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The Great Compromise: Ideas, Interests, and the Politics of Constitution Making

Jack N. Rakove

OF all the questions that may be asked about the intentions of the framers of the Constitution, seemingly the least puzzling involve explaining the decision to give the states an equal vote in the Senate. On no other subject are the records of debate so explicit or the alignments so apparent. Nor did any other question evoke the same conspicuous range of responses that came into play during the debates leading up to the Great Compromise of July 16, 1787: everything from heavy-handed threats and poker-faced bluffs to heartfelt pleas for accommodation, from candid avowals of interest to abstract appeals for justice. The speeches and vignettes that most vividly reveal the mood of the Federal Convention—its tension and even passion—also centered on this decision. Yet for all this, the conflict is readily reducible to a single issue: whether the states would retain an equal vote in one house of the national legislature, or whether schemes of proportional representation would be devised for both upper and lower chambers. And the outcome of the controversy can be explained with equal elegance. When the small-state leaders proved unyielding after seven weeks of struggle, their opponents accepted defeat and began the process of pragmatic accommodation that would characterize the remaining two months of deliberation.

That this one question so long preoccupied the convention is nevertheless a cause for some regret. Modern constitutional commentary would have been better served had the framers devoted even a day or two more to such issues as the scope of judicial review or the nature of executive power. Yet in one fundamental sense the apparent clarity of the politics of the Great Compromise nicely reflects the prevailing image of the convention as a cumulative process of bargaining and compromise in which a rigid

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adherence to principle was subordinated to the pragmatic tests of reaching agreement and building consensus.

Such an emphasis has one obvious advantage. It enables scholars to cast the deliberations of 1787 within the familiar frameworks that we ordinarily use to analyze legislative politics. Historians and political scientists have thus tended to interpret the results of the convention in more or less equivalent terms: as the pragmatic work of "a reform caucus in action," or as reflections of changing alignments among delegations that can be charted by identifying either key bargains or shifts in voting blocs.[1] Such approaches assume that the Federal Convention, however exceptional or unprecedented it seemed at the time, was ultimately an assembly not so different from other deliberative bodies whose actions reflect the play of competing interests espoused by representatives sharing a well-defined set of fundamental values. Thus if disagreement as to which explanatory model works best accounts for the "disarray" that James H. Hutson has found in current interpretations of the convention, its final results still go far to support his conclusion that "considering the convention as a gathering devoted principally to harmonizing concrete interests will simplify efforts to understand it."[2] For in the end, concessions were made to every interest that manifested itself at the convention, and as the weeks wore on, these were often described, quite self-consciously, as gestures of conciliation.

Were the politics of the Federal Convention really quite so conventional? The major scholarly dissenters from this view have been political theorists who are concerned to recover both the deep convictions upon which the framers acted and the principles that the Constitution itself incorporated. Only rarely, however, does this reverential view of "the founding" help to unravel the nuances of political *behavior* within the convention. Too often the search for these ruling ideas either blurs the distinction between the concerns that prevailed among the framers and the arguments that would soon be made "out-of-doors" in support of the

[1] John P. Roche, "The Founding Fathers: A Reform Caucus in Action," *American Political Science Review*, LV (1961), 799-816; Calvin C. Jillson, "Constitution-Making: Alignment and Realignment in the Federal Convention of 1787," *ibid.*, LXXV (1981), 598-612; William H. Riker, "The Heresthetics of Constitution-Making: The Presidency in 1787, with Comments on Determinism and Rational Choice," *ibid.*, LXXVIII (1984), 1-16.

[2] Hutson, "The Creation of the Constitution: Scholarship at a Standstill," *Reviews in American History*, XII (1984), 463-477, and "Riddles of the Federal Constitutional Convention," *William and Mary Quarterly*, 3d Ser., XLIV (1987), 423. Professor Olson has suggested to me that this equation of the convention with "normal" deliberative politics errs in implying that conflicting values and appeals to theory do not enter into the ordinary business of legislation. While I would certainly agree that they do, Hutson is still probably correct to argue that historians prefer to treat the convention's success as a tribute to the framers' talents, if not for logrolling, then at least for pragmatic accommodation.

Constitution,[3] or else it exaggerates the relative influence that earlier authorities or texts (Locke, Montesquieu, the Declaration of Independence) exerted on the thinking of the framers.

At first glance, these disparate emphases on interests and ideas—to evoke the classic antinomies of historiography—do not sit well with one another. Either the framers appear, as Elbridge Gerry lamented a month into the debates, merely as "political negociators" intent on protecting particular interests, or else they are cast as visionary statesmen whose "reason," in Martin Diamond's formulation, "constructs the system within which the passions of the men who come after may be relied upon" to operate safely.[4] But at bottom these approaches are more complementary than exclusive. Just as the historian can take for granted the framers' deeper commitments and go on to examine how they actually reached decisions, so, too, the political theorist can pay quick homage to their genius for compromise and proceed with the quest for higher principles.

Accepting that ideas and interests separately deserve credit does not, however, enable us to assess the elusive interplay between them within the actual context of the convention's deliberations.[5] If current scholarship on the convention is indeed in disarray, part of the reason may lie in the difficulty of determining just what role appeals to theory and principle played in the debates. The task (as James Madison might say) is to find "a middle ground" somewhere between the clouded heights of great principles and the familiar terrain of specific interests. Some of the arguments the framers advanced were doubtless designed simply to legitimate positions rooted in interest. Others carried deeper conviction on their merits, however, and deserve to be examined with the same seriousness with which they were originally proposed.

Two sets of considerations justify assessing how appeals to theory affected the unconventional politics of constitution making. First, the key decision of July 16 cannot be construed simply as a triumph for pragmatism. Had bargaining and compromise actually set the tone for the convention, it is difficult to see why their appeal took so long to unfold. Leading spokesmen for the small states presented their ultimatum within the first week of debate, and an assembly composed of ten or eleven delegations, most of whose basic positions were evident from the outset, left little room for

[3] Thus historians are justified in objecting to the uncritical presumption implicit in the title of an influential essay by Martin Diamond, "Democracy and *The Federalist:* A Reconsideration of the Framers' Intent," *Am. Pol. Sci. Rev.*, LIII (1959), 52-68.

[4] Max Farrand, ed., *The Records of the Federal Convention of 1787*, rev. ed. (New Haven, Conn., 1937), I, 467; Diamond, "Democracy and *The Federalist*," *Am. Pol. Sci. Rev.*, LIII (1959), 67-68.

[5] On this same point see Calvin C. Jillson and Cecil L. Eubanks, "The Political Structure of Constitution Making: The Federal Convention of 1787," *American Journal of Political Science*, XXVIII (1984), 435-458, which begins with many of the assumptions that inform this essay and pursues several of the same issues, though reaching somewhat different conclusions.

maneuvering in the interest of building a dominant coalition. In the end, the Great Compromise was a compromise in name only. The small states carried their position by the narrowest margin possible: five states to four, with Massachusetts, by all rights a member of the large-states bloc, divided by the votes of Gerry and Caleb Strong. The victors naturally called this decision a compromise. But the losers rightly saw it as a defeat and continued to deny that the nominal concession extended to them—the power of the House over money bills—was consequential.

Second, although the vote of July 16 was a breakthrough, it was so long in the making precisely because the preceding seven weeks of debate were dominated not by efforts to find common ground but by a campaign designed to break the resistance of the small states by persuasion, rational argument, and appeals to principle. During these weeks, the large-state delegates were indeed involved in something more than an interested effort to gain the maximum legislative influence for their constituents. Their arguments marked an attempt to formulate a theory of representation superior to that which had prevailed at the outset of the Revolution, to reconceive the basis upon which individuals and interests alike could be most appropriately represented in government. In place of the received view that imagined a polity composed of the rulers and ruled, of the few and the many, or (more to the point) of fictive corporate units, they were struggling to fashion a more realistic—or modern—image of society.[6] Unlike the spokesmen for the small states, who were merely defending the status quo, the large-state leaders needed to devise arguments that their antagonists could simply not rebut. In the end, of course, reason did not prevail against will. But to explain why it did not may illuminate the complex interplay between ideas and interests that shaped the special nature of constitutional politics. And more than that, a careful reconstruction of this struggle demonstrates that James Madison's theory of the extended republic was very much at the center of debate throughout these opening weeks.

No one could have been surprised that the issue of representation became the great sticking point of the convention. It had been, after all, the first question of substance raised at the First Continental Congress of 1774. Rather than bog down in controversy over this issue, Congress had agreed to give each colony one vote. This precedent held up over the next few years, when Congress haltingly went about the task of framing confederation. Against the withering arguments of a succession of large-state delegates—first Patrick Henry and John Adams, later James Wilson—members from the small states clung to the principle of equal state

[6] These themes have been treated with great insight and nuance in J. R. Pole, *Political Representation in England and the Origins of the American Republic* (London, 1966), which locates the proceedings of 1787 in a context extending from late 17th-century English thought to the development of 19th-century political democracy.

voting.[7] As Adams himself confessed in 1774, serious practical difficulties militated against any scheme of proportional representation. Even could Congress have agreed upon a principle for apportionment, it lacked the information it needed to determine how many votes each colony should receive. Moreover, the political situation that confronted Congress in the mid-1770s further undercut the arguments that the spokesmen for the large states were making. The critical decisions Congress had to take ultimately called not so much for bare majorities as for consensus and even unanimity, and this in turn made fair apportionment seem less urgent.

Rooted as it was in Revolutionary expediency, the victory that the small states gained in drafting the Articles never carried great intellectual conviction, but its theoretical implications gathered importance as criticism of the Articles mounted in the 1780s. Because the principle of an equal state vote was naturally conducive to an image of a federation of sovereign states joined for specific purposes, it sharply limited the range of additional *powers* that would-be reformers of the Articles could seriously consider bestowing on the union. The principle worked best in areas where it was still possible to perceive a broad national interest to which the states could generally accede—most conspicuously in the realm of foreign affairs. If the exercise of a particular power would have a discriminatory impact upon individual states or regions, however, or upon the particular *interests* they contained, a scheme of voting based on equal corporate units quickly became more problematic. If Congress received authority to regulate commerce or levy taxes, property would become the direct object of national legislation, in which case it seemed inherently unfair for Delaware to cast a vote of equal weight with Pennsylvania.

In practice, the requirement of unanimous state approval made the adoption of any amendment to the Confederation improbable and a change in the principle of representation inconceivable. Rather than propose a wholesale revision, reformers such as James Madison and Charles Thomson favored the adoption of modest amendments whose gradual benefits would make Americans less suspicious of national government. Only after they abandoned the tactics of piecemeal reform in the waning months of 1786 did it become not only possible but necessary to restore the issue of representation to the central place it had occupied in the original debates over confederation. "The first step to be taken is I think a change in the principle of representation," Madison wrote Edmund Randolph in early April 1787, and on the other side of the question, small-state delegates such as George Read and John Dickinson of Delaware quickly foresaw the challenge they would confront.[8]

[7] For the debate of Sept. 5, 1774, see the notes kept by John Adams and James Duane, in Paul H. Smith, ed., *Letters of Delegates to Congress, 1774-1789* (Washington, D.C., 1976-), I, 27-31. See also the discussions in Pole, *Political Representation*, 344-348, and Jack N. Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York, 1979), 140-141.

[8] The discussion of Madison's ideas that begins here and continues through the

Because of the central role that Madison played at Philadelphia and the commanding position his ideas now occupy in all interpretations of "the founding," one must ask why he insisted upon making a shift to some scheme of proportional representation the "ground-work" upon which all other changes would rest. The current canon of interpretation holds that when Madison considered the problem of representation, his principal concern was to establish "such a process of elections as will most certainly extract from the mass of the Society the purest and noblest characters which it contains."[9] In point of fact, however, Madison's commitment to proportional representation preceded in time and exceeded in clarity the development of his ideas about the electoral mechanisms that would bring the right men into office. When he first outlined his plans for the Constitutional Convention to Thomas Jefferson in mid-March 1787, he already contemplated a system in which the vote of a congressman from Delaware would count the same as that of one from Massachusetts or Virginia. Yet when he drafted a similar letter to George Washington four weeks later, he was still uncertain whether the lower house of the national legislature should be elected "by the people at large, or by the legislatures"—hardly a trivial point.[10] And while it is likely that Madison privately preferred that members of the lower house be popularly chosen by secret ballot in electoral districts, he never sought to engraft such regulations on the Constitution. His most explicit remarks on the subject conceded that the states would retain the right to determine how congressmen were to be selected. As late as October 1788, when the laws regulating the first federal elections were being framed, he observed that "it is perhaps to be desired that various modes should be tried, as by that means only the best mode can be ascertained." In 1787 Madison was prepared to accept whatever electoral systems the states adopted so long as principles of equitable apportionment were vindicated.[11]

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remainder of this section is based primarily on his letters to Thomas Jefferson, Mar. 19, 1787, Edmund Randolph, Apr. 8, 1787, and George Washington, Apr. 16, 1787, in William T. Hutchinson *et al.*, eds., *The Papers of James Madison* (Chicago and Charlottesville, Va., 1962-), IX, 317-322, 368-371, 382-387, and on his memorandum on the "Vices of the Political system of the U. States" [April 1787], *ibid.*, 345-357. The three letters are particularly valuable for the light they shed not only on Madison's strategy but also on the meaning of key passages of his memorandum. For the concerns of the Delaware delegates see Read to Dickinson, Jan. 6, 1787, R. R. Logan Collection, box 4, Historical Society of Pennsylvania, Philadelphia, and Read's further letters of Jan. 17 and May 21, in William T. Read, *Life and Correspondence of George Read* . . . (Philadelphia, 1870), 438-439, 443-444.

[9] "Vices of the Political system," in Hutchinson *et al.*, eds., *Madison Papers*, IX, 357.

[10] Madison to Washington, Apr. 16, 1787, *ibid.*, 384.

[11] The clearest statement of Madison's ideas about elections is found in his letter to Caleb Wallace, Aug. 23, 1785, discussing a constitution for Kentucky, *ibid.*, VIII, 353-354. See also his remarks in the convention, Aug. 9, 1787, in Farrand, ed., *Records*, II, 240-241, and Madison to Jefferson, Oct. 4, 1788, in Hutchinson *et*

To suggest that Madison's thoughts about elections remained somewhat inchoate is not to imply that they were less important than his forthright commitment to proportional representation. The true difficulty is to set this preliminary devotion to a change in voting within the larger cluster of ideas with which he had armed himself during his preparations for Philadelphia. So much has been written about the theory of the extended republic that one hesitates to add another commentary to the existing midrash. Yet most recent analyses have been directed not toward explaining the actual deliberations at Philadelphia but rather toward reconstructing the general reasoning that allowed Madison to reconcile the American commitment to republicanism with the idea of a national government. If we are to understand the strategy he pursued at Philadelphia—and more particularly his reasons for making proportional representation in both houses of the national legislature the sine qua non of reform—it is necessary to link Madison's analysis of the failings of the federal and state regimes with the expedient political calculations upon which he acted in the spring of 1787.[12]

Madison addressed the issue of proportional representation most

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al., eds., *Madison Papers*, XI, 276. Commenting later on Jefferson's draft of a new constitution for Virginia, Madison preferred the idea of statewide voting for senators, who would, however, represent particular districts (Madison to Jefferson, Oct. 15, 1788, *ibid.*, 286). Georgia and Maryland used the same scheme to elect representatives to the First Congress. The question whether the framers, and Madison in particular, thought they had established mechanisms for the "filtration of talent" is also examined in Jack N. Rakove, "The Structure of Politics at the Accession of George Washington," in Richard Beeman, Stephen Botein, and Edward C. Carter II, eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill, N.C., 1987), 261-294.

[12] A useful introduction to Madison's ideas is Robert J. Morgan, "Madison's Theory of Representation in the Tenth Federalist," *Journal of Politics*, XXXVI (1974), 852-885, which, despite its title, does not focus exclusively on the final version of the theory presented in that seminal essay. More important for considering the entire range of his motives and concerns are Charles F. Hobson, "The Negative on State Laws: James Madison, the Constitution, and the Crisis of Republican Government," *WMQ*, 3d Ser., XXXVI (1979), 215-235, and three essays by Lance Banning: "James Madison and the Nationalists, 1780-1783," *ibid.*, XL (1983), 227-255; "The Hamiltonian Madison: A Reconsideration," *Virginia Magazine of History and Biography*, XCII (1984), 3-28; and "The Practicable Sphere of a Republic: James Madison, the Constitutional Convention, and the Emergence of Revolutionary Federalism," in Beeman, Botein, and Carter, eds., *Beyond Confederation*, 162-187, all of which attempt to mute the nationalist excesses in Irving Brant's portrait of the young statesman. Finally, no scholar should overlook Douglass Adair's two seminal essays, "The Tenth Federalist Revisited" and "'That Politics May Be Reduced to a Science': David Hume, James Madison, and the Tenth Federalist," in Trevor Colbourn, ed., *Fame and the Founding Fathers: Essays by Douglass Adair* (Chapel Hill, N.C., 1974), 75-106, to which Garry Wills, *Explaining America: The Federalist* (Garden City, N.Y., 1981), adds excessive nuance.

explicitly in his preconvention letters to Jefferson, Randolph, and Washington. He conceded that, under the Articles, the larger states exercised "more weight and influence" than the smaller, and he further noted that the "equality of suffrage if not just towards the larger members" of the union was "at least safe to them," since the states retained the power to determine how and even whether to comply with acts of Congress. "Under a system which would operate in many essential points without the intervention of the State legislatures," however, "the case would be materially altered." Clearly, the starting point of this analysis was the inefficacy of a federal system that made Congress so dependent on the states. As Madison observed in his concurrent memorandum on the vices of the political system, an administration resting on the "voluntary compliance" of the states "will never fail to render federal measures abortive." Madison accordingly concluded that the new government had to be empowered to act not indirectly through the states but directly upon their populations. Stripping the states of what might be called their federal functions would undermine their major claim to a right of equal representation.[13]

Madison had never doubted the justice of such a change; what was new was his belief that it had now become both "practicable" and necessary. The smallest states would oppose any change, but Madison assumed that, in *regional* terms, apportionment would appeal to both the North, because of "the actual superiority of their populousness," and to the South, because of "their expected superiority." (Like others, he expected population movements to carry emigrants southwest toward the Gulf of Mexico rather than northwest toward the Great Lakes.) "And if a majority of the larger States concur," he concluded, "the fewer and smaller States must finally bend to them." There was thus no question whose account had to be credited when the fears of the small states came to be balanced against the claims of the larger: "the lesser States must in every event yield to the predominant will." For the deeper challenge the convention faced, Madison believed, would involve overcoming not the arguments of the small states but the reservations of the large states. "The consideration which particularly urges a change in the representation," he wrote Washington, "is that it will obviate the principal objections of the larger States to the necessary concessions of power."[14] Without that, the large states would never grant even the minimal additional powers the union required, and the small states would have to acquiesce because they, too, understood the manifest failings of the Confederation.

Perhaps federal concerns alone provided sufficient justification for proportional representation. But Madison, of course, no longer believed in limiting the agenda of the convention to the inadequacy of the Confederation. The great achievement of his preconvention studies had been to forge a comprehensive framework within which the hitherto

[13] Hutchinson *et al.*, eds., *Madison Papers*, IX, 369, 383, 352.
[14] *Ibid.*, 318-319, 383.

distinct issues of the "imbecility" of the union and the debilities of republican government within the states could be considered together. The time had come not only to rescue Congress from the states, but to save the states from themselves. In fashioning his theory of the extended republic, then, Madison had two preeminent goals in mind. In the first place, he was certainly intent on refuting the received wisdom that held that stable republican governments could be established only in small, relatively homogeneous societies. He had to demonstrate that a national republic could avoid the "vices" that had produced the "multiplicity," "mutability," and finally the "injustice" of state legislation. Scholarly debate will long continue as to which of two key elements of this theory would matter more at the *national* level of politics: the obstacles the extended republic would place to the formation of factious majorities in the body politic or the legislature, or the encouragement it would give to the recruitment of a talented and conscientious class of legislators.[15] But both prongs of this argument bent to the same point: to prove that national lawmaking would escape the vicious pressures that prevailed in the state assemblies.

This would cure only half the evil. For in the second place, Madison was also convinced that the injustice of state lawmaking required vesting the national legislature with "a negative *in all cases whatsoever* on the legislative acts of the States, as heretofore exercised by the Kingly prerogative." Such a power, he told Randolph, was "the least possible abridgement of the State Soveriegnties [*sic*]" that could be made. Without it the national government could still avoid the evils of faction, but the vices that were already operating within the states would go untreated. Nothing better measures the depth of Madison's attachment to this proposal than his willingness to associate it with both the Declaratory Act of 1766 and the long-resented exercise of a royal veto over colonial legislation. And to obviate the objection that national review of state laws would delay the timely execution of necessary acts, he was even prepared to establish some sort of federal proconsular authority, empowered "to give a temporary sanction to laws of immediate necessity."[16]

Madison's attachment to this proposal had important implications for his ideas about representation. Beyond all the other arguments in favor of both proportional representation and popular election, the need to preserve the device that he had hailed as the solution to "the great desideratum" of republican government reinforced his unwillingness to compromise on the issue of apportionment.[17] Foreseeing that a bicameral

[15] *Ibid.*, 353-354. See also especially Banning, "Hamiltonian Madison," *VMHB*, XCII (1984), 12-14, disputing the emphasis placed on the "filtration of talent" in Wills, *Explaining America*, *passim*, and Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, N.C., 1969), 502-506.

[16] Hutchinson *et al.*, eds., *Madison Papers*, IX, 318, 370, 383; Hobson, "Negative on State Laws," *WMQ*, 3d Ser., XXXVI (1979), 215-235.

[17] The absolute centrality of the negative on state laws to Madison's thinking is confirmed not only by the "immoderate digression" justifying its importance in his

veto would prove unwieldy, he early decided that "the negative on the laws might be most conveniently exercised" by the upper chamber of the national legislature. Two conclusions followed from this. First, the large states could never accept the national veto if it were vested in a senate constituted along the same lines as the existing Congress. Second, the negative would prove ineffective if the members of the upper house were elected by the state legislatures and were thus dependent on their will.[18] These considerations helped Madison to concentrate his thinking about both apportionment *and* election, making him realize (perhaps belatedly) the importance of denying the legislatures any direct electoral role in the national government. Allowing the legislatures to exercise such power would reinforce the claim to equal representation of corporate units, while impairing the ability of the national legislature to exercise the powers Madison hoped it would soon acquire. Finally, because Madison viewed the upper house as the single most important institution of government, the question of its composition became even more sensitive.[19]

But what other than a credulous confidence in the good intentions of the large states could lead the small states to entrust either the veto or any other substantial powers to a body in which they would no longer enjoy an

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famous letter to Jefferson of Oct. 24, 1787, but also by a close comparison of his memorandum on the vices of the political system with his letter to Washington of Apr. 16. Such a comparison clearly demonstrates that Madison linked the somewhat murky language of the penultimate paragraph of the memorandum, with its call for "such a modification of the Sovereignty as will render it sufficiently neutral between the different interests and factions," to the justification of the veto and his concern with the problem of factious majorities within the states. Madison's faith in the capacity of the extended republic to permit the election of better representatives was thus "an auxilliary desideratum" to the pet scheme of a national veto in the sense that it would bring to office men capable of exercising so sensitive an authority. Hutchinson *et al.*, eds., *Madison Papers*, IX, 357, 383-384, X, 214.

[18] Madison to Washington, Apr. 16, 1787, *ibid.*, IX, 385. One should note, however, that the Virginia Plan also divided the exercise of the negative on state laws between Congress and the proposed Council of Revision, which would be composed jointly of the national executive and a select number of the federal judiciary (presumably the Supreme Court). Congress (or the Senate) would have authority to override the council's action, but Madison may also have hoped that the legislators would ordinarily defer to its judgment. On the other hand, because Madison also doubted whether executive and judicial authority, taken together or separately, could ever match the political influence or strength of local elected officials, he may also have felt that a veto on state laws, to be effective, would require the endorsement of one or both houses of Congress.

[19] See Madison's convention speech of June 26, in which the defense of a nine-year term for senators rests on the assumption that, over time, the upper chamber would have a special role in preventing a putative future majority of those who "will labour under all the hardships of life, & secretly sigh for a more equal distribution of its blessings," from making "agrarian attempts" against the rights of a propertied minority (Farrand, ed., *Records*, I, 422-423).

equal vote? Their great professed fear was that the relative reduction of their representation would expose them to the rapacious impulses of a putative coalition of the large states. As Gunning Bedford of Delaware noted on June 8, when a motion for the congressional negative was before the convention, "it seems as if Pa. & Va. by the conduct of their deputies wished to provide a system in which they would have an enormous & monstrous influence."[20]

It was in part to overcome this objection that the most familiar element of Madison's theory was addressed: the recognition that "all civilized societies are divided into different interests and factions, as they happen to be creditors or debtors—Rich or poor—husbandmen, merchants or manufacturers—members of different religious sects—followers of different political leaders—inhabitants of different districts—owners of different kinds of property &c &c." Ordinarily this passage (or the more polished variation in the tenth *Federalist*) is cited in the context of Madison's refutation of the orthodox notion that the stability of a republic rested upon the virtue of its citizens and the similarity of their interests. But in two major respects his realistic image of the actual sources of faction was also directly relevant to the issue of proportional representation. For if, in the first place, Madison could indeed prove that the extension of the republic would work to protect *all* interests against factious majorities, the claims of the small states to equal representation for purposes of security would be sharply undercut. The small states would no longer need an equal vote because the process of national legislation would operate to prevent any majority from trampling upon the rights of any minority. The obstacles erected against the coalescence of factious majorities would keep the legislature from adopting measures inimical to their interests, while the prospect that congressmen would be drawn from distinguished and enlightened ranks of leadership would assure that the policies eventually adopted would be framed, as Madison later explained in *Federalist* No. 10, by those "whose wisdom may best discern the true interest of their country."[21]

This part of the argument explained why the small states did not *need* equal representation, but Madison further sought to demonstrate why they did not *deserve* it. To make their case conclusive, spokesmen for the large states had to refute the claim that the states deserved representation as corporate units, as the sovereign constituencies of which the union was originally and immutably composed. This was precisely what the modern image of society that forms the very heart of Madison's theory enabled them to do. Implicit in its logic lay the recognition that states themselves were not real interests deserving representation. As political entities they were mere units of convenience that ultimately embodied only the fictitious legal personality of all corporations. States possessed interests, but these interests were rooted in the attributes of individuals: in property, occupation, religion, opinion. Moreover, since congeries of

[20] *Ibid.*, 167-168.

[21] Hutchinson *et al.*, eds., *Madison Papers*, IX, 355, X, 268.

interests could be found within any state, however small—witness Rhode Island—the principle of unitary corporate representation was further suspect. And, of course, the larger a state was, the more varied and complex the interests it contained would be. Nor, finally, was size itself an interest capable of manifesting itself in any situation *other than a constitutional convention,* where the rules of voting would first have to be determined. As Madison and his allies repeatedly argued, the only consideration that ever seemed likely to unite such disparate aggregates of interests as Pennsylvania, Virginia, and Massachusetts was the constitutional claim for proportional representation.

The connection between the specific claim for proportional representation and the ostensibly more general concerns expressed in Madison's preconvention memorandum on the vices of the political system was thus intimate. Convinced both that the desired reforms could be attained only if the large states received justice on the issue of apportionment *and* that the extended republic would operate as he predicted, Madison intended to put his theory to more effective use than the mere rebuttal of trite objections lifted from dog-eared copies of Montesquieu. What he carried to Philadelphia was not a set of discrete proposals but a comprehensive analysis of the problems of federalism and republicanism. Nor was he inclined to rank the components of his theory in order of importance, discriminating those that were essential from those that were merely desirable. Within this argument there was no room for the "compromise" that would eventually prevail. And his resistance to concessions had roots that ran deeper than logic. For Madison went to the convention in the grip of a great intellectual passion. The quiet but powerful sense of discovery that suffuses the concluding section of his memorandum had been converted into self-confidence and conviction.[22]

Yet comprehensive and even integrated as this theory was, it had critical weaknesses. The most obvious, of course, was the pet scheme of the negative on state laws, which was found vulnerable to a wide range of objections. But at Philadelphia two other problems proved even more threatening. One was the difficulty of devising a satisfactory procedure for electing the upper house, one that could safely deprive the state legislatures of a claim to representation. Here the indefinite character of Madison's ideas served him poorly, especially since his desire to render the Senate independent of both the legislatures and the people made it difficult to specify just what social entities it was representing.

The other problem that Madison had not thought through had more ominous overtones. How well would his favorite image of a society "broken into a greater variety of interests, of pursuits, of passions"[23] work

[22] As Hobson, echoing Adair, has aptly noted, "Madison embarked on his mission to Philadelphia with the confidence of one who had discovered the proper cure for the disease that afflicted the American political system" ("Negative on State Laws," *WMQ,* 3d Ser., XXXVI [1979], 225).

[23] Hutchinson *et al.,* eds., *Madison Papers,* IX, 357.

when the convention confronted certain stark conflicts, rooted in specific interests, that cut across state lines? No one entered the convention more keenly aware of the danger of sectional divisions than Madison.[24] Yet here, too, it is by no means clear how well he had reconciled his general theory of the multiple sources of faction with the dangers both to minority rights and to the permanent interest of the union that sectional differences evoked.

Madison was the best prepared of the delegates who gathered in Philadelphia in May 1787, but he was not he only one who had pondered just how the deliberations were to be structured. Among his colleagues, the nearest potential competitor may have been John Dickinson of Delaware, who had taken the leading role in preparing the first official draft of the Articles of Confederation eleven years earlier. Perhaps it was memories of that experience that led Dickinson, on May 30, to urge the convention to pursue "a more simple mode" of action than the one implicit in the Virginia Plan that had been presented just the day before. Rather than seek agreement on broad principles, he argued, the convention need only agree "that the confederation is defective; and then proceed to the definition of such powers as may be thought adequate to the objects for which it was instituted." Inclined by temperament and principle alike to pursue conciliation, Dickinson sensed that the convention would greatly improve its chances for success if it postponed taking on the question of representation until consensus had been built on other, more tractable issues.[25]

On many other points Dickinson and Madison were in agreement. But in the event it was Madison's notion of the course the deliberations should take that prevailed. Chance as much as foresight made this possible: only the tardy arrival of other delegations enabled the Virginians to draft the plan that Randolph presented on May 29.[26] But Madison knew an opportunity when he saw one, especially when it involved setting the agenda upon which others would act. Where Dickinson and Roger Sherman, among others, would have postponed considering changes in

[24] Rakove, *Beginnings of National Politics*, 349-350, 368-380.

[25] Farrand, ed., *Records*, I, 42 (as recorded by James McHenry; Madison did not cite this speech, though his notes and McHenry's correspond in other respects). It was probably also with Dickinson's encouragement that the Delaware assembly had formally instructed its delegates to oppose any alteration in the existing rule of voting. In 1775, when leading the opposition to Independence within Congress, Dickinson had arranged for the Pennsylvania assembly to issue appropriate instructions to its delegates. On Dickinson's role in 1787 see James H. Hutson, "John Dickinson at the Federal Constitutional Convention," *WMQ*, 3d Ser., XL (1983), 256-282.

[26] Madison, Washington, George Wythe, and John Blair were all present in Philadelphia by May 14; Mason, Randolph, and James McClurg arrived within the next few days. Only then did the Virginia delegation begin to caucus.

the formal organization of the national government until its additional powers had been precisely enumerated, the Virginia Plan thrust in a different direction.

The plan had a preemptive intent. It presupposed that the powers of the new central government would be substantial but sought to defer discussion of their precise nature and scope until basic agreement had been reached on the structure and composition of its several branches. Rather than detail the specific functions the government would discharge, Article 6 of the plan merely offered a general statement of the principal powers to be accorded to the legislature. These powers were formidable, extending as they did to "the Legislative Rights vested in Congress by the Confederation," to "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 [state] legislation," to a national veto over state laws "contravening . . . the articles of Union," and to the right "to call forth the force of the Union agst. any member . . . failing to fulfill its duty." The contrast between this open-ended language and the carefully delimited amendments to the Articles proposed hitherto could not have been more striking. Finally, on the critical issue of representation the Virginia Plan called for "suffrage . . . to be proportioned to the Quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases." The sole concession extended to the states as such was to permit their assemblies to nominate the candidates from whom the members of the upper house would be chosen by the lower house, which itself would be popularly elected.[27]

As Madison and his colleagues sought to define the issues, then, the problem of representation had to be resolved first. Because the national government was to be so powerful, justice demanded that its political will—vested in the legislature—embody the real constituent interests of the society, not the artificial claims of the states. Only after this principle was accepted would the convention be free to determine the powers of the national government as a whole and to allocate them among its branches.

Insistence on this rule of action guided the conduct of the large-state delegates throughout the opening weeks of debate. They had privately considered how to attain their goal even before the Virginia Plan was presented. At some point before the committee on rules delivered its report on May 28, Gouverneur Morris and Robert Morris argued "that the large States should unite in firmly refusing to the small States an equal vote" in the convention. The Virginians, fearing that an early clash "might beget fatal altercations," disagreed, replying that "it would be easier to prevail" on the small states "in the course of the deliberations" than to require them to "throw themselves on the mercy of the large States" at the outset.[28] This logic set the strategy the large-state coalition pursued. From

[27] Farrand, ed., *Records*, I, 20-21.

[28] *Ibid.*, 11 (May 28). Madison is ambiguous as to when this decision was taken; he notes only that the issue became "a subject of conversation" at some point

May 28, Madison and his principal allies—James Wilson, Alexander Hamilton, Rufus King—acted on the belief that superior arguments would ultimately prove persuasive. Only when the convention seemed poised near deadlock in late June did they begin to contemplate even modest compromise, but what is more remarkable is the consistency of the positions, both theoretical and tactical, that they held down to the last summative debate of July 14.

Issues other than representation were, of course, discussed during this period, but no more than tentative progress could be made on any of them until the question of apportionment was resolved. In this sense, at least, the entire span of seven weeks can be treated as one sustained debate. Yet to understand the particular purposes to which arguments were put, as well as their respective strengths and weaknesses, it is useful to reconstruct the three major stages into which the proceedings leading to the decision of July 16 can be divided. The first of these began with the reading of the Virginia Plan on May 29 and ended when the committee of the whole agreed to a revised version of its resolutions on June 13. The introduction of the New Jersey Plan on June 15 ushered in a second phase that lasted until July 2, when a motion to give each state an equal vote in the Senate narrowly failed, with five states on either side and Georgia divided. This vote immediately gave rise to the election of a committee "to devise & report some compromise."[29] Its report, delivered on July 5, provided the basis for the remaining discussions preceding the key decision of July 16.

The initial debate on the Virginia Plan followed the lines Madison desired—and not because his opponents were stunned by the scope of the changes envisioned. Some of the deceptive ease with which the committee of the whole raced through the Virginia Plan reflected the "shyness" of which Benjamin Franklin and John Rutledge complained on June 1.[30] But leading spokesmen for the small-state position immediately recognized where the logic of the Virginia Plan led. Dickinson revealed as much in calling for "a more simple mode" of proceeding on May 30 and again three days later when he observed that the conflict over representation "must probably end in mutual concession," in which "each State would retain an equal voice at least in one branch of the National Legislature." Sherman similarly grasped the central issue on June 6, when he argued that the state legislatures should elect the lower house because "the objects of the union . . . were few," and again on June 11, when he echoed Dickinson by declaring that "the smaller States would never agree to the plan on any other principle" than an equal vote in the Senate. The strongest evidence of the resentment that Madison's tactics provoked can be found in an encounter that took place immediately after the reading of the New Jersey

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"previous to the arrival of a majority of the States," which could refer either to the period before May 25 or to the morning of the 28th (*ibid.*, 10).

[29] *Ibid.*, 511.

[30] *Ibid.*, 65.

Plan on June 15, when an angry Dickinson took Madison aside to make sure the message was clear. "You see the consequence of pushing things too far," he asserted. "Some of the members from the small States . . . are friends to a good National Government; but we would sooner submit to a foreign power, than submit to be deprived of an equality of suffrage, in both branches of the legislature."[31]

This anger was far from unjustified, for from the outset Madison and his allies evinced a candid determination to reject the claim for an equal state vote. "[W]hatever reason might have existed for the equality of suffrage when the Union was a federal one among sovereign States," Madison observed on May 30, "it must cease when a national Governt. should be put into the place."[32] More important, the arguments they adduced to support this position were fundamentally consistent if not identical with the comprehensive theory that Madison had forged before the convention, and they were arrayed in essentially the same interlocking configuration. Thus on May 31, when the South Carolina delegates objected to "the vagueness" of the clause authorizing national legislation "in all cases to which the State Legislatures were individually incompetent," a chorus of large-state delegates spoke in favor of the idea of proceeding with an adoption of general principles, with Randolph, Wilson, and Madison all concluding that "it would be impossible to enumerate the powers which the federal Legislature ought to have." Charles Pinckney, Wilson, and Madison voiced similar sentiments on June 8 in support of the national negative of state laws.[33] When Elbridge Gerry and Sherman spoke against *direct* popular election of the lower house, Wilson and George Mason replied that "there is no danger of improper elections if made by *large* districts."[34]

Even more notable was the speech that followed by Madison, who seized upon Sherman's statement that "the objects of the Union" would not extend beyond foreign affairs and the prevention of interstate disputes to deliver his first presentation of the problem of faction and his argument for the extended republic. If Madison's account of his speech of June 6 is to be trusted, his performance must have been impressive yet perplexing. For in his eagerness to prove that the proper objects of the union would go well beyond those of the Confederation, he ranged far more widely than he needed to do before finally concluding that popular elections "may safely be made by the People if you enlarge the Sphere of Election."[35]

[31] *Ibid.*, 42, 87, 133, 201, 242.

[32] *Ibid.*, 37.

[33] *Ibid.*, 53-54, 59-60, 164-168.

[34] *Ibid.*, 132-134. Since Connecticut (like Rhode Island) already used at-large popular elections to select its delegates to Congress, it could be argued that Sherman was simply attempting to stake a claim for legislative election to the upper house. Cf. John Lansing's remark on June 20 that "Delegates [to Congress] however chosen, did not represent the people merely as so many individuals; but as forming a sovereign State" (*ibid.*, 336).

[35] *Ibid.*, 132-136, 143 (as quoted by King). It is troubling that the notes of

Strictly speaking, he did not have to discuss the danger of factious majorities or the history of conflicts between debtors and creditors in Greece and Rome in order to justify popular election of one house of the legislature—which is precisely what makes his eagerness to do so the more revealing. The most plausible explanation of this speech is that Madison was anxious to seize the first opportunity that offered to present the new teaching he had carried to Philadelphia.

In only two respects did this effort to use the opening fortnight of debate to seize the higher ground fall short of the objectives Madison had set. One reverse initially occurred within the Virginia delegation itself, when Randolph and Mason insisted on limiting the proposed negative to potential conflicts between state law and national interest, rather than extend it to "all cases whatsoever" in order to protect private rights within the states. In this form, however, the veto still received the approval of the committee of the whole (which, however, rejected Pinckney's amendment to extend it to all cases).[36] Potentially more damaging was the decision of June 7 to have the state legislatures elect the Senate. Wilson and Madison opposed this idea vigorously, denying that it would produce the benefits its supporters foretold. How, they asked, could legislative election work to bring "characters, distinguished for their rank in life and weight of property" into the Senate, as Dickinson suggested, or to enable it to "provide some check in favor of the commercial interest agst. the landed," as Gerry intimated? These objections elicited weak responses. But one additional argument had been made in favor of the motion, and even some of the large-state delegates conceded its force. As Mason put it, "the State Legislatures also ought to have some means of defending themselves agst. encroachments of the Natl. Govt." It was probably this consideration that led the ten states on the floor to vote unanimously to accept legislative election.[37]

Yet the implications of this decision were ambiguous. On the one hand, legislative election implied that the Senate would in some sense represent the states as states, and this in turn could be used to reinforce their claim for an equal vote. On the other, if the essential purpose of legislative

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Madison's speech by Robert Yates, King, and Hamilton do not record the full argument that appears in Madison's own version.

[36] *Ibid.*, 164-168.

[37] *Ibid.*, 150-157. In defense of the proposition that the state legislatures would be attentive to the "commercial & monied interest" in their election of senators, Gerry did argue that "the people are for paper money when the Legislatures are agst. it." But when the issue of the national negative was discussed the next day, "a negative to paper money and similar measures" provided the only class of cases in which he was prepared to support Madison's pet proposal. And when on June 26 Madison described the role the Senate must eventually play in protecting the rights of property, Gerry agreed "that he did not deny the position of [Madison] that the majority will generally violate justice when they have an interest in so doing; But [he] did not think there was any such temptation in this Country." *Ibid.*, 165, 173, 425.

election was to enable the states as a class to protect themselves against federal encroachment, all senators would presumably be sensitive to the rights of their constituents, regardless of the rules of suffrage. The consensus in favor of legislative election thus did not extend to the issue of voting in the Senate, and so on June 11 the committee of the whole voted, six states to five, to base suffrage in the Senate on the same proportional rule established for the lower house.[38]

What had been largely absent from the debate thus far was any sustained effort to explain exactly how the specific rights and interests of the small states would be either injured or protected should proportional representation be instituted in both houses.[39] The second phase of debate that began with William Paterson's reading of the New Jersey Plan on June 15 brought this issue to the fore. In appearance the New Jersey Plan offered a genuinely confederal alternative to the nationalistic thrust of the Virginia Plan. In the substance of the powers it would have conferred on the union, it resembled the proposals for amending the Confederation that had been discussed during the 1780s. And while it followed the Virginia Plan in recommending three independent branches of government, its key provision was to retain a unicameral legislature in which each state would have one vote. Since it was generally believed that such an assembly could not be safely vested with broad legislative authority, the New Jersey Plan could not pretend to grant the union anything like the sweeping authority envisioned in its counterpart.[40]

This was so conspicuously its major weakness that one has to ask whether the New Jersey Plan was meant to be taken seriously on its merits. Some delegates professed to be skeptical from the start. Charles Pinckney put the point directly when he dismissed the entire scheme as little more than a ruse: "the whole comes to this," Pinckney scoffed; "Give N[ew] Jersey an equal vote, and she will dismiss her scruples, and concur in the Nati[ona]l system."[41] Pinckney was a touch too sarcastic, but his analysis was not far from the mark. For the New Jersey Plan was not equivalent to the Virginia Plan; though it would have empowered the union to use force to compel delinquent states to perform their duty—a drastic remedy whose impracticality was easily exposed—it simply would not have given the federal government the authority that most delegates believed necessary. This its supporters tacitly conceded when they barely bothered to defend the plan's actual provisions. Instead, their central line of argument ran against the legitimacy, not the merits, of the Virginia Plan. The convention, they declared, had no right to consider any change in the

[38] *Ibid.*, 193.

[39] The two noteworthy exceptions to this were Gunning Bedford's speech opposing the congressional veto on June 8 and David Brearley's remarks of June 9 seconding William Paterson's motion to resume discussion of the rule of suffrage (*ibid.*, 167, 177).

[40] See especially the comments of James Wilson on this point, *ibid.*, 254.

[41] *Ibid.*, 255.

basic principle of the existing confederation—the representation of states as corporate units—and even if it did, there was little chance that so sweeping a revision could ever be adopted.[42]

From Madison's perspective, however, the manifest shortcomings of the New Jersey Plan provided the same convenient foil that Sherman had offered on June 6. When Madison rose on June 19 to deliver a final indictment of the plan's inadequacies, he used the occasion to present a second and more complete statement of his theory of the extended republic. The New Jersey Plan, he argued, would not "provide a Governmt. that will remedy the evils felt by the States both in their united and individual capacities." After again reviewing, item by item, his memorandum on the vices of the political system, Madison was careful to return to the central issue of proportional representation. "The great difficulty lies in the affair of Representation," he concluded, "and if this could be adjusted, all others would be surmountable." And again, he rested his case on an appeal to justice, now reinforced by a final reminder that the admission of new states endowed with "an equal vote" would enable "a more objectionable minority than ever [to] give law to the whole."[43]

On its merits, then, the New Jersey Plan had little to commend it, and immediately after Madison spoke, the committee of the whole rejected Paterson's resolutions by a decisive margin of seven states to three, with one divided. A revealing interlude followed. The task and opportunity that now awaited the large-state leaders was to convert this commanding majority into a durable coalition in favor of proportional representation in both houses. The campaign began immediately. One after another, Wilson, Hamilton, and King took the floor. In part their remarks were conciliatory. Wilson began by dissociating himself from Hamilton, whose famous speech of the day before had implied that the state governments should be "swallow[ed] up"—whereupon Hamilton complained that he had been misunderstood and that "he admitted the necessity of leaving in them, subordinate jurisdictions." But the three speakers also broadened the intellectual foundation upon which proportional representation in both houses could be vindicated. At the high level of theory King explained why the states did not "possess the peculiar features of sovereignty," while Hamilton more pointedly reminded the small states that "all the peculiarities which distinguish the interests of one State from those of another" would operate to prevent combinations among Pennsylvania, Virginia, and Massachusetts.[44]

Only a brief rejoinder from Luther Martin interrupted this stream of argument. But the silence of the New Jersey Plan's advocates is mislead-

[42] These were the two principal reasons cited by both John Lansing and Paterson in their speeches of June 16, which apparently constituted the only remarks made in support of the New Jersey Plan (*ibid.*, 249-250).

[43] *Ibid.*, 314-322.

[44] *Ibid.*, 287, 322-325.

ing, for they had already achieved their point. Their basic purpose was not to move the convention to pursue a more prudent agenda of reform. It was rather to convince the large states that the scope of change envisioned in the Virginia Plan could never be adopted unless the small states were accorded an equal vote in one house. Should the large states persist in *their* ultimatum, the small states would respond in kind and accept nothing that went much beyond the modest amendments discussed in the mid-1780s. The real debate over the thrust of the New Jersey Plan thus began only *after* its rejection. Indeed, the most significant discussions of the next week and a half nominally addressed issues that, as Mason put it, one "did not expect . . . would have been reagitated."[45]

But in point of fact it was during the final third of June that the great issues between the two contending sides were most clearly drawn and the strengths and weaknesses of the large-state position also became evident. The critical exchanges of this period occurred over three motions introduced by opponents of bicameral proportional representation. The first of these, proposed on June 20 by John Lansing of New York, was to vest additional powers not in a new legislature but in the existing Congress. The second, introduced by Lansing on the 28th, was to base representation in the *first* house "according to the rule established by the Confederation."[46] This was rejected on Friday the 29th, whereupon Oliver Ellsworth immediately moved that each state should be accorded an equal vote in the Senate. After a day and a half of debate, the convention reassembled on Monday, July 2, to reject Ellsworth's motion on a tie vote. But the narrowness of its defeat revealed that the effort to translate the majority against the New Jersey Plan into a coalition in favor of proportional representation in both houses had failed. This vote led immediately to the election of a committee to propose a compromise and thus to the final phase of debate preceding the decision of July 16.

What form did the debates of June 20-30 take? In one sense, the specter of deadlock led partisan advocates on both sides to offer comparable threats and insinuations on behalf of the interests of their constituents. But in a more fundamental respect the opposing positions of the large and small states were asymmetrical. The character and substance of the arguments presented on either side of the question were not equivalent, nor did the advocates use ideas in quite the same way. The central challenge confronting the small states was simply to find additional bases for legitimating the existing principle of corporate representation. In this endeavor consistency was useful but not always necessary. For the small states' inherent interest in preserving some vestige of the precedent

[45] *Ibid.*, 338.

[46] *Ibid.*, 336-338, 445. On the 16th Ellsworth had offered a similar motion to the effect "that the Legislative power of the U.S. should remain in Congs." This had gone unseconded, although Madison privately noted that "it seemed better calculated for the purpose" than the introductory motion of the New Jersey Plan. *Ibid.*, 255.

of 1774 was so strong that they were prepared to use whatever arguments came readily to hand.

In practice, the defense of the equal state vote was deployed along three parallel lines, any two of which could be abandoned as circumstances dictated. The first and most conspicuous held that the interests of the small states would be entirely ignored or overwhelmed should proportional representation prevail in both houses. A second position asserted that the continued existence of the state governments could not be assured "without allowing them to participate effectually in the Genl. Govt.," and that this in turn required "giving them each a distinct and equal vote for the purpose of defending themselves in the general Councils." Finally, the same logic could be extended to imply that the existence of the states "as political societies"—that is, as self-governing communities—similarly depended on the principle of equal representation in the upper house.[47]

The flaws in each of these positions were easy to detect, and leading speakers from the large states hammered away at them relentlessly. On the whole, it is difficult to resist concluding that the small-state delegates knew they had the weaker arguments. Time and again they were battered in debate. Again, as during the interlude over the New Jersey Plan, Madison, Wilson, and King were content to take the opposing claims at face value and refute them on their merits; only rarely, if at all, did they evoke counterarguments that posed genuine difficulties.

On what basis "was a combination of the large [states] dreaded?" Madison asked on June 28, shortly after Luther Martin had finally concluded his rambling defense of state sovereignty. What "common interest" did Virginia, Massachusetts, and Pennsylvania share that would enable them to coalesce against the other states? His answer amounted, in effect, to a restatement of his theory of faction. "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," Madison declared. "In point of manners, Religion and the other circumstances, which sometimes beget affection between different communities, they were not more

[47] *Ibid.*, 355, 461-462. In both cases the speaker was William Samuel Johnson, who did not clearly distinguish between the idea of representing either the state governments as such or the integral communal interests they were somehow presumed to embody. But cf. the remarks of Sherman during the final debate of July 14: "Mr. Sherman urged the equality of votes not so much as a security for the small States; as for the State Govts. which could not be preserved unless they were represented & had a negative in the Gen[era]l Government." But if this was meant to affirm that the states were to be represented in a corporate capacity, one is hard-pressed to see how Sherman could logically then add that "he had no objection to the members in the 2d b[ranch] voting per capita," since a divided delegation would testify to the existence of disparate interests within a state. *Ibid.*, II, 5. The entire question of the nature of statehood in the Revolutionary era needs to be reconsidered in the light of Peter S. Onuf's conceptually brillant study of *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1787* (Philadelphia, 1983).

assimilated than the other States." Nor, of course, did they have common economic interests. Hamilton echoed the same point the next day, and Wilson came back to it again on the 30th, noting in passing that "no answer has yet been given to the observations of [Madison] on this subject." This at last goaded Ellsworth to object that "the danger of combinations among" the large states was "not imaginary." This response did not seem to carry great conviction: Ellsworth immediately added that "altho' no particular abuses could be foreseen by him, the possibility of them would be sufficient to alarm him."[48] The closest the small states could come to identifying the danger they faced was to suggest that the very prospect of dominance would lead the large states to discover suitable objects for mutual self-aggrandizement.

As a means of describing the general range of interests that the union already embraced, then, Madison's theory of the extended republic provided a credible answer to the objections of the small states—and it was so used. But his conception of faction could also be invoked, though less easily, against the claim that the states were themselves interests deserving equal representation as sovereign corporate units. Here the ambiguity of the argument advanced especially by the Connecticut delegates demanded a more complex response. Their most clearly developed claim asserted that the state *governments* would be unable to protect themselves if they were deprived of a voice in the national legislature. Alternatively, they argued that the participation of the states ought to be encouraged because "without their co-operation it would be impossible to support a Republican Govt. over so great an extent of Country."[49] But while these claims were certainly compatible with the idea of legislative election, they did not logically require an equal state vote. They were further vulnerable to exactly the range of criticisms of the Articles of Confederation that Madison had compiled during his researches of 1786-1787 and that he and others repeatedly raised throughout the debates. "All the examples of other confederacies prove the greater tendency in such systems . . . to a disobedience of the members than to usurpations of the federal head," Madison reminded the convention on June 21. "Our own experience had fully illustrated this tendency." To allow jealous state assemblies to appoint senators, King warned, would result in their "constantly choos[ing] men subservient to their own views as contrasted to the general interest."[50] And in a way that many members intuitively understood but never fully articulated, combining legislative election with the idea of an equal vote reinforced this fear of a parochial and potentially indecisive upper house precisely because it evoked the

[48] Farrand, ed., *Records*, I, 447-448, 466, 483-485. Ellsworth did go on to suggest two possible bases of "combination": a commercial treaty in which only "three or four free ports & no more were to be established" and "concert . . . in the appointment of the great officers."

[49] Oliver Ellsworth, speech of June 25, *ibid.*, 406.

[50] *Ibid.*, 356-357, 359.

prevailing image of the existing Congress. "A reform would be nugatory & nominal only," King complained, "if we should make another Congress of the proposed Senate."[51]

Madison and Wilson might have opposed legislative election less strongly had they been confident that their opponents would be willing to stop there. But believing, with reason, that the case for protecting the state governments was meant to justify the claim for an equal vote, they had to contest the idea that states deserved representation on any basis, whether as sovereign members of the union, coordinate governments, or simply communities.[52] Here, again, the arguments advanced by Wilson, Hamilton, and King were consistent with Madison's general theory, which traced the origin and persistence of faction to the attributes of individuals. Benjamin Franklin put the point plainly on June 11 when he noted that "the Interest of a State is made up of the interests of its individual members. If they are not injured, the State is not injured."[53] The logical extension of this point was not only to deny that state governments were legitimate interests in themselves, but also to suggest, as Wilson noted on June 20 and again the next day, that within the sphere of national politics the interests of state legislators and their constituents were not identical. "A private citizen of a State is indifferent whether power be exercised by the Genl. or State Legislatures, provided it be exercised most for his happiness," Wilson argued. "His representative has an interest in its being exercised by the body to which he belongs."[54] The large-state leaders conceded that the less populous states would lose influence. But they heatedly argued that the citizens of the small states would be no less free than any others, and no less capable of reaping the benefits of a reinvigorated union.[55] And it was on this basis—rather than on its impact on the power of the state governments—that the new government would ultimately be judged.

What is most striking about the response of the small-state spokesmen

[51] *Ibid.*, 489. See also the similar remarks of William Davie, *ibid.*, 488, delivered, however, while attempting to stake out a middle ground.

[52] *Ibid.*, 417. See also the comment that Madison added (probably much later) to his notes for the debate of June 25 over the election of the Senate: "It must be kept in view that the largest States particularly Pennsylvania & Virginia always considered the choice of the 2d. Branch by the State Legislatures as opposed to a proportional Representation to which they were attached as a fundamental principle of just Government" (*ibid.*, 408). Their ability to maintain this position, however, was weakened by the conspicuous support that the mode of legislative election received from Mason and Gerry. Had the large states been able to prevail on the major question of the equal vote, Madison would almost certainly have attempted to secure some other form of election. In his view, again, the question of election was subordinate to the issue of apportionment. See his comment of June 25, *ibid.*, 407.

[53] *Ibid.*, 199.

[54] *Ibid.*, 343-344, 359.

[55] Hamilton, speech of June 29, *ibid.*, 466.

to this argument is that they avoided meeting it seriously on its own terms. They did not seek to demonstrate that the states—or at least their states—did indeed constitute cohesive communities of interest. Only at the close of the debate of June 30 did Ellsworth assert that "domestic happiness" could never be attained by acts of a national government but depended on the preservation of the rights of the states. The defense of an equal vote rested instead on claims of original sovereignty, on the need to secure both the rights of state governments and the interests of small states, and on candid avowals that the small states could not be expected to act from "pure disinterestedness" when the call for proportional voting itself proved that the large states were "evidently seeking to aggrandize themselves at the expense of the small."[56]

Yet the overall weakness of their theoretical arguments did little to impair the political position of the small states. For these arguments, and the motions that occasioned them, were directed not toward a strategy of persuasion but toward two more immediate purposes. In the first place, the three motions introduced by Lansing and Ellsworth after June 20, by providing continuing tests of the relative strength of the two parties, demonstrated that the large states could not translate the alignment of June 19 into a new coalition. Second, and more important, they provided the small states with leverage for the "compromise" that Ellsworth, Sherman, and Dickinson had indicated would prove both acceptable and necessary all along. Each narrow defeat their coalition suffered strengthened the claim for compromise. This was why questions that the convention had seemingly settled were "reagitated" after June 20. Ellsworth disclosed the logic of this gambit immediately after Lansing's second motion was rejected on June 29. "He was not sorry on the whole" about the result of "the vote just passed," he declared, for "he hoped it would become a ground of compromise with regard to the 2d. branch." He thereupon moved to give the states an equal vote in the upper house.[57]

Ellsworth justified this proposal in part with the famous image of a union that was "partly national; partly federal"; but the argument he pressed more vigorously was the familiar one of security: "the power of self-defence was essential to the small States." An equal vote in the second house would accord them the same protection the large states enjoyed in the first. "If security be all that the great States wish for," he argued the next day, "the 1st. branch secures them." But security was not in fact what the large states desired, Wilson and Madison replied, nor was it to be equated with justice. The true issue was not protection but legislation—that is, the ability of the national government to act, consistent with the will and interests of whatever majority would be represented in Congress.

[56] *Ibid.*, 491-492; the second speaker quoted is Gunning Bedford. A negative proof of the lack of reliance placed on the image of the states as social communities is that Madison felt no need to reiterate the evidence for the pervasive impact of faction within the states.

[57] *Ibid.*, 468-469.

Even if a popular majority were adequately protected in the first house, Madison replied, a majority of states could still injure their "wishes and interests" by blocking the measures they desired, by extracting "repugnant" concessions in exchange for their passage, or by using the "great powers" that would presumably be exercised by the Senate alone—most notably, the negative on state laws—to "*impose* measures adverse" to their concerns.[58]

It was at this point that Madison injected a new argument, touching upon an issue that he had not explicitly addressed in his preconvention writings or previous debates. The concluding passage of his speech of June 30 is well known for its frank invocation of the danger of sectionalism. Madison agreed

> that every peculiar interest whether in any class of citizens, or any description of States, ought to be secured as far as possible. . . . But he contended that the States were divided into different interests not by their difference of size, but by other circumstances; the most material of which resulted partly from climate, but principally from ⟨the effects of⟩ their having or not having slaves. These two causes concurred in forming the great division of interests in the U. States. It did not lie between the large & small States: it lay between the Northern & Southern. [A]nd if any defensive power were necessary, it ought to be mutually given to these two interests. He was so strongly impressed with this important truth that he had been casting about in his mind for some expedient that would answer the purpose.

One solution to this problem, Madison hinted, would be to apportion representation in one house to free inhabitants only, and to total population in the other. But "he had been restrained from proposing this expedient by two considerations," he concluded; "one was his unwillingness to urge any diversity of interests on an occasion when it is but too apt to arise of itself—the other was the inequality of powers that must be vested" in the two houses.[59]

[58] *Ibid.*, 468-469, 482-487, 496-497, 504. The reference to the negative on state laws is found not in Madison's own notes for this speech but in those kept by Yates and Paterson.

[59] *Ibid.*, 486-487. Since the force of the observations in the following pages hinges in part on the accuracy of Madison's own account of this speech, one should note that Yates's and Paterson's notes on this speech do not contain anything that corresponds to these concluding remarks (although Yates does attribute comparable sentiments to Madison on June 29; *ibid.*, 476). Both suggest that Madison instead ended his speech by reminding the convention that the large states would not accept the desired negative on state laws if it were exercised by an improperly constituted senate. That point, by itself, is consistent with the general argument of this essay, since it demonstrates that Madison's commitment to proportional representation was still integrally bound to his general theory of the extended republic. But it is not beyond the realm of possibility that when Madison later

Madison had not discovered the danger of sectionalism only in the course of the convention. He was, after all, the principal author of the original version of the three-fifths clause, as it had first appeared in the congressional revenue plan of April 18, 1783,[60] and one of the major concerns that had led him in the fall of 1786 to accept the necessity of a general constitutional convention was his fear that the sectional rift within Congress over the navigation of the Mississippi portended the imminent devolution of the union into two or three regional confederacies.[61] Moreover, notwithstanding his professed reluctance to identify any further "diversity of interests" within the convention, it is noteworthy that Madison broached his hint *before* the application of the three-fifths clause to the issue of representation in the lower house had become controversial. If he was now willing to risk all the difficulties that the interjection of the sectional issue raised, it could only have been because he sensed that the tide of debate was turning against his position. For the invocation of sectional conflict could cut in two quite different directions. On the one hand, it could certainly be used to show that the immediate conflict between small and large states was not the major danger the union faced; on the other, by calling attention to fundamental differences not simply between states but between entire regions, it also encouraged every delegation to ask how its constituents might be protected should the balance of power within Congress swing against their particular interests.

If these were the assumptions upon which Madison rested his concluding remarks of the 30th, his expectations were well founded. The vote of July 2 revealed that deadlock itself could provide a sufficient rationale for compromise, regardless of the merits of the arguments on either side. Immediately after Ellsworth's motion was rejected, the convention elected a committee to frame a compromise, and its very composition revealed how strong the sentiment for accommodation had become. For while the large states were represented by those delegates whose previous state-

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prepared the transcript of his notes, he could have found reasons both personal and political to suggest that he had been quick to perceive the dangers of sectionalism and to attempt to propose, however tentatively, more explicit means of using the Constitution to accommodate the differences between the two major regions. This suspicion would take on greater weight if one believes, as this author does, that from the Missouri crisis on, Madison hoped that one great service the posthumous publication of his notes could provide would be to demonstrate to later generations how accommodation in the interest of union had become the dominant motif of the convention.

[60] See Madison's notes on debates in Congress for Mar. 28, 1783, in Hutchinson *et al.*, eds., *Madison Papers*, VI, 407-408.

[61] This concern further reinforced his commitment to proportional representation. For while the retention of a scheme of state voting, even if it applied only to the Senate, threatened to leave the South in the minority position in which it had been placed in Congress in 1786, the belief that population movements were tending south and west promised to bring southern interests into closer parity with those of the North.

ments augured best for conciliation—Gerry, Franklin, and Mason—the members elected from the small states included its leading partisans: Paterson, Ellsworth, Martin, and Gunning Bedford. Moreover, Madison must have sensed that the opportunity for rational persuasion was evaporating. On the central issue of voting there was little left to say. Of the nine days of debate that followed the committee's report on July 5, only two were devoted to the key issue of voting in the upper house.[62] Controversy centered instead on the precise apportionment of representation within the lower house, and as Madison must have expected, this in turn forced each delegation to assess the question of sectional balance.

The debate over apportionment had both geographical and chronological dimensions. It pitted the northern states not only against the southern states but conceivably also against the future states of the West, whose interest in opening the Mississippi to American navigation might lead them into a natural alliance with the South. And it required determining not only how seats would originally be allocated but also how later decisions about reapportionment would be made: by a legislature that was either free to act on its own discretion—which could enable the section holding the opening advantage to prolong its power—or was obliged to follow a constitutional rule. The central consideration that drove the convention to give constitutional sanction to both the three-fifths clause and periodic reapportionment was the need to assure the southern states that their current inferiority would be eased or even reversed by the anticipated movement of population to the west and south. The net result of this debate was supported by every state but Delaware (whose delegation was divided) and may plausibly be described as a compromise that, ironically, rested on the mistaken assumption that the southern states would soon control the lower house while the northern states would enjoy at least an initial advantage in the Senate.

Within the context of the larger debate over representation in two houses the sociology of sectionalism had one obvious intellectual advantage. It described objective interests and differences that everyone understood were fated to endure well beyond the adjournment of the convention and that reflected in the most profound terms the underlying characteristics of individuals, states, and entire regions. The same could not be said about the mere size of a state, which in Madison's view could be a source of division only within the convention. If congressmen from Connecticut and New Jersey later found themselves opposed to their colleagues from Virginia, were their differences more likely to arise from disparities in the size of their states or in their economic and social systems? In this sense, the reference to slavery, divisive as it was on other grounds, buttressed the case against equal state representation, simply because it provided a far superior model of the actual competing interests that any national government would continually need to reconcile. In a

[62] The subject was debated on Friday, July 6, and again from Monday the 9th through Friday the 13th.

telling exchange on July 9 Madison even caught Paterson in an embarrassing contradiction, when the New Jersey delegate opposed counting slaves for purposes of apportionment on the ground that "the true principle of representation" was to provide "an expedient by which an assembly of certain individls. chosen by the people is substituted in place of the inconvenient meeting of the people themselves." Madison must have fairly leaped to his feet to remind Paterson that such a "doctrine of Representation which was in its principle the genuine one, must for ever silence the pretensions of the small States to an equality of votes with the large ones."[63]

Yet the marginal gains to be reaped in this way did not outweigh the costs. The more carefully the question of apportionment in the lower house was examined, the more difficult it became for any delegate to ignore considerations of *regional* security. Rather than treat sectional differences as an alternative and superior way of describing the real interests at play in national politics, the delegates saw them instead as an additional conflict that also had to be accommodated if an enduring union was to be established. In this sense, the apportionment issue reinforced the position that the small states had clung to all along. For it called attention not to the way in which all interests could be protected in an extended and extending republic, but rather to the need to safeguard the most conspicuous interests of North and South. This defensive orientation in turn enabled even some large-state delegates to see virtue as well as necessity in the call for an equal state vote. If the security of a limited number of interests was to be the first object of the new government, a Senate in which each state voted equally afforded a promising basis of reassurance. No one could predict with any accuracy how the shifting tides of migration and population would affect the long-term composition of the House of Representatives. Calculations of influence based simply on numbers of states were far less daunting. And if the admission of new states was to be regulated by a legislature in which each major region could hope to have especial influence in one house, it was possible to foresee how some balance between (or among) the sections might be maintained over time.

Gouverneur Morris put the point with typical candor (as well as inconsistency) on Friday, July 13. The week before, he had rejected the argument that an equal vote in the Senate was needed "to keep the majority of the people from injuring particular States" with as sharp a riposte as was imaginable. "But particular States ought to be injured for the sake of a majority of the people," he insisted, "in case their conduct

[63] Farrand, ed., *Records*, I, 561-562. Madison quoted Paterson again in his final speech of July 14 (*ibid.*, II, 8). On July 12 William Samuel Johnson similarly noted "that wealth and population were the true, equitable rule of representation," though here he proposed to include "blacks *equally* with the *whites*," perhaps because the link between taxation and representation had now been forged (*ibid.*, I, 593).

should deserve it." Since then, however, Morris had taken the lead in opposing fixed constitutional rules for apportionment—especially rules prescribing the inclusion of slaves and the extension of equal rights to the new settlements; he had staked his case not on his earlier invocation of "the dignity and splendor of the American Empire" but on avowals of regional interest so transparent that Madison complained that Morris "determined the human character by the points of the compass." Still, inconsistency and insight are not always mutually exclusive. Even while lamenting on the 13th that "there can be no end of demands for security if every particular interest is to be entitled to it," Morris revealed where this concern could readily lead. "The consequence of such a transfer of power from the maritime to the interior & landed interest," he declared, "will . . . be such an oppression of commerce, that he shall be obliged to vote for the vicious principle of equality in the 2d. branch in order to provide some defence for the N. States agst. it."[64]

For lawyerly sophism Morris had few peers. In their own final defenses of proportional representation Madison, Wilson, and King opted for consistency. Almost everything that was said during the few days that were given to the main points of the ostensible compromise recapitulated not only arguments made earlier but the basic asymmetry of the two positions. With compromise itself the issue now before the convention, the small states no longer had to defend their position in theoretical terms, while the large-state spokesmen, left with correspondingly little room for maneuver, could only make a final appeal along the lines they had already established. Thus when Gerry suggested that it might be better "to proceed to enumerate & define the powers to be vested in the Genl. Govt." before deciding the rule of voting, Madison continued to insist that such determinations could be made only after the issue of representation was resolved. Again, the arguments against the equal state vote do not appear to have been effectively rebutted. When delegates from the large states dismissed as inconsequential the ostensible concession that would restrain the Senate from initiating or amending appropriations bills, their comments elicited only weak responses from the proponents of a compromise. Paterson even declined to say whether it was "a valuable consideration or not."[65] Only on July 14 did the large-state delegates belatedly suggest a tepid compromise of their own whereby no state would have more than five senators. But their final speeches restated the major principles they had adhered to all along. King asserted that no credible threat to either the small states or the state governments had ever been identified; Wilson argued that the legislative election of senators would afford adequate security for the states; and Madison rejected Ellsworth's image of a union "partly federal" by denying that there would be "a single

[64] *Ibid.*, 551-553, 584, 604.
[65] *Ibid.*, 551.

instance in which the Genl. Govt. was not to operate on the people individually."[66]

In his final comments, Madison echoed his conclusions of June 30. An equal state vote would not merely give the small states the security they craved; in practice it would also enable them to thwart the majority will. But he then cited one last "serious consideration" that he felt should be opposed to the claim for an equal state vote—and he did so in a way that implicitly called into question much of what he had argued hitherto. "It seemed now to be pretty well understood that the real difference of interests lay, not between the large & small but between the N. & Southn. States," Madison reminded his colleagues, alluding, of course, to the previous days of debate over the apportionment of representation in the lower house. "The institution of slavery & its consequences formed the line of discrimination," with the five states from Maryland south arrayed against the eight from Delaware north. The disparity would remain even should a scheme of proportional representation be adopted for both houses, "but not in the same degree [as] at this time; and every day would tend towards an equilibrium" of sectional power.[67]

Did "equilibrium" as Madison used it here mean anything different from the "security" that Ellsworth had sought for the small states? The debate over apportionment had exposed the central tension—or even contradiction—that lay at the core of the general theory that Madison labored so hard to develop. For the recognition that there was one overriding issue that threatened to establish a great "division of interests" between slave and free states could not be easily rendered compatible with the pluralist imagery of the diverse sources of faction. In both instances, it is true, Madison expressed concern for the protection of minority rights, by which he meant, principally but not exclusively, rights of property.[68] Yet radically different inferences could be drawn from these two attempts to trace the origins of faction.

The theory that Madison had formulated on the eve of the convention,

[66] *Ibid.*, II, 6-11, quotation on p. 9. Sherman, in the very last speech recorded for July 14, did respond to Madison by "signif[ying] that his expectation was that the Genl. Legislature would in some cases act on the federal principle of requiring quotas."

[67] *Ibid.*, 9-10.

[68] It is noteworthy that in his memorandum on the vices of the political system, and again in his speech of June 19, Madison cited the existence of slavery within a state as one of three examples of ways in which "a minority may in an appeal to force, be an overmatch for the majority." One would like to think that by arguing that "where slavery exists the republican Theory becomes still more fallacious," Madison was condemning slavery as a system based on brute coercion. But since the context in which this point was cited concerns the inability of the existing Congress to intervene to protect the laws and constitutions of the states "against internal violence," the more likely reference is to the danger of slave rebellions. Hutchinson *et al.*, eds., *Madison Papers*, IX, 350-351; see also Farrand, ed., *Records*, I, 318.

with its emphasis on the multiple and mutable sources of interested behavior, promised to assure an array of minorities that their rights and concerns would be treated justly in a national legislature that they could never hope to control.[69] But this conception of the sources of faction purported to describe "all civilized Societies" and was thus, in a sense, abstract and even disembodied. The same could not be said of the portrait of the United States that Madison had first etched in his speech of June 30 and to which he returned in his exchange with Paterson on July 9 and again in his closing remarks of July 14. But what did one see when the new republic was described in these gross terms: a society embracing "so great a number of interests & parties" or a nation divisible into two great and potentially antagonistic factions, either of which could readily imagine how future changes in regional population and influence might threaten its prosperity, institutions, and values alike? And what notion of legislation was more compatible with this image: one that would allow majorities to govern while promising protection to all interests, defined principally in terms of the attributes of *individuals;* or one that implied, as the small states continually insisted, that the first task in the construction of a national legislature was to provide specific constitutional guarantees for certain broad groupings of *states,* whether large or small, northern or southern? And which political goal had become more important: overcoming the objections of all the populous states to granting additional powers to a government founded (as King put it) on the "viccious [*sic*] constitution of Congs. with regard to representation & suffrage,"[70] or convincing the southern states in particular that their interests would not be endangered in a government in which they could not initially hope to command a majority?

In the end, as the remarks of both Madison and Morris suggest, the framers could not avoid reverting to the idea that states somehow were the essential constituent elements of the polity and that simple residence in the same state would establish the first and most natural bond of individual political loyalty. Even Madison found it hard to convert his brilliant conception of faction into a more detailed map of the diverse interests that actually existed both among and within the states. It is striking that in all

[69] In this respect it is important to recall the discussion of the nature of legislation that provides the transition in the tenth *Federalist* between Madison's account of "the latent causes of faction" and his argument about "the means of controlling its *effects*." "The principal task of modern legislation," Madison argued, is "the regulation of these various and interfering interests" that arise from "the various and unequal distribution of property." The examples he then provided of regulation—notably the encouragement of "domestic manufactures"—indicate that Madison understood the creative or positive character of legislation. "Yet what are many of the most important acts of legislation," he also asked, "but so many judicial determinations . . . concerning the rights of large bodies of citizens?" [Alexander Hamilton, James Madison, and John Jay], *The Federalist,* ed. Benjamin Fletcher Wright (Cambridge, Mass., 1961), 131-132.

[70] Farrand, ed., *Records,* I, 135, 136, II, 7.

their efforts to demonstrate that no objective interest could work to unite Virginia, Pennsylvania, and Massachusetts in the exercise of a federal condominium, the spokesmen for the large states never thought to cite the existing diversity of interests within their own states to disprove the conspiracy theories of their antagonists. None of them ever suggested that representatives elected by small farmers in Pennsylvania and Maryland might have more in common with each other than they would with merchant congressmen from Philadelphia or Baltimore. "If Va. should have 16 votes & Delre. with several other States together 16," reasoned Nathaniel Gorham of Massachusetts, "those from Virga. would be more likely to unite than the others, and would therefore have an undue influence."[71] Nor for that matter did delegates from the small states attempt to argue that their constituents were no more likely to coalesce for obstructive purposes than were the large states in pursuit of domination.

There was, moreover, another reason why the arguments for proportional representation in both houses fell short of being persuasive. In his speech of July 14 King suggested that "the idea of securing the State Govts." logically required the creation of a tricameral legislature. For if the first house was designed to represent the people directly, the second "was admitted to be necessary, and was actually meant, to check the 1st. branch, to give more wisdom, system, & stability to the Govt."; after that was assured, the third could operate for the "purpose of . . . representing the States as such and guarding by equal votes their rights & dignities."[72] Awkward and even frivolous as such a scheme would be, King's rationale illustrated one crucial point. In his conception as in Madison's, whatever representative character the Senate might enjoy was essentially incidental to the major substantive functions it was meant to fulfill as well as to the attributes its members were expected to possess. Hamilton's notion of a Senate composed of members serving for life was more than any true republican could accept; but the independence he hoped this tenure would secure did not at bottom differ from what Madison had in mind when he argued for a nine-year term that "should not commence till such a period of life as would render a perpetual disqualification . . . inconvenient."[73] It was the Senate that would serve as the great guardian of national interests, charged, as almost all of the framers originally expected it would be, with responsibility for war and foreign affairs, as well as with the negative on state laws.[74] Within this framework the proportional vote was no more designed to enable the Senate to reflect the actual distribution of interests within society than the aversion to legislative election was

[71] *Ibid.*, 404-405. Gorham was speaking of the idea of using a less than strictly proportional scale in the apportionment of the Senate, but the assumptions underlying this remark are applicable to both houses.

[72] *Ibid.*, II, 6-7.

[73] *Ibid.*, I, 289-292, 421-423.

[74] See Jack N. Rakove, "Solving a Constitutional Puzzle: The Treatymaking Clause as a Case Study," *Perspectives in American History*, N.S., I (1984), 233-281.

intended to make it more dependent on the popular will. The former was required merely to persuade the large states to approve the desired augmentation of national power, the latter to prevent the Senate from becoming "another edition of Congs."[75] through an improper solicitude for provincial concerns.

The great flaw in this conception was that it risked ceasing to be a scheme of representation. The relation between senators and their constituents required nothing more of the former than that they possess some knowledge of local circumstances—without which they were hardly likely to be chosen in the first place. Yet Madison never developed a clear or persuasive conception of how the selection process would actually operate. His failure is the more striking because the central place that the Senate occupied in his constitutional theory suggests that it, far more than the lower house, was meant to be the destination of those whom he hoped would emerge from "such a process of elections as will most certainly extract from the mass of the Society the purest and noblest characters which it contains." He knew better what he wanted to avoid than what he hoped to institute. "If an election by the people, or thro' any other channel than the State Legislatures promised as uncorrupt & impartial a preference of merit, there could surely be no necessity for an appointment by those Legislatures," he observed on June 7.[76] But the vote of that date revealed that legislative election of senators, for all its faults, was preferred by a decisive majority of the convention. From that point on, Madison found himself having to hope either that the damage could be limited without jeopardizing the cause of proportional representation or that an eventual victory on apportionment could be used to reverse the decision on election. But once the specter of sectional conflict legitimated the small states' appeal to security, that opportunity was lost. With it went not his hopes for a better government but his confidence that the analysis he had framed in the spring would provide the foundation upon which the entire system would rest.

To examine the role that particular arguments played within the overall structure of the debates of 1787 does not require us to conclude that the Federal Convention took the form of a seminar in political theory or of sustained intellectual combat between Madison and the ghost of Montesquieu. But the opening weeks of debate were nevertheless very much concerned with testing the appeal and the merits of the original formulation of the theory of the extended republic that James Madison brought to Philadelphia. All of the major components of his thought figured prominently in the debates leading up to the decision of July 16. That result and the consequences that followed from it cannot be described simply as a referendum on Madison's theory. But neither can

[75] Farrand, ed., *Records*, I, 490.

[76] "Vices of the Political system," in Hutchinson *et al.*, eds., *Madison Papers*, IX, 357; Farrand, ed., *Records*, I, 154.

the making of the Constitution be adequately explained unless careful attention is paid both to the range of uses to which Madison and his allies put his ideas and to the difficulties they encountered in defending the broad theory. Perhaps all the reasoning in the world could not have dislodged the likes of Roger Sherman and William Paterson from the position in which they entrenched themselves from the start. But until that became evident, the deliberations of 1787 involved an unconventional and complex interplay of ideas and interests, which goes far toward explaining why the nuances of constitutional politics retain their inherent fascination two centuries later.