



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
 Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 3 The Founding Era – Separation of Powers

OXFORD
 UNIVERSITY PRESS

Debate in the Constitutional Convention (1787)¹

*The presentation of the Virginia and New Jersey Plans brought the convention to a key turning point. Would it propose to reform or overturn the Confederation? The two plans crystallized the disagreements in the convention over what was politically possible in the country at large in 1787 and what was in fact desirable for a country as diverse and loosely connected as the United States. In defense of his plan, James Madison of Virginia offered the arguments that he had shared privately with some in the previous months in his short essay on “Vices of the Political System of the United States” and would go on to develop at length in *The Federalist Papers*. He was joined by other “big state” advocates, such as James Wilson of Pennsylvania, who were friendly to a more powerful national government organized as a majoritarian democracy. New York splintered, with Alexander Hamilton willing to go further than anyone to remake the union but with the other two delegates loyal to Governor George Clinton, who preferred a weak national government that could not interfere with his power base.*

“Small state” advocates such as William Paterson of New Jersey, Luther Martin of Maryland, and Roger Sherman of Connecticut rallied around the New Jersey Plan. With New Hampshire not yet present at the convention and Georgia split (and therefore unable to vote), the remaining delegations divided over the two plans. With the convention deadlocked, the Connecticut delegates eventually brokered a compromise that included equal apportionment in the Senate. In the course of the debate, the delegates examined where the threats to liberty and political interest might come from under different constitutional arrangements and how best to guard against those dangers.

Did the “small states” really share a common interest? Were their interests as political communities and the interests of their citizens better protected in a stronger or a weaker union? How much leverage did they have in the constitutional convention to win more power for themselves in reorganized federal government? Was there a principled objection to simply eliminating the states entirely and developing a new governing system from scratch, or were there only practical and political problems with taking that route?

June 16th

Mr. JOHN LANSING (New York) called for the reading of the 1st. resolution of each plan, which he considered as involving principles directly in contrast; that of Mr. Paterson [New Jersey Plan] says he sustains the sovereignty of the respective States, that of Mr. Randolph [Virginia Plan] destroys it: the latter requires a negative on all the laws of the particular States; the former, only certain general powers for the general good. The [Virginia Plan] in short absorbs all power except what may be exercised in the little local matters of the States which are not objects worthy of the supreme cognizance. He grounded his preference of [the New Jersey] plan, chiefly on two objections against that of [the Virginia Plan] 1. Want of power in the Convention to discuss & propose it. 2. The improbability of its being adopted.

1. He was decidedly of opinion that the power of the Convention was restrained to amendments of a federal nature, and having for their basis the Confederacy in being. The Act of Congress, the tenor of the Acts of the States, the Commissions produced by the several deputations all proved this. And this limitation of the power to an amendment of the Confederacy, marked the opinion of the States, that it was unnecessary & improper to go farther. He was sure that this was the case with his State. New York

¹ Excerpts taken from *The Papers of James Madison* (Washington, D.C.: Langtree & O’Sullivan, 1840).



would never have concurred in sending deputies to the convention, if she had supposed the deliberations were to turn on a consolidation of the States, and a National Government.

2. was it probable that the States would adopt & ratify a scheme, which they had never authorized us to propose? And which so far exceeded what they regarded as sufficient? . . . The States will never feel a sufficient confidence in a general Government to give it a negative on their laws. The Scheme is itself totally novel. There is no parallel to it to be found. The authority of Congress is familiar to the people, and an augmentation of the powers of Congress will be readily approved by them.

Mr. WILLIAM PATERSON (New Jersey). . . . He preferred [the New Jersey Plan] because it accorded 1. with the powers of the Convention, 2 with the sentiments of the people. If the confederacy was radically wrong, let us return to our States, and obtain larger powers, not assume them of ourselves. I came here not to speak my own sentiments, but the sentiments of those who sent me. Our object is not such a Government as may be best in itself, but such a one as our Constituents have authorized us to prepare, and as they will approve. . . . If the sovereignty of the States is to be maintained, the Representatives must be drawn immediately from the States, not from the people: and we have no power to vary the idea of equal sovereignty. The only expedient that will cure the difficulty is that of throwing the States into Hotchpot. To say that this is impracticable, will not make it so. Let it be tried, and we shall see whether the Citizens of Massachusetts, Pennsylvania, & Virginia accede to it. It will be objected that Coercion [of the states by the federal government] will be impracticable. But will it be more so in one plan than the other? Its efficacy will depend on the quantum of power collected, not on its being drawn from the States, or from the individuals; and according to his plan it may be exerted on individuals as well as according that of [the Virginia Plan] . . .

Mr. JAMES WILSON (Pennsylvania). . . . With regard to the power of the Convention, he conceived himself authorized to conclude nothing, but to be at liberty to propose any thing. In this particular he felt himself perfectly indifferent to the two plans.

With regard to the sentiments of the people, he conceived it difficult to know precisely what they are. Those of the particular circle in which one moved, were commonly mistaken for the general voice. He could not persuade himself that the State Governments & Sovereignities were so much the idols of the people, nor a National Government so obnoxious to them, as some supposed. Why should a National Government be unpopular? Has it less dignity? Will each Citizen enjoy under it less liberty or protection? Will a Citizen of Delaware be degraded by becoming a Citizen of the United States? Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of their Governments? No, Sir. It is from the National Councils that relief is expected. . . .

Mr. CHARLES PINCKNEY (South Carolina) the whole comes to this, as he conceived. Give New Jersey an equal vote, and she will dismiss her scruples, and concur in the National system. He thought the Convention authorized to go any length in recommending, which they found necessary to remedy the evils which produced this Convention.

....

June 18th

Mr. ALEXANDER HAMILTON (New York) had been hitherto silent on the business before the Convention, partly from respect to others whose superior abilities age & experience rendered him unwilling to bring forward ideas dissimilar to theirs, and partly from his delicate situation with respect to his own State, to whose sentiments as expressed by his Colleagues, he could by no means accede. The crisis however which now marked our affairs, was too serious to permit any scruples whatever to prevail over the duty imposed on every man to contribute his efforts for the public safety & happiness. He was obliged therefore to declare himself unfriendly to both plans. He was particularly opposed to that from New Jersey, being fully convinced, that no amendment of the Confederation, leaving the States in possession of their Sovereignty could possibly answer the purpose. . . . A federal Government he conceived to mean an association of independent Communities into one. . . . He agreed moreover with



the Honorable gentleman from Virginia [Mr. Randolph] that we owed it to our Country, to do on this emergency whatever we should deem essential to its happiness. The States sent us here to provide for the exigencies of the Union. . . .

The great question is what provision shall we make for the happiness of our Country? He would first make a comparative examination of the two plans – prove that there were essential defects in both – and point out such changes as might render a national one, efficacious. – The great & essential principles necessary for the support of Government are 1. an active & constant interest in supporting it. This principle does not exist in the States in favor of the federal Government. They have evidently in a high degree, the esprit de corps. They constantly pursue internal interests adverse to those of the whole. . . . 2. The love of power. Men love power. The same remarks are applicable to this principle. The States have constantly shown a disposition rather to regain the powers delegated by them than to part with more, or to give effect to what they had parted with. The ambition of their demagogues is known to hate the control of the General Government. . . . 3. An habitual attachment of the people. The whole force of this tie is on the side of the State Government Its sovereignty is immediately before the eyes of the people: its protection is immediately enjoyed by them. From its hand distributive justice, and all those acts which familiarize & endear Government to a people, are dispensed to them. 4. Force by which may be understood a coercion of laws or coercion of arms. Congress have not the former except in few cases. In particular States, this coercion is nearly sufficient; though he held it in most cases, not entirely so. A certain portion of military force is absolutely necessary in large communities. Massachusetts is now feeling this necessity & making provision for it. But how can this force be exerted on the States collectively. It is impossible. It amounts to a war between the parties. Foreign powers also will not be idle spectators. They will interpose, the confusion will increase, and a dissolution of the Union ensue. 5. Influence. He did not mean corruption, but a dispensation of those regular honors & emoluments, which produce an attachment to the Government Almost all the weight of these is on the side of the States; and must continue so as long as the States continue to exist. . . . How then are all these evils to be avoided? Only by such a complete sovereignty in the general Government as will turn all the strong principles & passions above mentioned on its side. Does the scheme of New Jersey produce this effect? Does it afford any substantial remedy whatever? On the contrary it labors under great defects, and the defect of some of its provisions will destroy the efficacy of others. It gives a direct revenue to Congress but this will not be sufficient. The balance can only be supplied by requisitions: which experience proves can not be relied on. If States are to deliberate on the mode, they will also deliberate on the object of the supplies, and will grant or not grant as they approve or disapprove of it. The delinquency of one will invite and countenance it in others. . . . Another destructive ingredient in the plan, is that equality of suffrage which is so much desired by the small States. It is not in human nature that Virginia & the large States should consent to it, or if they did that they should Long abide by it. It shocks too much the ideas of Justice, and every human feeling. Bad principles in a Government though slow are sure in their operation and will gradually destroy it. . . . The general power whatever be its form if it preserves itself, must swallow up the State powers. Otherwise it will be swallowed up by them. . . . The plan of New Jersey therefore will not do. What then is to be done? Here he was embarrassed. The extent of the Country to be governed discouraged him. The expense of a general Government was also formidable; unless there were such a diminution of expense on the side of the State Government as the case would admit. If they were extinguished, he was persuaded that great economy might be obtained by substituting a general Government He did not mean however to shock the public opinion by proposing such a measure. On the other hand he saw no other necessity for declining it. They are not necessary for any of the great purposes of commerce, revenue, or agriculture. Subordinate authorities he was aware would be necessary. There must be district tribunals: corporations for local purposes. But cui bono, the vast & expensive apparatus now appertaining to the States. . . .

June 19th

Mr. JAMES MADISON (Virginia). . . . Proceeding to the consideration of Mr. Paterson's plan, he stated the object of a proper plan to be twofold. 1. to preserve the Union. 2. to provide a Government that will



remedy the evils felt by the States both in their united and individual capacities. Examine Mr. Paterson's plan, & say whether it promises satisfaction in these respects.

1. Will it prevent those violations of the law of nations & of Treaties which if not prevented must involve us in the calamities of foreign wars? The tendency of the States to these violations has been manifested in sundry instances. The files of Congress contain complaints already, from almost every nation with which treaties have been formed. Hitherto indulgence has been shown to us. This can not be the permanent disposition of foreign nations. A rupture with other powers is among the greatest of national calamities. It ought therefore to be effectually provided that no part of a nation shall have it in its power to bring them on the whole. . . .

2. Will it prevent encroachments on the federal authority? A tendency to such encroachments has been sufficiently exemplified, among ourselves, as well in every other confederated republic ancient and Modern. . . .

3. Will it prevent trespasses of the States on each other? . . . He considered the emissions of paper money & other kindred measures as also aggressions. The States relatively to one another being each of them either Debtor or Creditor; The creditor States must suffer unjustly from every emission by the debtor States. We have seen retaliating acts on this subject which threatened danger not to the harmony only, but the tranquility of the Union. The plan of Mr. Paterson, not giving even a negative on the acts of the States, left them as much at liberty as ever to execute their unrighteous projects against each other.

4. Will it secure the internal tranquility of the States themselves? The insurrections in Massachusetts admonished all the States of the danger to which they were exposed. . . .

5. Will it secure a good internal legislation & administration to the particular States? In developing the evils which vitiate the political system of the U.S. it is proper to take into view those which prevail within the States individually as well as those which affect them collectively. . . .

. . . .

8. He begged them to consider the situation in which they would remain in case their pertinacious adherence to an inadmissible plan, should prevent the adoption of any plan. The contemplation of such an event was painful; but it would be prudent to submit to the task of examining it at a distance, that the means of escaping it might be the more readily embraced. Let the Union of the States be dissolved, and one of two consequences must happen. Either the States must remain individually independent & sovereign; or two or more Confederacies must be formed among them. In the first event would the small States be more secure against the ambition & power of their larger neighbors, than they would be under a general Government pervading with equal energy every part of the Empire, and having an equal interest in protecting every part against every other part? In the second, can the smaller expect that their larger neighbors would confederate with them on the principle of the present confederacy, which gives to each member, an equal suffrage; or that they would exact less severe concessions from the smaller States, than are proposed in the scheme of Mr. Randolph?

The great difficulty lies in the affair of Representation; and if this could be adjusted, all others would be surmountable. It was admitted by both the gentlemen from New Jersey that it would not be just to allow Virginia which was 16 times as large as Delaware an equal vote only. Their language was that it would not be safe for Delaware to allow Virginia 16 times as many votes. The expedient proposed by them was that all the States should be thrown into one mass and a new partition be made into 13 equal parts. Would such a scheme be practicable? The dissimilarities existing in the rules of property, as well as in the manners, habits and prejudices of the different States, amounted to a prohibition of the attempt. . . . But admitting a general amalgamation and repartition of the States to be practicable, and the danger apprehended by the smaller States from a proportional representation to be real; would not a particular and voluntary coalition of these with their neighbors, be less inconvenient to the whole community, and equally effectual for their own safety. If New Jersey or Delaware conceived that an advantage would accrue to them from an equalization of the States, in which case they would necessarily form a junction with their neighbors, why might not this end be attained by leaving them at liberty by the Constitution to form such a junction whenever they pleased? . . . The prospect of many new States to the Westward was another consideration of importance. If they should come into the Union at all, they would come when they contained but few inhabitants. If they should be entitled to vote according to their proportions of



inhabitants, all would be right & safe. Let them have an equal vote, and a more objectionable minority than ever might give law to the whole.

June 28th

Mr. MADISON . . . That it is not necessary to secure the small States against the large ones he conceived to be equally obvious: Was a combination of the large ones dreaded? This must arise either from some interest common to Virginia, Massachusetts & Pennsylvania & distinguishing them from the other States or from the mere circumstance of similarity of size. Did any such common interest exist? In point of situation they could not have been more effectually separated from each other by the most jealous citizen of the most jealous State. In point of manners, Religion, and the other circumstances which sometimes beget affection between different communities, they were not more assimilated than the other States. . . .

Mr. ROGER SHERMAN (Connecticut). The question is not what rights naturally belong to men; but how they may be most equally & effectually guarded in Society. And if some give up more than others in order to attain this end, there can be no room for complaint. To do otherwise, to require an equal concession from all, if it would create danger to the rights of some, would be sacrificing the end to the means.

Mr. MADISON . . . entreated the gentlemen representing the small States to renounce a principle which was confessedly unjust, which could never be admitted, & if admitted must infuse mortality into a Constitution which we wished to last forever. He prayed them to ponder well the consequences of suffering the Confederacy to go to pieces. . . . The same causes which have rendered the old world the Theatre of incessant wars, & have banished liberty from the face of it, would soon produce the same effects here.