, Pierce writes, supplied the finest leadership, and, with the exception of James Wilson, his was the keenest intellect. Though not an orator, he was "a most agreeable sic

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<sup>24</sup>Documents Illustrative of the Formation of the Union of the American States, ed. Charles Tansill (Washington, 1927).

eloquent, and convincing speaker." On every debate, he was the best informed, and had the most correct knowledge of the affairs of the United States. In Congress, Madison was one of the ablest members "that ever sat in that Council." About thirty-seven years of age, he was an agreeable person, modest in countenance, and of controlled emotions.<sup>25</sup>

George Washington was esteemed by all as the Commander in Chief, of the late American Army. Having led the States to independence and victory, he again left his beloved estate, to devote himself to framing the government. Deliverer of his Country, politician, statesman, most honored citizen, leader of men, all these was Washington. The General sought to make himself useful to his beloved Countrymen. It is only natural that the delegates elected him Presiding Officer of the Convention.<sup>26</sup>

James Wilson ranked among the foremost in legal and political acumen. Government was Wilson's consuming interest; he studied everything that might make him more expert in political science. He knew human nature, the history of political institutions, the causes and effects of every Revolution, from the days of ancient Greece, until the American Revolution. Yet, Wilson was no orator. He was clear, copious, and comprehensive, drawing the attention of his listeners, not by eloquence, but by cogent reasoning. When the

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<sup>25</sup>Ibid. 105.

<sup>26</sup>Ibid. 104.

Convention opened, Wilson was still a young man in his forty-fifth year.<sup>27</sup>

Another Pennsylvania delegate, whose prestige and wisdom further enhanced the gathering, was Benjamin Franklin. Proclaimed the greatest philosopher of early America, he understood all the operations of nature. Pierce almost defied him in adulatory exuberance: "the very heavens obey him, and the clouds yield up their lightning to be imprisoned in his rod." As yet, he had no claim to fame as a politician, nor did his interest extend to the frays of the political arena. Though eighty-two years old, his mind was sharp, his story-telling the highest of entertainment.<sup>28</sup>

Also, from Pennsylvania, was the verbose and garrulous Gouverneur Morris. He was "one of those Genius's sic" in whom the highest talents combined to make him a conspicuous and successful orator. His rhetoric was sublime, embellished with smooth flowing periods that enthralled his audience for hours on end. Even his reasoning was garbed in the lightsome simile and metaphor. Unfortunately, his logic left much to be desired. Though brilliant of speech, widely read, and a savant of the sciences, his thought was "fickle and inconstant." Though bred to the Bar, he chose business with his Brother, Robert, in preference to the world of litigation. Gouverneur Morris was also conspicuous by his wooden

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<sup>27</sup> Ibid. 101.

<sup>28</sup> Ibid. 100.

leg and badly marred arm, the results of a youthful accident.<sup>29</sup>

Roger Sherman, to the Madison-Wilson contingent, was the villain of the Great Debate. He exhibited the oddest shaped character Pierce had encountered. He was a strange combination of awkwardness and forceful logic. His odd clothing, the vulgarisms of his speech, and his "strange New England cant" made his speeches almost laughable; yet, no man had "a better heart or a clearer head." Victory was a habit with Sherman, failure a total stranger. In early life, he was a cobbler. Ambitious and industrious, he became an Almanack printer, a Judge, a Member of Congress, and, now, at sixty was chosen to represent his State in this highly touted gathering of patriots.<sup>30</sup>

Alexander Hamilton, of New York, did not take a prominent part in the arguments. Still, he deserves mention as one of the most talented men to ride into Philadelphia. A lawyer and finished scholar, he had strong, clear judgment, smooth prose style, and an ability to win both the head and heart of his listener. His voice was feeble; but his delivery was convincing. Small of stature, lean, and apparently vain, this talented New Yorker was then only thirty-three years of age.<sup>31</sup>

After May 25th, the delegates devoted two days to the details

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<sup>29</sup>Ibid. 101-102.

<sup>30</sup>Ibid. 97-98.

<sup>31</sup>Ibid. 98-99.

of organization and procedure. George Washington was unanimously elected President of the proceedings; William Jackson was elected Secretary; and a Committee of Rules was appointed. With Washington's election to the Presidency, Madison and the Nationalists had already won a victory. Although he expressed himself only when necessary, Washington was convinced of the need for strong government. "My wish is," Washington wrote to Madison, "that this Convention may adopt no temporizing expedients, but probe the defects of the Constitution to the bottom, and provide a radical cure, whether agreed to or not."<sup>32</sup> Jackson apparently suffered from over-work or sloth. As a result, we are indebted to Madison for our best record of the debates.

Once Officers had been elected and procedure settled, Madison presented his Virginia Plan, on May 29, through Governor Randolph. Since this Plan is considered the work of Madison, and since it emerged in many respects as our finished Constitution, we should understand the Plan, before embarking on a study of the Convention.

Randolph began by resolving that the Articles of Confederation should be "corrected and enlarged" to provide "common defense, security of liberty and general welfare." Thus, nothing is said to indicate that the Virginia delegation hoped to go beyond the authorization given by Congress, namely, to revise the Articles. Next, he resolved that suffrage should be proportioned to the quo-

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<sup>32</sup>Bancroft, II, p. 5.

tas of contribution or number of free inhabitants. The National Legislature was to consist of two branches, the first elected by the people of the States, the second by the members of the first, out of a number of persons nominated by individual Legislatures. As an indication that the Legislators would owe their first loyalty to the National government, it was stipulated that they hold no offices established by a State.

The Sixth Resolution of the Plan dealt with the National Legislature. The new Legislature would possess "the Legislative rights vested in Congress by the Confederation, and, moreover, to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation." Congress would also have power of negative over State laws deemed contrary to the Constitution. If any State failed to follow the Constitution, force would be used by the authorization of the National Legislature.<sup>33</sup>

After the proposals for the Legislature, Randolph turned to the National Executive. He (the Magistrate) would be chosen by the National Legislature, would receive a fixed compensation, and would be ineligible for a second term. In addition to the duty to execute the laws, the Executive would have all the powers vested in Congress under the Articles.<sup>34</sup>

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<sup>33</sup>Tansill, p. 117.

<sup>34</sup>Ibid.

The Executive, with a chosen number of the National Judiciary, would compose a Council of Revision with two-fold powers, namely, to examine the acts of the Legislature, before they shall operate, and to study every act of a State Legislature, before a negative shall be final.<sup>35</sup>

The Virginia Plan resolved that a National Judiciary be established with one or more supreme tribunals and several inferior tribunals to be chosen by the National Legislature. The inferior Courts would hear in the first instance, while the supreme would hear and determine in the dernier instance.<sup>36</sup>

The Plan provided for the admission of new States, stating that they could be admitted by the National Legislature with a majority "less than the whole" body. A Republican form of government was to be guaranteed to each State.<sup>37</sup>

Provision was made for Congress to continue with all its authority until the "reform" of the Articles would be adopted. Provision should be made for amendment of the proposed Articles of Union without the consent of the National Legislature. The Legislative, Executive and Judiciary powers within the States should be bound to support the Constitution.

Finally, the Plan provided that the amendments offered by

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<sup>35</sup>Ibid. 118.

<sup>36</sup>Ibid.

<sup>37</sup>Ibid.



this Convention ought to be submitted to an assembly or assemblies of Representatives recommended by the several Legislatures to be expressly chosen by the people, "to consider and decide thereon."<sup>38</sup>

This radical proposal, though submitted as a mere series of amendments to the Articles, was in reality a proposal for a new, powerful National government. It was Madison's answer to the problems besetting the government under the Articles. This new proposal would have the government based not solely on the individual States, but upon the people of the States. In McLaughlin's opinion, the Plan provided three most explicit answers to the problems facing the Nation: (1) the negative power of the National Legislature over State laws contravening "in its opinion" the Articles of Union; (2) the power vested in the National Legislature to use force against recalcitrant members not fulfilling their duties under the Articles of Union; (3) the Legislative, Executive and Judiciary powers within the States to be bound to support the Articles of Union.<sup>39</sup>

From a study of this Plan, we can infer Madison's political philosophy at the Convention's dawn. On many of his proposals, he was forced to compromise; on others, his Doctrine evolved, and in years to come he changed radically. We are interested in his work for a strong National government at the Convention, a govern-

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<sup>38</sup> Ibid. 119.

<sup>39</sup> McLaughlin, Constitutional History, pp. 155-157.

ment that he hoped would materialize through proportional representation, a strong Executive, popular election of at least one branch of the National Legislature which would in turn elect the Executive, and the National negative. These, in our estimation, are the heart of the argument, and by studying them, we hope to present a clear outline of his political philosophy in the summer of 1787.

The New Jersey Plan, presented as a counter-proposal to the Virginia Plan, was strictly a modification of the Articles. It would give Congress power to tax and regulate commerce; it provided for a better system of requisitions from the States by allowing Congress to force States to pay if a majority of them agreed that force must be used. Under this Plan, the States would select an Executive of several persons who would appoint a Federal Judiciary with power to hear in the first instance cases involving impeachment of Federal Officers, and to serve as Appellate Court in the dernier instance for cases involving the Federal Government, piracy, or foreigners.<sup>40</sup>

All acts and treaties made by Congress would be the supreme law of the land for the States, when they involved the States or their citizens. The Federal Executive would be empowered to use force when a recalcitrant State refused to recognize this supreme law. Although such resolutions would strengthen the government,

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<sup>40</sup>Ibid. 164-166.

the Plan did not go far enough to please the Nationalists, most of whom came from the large States. The government would still be based not on the people, but on the individual States, and the evils of the Articles would still harass the land.

With a knowledge of the delegates, the procedure, the Officers, and the two opposing Plans, we are able to follow Madison through the vicissitudes of the Convention, as he, more than any other man, moulds our Constitution into the "chain of iron" which amazed the world. As both sides lined up in grim preparation for the task ahead, the words of the venerable leader of men in the President's chair rang through Independence Hall. "This event is in the Hand of God."

## CHAPTER II

### ELECTION OF PRESIDENT AND CONGRESS

In the Virginia State Convention, when fighting for ratification of the completed Constitution, Madison told the delegates "that the organization of the general government was in all its parts difficult," and that "there was a peculiar difficulty in that of the Executive." In the Constitutional Convention, James Wilson had said, "this subject has greatly divided the House, and will also divide the people out of doors."<sup>1</sup>

It is clear that the election of the Executive greatly puzzled our Founding Fathers. Discussion of methods of election of an Executive runs through Madison's notes like a thread. The subject was first mentioned on Friday, June 1, by James Wilson, when he moved that election be by the people, a motion that was opposed by Roger Sherman, of Connecticut.<sup>2</sup> Two weeks later, when the Committee of the Whole reported on the Virginia Plan, they incorporated the very words Randolph had used when speaking of the Executive "to be chosen by the National Legislature for the term of \_\_\_\_\_"

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<sup>1</sup>Max Farrand, "Compromises of the Constitution," American Historical Association Annual Report, I, (1903), p. 80.

<sup>2</sup>Tansill, p. 134.

years."<sup>3</sup> As it stood in this report, the method of election would please no one, with the possible exception of the small States, providing the Senate had a prominent part in this choice.

Two days after this report by the Committee of the Whole, delegates from the larger States contended with those of the small over election of the Executive. The small States, confident that control of the Senate would be theirs, hoped likewise to control the Executive by having the National Legislature elect him. Conversely, delegates from the larger States hoped to have the people elect the Executive. While Martin and Sherman debated with Morris Wilson, and Pinckney, on election of the Executive, Madison kept his peace, perhaps preparing what would be his longest speech in the Convention. On Thursday, July 19, Luther Martin moved that the Executive, since his election was by the Legislature, be ineligible for re-election, lest he become too dependent on those who elected him.

Rufus King then suggested that some form of election by the people, possibly through electors, would be best. This time Paterson's ideas were similar to those of King. He proposed that three electors be allowed to a large State, one to a small. Wilson remarked that it was apparent that all feared election by the Legislature, unless the man be ineligible for a second term. He was delighted to see "that the idea was gaining ground, of an

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<sup>3</sup>Ibid. 117.

election mediately or immediately by the people."<sup>4</sup>

At this point, Madison thought the time had come for him to express his ideas on election of an Executive. He began by reminding all that it was a fundamental principle of free government that the Legislative, Executive, and Judiciary powers should be separately exercised, and it is just as fundamental that they be independently exercised. It is a necessary part of free government that the Executive be independent and separate from the other branches. He explained that the coalition of the two former powers could be immediately dangerous to liberty. To him it seemed essential that the Executive be elected by some source that would enable him to be free from any dependence on the Legislature.<sup>5</sup>

Once Madison established his point on separation of powers, he hastened to add that this separation could not exist if one branch chose the other, that is, if one was dependent on the other. He contended that even with ineligibility for a second term, this procedure would wed the two branches; intrigues and contentions would certainly follow. For these reasons, he was disposed to refer the appointment to some other body. The people at large was, in his opinion, the finest body to elect the Executive. He professed his faith in the people as electors by concluding that the people would choose a distinguished Magistrate, whose merits and

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<sup>4</sup>Ibid. 412.

<sup>5</sup>Ibid. 412-413.

patriotism had already rendered him valuable to the Nation.<sup>6</sup>

In this same speech, Madison admitted one serious difficulty in the popular election of a President. Since the northern States had a larger voting population than the southern, the latter could not duly influence the election. Therefore, he committed himself to election by electors, as the method open to the fewest objections.<sup>7</sup> We must remember, however, that Madison considered the electoral method election by the people, since the people chose the electors. By popular election through the electors, he hoped to strengthen National Government.

Six days later, Madison thought the election should be by some special authority derived from the people, or by the people themselves.<sup>8</sup> He offered three objections to election by the Legislature. In the first place, election would divide the Legislative, and public interest would suffer. Secondly, the candidate would intrigue with the Legislature and render his administration subservient to them. Thirdly, foreign powers could resort to intrigue and influence the election.<sup>9</sup>

Nor did he approve of election by State Legislatures, since in this case, the Executive might be subservient to these smaller

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<sup>6</sup>Ibid. 413.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid. 449.

<sup>9</sup>Ibid. 449-450.

Legislatures.<sup>10</sup>

Madison insisted that the option was between electors chosen by the people and the people themselves. In both cases, the people would control the election. He preferred the mode whereby the people at large or the qualified part of them would choose the Executive.<sup>11</sup> Despite the objections that people would be prejudiced in favor of citizens of their own State, and that the southern States would have less voice in the election, Madison preferred it to all other alternatives.<sup>12</sup>

As late as September 12, Madison was still explaining his repugnance to Legislative election of the Executive. He repeated the objection that such a procedure would render the Executive dependent on this other branch. Nor were the Judges fit electors for similar reasons. The purpose of election by the people was to defend the Executive and to "prevent popular or factious injustice."<sup>13</sup>

When the Committee on Style presented their draft of Executive election, Madison approved the wording, and confidently remarked: "He is now to be elected by the people." With the Executive elected by the people, the first branch of the government

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<sup>10</sup> Ibid. 450.

<sup>11</sup> Ibid. 450-451.

<sup>12</sup> Ibid. 451-452.

<sup>13</sup> Ibid. 715.



would be independent of State Legislatures, the National Legislature, the Judiciary, and an arbitrary handful of electors.<sup>14</sup>

By his arguments for popular election of the Executive, Madison hoped to strengthen the central government. He and Wilson attempted to lodge as much power as possible in the hands of the people. By giving power to the people, they hoped to strengthen the National government, and prevent an excess of power on the part of the States. Madison consistently refused to countenance election by the Legislative or Judicial branches of the National government, because this would hinder the separation and independence of the three branches. Throughout the Convention, Madison considered the granting of more power to the people the best way to strengthen the National government.<sup>15</sup>

Madison desired popular election of the Executive. A study of his arguments for the mode of electing the Legislative branch reveals that he also approved of popular election of this branch of the government. To study Madison's arguments for Legislative election, it will be necessary to return to the early days of the Convention, and watch how the discussions developed.

In the Virginia Plan, Madison recommended that the First House of the Legislature be elected by the people. This House would then elect the second House. By this expedient, the people

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<sup>14</sup>Farrand, "Compromises," I, 82.

<sup>15</sup>It seems that Madison hoped to weaken State powers by transferring power to the people of the United States.

and not the States would directly control the first House, and indirectly the second.<sup>16</sup> On May 31, Roger Sherman arose to object to popular election of either branch of the National Legislature. Since he thought the people easily misled, he preferred election by the State Legislatures. Gerry agreed with Sherman, but Wilson and Colonel Mason sided with the Virginia Plan. Wilson pointed out that no government could exist for long without participation by the People. Furthermore, he believed that State Legislatures should be weakened, whereas Sherman's objection would give more power.<sup>17</sup>

Madison hastened to the assistance of Mason and Wilson, since he sincerely considered the "popular election of one branch of the National Legislature as essential to every plan of free government."<sup>18</sup> He contended that the first branch, if elected by the States, would be controlled by the States, and not by the people. If the first were elected by the people, the people would control both branches, even if the second were elected by the first. He thought, too, that the "great fabric to be raised would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the Legislatures."<sup>19</sup>

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<sup>16</sup>Tansill, 116-117.

<sup>17</sup>Ibid. 125-126.

<sup>18</sup>Ibid. 126.

<sup>19</sup>Ibid. 126-127.

Although Gerry again expressed disagreement, it was agreed by vote that the people should elect the first branch of the National Legislature, but as the delegates were unable to agree on election of the second branch, the question was deferred.<sup>20</sup>

Six days later, in Committee of the Whole, Charles Pinckney moved that the "first branch of the National Legislature be elected by the State Legislatures, and not by the people." This motion was hastily seconded by John Rutledge, of South Carolina. Elbridge Gerry expressed disagreement with this attempt to undo the affirmative vote by May 31. Frequently, he said, the worst type of men belong to State Legislature, men who are not fit to elect the National Legislature; furthermore, he insisted, it was necessary for the people to elect at least one branch in order to inspire confidence.<sup>21</sup> James Wilson added that the only reason representation was necessary was that the people in glebe were too unwieldy to conduct their government. He insisted that they would be more attached to a government of their own choosing.<sup>22</sup> Sherman arose to contend that election by the people would abolish State Legislatures. He thought a binding force between State and National Legislatures could be established if the States elected the National Legislature.<sup>23</sup>

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<sup>20</sup>Ibid. 127-129.

<sup>21</sup>Ibid. 159-160

<sup>22</sup>Ibid. 160.

<sup>23</sup>Ibid. 160-161.

After Wilson and Mason, to the chagrin of Roger Sherman, had defended popular election of the Legislature, Madison arose to bolster their arguments. So convinced was he of the necessity for election of at least one branch by the people, that he considered it a clear principle of free government. It avoided too great an influence of the State governments in the general one.<sup>24</sup> He also begged to differ from the member from Connecticut, Roger Sherman, on his concept of the objects that required a National government. Sherman admitted faction and oppression in the States. This very admission proved that the sphere of the National government should be enlarged. It was incumbent on us, he said, to try this proposed remedy, and to frame a Republican system on such a scale and in such a form as will control all the evils experienced.<sup>25</sup>

After Madison, Dickerson announced his concurrence with the delegate from Virginia, that at least one branch of the Legislature should be chosen by the people. Read and Wilson also supported Madison. When the vote was taken on Pinckney's proposal that the election of the Legislature be not by the people, but by the States, it was defeated with only New Jersey, Connecticut, and South Carolina voting in the affirmative.<sup>26</sup>

Three months later, the Committee on Style reported that the

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<sup>24</sup>Ibid. 161-163.

<sup>25</sup>Ibid. 161-162.

<sup>26</sup>Ibid. 163-165.

House of Representatives shall be elected every second year by the people of the several States. As for the Senate, this branch would be elected by the State Legislatures.<sup>27</sup>

We have seen that Madison hoped to strengthen the Federal Government, and check the errant tendencies of the States by reposing the power of election of an Executive in the people at large. He also succeeded in strengthening the government by allowing the people to elect the Lower House. He would have preferred popular election of the Senate, or at least election by the Lower House, but until the twentieth century, this branch would be chosen by the Legislatures.

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<sup>27</sup> Ibid. 702.-703.

## CHAPTER III

### THE FEDERAL NEGATIVE

In the Virginia Plan, submitted May 29, there was a provision that the National Legislature "negative all laws passed by the several States, contravening in the opinion of the National Legislature the Articles of Union."<sup>1</sup> One authority on the Convention, says that the men who defended this proposed negative were still comparing the projected government with former British rule of the Colonies.<sup>2</sup> James Madison considered it essential and "could not but regard an indefinite power to negative Legislative acts of the States as absolutely necessary to a perfect system."<sup>3</sup>

Madison's biographer says that in his striving for a powerful government, he won where he deserved to win, and lost where he deserved to lose. One argument he deserved to lose was his contention for a Federal negative;<sup>4</sup> the plan was simply unworkable for myriad reasons. It is not the purpose of this Chapter to defend

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<sup>1</sup>Tansill, p. 117.

<sup>2</sup>McLaughlin, The Confederation, p. 206.

<sup>3</sup>Madison, Writings, III, 121. Burns, Madison, p. 99.

<sup>4</sup>Brant, James Madison, pp. 128-131.

Madison's ideas on the negative. To study his reasons for the negative is helpful, however, to an understanding of his Doctrine of strong National sovereignty. Years later, Madison would refuse to take responsibility for his defense of the negative, although five days before the Convention adjourned, he still thought judicial review was inadequate to prevent the States from disrupting the Federal Government.<sup>5</sup>

The notes of Robert Yates report that Madison argued for a negative to avoid use of force. "To prevent this disagreeable expedient," Madison is quoted as saying, "the power of negating is absolutely necessary--this is the only attractive principle which will retain its centrifugal force, and without this the planets will fly from their orbits."<sup>6</sup>

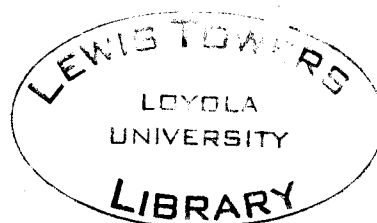
Madison's own notes on the debates discuss this same debate on the negative, and agree with Yates, that the first mention of it was June 8. The section is headed by Madison, "On a reconsideration of the cause giving the National Legislature a negative on such laws of the States as might be contrary to the Articles of Union, or Treaties with foreign Nations."<sup>7</sup> By a Federal negative, Madison meant a power resident in the National Legislature whereby they could, in effect, nullify State laws. This power is similar

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<sup>5</sup>Tansill, p. 717.

<sup>6</sup>Ibid. 758.

<sup>7</sup>Ibid. 174.



to judicial review as exercised by the Supreme Court today. According to Madison's plan, State laws would be declared unconstitutional by the National Legislature.

Charles Pinckney began the debate by a motion "that the National Legislature should have authority to negative all laws which they should judge to be improper."<sup>8</sup> The tenor Pinckney's argument manifests the ardor of the South Carolinian for a government to which the States could be wholly subordinate.

When Pinckney surrendered the floor, Madison seconded his motion. Madison contended that an indefinite negative power on legislative acts of the States was necessary for a perfect system of government.<sup>9</sup> He argued that government under the Articles had taught American leaders several lessons, among them that the States constantly tended to infringe on the authority of the National Government. National treaties, he said, were violated with impunity; the rights of one State were ignored by another; the weaker party was always repressed.<sup>10</sup> He proposed a negative to meet these difficulties, as the wisest expedient for preventing State mischief. A negative power would not only allow the government to deal with State encroachments, but would prevent the States from attempting to over-step their rights. He feared force if a negative were not

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<sup>8</sup>Ibid.

<sup>9</sup>Ibid. 174.

<sup>10</sup>Ibid. 174-175.



adopted. If Massachusetts, for instance, would decide to defy the National Government, he feared the National forces could not compel her to yield, especially if she were aided by her neighbors.<sup>11</sup> Madison feared that the National army would not prevail under such circumstances. It seemed to him that a small portion of the community, acting on the defensive, could bid defiance to the National Government at will.<sup>12</sup>

This proposed negative, Madison reiterated, would render the use of force unnecessary. Nor would the States, if a negative were in the Constitution, defy the National authority. Bolstering his argument for a vigorous negative, Madison exhorted his conferees to a negative that would extend to all cases whatsoever. He then returned to his cherished illustration of the planetary system, and again insisted that this proposed prerogative of the National Government was the one principle that must counteract the centrifugal tendency of the States. Without a strong negative, the States would "destroy the order and harmony of the political system."<sup>13</sup>

Elbridge Gerry attached the negative plan. He feared such a power would enslave the States.<sup>14</sup>

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<sup>11</sup>Ibid.

<sup>12</sup>Ibid.

<sup>13</sup>Ibid. 175.

<sup>14</sup>Ibid. 175-176.

Roger Sherman proposed an enumeration of cases in which a negative could be used.<sup>15</sup> James Wilson defended Madison's position. The negative, he insisted, when viewed with a steady and close eye, was right. It seemed that there was little danger of hurting the States, but he feared the States would injure the whole and let local interests supersede National ones.<sup>16</sup> Dickenson also defended the negative lest the States again disrupt the whole.<sup>17</sup> Bedford, of Delaware, feared the negative was a menace to the small States. It seemed unreasonable to him for a National Legislature, miles away, to judge on the Constitutionality of State Legislation.<sup>18</sup>

When Bedford's objection was made, Madison defended his position. He admitted that the difficulties were worthy of attention, and ought to be answered before a vote was taken. As to Bedford's argument, he thought a Board could be established in each State, to give temporary approbation to laws which seemed Constitutional. He suggested that the power of negating be lodged in the Senate alone, so that the Lower House could adjourn more frequently. Turning to Bedford, Madison asked what would happen if the National Government collapsed. He doubted if the small States would be

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<sup>15</sup>Ibid. 176.

<sup>16</sup>Ibid. 176-177.

<sup>17</sup>Ibid. 177.

<sup>18</sup>Ibid. 177-178.

safer without its protection.<sup>19</sup>

When a vote was taken on Pinckney's original proposal, it was passed in the negative, with only Virginia, Massachusetts, and Pennsylvania voting aye.<sup>20</sup>

The issue again arose on July 17, when Gouverneur Morris attacked the power as unnecessary. When Sherman and Martin joined the attack, Madison countered with a defense of his negative.<sup>21</sup> This time he claimed that a negative was essential to the security of the general government. The necessity of general government proceeded from the tendency of States to proceed on their own. This propensity, he continued, would disturb the community, unless controlled. Only a negative could control it. Madison disagreed with Sherman's opinion that State tribunals could control State Legislation, since in all the States, these tribunals were dependent on Legislatures. In Georgia, for example, the Legislature annually appointed Judges to these Courts. In Rhode Island, the Judges were displaced by the Legislature for defending the Articles of Confederation.<sup>22</sup>

A mild and perfect means, Madison claimed, was necessary to check the States; such a means was the Federal negative. Again he

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<sup>19</sup>Ibid. 178.

<sup>20</sup>Ibid.

<sup>21</sup>Ibid. 390-391.

<sup>22</sup>Ibid.

pointed to the British system which revealed the utility of a negative. Nothing else could maintain the harmony of the empire but the negative. Nor was the Crown loath to use this negative for the good of the whole. Every Act passed against the central government was stifled in birth. He admitted some abuse of this prerogative, due to favoritism toward one or another part of the empire, but he did not believe the United States of the future would perpetrate such abuse.<sup>23</sup>

After Madison's arguments, Gouverneur Morris bluntly replied that the very proposal of such a measure would disgust all the States.<sup>24</sup> Pinckney, according to Madison's notes, defended the negative.<sup>25</sup> When Pinckney surrendered the floor, another vote was taken. Again the measure was defeated, with Virginia, North Carolina, and Massachusetts voting affirmatively.<sup>26</sup>

Immediately after the vote sounding the death knell of the Federal negative, Martin proposed that the Legislative Acts of the United States be the supreme law of the land, and that the judiciaries be compelled to uphold them. Anything in the respective State laws to the contrary would be invalid.<sup>27</sup> This motion of

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid. 391.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid. 391-392.

Martin's was a perfect answer to Madison's wish for a check on State Legislation. Although Madison continued to defend the negative, it seems that Martin's plan was, in this case, superior. Madison, in his zeal for strong central government, preferred the National Legislature to State Courts as a curb on State Legislation.<sup>28</sup>

As late as August 17, Pinckney, for the third time, suggested further discussion of a negative power. Sherman, of Connecticut, reminded Pinckney that the matter should rest, since Martin's plan was acceptable to the majority.<sup>29</sup> Madison merely stated his continued preference for some form of negative.<sup>30</sup>

James Wilson did not surrender as easily as Madison. He thought the firmness of Judges insufficient; he was convinced of the expediency of a negative that could prevent the passage of laws, rather than a feeble power that would declare them void when already passed.<sup>31</sup>

Rutledge, Ellsworth, and Morris all spoke against Madison. All considered the negative impractical and unnecessary.<sup>32</sup> When a vote was taken, New Hampshire and Delaware joined Virginia, Penn-

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<sup>28</sup> Ibid. 604.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid. 604-605.

sylvania, and Massachusetts, in support of the negative; New Jersey voted negatively. The doomed negative was again defeated, six to five.<sup>33</sup>

Later in life, Madison attempted to avoid discussion of the negative. Five days before the Convention's close, he was still suspicious, however, of judicial review as a check on State laws. In his notes, he quotes himself as saying, "A negative on the State laws alone could meet all the shapes which these could assume. But this had been over-ruled."<sup>34</sup>

In summary, then, it is obvious that Madison, during the Convention, never relented in his arguments for a negative. He proposed that the National Legislature should review all State Legislation. Any acts of State Legislatures that, in the opinion of the National Legislature, contravened the Constitution, could be negatived. As is obvious, Madison's plan received little support. Instead, Martin's judicial review was adopted. Despite the perennial difficulties between Legislatures, Congress and Courts, Martin's plan seems to have worked in most instances. Madison's heated arguments for a Federal negative revealed his zeal for a strong Federal Government; his distrust of State as a check on State Legislation, revealed his distrust of excessive decentralization.

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<sup>33</sup>Ibid. 605.

<sup>34</sup>Ibid. 717.

## CHAPTER IV

### A STRONG YET RESPONSIBLE EXECUTIVE

In forging a strong central government, based on the people of the States, Madison realized the need of a strong Executive, who was at the same time responsible to the people and Congress for his actions.<sup>1</sup> At the time of the Convention, there was a general fear of the Executive branch of government. The Articles had provided for committees to serve as executive, and a few of the delegates to the Constitutional Convention feared a strong Executive lest the Executive, or Executives, evolve into some form of monarchy.<sup>2</sup>

On the whole, the Convention seemed to favor a strong Executive, although a minority feared the advent of despotism. Most delegates realized how dismal had been the failure of the Executive Committees under the Articles, but misgivings about possible monarchy could be effaced by adequate safe-guards. It was absolutely necessary to make the Executive eager to comply with the demands of his Country. Such expedients as a suitable term of of-

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<sup>1</sup>Burns, 139.

<sup>2</sup>Farrand, "Compromises," 80.

office, responsibility to the people for election and re-election, a balance of power between the three branches of government, and the possibility of impeachment, were thought suitable to harness Executive independence.<sup>3</sup> Although a strong Executive was absolutely necessary for a strong government, too strong an Executive would defeat the purpose of Republican rule. Madison realized the need of a balance between the two, the necessity of a strong Executive and responsibility to the American people. Throughout the Convention, in his efforts to establish a powerful government, he argued for a strong Executive surrounded by adequate safe-guards.<sup>4</sup>

The first time Madison spoke on the Executive branch, was June 1, when the Committee of the Whole took up Resolution 7, of the Virginia Plan.<sup>5</sup> Charles Pinckney, who opened the discussion by expressing the desire for a strong Executive, made clear, however, that he feared any form of monarchy.<sup>6</sup>

After Pinckney's remarks, James Wilson narrowed the discussion with his motion that the Executive consist of one person. C. C. Pinckney seconded this motion.<sup>7</sup> Benjamin Franklin interrupted

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<sup>3</sup>Ibid. 161.

<sup>4</sup>Burns, 114.

<sup>5</sup>Tansill, 133.

<sup>6</sup>Ibid. 131.

<sup>7</sup>Ibid.



the proceedings to remark on the importance of this subject.<sup>8</sup> Wilson heatedly argued with Sherman, Randolph, and Gerry, over the necessity for a single Executive.<sup>9</sup> Those who opposed Wilson's motion, did so on the grounds that an Executive, if one person, could be the foetus of monarchy.<sup>10</sup> So heated was this dispute over the Executive, that the question was dropped, by common consent, until all could prepare further arguments for their positions.<sup>11</sup>

Madison suggested the propriety of establishing the extent of Executive authority before settling the question of unity or plurality.<sup>12</sup> He thought a definition of Executive powers would clarify the need for one, or for several Executives. He moved that the National Executive have powers to execute the National laws, to appoint to offices not otherwise provided for, and to execute such other powers "not Legislative nor Judiciary in their nature, as may from time to time be delegated by the National Legislature."<sup>13</sup> Wilson seconded the motion. C. C. Pinckney moved that the 19 words quoted above be dropped as superfluous. Madison ac-

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid. 131-133.

<sup>10</sup> Ibid. 132.

<sup>11</sup> Ibid. 133.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

ceded to this motion.<sup>14</sup> The first part of his motion was immediately agreed to.<sup>15</sup>

The next day the inevitable question of impeachment arose. James Dickenson moved that the Executive be removed by the National Legislature on request of a majority of State Legislatures.<sup>16</sup> Bedford and Sherman agreed with Dickenson. Madison, however, feared such an expedient would produce an equality of agency in small and large States; and he feared that a minority of the people might thus remove the highest Federal officer. Moreover, he feared that it might open the door to intrigue against him in States where his policies, though just, might be unpopular. Wilson joined him in objection to such a mixture of State and National authorities.<sup>17</sup> When a vote was taken on Dickenson's motion, all the States, save Delaware, voted it down.<sup>18</sup>

On July 20, Madison again expressed himself on the question of impeachment. He thought some words should be incorporated into the Constitution, explaining that impeachment was meant to defend the community against the incapacity, negligence, or perfidy of the Chief Magistrate. Although Madison was for a strong, inde-

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<sup>14</sup>Ibid. 133-134.

<sup>15</sup>Ibid. 134.

<sup>16</sup>Ibid. 141.

<sup>17</sup>Ibid. 142.

<sup>18</sup>Ibid. 143.

pendent Executive, he thought impeachment vital to free government. He enumerated the three cases where he thought impeachment necessary. Limitation of the President's term was not enough. He might betray the Nation to foreign powers; his health might break; he might reign despotically. In any of these cases, impeachment was necessary. In the Legislature, it was difficult for many to betray their trust or lose their capacity; the soundness of the majority would maintain the integrity and ability of the Legislature. The Executive, however, was administered by one man. Loss of capacity, corruption, or despotism on his part might prove fatal to the Nation.<sup>19</sup>

After Madison had so expressed his desire for impeachment, a vote was taken. As yet, it was not decided how the Executive would be impeached. That some form of impeachment be incorporated into the Constitution, all voted aye, except Massachusetts, and South Carolina.<sup>20</sup>

Madison's biographer says Madison guided the Convention's thought on another expedient to strengthen the Executive--the veto.<sup>21</sup> Gerry opened discussion of a veto on June 4. He proposed that the National Executive have power to negative acts of the Legislature not afterwards re-passed "by \_\_\_\_\_ parts of each

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<sup>19</sup> Ibid. 418-419.

<sup>20</sup> Ibid. 421.

<sup>21</sup> Erant, 40. Burns, 64.

branch of the National Legislature."<sup>22</sup> Wilson and Hamilton suggested an absolute Executive veto.<sup>23</sup>

Benjamin Franklin reminded all of the danger of such an absolute power in the hands of one man.<sup>24</sup> Sherman was against giving the Executive such power.<sup>25</sup> Madison agreed with the suggestion for over-ruling an Executive veto by a proper proportion of the Legislature. Few Executives would defy the Legislature. He said that an absolute negative would certainly be obnoxious to the people, at least in their present aversion to any form of monarchy. However, Madison was clearly an exponent of an Executive veto as another means of strengthening the National Government.<sup>26</sup>

When a vote was taken, every State voted negatively on the motion that an absolute veto power be granted, but the issue of allowing two-thirds of the Legislature to over-rule the revisionary check passed in the affirmative.<sup>27</sup>

There was no more discussion of the Executive, until July 17. All agreed that the Executive should have power to execute the National laws, to appoint to offices not provided for, that

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<sup>22</sup>Tansill, 147.

<sup>23</sup>Ibid. 147-148.

<sup>24</sup>Ibid. 148.

<sup>25</sup>Ibid. 148-149.

<sup>26</sup>Ibid. 149.

<sup>27</sup>Ibid. 152.

he be elected by a National Legislature. It was also agreed to eliminate the clause of ineligibility for a second term since this would make the Executive more anxious to please the people.<sup>28</sup>

The delegates then turned to discussion of the Executive's term. Doctor McClurg and Gouverneur Morris moved that the Executive hold office "during good behavior."<sup>29</sup> This motion horrified those with less monarchical leanings. Sherman said that the Executive, now eligible for a second term, was already destined to hold office during good behaviour.<sup>30</sup> Madison repeated his previous arguments for a strong and responsible Executive. It was most essential to liberty, said Madison, that the Executive, Legislative, and Judiciary powers be separate. It was essential to a maintenance of this separation that they be independent of each other, but the Executive could not be independent of the Legislature if dependent on it for re-election. Such a dependence would make the Legislature not only the maker, but, in effect, the executor of the laws. Tyrannical laws would be made, he feared, and carried out in a tyrannical manner.<sup>31</sup>

Madison thought there was, in several respects, an analogy

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<sup>28</sup> Ibid. 396.

<sup>29</sup> Ibid. 396-397.

<sup>30</sup> Ibid. 397.

<sup>31</sup> Ibid. 397-398.

between the Executive and Judiciary departments.<sup>32</sup> The latter executed certain laws, the former others. The former expounded and applied them for certain purposes, as the latter did for others. The difference between them seemed to consist chiefly in two circumstances--the collective interests and security were much more in the power of the Executive than the Judiciary department. Secondly, in administration the Executive had more latitude for discretion than the Judiciary. He considered it absolutely necessary for a well constituted Nation, that the Legislature and Executive departments be separated completely. Doctor McClurg's motion aimed at keeping the Executive free from dependence on the Legislative department, and such a motion demanded fair hearing, although it was another question whether it was workable or not.<sup>33</sup>

Colonel Mason objected strenuously to Madison's arguments, on the ground that tenure during good behaviour was comparable to tenure for life. No State, he was sure, would accept such flirtation with monarchy.<sup>34</sup> At Mason's insinuations, Madison again was on his feet. His real aim, he said, was to prevent the introduction of monarchy. He had no fear of being considered a monarchist.

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<sup>32</sup>Ibid. In a foot-note, Madison explains that these views were inserted to parry objections likely to fall on Doctor McClurg's motion that the Executive hold office during good behaviour. McClurg's reason was desire to make the Executive independent of the Legislature. As we have seen, Madison concurred with this, and preferred to have the people elect the Executive.

<sup>33</sup>Ibid. 397-398.

<sup>34</sup>Ibid. 398.

He hoped to obviate the dangerous tendency in our government to throw all to the Legislative branch. He warned that future revolutions would follow unless this trend toward Legislative omnipotence were checked. In devising a Republican government, he urged all to keep in view the basic principles of such government.<sup>35</sup>

McClurg supported Madison's remarks by expressing his hatred of monarchy. He was zealous, however, to make the Executive independent of the Legislature in the Republican form of government they hoped to erect. Therefore, he repeated his preference for Executive tenure during good behaviour.<sup>36</sup> This motion was passed in the negative.<sup>37</sup>

In Madison's defense of McClurg, he again showed his desire for a strong government with a strong Executive. Four days later he would show this preference again. On July 21, Wilson moved that the Executive be joined to the Judiciary in the revisionary power. Madison quickly seconded this motion.<sup>38</sup> He thought the motion of "great importance to the meditated Constitution."<sup>39</sup> It would enable the Judicial department to inspire additional confidence against Legislative encroachment. It would enable the Leg-

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<sup>35</sup> Ibid. 398-399.

<sup>36</sup> Ibid. 399.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid. 422-423.

<sup>39</sup> Ibid. 423.

islative department to preserve the integrity of public servants. It would enable the whole community to guard against unwise and unjust measures. He rejected the objection that this gave too much power to the Executive and Judicial departments. The real danger, he repeated, was too strong a Legislature. Every power given to the other departments was a step in the right direction. Nor did he consider the proposed revision with the Judges any violation of separation of Executive and Judicial branches. On the contrary, he thought such association in the revisionary power would further preclude any encroachments of one department on the other, and would serve to maintain distinction of the three branches. If such a union were an improper mixture of powers, then it seemed to him equally improper to allow the Executive any participation whatever in the making of laws, and the revisionary plan should be discarded altogether.<sup>40</sup>

This proposed plan of Judicial association with the Executive in revision of laws, championed by Madison and Wilson, was defeated with only Connecticut and Virginia voting in the affirmative.<sup>41</sup>

Throughout the Convention, Madison fought to fortify the central government by giving vast powers to the Executive. At the same time he suggested checks on the Executive's independence. While he agreed that the Executive, if negligent or incapable,

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<sup>40</sup>Ibid. 423-424.

<sup>41</sup>Ibid. 429.



should be impeached; he was careful, however, to enumerate cases when impeachment was deemed necessary. Most important of all, he insisted that the State Legislatures have no part in the proceedings. This was another example of his desire to weaken the powers of the States.

Madison was instrumental in incorporating the famous veto power into our Constitution. Prudently he opposed the absolute veto, that is, the veto which does not include the provision that for re-passage, two-thirds of the Legislature must vote aye. The purpose of the veto was to prevent Legislative despotism. Since the Executive was responsible to the people alone, and not to States or State Legislatures, the veto power enhanced the power of the National Government.

In Madison's defense of McClurg's arguments for tenure during good behaviour, he again indicated his preference for a strong, independent Magistrate. Under such a system the Executive would have no worry about what the State Legislatures or the Senate thought. He could follow his conscience. It was the people who determined good behaviour.

Madison and Wilson also hoped to join the Executive with the Judges in the revisionary power, but their argument was not accepted by the other delegates. Madison supported this participation of the Executive in revision of laws as another means of strengthening the Executive. Throughout the Convention, Madison argued time and time again for a vigorous Chief Magistrate. These

myriad arguments reflected his desire for strong central rule.

## CHAPTER V

### PROPORTIONAL REPRESENTATION

In discussing Congressional representation, Madison defended proportional representation, that is, representation based on the number of people in a State. He preferred this plan of representation to that based on the States.<sup>1</sup> Under the Articles, there was equality of suffrage; under Madison's new plan this system would be abolished. From the out-set, Madison sought to convince his conferees that proportional representation was an important pillar in the National Government. As early as May 30, he moved that "the equality of suffrage established by the Articles of Confederation ought not to prevail in the National Legislature, and that an equitable ratio of representation ought to be substituted."<sup>2</sup>

George Read immediately objected to this early proposal. He reminded the delegates that Delaware had issued specific instructions against any change of suffrage. If Delaware's wishes were

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<sup>1</sup>Tansill, 123-124.

<sup>2</sup>Ibid. 122-123.

not respected, he threatened to withdraw.<sup>3</sup> Gouverneur Morris regretted the imminent danger of Delaware's secession, but with a touch of sarcasm, he reminded them that if discussion of suffrage offended them, such discussion, nevertheless, was necessary to the success of the Convention.<sup>4</sup>

Madison interposed an observation. Whatever the reason for equality of suffrage under the Articles, he thought it should cease when a National Government replaced a Federal. In the former case, he said, the government was wholly dependent on the States; in this case, it would be dependent on the people.<sup>5</sup> There was as much reason for proportional representation in the National Legislature as there was for different representation in a State Legislature of Counties of different sizes. After Madison's speech, all agreed to postpone discussion of representation.<sup>6</sup>

Three weeks later, Madison again defended proportional representation. The men from New Jersey and Delaware thought it unjust to allow Virginia a greater vote than Delaware. Madison reminded them that Virginia was sixteen times the size of Delaware. These same men considered it just to allow Virginia, with its sprawling territory, the same amount of representation as little

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<sup>3</sup>Ibid. 123.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid. 123-124.

<sup>6</sup>Ibid. 124.

Delaware. He attacked the whispered proposals of some small State men to divide the Nation into Thirteen separate but equal States. This was impractical since the manners, modes of land tenure, habits and prejudices in the States differed. A voluntary amalgamation of small States with their neighbors would be more convenient for the Country as a whole. He reminded them of the imminent entrance of Western States into the Union, which States, upon entrance, would have few citizens. If proportional representation were adopted, these States would not be able to rule the old.<sup>7</sup>

On June 27, and 28, Martin delivered one of his verbose speeches on State sovereignty.<sup>8</sup> John Lansing and John Dayton agreed with him that suffrage under the new government should be the same as the old, that is, equal votes for each State.<sup>9</sup> Hugh Williamson, of North Carolina, reminded them of the danger of Western States; if equality of suffrage were adopted, he feared the new States might rule the old.<sup>10</sup>

Madison professed a desire to concur in any expedient that would remove the difficulty over representation, but the arguments just advanced seemed unjust. Nor was equal suffrage necessary for the protection of the rights of the small States. He

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<sup>7</sup> Ibid. 226-234.

<sup>8</sup> Ibid. 289-290.

<sup>9</sup> Ibid. 290.

<sup>10</sup> Ibid.

reminded them that Paterson's plan of land division demonstrated Paterson's realization of the injustice of equal suffrage. Although foreign Countries dealt with all Nations as equals, they would not allow a minority of their people to dominate a majority. He repeated his example of the proportionate representation of Counties. The States should have proportional representation in Congress, just as Counties have proportional representation within a State.<sup>11</sup>

Madison belittled the fear of some that larger States might unite; for such a union, common grounds were necessary, such as similar crops and similar customs. The larger States, according to his calculations, had none of these. They differed in manners, religions, crops, and other circumstances necessary for unity. For example, he reminded them that the staple of Massachusetts was fish, that of Pennsylvania, flour, that of Virginia, tobacco. Mere equality in size could not surmount inequality of resources. He used an historical example. Carthage and Rome were simultaneously powerful. Instead of concord, they were ravaged by the Punic Wars.<sup>12</sup>

It seemed to Madison that two extremes faced the Deputies; either perfect separation or complete incorporation of the States. In the first case, they would be independent States, subject only

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<sup>11</sup>Ibid. 290-294.

<sup>12</sup>Ibid.

to the law of Nations. In the latter case, the States in a Nation would approximate Counties in a State. If the small States were wise, he said, they would seek safety in a government, whereby all the States, large and small, would associate as Counties within a State.<sup>13</sup>

He reminded the small States of the danger of government, whereby all the States would live in equality. He warned them of dangers to small States if the general government were too feeble. In such a case, the large States would distrust the government, and would be tempted to take affairs into their own hands. If the small States supported a strong government, some day partition of the large States might take place.<sup>14</sup>

James Wilson added that those who advocated equality of large and small States were advocating the same expedient which perpetuated the "rotten boroughs." He thought the best way to protect the citizens of a small State was to allow proportional representation.

Roger Sherman insisted that the issue touched the rights of men. The best way to protect the citizens was to allow equal representation, even if the larger States were forced to sacrifice what they considered their right to a larger vote.<sup>15</sup> When a vote

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<sup>13</sup>Ibid.

<sup>14</sup>Ibid. 293-294.

<sup>15</sup>Ibid. 294-295.

was taken, the motion to perpetuate the system under the Articles was rejected six to four.<sup>16</sup>

Although as explained above, a compromise committee drew up a plan to settle the issue of representation, Madison was never wholly reconciled to the compromise which allowed equal suffrage in the Upper House. When Charles Pinckney moved, on July 14, that instead of equality of voting power, the States be represented in the Upper House according to population, Madison hastily seconded the motion.<sup>17</sup> He voiced apprehension that if the proper foundation of government was destroyed by substituting equality in place of proportional representation, no proper super-structure could be raised. If the small States wanted a government strong enough to regulate the large States, they were mistaken in their means.<sup>18</sup>

The Articles, said Madison, had fettered the central authority so that it was incapable of controlling the Nation. As representation was a substitute for meetings of the people, the representatives should have voting power in proportion to their constituents. If the alleged distinction that the government was partly National, partly Federal, was correct, he was willing to accede to it. If the government was National alone, he was un-

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<sup>16</sup> Ibid. 303.

<sup>17</sup> Ibid. 376-377.

<sup>18</sup> Ibid. 379-381.



willing to allow anything but government of the people.<sup>19</sup> In all cases where the government acts on the people, he insisted that the people be represented by proportional votes. In cases where the government acts on the States, let the States have an equal vote. He said that if there was ground for compromise, this was the place, but he thought there was no real room for compromise.<sup>20</sup>

Madison thought that the people of large States, if unable to obtain adequate power through proportional representation, would obstruct the government until they were able to exercise their due influence. Even the existing Confederacy allowed extra influence by larger States. Nowhere at that time, in or out of Congress, did Delaware rival Virginia. If the latter supplied ten times the money Delaware supplied, she deserved ten times the number of representatives of Delaware.<sup>21</sup>

He then enumerated the objections against equality of voting power in the Senate, even if proportional representation were allowed in the Lower House. He contended that a majority could negative the will of the majority; that they could extort measures by making such measures a condition of their cooperation. They could force measures on a majority through their influence in the Senate. The evil, he thought, would increase with every State admitted.

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

Furthermore, the perpetuity it would give Northern preponderance was to him a serious consideration.<sup>22</sup>

Madison then made an acute observation that would be verified in the future. "It seemed now...that the real difference of interests lay, not between the large and small, but between the Northern and Southern States. The institution of slavery and its consequences formed the line of discrimination."<sup>23</sup> It was true that even in proportional representation, the North would outnumber the South, but not in the same degree as if equal representation was allowed in the Senate.

Despite Madison's efforts, and the oratory of Pinckney and Wilson, the motion passed in the negative.<sup>24</sup> The compromise submitted by the committee of eleven was here to stay. Madison drudgingly accepted the compromise as unfair to the majority of the people.

Thus, we see that Madison sought to abolish what he considered a prime weakness in the Articles, equality of suffrage. He defended his new plan of proportional representation as an excellent mode of transferring power from the States to the people. By basing suffrage on the people, the National Government was to be dependent on the people. The States were to resemble Counties with-

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<sup>22</sup>Ibid.

<sup>23</sup>Ibid. 381.

<sup>24</sup>Ibid. 383.

in a State. If a government was based primarily on the States, then that government was weak and the States were strong. If the government was based primarily on the people, then that government was strong and independent. Madison reminded his fellow delegates that they were replacing a Federal Government with a National one. A Federal Government was dependent on the States; a stronger one, a National one, was based on the people.

Madison also argued that a larger State, with a larger population, deserved a larger franchise. Whether he was truly concerned with the "injustice" involved, or whether he used this argument to strengthen his bid for government based on the people is not clear.

It should be remembered that Madison was wholly for proportional representation. A study of his notes reveals that he opposed the compromise because it did not allow proportional representation in both branches. It does seem clear that he wished to get away from a Congress of jealous and selfish States, and to construct a Congress of American Congressmen.

## CHAPTER VI

### SUMMARY

Professor Jensen, in his book, The Articles of Confederation, defends the Articles as a philosophical out-growth of the Declaration of Independence.<sup>1</sup> The Articles of Confederation achieved decentralization of the States from the British Empire. Once this decentralization had been achieved, there was a need for strengthening the central government. Congress lacked sufficient power to suppress internal rebellion, to regulate trade, and to control the disruptive tendencies of State Governments.<sup>2</sup> Men like Madison, Washington, and Hamilton realized the need for a radical revision of the Articles, or the drafting of a new Constitution.

Washington, Hamilton, Wilson, Sherman, Morris, and many others contributed to our American Constitution, but the man who has gone down in history as the "Father" of this document, is James Madison, of Virginia. By reason of his work before and during the Federal Convention of 1787, his forceful arguments at the subsequent Virginia Convention for ratification, and his cogent reason-

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<sup>1</sup>Jensen, Articles, 239.

<sup>2</sup>Ibid. 241.

ing in the Federalist, Madison earned the title of "Father" of our Constitution.

In this study we discussed Madison's Doctrine of National Sovereignty at the Convention of 1787. Although his work at the Virginia Convention, and his writings for the Federalist, contributed to the adoption of the Constitution, his work at the Philadelphia Convention won him fame for all ages as a political philosopher. In later years, his Doctrine of National Sovereignty would evolve into a doctrine which allowed more sovereignty to the States.<sup>3</sup> Madison later changed his views because he feared the Federal Government was going too far in its centralization.<sup>4</sup> Although the evolution of his doctrine is not discussed here, it should be noted that his ideas on centralization did evolve, and that those who cite Madison as a defender of such centralization as occur in the Nineteen Thirties, do not completely understand the evolution of his political philosophy.

We attempted to trace Madison's Doctrine of National Sovereignty as he expressed it in the summer of 1787, at Philadelphia. Madison considered the Articles of Confederation dangerously inadequate for the preservation of our National strength and unity.

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<sup>3</sup>Brant, 465. In the Chapter on the famous Virginia Resolution, Brant gives another reason for Madison's posthumous publication of his notes on the debates; he feared his arguments might add to a trend toward despotism.

<sup>4</sup>Ibid. 452-471.

He lamented the dangerous weaknesses of the Articles of Confederation that threatened to destroy the Country. So determined was he to forge a mighty "chain of iron" that would bind the States tightly together in corporate unity, that he arrived in Philadelphia, early in May, before the other delegates. A quorum was not present until May 25.<sup>5</sup>

Before enough delegates arrived to conduct business, Madison drafted the famous Virginia Plan, a Plan of government to be presented by Governor Randolph, which would emerge, in many respects, as our finished Constitution.

Throughout the confusion and friction that threatened to disrupt the gathering, Madison led the fight for National sovereignty. He was opposed, for the most part, by members of the small State bloc, men who feared their States' sovereignty would be submerged in an amorphous government of the people. Even to a casual reader of Madison's notes, it is apparent that Madison was on his feet whenever a chance presented itself to advance or to second some motion to strengthen the National Government, and to curtail or destroy the centrifugal tendency of the States. To study all the arguments of Madison, would be to study almost every word he uttered at Philadelphia, that summer of 1787. We selected what we consider four outstanding strands of his contemplated tapestry of National Government, namely, popular election of President and Con-

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<sup>5</sup>Kelly and Harbison, The American Constitution, 115.

gress, a Federal negative, a strong Executive, and proportional representation. From these four we can deduce Madison's philosophy of government that summer, and his work for a strong central government based on the people.

Sometimes, Madison did get what he wanted. At other times, he did not. Of the arguments he lost, it was better for posterity that he did lose.<sup>6</sup> The compromise of equal representation in the Senate, for example, has worked better for the Country than Madison could have dreamed in 1787. Whether he won or lost, his spirit usually dominated the outcome of an issue. He feared the interference of State Legislatures in the National Government. To obviate undue State interference, he proposed popular election of the President, so that the Magistrate might be independent of the Legislatures, both State and Federal. He proposed popular election of at least one branch of the National Legislature to prevent State interference in the Legislative. If the people were not to elect both branches, then the first which was elected by the people, was to elect the second. Thus, the people would control the first branch directly, the second indirectly. And neither branch would have to depend on the States, or any other Agency in the National Government.

Madison has been ridiculed for his proposal of a Federal negative of conflicting State laws. Such criticism ignores the fact

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<sup>6</sup>Brant, 128.

that, even though the negative itself was unworkable, still Madison achieved his end with the adoption of Judicial review. Perhaps he did not know it at the time, but Judicial review as proposed in the New Jersey Plan, made the Constitution the supreme law of the land.<sup>7</sup> Madison had proposed a negative, because he feared, under the new Constitution, a recurrence of the same difficulties that harassed the impotent Congress under the Articles. There was a definite weakness in Madison's proposed negative, a weakness that was removed by Judicial review and the "Supreme Law" Doctrine. Andrew McLaughlin says that Madison and other defenders of the negative were comparing the projected government with former British rule.<sup>8</sup> At best, the negative would have made way for arbitrary rule by the National Legislature, such as existed even without a negative during the black days of re-construction. The negative was chosen for a Chapter of this study, not because it was a canny proposal, but because it illustrates Madison's zeal for a strong government.

Madison fought for a strong Executive, elected not by State Legislatures, but by the people. As a former member of Congress, he knew first-hand the pitiful attempts of fumbling Executive committees under the Articles. Although he wanted a strong, independent President, it is not true that he wanted any semblance of

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<sup>7</sup>Farrand, Framing, 209.

<sup>8</sup>McLaughlin, Confederation, 206.



monarchy. Nor did he leave the door open for future monarchy. He concurred with his fellow citizens in the desire to prevent the advent of future despots, and formed bulwarks against this danger by his proposed checks on the Executive. Since for strong government the department that executes the laws must be strong, Madison proposed a strong Executive. And since for an independent government the Executive cannot be dependent on parts of the whole, but must be dependent on the people, the citizens of the whole, Madison proposed popular, not Legislative, election of the Magistrate.

He proposed and argued for proportional representation, not only in the Lower House, but in the Senate as well. His arguments for proportional representation in the Lower House must have convinced most of his fellow delegates, but the Senate was allotted two members from each State. This compromise warded off disruption of the Convention by disgruntled small State delegates. Madison never dreamed in 1787, that future years would sometimes find the Senate more Nationalistic than the House of Representatives.

Madison was an ardent Nationalist at the Convention of 1787. With his arguments for a strong government, he dissipated much ignorance and convinced his fellow leaders that America needed a Constitution similar to the one he espoused. He deserves his honored place in American history for his work at the Convention. He deserves the title he bears, that of "Father of our Constitution."

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APPROVAL SHEET

The thesis submitted by Edward P. Echlin, S.J. has been read and approved by three members of the Department of History.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the degree of Master of Arts.

Sept. 7, 1958  
Date

Charles H. Metzger, S.J.  
Signature of Adviser