patched their main army under Charles Cornwallis into the Carolinas, Washington refused to budge from his strategic perimeter. (He made Greene his one-man solution again, sending him with a small “flying army” to bedevil Cornwallis, which he proceeded to do with his customary brilliance.) In spite of his instinctive urge to defeat the British army, Washington realized that the most crucial battlefield was elsewhere, out there on that psychological terrain where ordinary Americans were calculating their interests and allegiances. By controlling that terrain he assured victory in the most decisive battle of the war. Yorktown thus became a gift from the gods that satisfied Washington’s fondest dream, but Valley Forge was the pivotal moment when he first glimpsed the strategic reality that made a Yorktown of some sort inevitable.

CHAPTER THREE

The Argument

In 1783, the year the War for Independence officially ended, Washington wrote his last Circular to the States. His prose was uncharacteristically lyrical; indeed, the letter contained the most poetical passages that Washington ever wrote. And his message was equally uplifting—nothing less than a visionary version of just what the recent American victory actually meant. “The Citizens of America,” Washington wrote, placed in the most enviable condition, as the sole Lords and Proprietors of a vast Tract of Continent, comprehending all the various soils and climates of the World, and abounding with all the necessaries and conveniences of life, are now by the late satisfactory pacification, acknowledged to be possessed of absolute freedom and Independency; They are, from this period, to be considered as the Actors on a most conspicuous Theatre, which seems to be designated by Providence for the display of human greatness and felicity.1

In short, the American victory not only meant independence from the British Empire, it also meant the creation of an American empire in its stead as the dominant power on the continent. The American Revolution, as Washington saw it, was a continuation of the French and Indian War for control of the eastern third of North America. The Peace of Paris (1763) had eliminated France from contention. Now the Treaty of Paris (1783) had eliminated Great Britain. There was now no
one left, save the disparate Indian tribes, to contest American supremacy east of the Mississippi.

When Lafayette proposed a grand tour of the European capitals as a kind of victory parade, Washington countered with a proposal for an American tour of the "New Empire," starting in Detroit, sailing down the Mississippi River to New Orleans, then heading back through modern-day Mississippi and Alabama to Savannah. It was a breathtaking imperial vision, which more than half a century later would be given the name "manifest destiny." "We have indeed so plain a road before us," wrote Washington, "that it must be worse than ignorance if we miss it." 2

Not everyone agreed. The very fact that Washington's Circular was directed at the respective state governments constituted an implicit recognition that they, and not the Confederation Congress (i.e., the government under the Articles of Confederation), were the true sovereign sources of political power in the infant American republic. Meanwhile, down in Philadelphia, the Treaty of Paris could not be approved for several weeks because not enough delegates cared enough to show up to constitute a quorum. Instead of a powerful nation-state with imperial pretensions, the government established under the Articles of Confederation was not really much of a government at all, but rather a diplomatic conference where the sovereign states, each of which regarded itself as an autonomous nation, met to coordinate a domestic version of foreign policy. It was, in effect, designed to be weak, and lacked altogether the authority to manage a burgeoning empire.

Given the subsequent history of the United States, which confirmed Washington's imperial vision by consolidating its power on the continent in the course of the nineteenth century, then emerged in the twentieth century as the dominant economic and military power in the world, it is essential to remember that the term "United States" began as a plural rather than singular noun, more like the modern-day European Union than a latter-day Roman Empire. Allegiances remained primarily local; they then clustered into state-based loyalties, then periodically enlarged to regional affinities and interests. (Just before Jefferson sat down to write the Declaration of Independence, he bemoaned his exile in Philadelphia, far away from the bosom of "my country," by which he meant Virginia.) The dominant view of most prominent and ordinary American colonists in 1776 was that they were joining together in common cause to defeat the British leviathan, but this union was a temporary necessity, less a marriage than a forced friendship. The only thing that had held the colonies together was their mutual membership in the British Empire. The only thing that had held the states together, and only barely, was their mutual opposition to the authority of the British Empire. Now that the war was won, the states began to go their separate ways.

If Washington was right, the burgeoning American empire required a fully empowered central government to manage its inevitable expansion across the continent. But such a national government contradicted the most cherished political values the American Revolution claimed to stand for. From Washington's perspective the Confederation Congress appeared "little more than an empty sound" or "a Nugatory body" destined to "sink into contempt in the eyes of Europe." From the perspective of the vast majority of American citizens, however, the inherent weakness of the Articles of Confederation was a shining example of republican principles, since a strong central government replicated the distant and despotic political power against which they had recently rebelled. 3

The gap between these two political camps was an unbridgeable chasm separated by a fundamental difference of opinion over the true meaning of the American Revolution. The outright nationalists, of whom Washington and most officers in the Continental Army were the most outspoken advocates, were a decided minority at war's end. The staunch confederationists, on the other hand, were a clear majority who also enjoyed the incalculable ideological advantage of knowing that a powerful American nation-state violated the hallowed political principles embodied in "the spirit of '76."

How that chasm was bridged, how a dedicated minority of nationalists managed to redefine "the spirit of '76," which then became "the spirit of '87," is the story we try to tell here. It is, of course, an oft-told tale, and the ground we will be traversing is littered with the dead bodies of many previous historians, who have thereby, if inadvertently,
marked the trail. Unfortunately, their respective versions of the story tend to align themselves either with the nationalists, who regarded the Constitution as the culmination of the American Revolution, or with the confederationists, who regarded it as a betrayal. As a result, the historical dialogue has been trapped within the political framework the original participants established in the 1780s, essentially repeating, over and over again, the partisan arguments of each side or, on occasion, attempting to fashion a split-the-difference compromise that still remained hostage to the original formulation.4

As I have argued elsewhere, taking sides in this debate is like choosing between the words and music of the American Revolution. Both sides had legitimate claims to historical truth. Both sides harbored the sincere conviction that they spoke for the deepest impulses of the American Revolution. That awkward fact should serve as the bipartisan starting point for any genuinely detached effort at grasping the messy and shifting meanings of the American Revolution after independence was won.5

Our focus, the two-year period from 1786 to 1788, can make a plausible claim to being the most creative moment in all of American political history. The climax of the story is not the Constitutional Convention in the summer of 1787, but rather the Virginia Ratifying Convention in the summer of 1788, where the contested terms of the debate between the two sides are most fully exposed. The main character in the story is James Madison, a diminutive, paralyzingly shy Virginian who emerged at this dramatic moment as America’s most profound political thinker. The star-studded supporting cast features George Washington, Alexander Hamilton, George Mason, and, perhaps most poignantly, Patrick Henry. Ironically, none of these players believed wholeheartedly in the constitutional settlement proposed in 1787 and ratified in 1788, which was more the product of painful compromise and elegant improvisation than any pure and sustained argument about political theory.

The argument that eventually won out, which was a new and wholly unprecedented version of federalism, emerged from the messy political process itself rather than from the mind of any single thinker. In essence, the argument that triumphed defied logic and the accumulated wisdom of the entire European political tradition, for it made argument itself the answer by creating a framework in which federal and state authority engaged in an ongoing negotiation for supremacy, thereby making the Constitution, like history itself, an argument without end.

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By 1786, only three years after his panoramic prophecy of an emerging American empire, George Washington had grown convinced that his beloved American republic was not on the verge of greatness but rather at the edge of anarchy. Multiple letters poured out from Mount Vernon, warning that the government established under the Articles of Confederation had proved itself “a rope of sand” and was now lurching from mere incompetence to complete dissolution: “Without some alteration in our political creed, the superstructure we have been seven years raising at the expense of much blood and treasure must fall. We are fast verging to anarchy & confusion.”6

The fear that the infant nation would not fulfill its vast promise was almost more than he could bear: “No morn ever dawned more favourable than ours did—and no day was ever more clouded than the present... Thirteen sovereignties pulling against each other, and all tugging at the federal head, will soon bring ruin on the whole.” The solution was simultaneously obvious and, at least within the current framework, impossible: “I do not conceive we can exist long as a nation,” he lamented to John Jay, “without having lodged somewhere a power which will pervade the whole Union in as energetic a manner, as the authority of the different state governments extends over the several States.” The time was fast approaching when responsible statesmen needed to make a fundamental choice: “We are either a United people, or we are not. If the former, let us, in all matters of general concern act as a nation, which have national objects to promote and a National character to support—if we are not, let us no longer act a farce by pretending to it.”7

Therein lay the rub. For the vast majority of Americans regarded the Confederation Congress as some distant irrelevancy and their local and
state governments as their only meaningful sources of political authority. Washington's broader nationalistic perspective was exceptional rather than typical, having developed in the crucible of a long war in which the inability of the Continental Congress to coerce the states, and the recalcitrance of the states to provide men and money on a reliable basis, nearly cost America its glorious victory. Or so thought the former commander in chief, for whom American independence had become synonymous with the creation of American nationhood. 

His lamentations after the war, then, were merely repetitions of his complaints during the war about the absence of a fully empowered central government, then to win the war, now to manage the peace, which included the consolidation of the continent over the course of the next century. The bulk of the populace did not share this perspective for two elemental reasons: first, the political arguments against Parliament's authority located sovereignty in the states and stigmatized any American version of Parliament as an equivalent threat to the very liberties won in the war; second, no positive national ethos existed in the minds and hearts of ordinary Americans to maintain some semblance of unity once the British troops sailed away. As a result, the weak federal government established under the Articles of Confederation accurately reflected both the ideology that justified the American Revolution as well as the mentality and experience of most American citizens, for whom grand visions of a powerful nation-state with imperial pretensions floated far above their daily lives.

The result was a prevailing indifference toward the obvious inadequacies of the Confederation Congress. Considerable debate had accompanied the creation of the respective state constitutions, most of which adopted some version of the Adams model proposed in Thoughts on Government: an elected executive, a bicameral legislature, and an independent judiciary. Nothing comparable occurred when the government was established under the Articles of Confederation, in part because it was designed and ratified while the war still raged, in part because it was not really supposed to be a national government at all.

As a result, when the Confederation Congress shifted its location from Philadelphia to Princeton, then to Annapolis, then to Trenton, then to New York, no one objected to the appearance of impermanence. Indeed, impermanence was somewhat reassuring. So was the abject failure to retire the swelling national debt, loosely estimated at $75 million, though no one was really sure. After all, federal taxes or duties smacked of Parliament's ill-begotten efforts two decades earlier, which of course had started all the trouble. Finally, the fact that many delegates refused to show up, or, when they did, chose to leave as soon as their own business was finished, only confirmed the appropriately ephemeral status of any faraway central authority. Critics of the inherent weakness of this fly-by-night arrangement failed to grasp that weakness was what most Americans wanted.

James Madison was one of the critics who did grasp this frustrating fact: "The question whether it is possible and worthwhile to preserve the Union of the States," he warned in 1786, "must be speedily decided one way or other. Those who are indifferent to the preservation would do well to look forward to the consequences of its extinction." The word that Madison, along with most critics of the current confederation, used to describe the consequences of inaction was "anarchy," a term suggesting utter chaos, widespread violence, possible civil war between or among the states, and the likely intervention of several European powers eager to exploit the political disarray for their own imperial purposes.

While we can never know for sure, since history veered sharply in another direction at the end of the decade, the most likely outcome if the Articles of Confederation collapsed was not anarchy but dismemberment into two or three separate confederacies. Madison himself acknowledged that the gossip mills in both Europe and America were predicting that the imminent dissolution of the Articles would probably lead to "a partition of the states into two or more Confederacies." An article in the Boston Independent Chronicle envisioned a regional union of five New England states, leaving "the rest of the continent to pursue their own imbecilic and disjointed plans." The most probable scenario was a tripartite division of regional alliances that created an American version of Europe. New England would be like Scandinavia, the middle Atlantic states like western Europe, the states south of the Potomac like...
the Mediterranean countries. How this new American trinity would have fared over the ensuing decades is anybody’s guess. Whether it would have become a mere way station on the road to civil war and foreign invasion or a stable set of independent republics that coexisted peacefully and prosperously is impossible to know. But separate confederacies, not outright anarchy, appeared the most likely alternative if and when the Articles dissolved.12

Madison had come to the same conclusion as Washington: namely, that the full promise of the American Revolution could be secured only by a stable and wholly consolidated nation-state. But he had reached that conclusion by a very different route. His fragile constitution made service in the Continental Army or Virginia militia impossible to contemplate, so he never shared Washington’s wartime frustrations at serving thirteen different masters or watching men die of starvation at Valley Forge. Madison’s frustrations took shape in the political arena, more specifically in the Virginia legislature and Confederation Congress, where he watched a bewildering collection of interest groups and political factions conspire to block essential legislation and conceal their narrowly partisan agendas behind a veil of popular rhetoric. In Virginia, these insidious efforts took the form of fearmongering the Anglican clergy in order to block Jefferson’s bill for religious freedom, paper money schemes designed to swindle creditors by permitting debts to be paid off in wildly inflated currency, or candidates for office irresponsibly promising to eliminate all taxes upon election. In the Confederation Congress they took the form of persistent absenteeism, utter disregard for the mounting national debt, Rhode Island’s reliably obstructionist stance toward all money bills, and sectional scheming that distorted any coherent conversation about foreign policy. In effect, Madison encountered the early manifestation of a wild-and-woolly democratic political culture in the states, with all its attendant excesses and shenanigans, topped off by a federal government that was not really a government in any meaningful sense of the term.13

In August of 1786 Madison apprised Thomas Jefferson, then serving as America’s minister in Paris, of a recent proposal floating around the delegations at the Confederation Congress. The proposal recommended the calling of a “Plenipotentiary Convention” to amend the Articles of Confederation in ways that were left unspecified: “Though my wishes are in favor of such an event,” Madison explained to Jefferson, “yet I despair so much of its accomplishment at the present crisis that I do not extend my views beyond a Commercial Reform. To speak the truth, I almost despair even of this.” Madison was reflecting the prevailing opinion within the small circle of nationalists, which recognized that their sense of urgency was not shared by the population at large and that a premature effort at serious reform would almost surely fail, a victim of the very gridlock it sought to remedy. Or worse, a convention called at this time might very well vote to dismember the union altogether in favor of regional confederacies in the European mode.14

Four developments in the fall of 1786 converged to convince Madison that, whether or not the time was ripe, further delay ran even greater risks than a bold gamble against the odds. The first development concerned navigation rights on the Mississippi River, which prompted a political crisis that had been brewing since the previous spring. John Jay, who had primary responsibility for foreign policy in the Confederation Congress, proposed the surrender of American rights to use the Mississippi for twenty-five or thirty years in return for a generous commercial agreement with Spain. All the northeast states had voted in favor of the proposal, primarily because they stood most to gain from expanded trade with Spain.

But Jay’s initiative set off alarm bells throughout Virginia and settlements on the western frontier, where the entire Mississippi Question was linked to the prospects for westward expansion. Jay’s proposal conjured up the specter of a northeastern conspiracy to sell out western interests for eastern profits. Madison regarded Jay’s initiative as “alarming proof of the predominance of temporary and partial interests over those just and extended maxims of policy . . . which alone can effectuate the durable prosperity of the Union.” Up to now, the one major issue the Confederation Congress had managed to handle with some measure of effectiveness was the rival claims of the various states to western lands, chiefly because the largest claimants, especially Virginia, had ceded authority to congress as the appropriate arbiter. Now, however,
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federal troops to assist the Massachusetts militia represented a failure of national will that endangered the very survival of the American republic. However misguided, these were sincere convictions on Madison's part, rooted as they were in the genuine belief that "the spirit of '76," with its reflexive resistance to any coercive expression of governmental authority, was incompatible with any viable national union.  

The third development was a hopeful gesture toward moderate reform that failed miserably. The Virginia legislature had endorsed a convention of delegates from the respective states at Annapolis to remove long-standing impediments to interstate commerce. Only five states showed up at the convention in September of 1786, which put all the delegates, including Madison, in the embarrassing posture of preachers without a congregation. In the ironic way that history often happens, the failure of the Annapolis Convention caused Madison to conclude that since modest efforts at reform of the Articles of Confederation were politically impossible, there was really nothing to lose by attempting a more radical solution. If the Annapolis Convention had succeeded, Madison would probably have remained committed to incremental change in the Articles. Its failure emboldened him to go for broke and endorse a proposal from an equally agitated New York delegate named Alexander Hamilton, destined to be his greatest collaborator and then his most awesome enemy. Hamilton urged another convention in Philadelphia the following spring to address the root causes of the problems affecting the confederation. It was as if a bloodied boxer, reeling from a flurry of damaging blows, resolved to go for a knockout in the last round.

The fourth and last development was less complicated, in fact involved only a single person. But that person was none other than George Washington, who happened to be the only man in America whose sheer prestige instantly transformed a lost cause into a viable contender. In late October of 1786 Madison spent three days visiting with Washington at Mount Vernon. They quickly discovered a mutuality of interests that would work its magic over the ensuing months. Madison found that Washington agreed completely with his dire diagnosis of the existent confederation, whose imminent collapse threatened to destroy
all that he had fought for. Washington discovered a youthful fellow Virginian, young enough to be his son, with brilliant political instincts, plus savvy beyond his years. Washington did not recognize it at first, but he was being courted, and eventually manipulated, out of retirement and back to center stage.¹⁸

The only way to assure that the convention scheduled for the spring did not meet the same ludicrous fate as the Annapolis Convention was to elect state delegations comprised of the most prominent figures, whose reputations guaranteed that reform of the Articles would be taken seriously. In this recruitment process Washington was the ultimate prize. In November of 1786 Madison apprised Washington that the Virginia legislature had unanimously voted to place his name at the head of the list of seven delegates to the convention. Washington was taken aback by this news, since he had not given his permission for such an appointment, in fact had made it quite clear to Madison that his attendance was utterly impossible. After all, he had effectively promised the American people that he would never return to public life when he stepped down as commander in chief. He was the American Cincinnatus, permanently ensconced under his vine and fig trees at Mount Vernon. What’s more, he had already declined an invitation to attend the annual meeting of the Society of the Cincinnati, which was scheduled in Philadelphia at the same time. Finally, it was not at all clear that the Philadelphia Convention would enjoy any greater success than the aborted Annapolis Convention, and at this stage of his illustrious career Washington was not in the habit of risking his reputation for questionable causes.¹⁹

Madison’s response to this litany of protestations was the political equivalent of guerrilla war. Of course Washington himself must have the final say on this matter, but in the meantime it would be extremely helpful to the larger cause if he allowed his name to remain on the list of Virginia’s delegates, since that was sure to inspire prominent figures in other states to step forward; plus, “having your name at the front of the appointments” would serve “as a mark of the earnestness of Virginia.” In the meantime, Washington’s silence would permit the possibility “that at least a door could be kept open for your acceptance hereafter, in case the gathering clouds should become so dark and menacing as to supersede every consideration, but that of our national existence or safety.” The outgoing governor of Virginia, Edmund Randolph, joined in Madison’s shrewd recruitment campaign, reminding Washington that he was, once again, America’s most indispensable figure: “For the gloomy prospect still admits one ray of hope,” wrote Randolph, “that those who began, carried on & consummated the revolution, can yet rescue America from impending ruin.”²⁰

For four excruciating months Washington attempted to wiggle away, but Madison had set the hook firmly in their October conversations, when Washington had acknowledged that he, like Madison, believed that the American experiment with republicanism had reached the edge of the abyss and that widespread popular apathy should not deter responsible statesmen from attempting a desperate last-minute rescue. Madison would never let him forget that fundamental assessment, which left Washington with no clear escape route other than to claim that he was no longer a responsible statesman, an obvious absurdity. Left unsaid was the equally obvious fact that Washington’s own legacy was at stake.

His tortured machinations ended in March of 1787, when he agreed to serve. He immediately wrote Madison to declare that, now that he was committed to the cause, there was no sense in proposing halfway measures which merely patched over the structural problems of the existent but expiring confederation of states. As he began to think about the agenda for the looming convention, Washington was firmly convinced that it should “adopt no temporizing expedient, but probe the defects of the Constitution to the bottom, and provide radical cures, whether they are agreed to or not.” The Articles of Confederation did not need to be revised, they needed to be completely replaced with a fully empowered national government that possessed a clear mandate to coerce the states in both foreign and domestic policy. As it turned out, Madison had also reached exactly the same conclusion.²¹
to twisting arms and counting noses. Washington could certainly attest to his skill on the former score, for he had begun his negotiations with Governor Randolph and Madison adamantly refusing to reenter public life, then had found himself—how had it happened?—fully committed to lead the Virginia delegation at Philadelphia. On the latter score, Madison had created a network of contacts in all the states that provided essential information on the delegates being selected for the looming convention.

His running tabulation revealed that the Philadelphia Convention would not repeat the fiasco at Annapolis. There would be a clear majority of delegates committed to a major overhaul of the Articles. Most of those favoring the status quo had boycotted the selection process. This piece of political homework led Madison to the surprising conclusion that there was at least a fighting chance to rescue the fragile American republic from dissolution. Washington’s recruitment to the cause gave the gamble legitimacy. News about the prospective delegates gave it plausibility.23

Between March and May of 1787 Madison launched a two-pronged campaign designed to prepare himself for the summer debates in Philadelphia. This was characteristically Madisonian behavior, since he habitually compensated for his deficiencies as an orator by always being the most fully prepared participant, the kind of frustrating opponent who always had more relevant information at his fingertips and who also somehow understood the logical implications of your argument better than you did. One campaign looked outward to the prevailing opinion in the respective state delegations, a wholly practical effort to determine how far in reforming the current confederation most delegates were prepared to go. The other campaign looked inward to his own convictions, a wholly introspective effort, aided by reading in the “literary cargo” of books on history and political theory that Jefferson had recently sent him from Paris.

Writing from Richmond, Edmund Randolph apprised him that the Virginia electorate would tolerate no more than a modest revision of the Articles, primarily some enhancement of the powers of the Confederation Congress to raise revenue and regulate trade. Any effort at more
radical reform would run against the grain of public opinion and almost surely lose. Writing from Paris, Jefferson concurred, though for different reasons. The existing government, Jefferson observed, was like a fabric that needed to be patched but not discarded. The hole that needed patching concerned federal sovereignty over foreign affairs, but all domestic policy ought to remain the exclusive province of the states. On the other side stood a small coterie of ultra-nationalists, who had formed around Washington as a trusted group of political consultants, to include Henry Knox, John Jay, and Alexander Hamilton, all of whom thought the Articles were beyond redemption and must be completely replaced. The more Madison thought about it, the more he too concluded that only root-and-branch reform would suffice.\(^{24}\)

He admitted to Randolph that his preference for a go-for-broke strategy might seem, as he put it, “if not extravagant, absolutely unattainable and unworthy of being attempted.” But he had grown convinced that “unless the Union be organized efficiently & on Republican Principles,” the inevitable result would be eventual dissolution and “the partition of the Empire into regional & hostile confederacies.” As he read the political context, Madison concluded that halfway measures were worse than nothing at all, for they would only prolong the agony and thereby delay a timely decision until the hopeless end.\(^{25}\)

Moreover, the outline of a truly efficacious answer was abundantly clear to him. Instead of a single-house legislature representing the states, there should be a bicameral legislature representing and proportional to the population in the states. There should also be an executive branch with expanded powers over foreign policy. Whatever document emerged from the convention should also be ratified by special state conventions instead of state legislatures in order to demonstrate that it was the will of the people rather than a compact among the states. Finally, and most decisively, the newly created federal government ought to possess veto power over all state laws “in all cases whatsoever.”

Madison realized that this last proposal, and the language he used to describe it, was inflammatory, for it echoed precisely the words Parliament had used to justify its authority over the colonial assemblies in the Declaratory Act of 1766. In that sense, Madison was arguing that a more energetic federal government needed to possess the same sovereign power over the states that the rebellious colonies had regarded as tyrannical two decades earlier. His insistence on a federal veto even put him a half step ahead of the other ultra-nationalists like Jay, Knox, and Hamilton, though all of them agreed that sovereignty must be shifted from the states to the national level.\(^{26}\)

Madison had in fact reached these radical conclusions by March of 1787, so that the intensive reading and thinking that he did throughout the spring was not an open-ended intellectual odyssey so much as a focused effort to marshal evidence for a predetermined conclusion. Though he had the demeanor and disposition of a scholar, he had the mentality of a lawyer defending a client, which in this case was a fully empowered American nation-state. He understood his task as a partisan exercise in which he amplified evidence that supported his case and prepared to rebut evidence from the other side. Historians who have described Madison’s preparation for the Constitutional Convention as a brilliant philosophical probe into the deepest complexities of republican government misconstrue the cast of Madison’s mind, which mobilized its fullest energies when the preferred verdict was already known beforehand.

For example, his “Notes on Ancient and Modern Confederacies” was not a detached appraisal of the checkered history of Greek, Italian, German, and Dutch confederations, but rather a concerted effort to demonstrate that all confederations were inherently weak political alliances, usually created to provide defense against a common enemy, that eventually dissolved because of a joint refusal to surrender sovereignty to a central source. Time and time again, Madison observed, the same thing happened for the same reasons. It was almost a mathematical axiom. Confederations were an inherently transitory political configuration headed either toward dissolution, which was the usual outcome, or toward unity, the rare but obviously preferred destination. The political lessons that history provided, then, were unambiguous. Either the confederated republic of the United States came together as one nation or it suffered the sad fate of its European predecessors, which was some combination of civil war, anarchy, and political oblivion.\(^{27}\)

Similarly, his “Vices of the Political System of the United States”
reads like an indictment of the Confederation Congress prepared by a relentless special prosecutor hell-bent on obtaining a conviction. The case against the Articles was easy to make, since the cardinal conviction that sovereignty resided in the states made all federal legislation merely advisory and all cooperation among the states wholly voluntary, the fatal weakness Madison had already demonstrated in meticulous detail throughout European history. But he wanted to assemble a full catalogue of specific failures as a kind of handy reference work that he could then draw upon during the looming debates in Philadelphia.

Thus the lengthy list of political vices, which might also be read as a latter-day version of Jefferson's lengthy indictment against George III in 1776: the states had failed to honor their tax obligations during the war and their promise to fund veterans' pensions after the war; they had refused to cooperate on internal improvements like roads and canals and had blocked efforts to facilitate interstate trade; they had encroached on federal authority by signing separate peace treaties with various Indian tribes; they had refused to abide by provisions in the Treaty of Paris that required payment of back debts to British creditors (Virginia was the chief culprit on this score); they had created a bewildering variety of state laws that made any uniform system of justice impossible. And so on.  

Then, near the end of the litany, Madison made a distinctively different point. Thus far his catalogue of vices had emphasized the failure of the states to meet their federal responsibilities. Now, however, he shifted his focus to failures within the states to act in the public interest. Local demagogues, claiming to be tribunes of the people, had learned how to make “sophisticated arguments with the glowing colours of popular eloquence.” He was probably thinking of Patrick Henry’s recent effort to mobilize the Virginia clergy against Jefferson’s own bill for religious freedom. But his larger point emerged from a more sweeping diagnosis of the state governments since the end of the war. As we have seen, John Adams had glimpsed the point earlier in his Thoughts on Government, when he warned against embracing the seductive illusion that there was a stable and homogeneous entity called “the people” that could be represented in a single-house legislature. But in the Adams formulation a bicameral legislature solved the problem because Adams continued to think within the classical categories of the few and the many, whose different interests could be safely housed in two legislative branches.

Madison took the next theoretical step, exploding the few and the many into a collage of competing factions and interest groups, all waving the hallowed banner of “the people” to sanction their self-interested agendas. He was particularly offended by the power of fleeting majorities to ride roughshod over the rights of minorities, though he was not thinking so much of protecting the civil rights of the poor and propertyless, but rather the rights of creditors from paper money schemes that allowed debts to be repaid with nearly worthless currency. His major point was that the experience of the state governments since the end of the war clearly demonstrated the folly of any simple or singular expression of the popular will, and that there was a glaring gap between what advertised itself as the will of the people and the abiding interest of the public.  

Then Madison took yet another theoretical step, generally regarded by most historians and constitutional scholars as his most brilliant contribution to modern political science. The conventional assumption, most famously articulated by Montesquieu, held that republics worked best in small geographic areas, where elected representatives remained close to the interests of the citizens who elected them. This prevailing assumption had in fact shaped the argument against parliamentary authority during the pre-revolutionary debates over British taxation and was the major reason why control of the purse was vested in the colonial, then state, assemblies. But Madison had just spent many pages in “Vices” demonstrating that proximity to the electorate had not produced responsible political behavior by state legislators. Quite the opposite: the overwhelming evidence, as Madison read it, revealed a discernible pattern of gross irresponsibility, a cacophony of shrill voices, a veritable kaleidoscope of local interests with no collective cohesion whatsoever.

So Madison reversed the conventional logic. Small republics, like the states, were actually more vulnerable to factional squabbling and sectarian divisions than large republics, because the larger scale of the enterprise vastly increased the number of competing factions, thereby producing “a greater variety of interests, of pursuits, of passions, which check each
other. . . . So an extensive Republic meliorates the administration of a small Republic." It was not just that a fully empowered national government was likely to attract a better class of statesmen more capable of resisting local pressures, though Madison believed that was true too. More fundamentally, an extended American republic, contrary to the prevailing wisdom, made space an asset rather than a liability.

Here was the germ of the idea that Madison would develop more fully in *Federalist* 10 and that twentieth-century political scientists would identify as the earliest formulation of the pluralist conception of politics. As a result, a veritable legion of scholars has descended upon this moment to locate the source of Madison's inspiration. The "literary cargo" of books Jefferson had sent from Paris included the histories of David Hume, which contained an embryonic version of the idea that Madison might have picked up. Another possible source is Adam Smith's *Wealth of Nations* (1776), where Smith's analysis of the synergistic balance of the marketplace, surely familiar to Madison, provided an economic version of the idea that Madison might have transposed to the political arena. Madison's leadership in behalf of the Virginia statute for religious freedom also exposed him to the unique religious history of the American colonies, whereby the sheer proliferation of different sects and denominations led eventually to the principle of religious toleration because no single church or creed could achieve dominance. This too might have struck Madison's mind.

A more prosaic interpretation, which is also more attuned to the lawyerlike thinking he was engaged in at this time, is that Madison recognized that the size argument was a mainstay of those defending the Articles and the status quo. It was surely going to be shouted at him in Philadelphia by those opposing radical reform. He therefore needed to have a rebuttal ready, needed in effect a new weapon in his intellectual arsenal to counter their anticipated attack on this vulnerable front. Wherever the idea came from, in short, he grasped it so firmly because he was looking for it and knew he needed it. As we shall see, the very novelty of the idea, which essentially turned a core assumption of revolutionary ideology on its head, limited its influence in the Constitutional Convention and the crucial ratifying conventions. In a sense it was an idea so far ahead of its time that no one could fully appreciate its originality. But at the time of its actual birth in the spring of 1787, the idea was effectively forced upon Madison, or perhaps the urgent need for just such an idea primed his mind to grasp for it.

### The Spirit of '87

Madison arrived in Philadelphia on May 5, 1787, with a clear sense of the political challenge he faced and an equally clear vision of the proper shape a truly national government needed to assume. On the first score, his canvass of the various state delegations showed that the convention would be almost equally divided between moderates, who wished to reform the Articles, and radicals like himself, who regarded the Articles as beyond repair and wished to replace them altogether. Taken as a whole, then, the delegates gathering in Philadelphia represented only one side of the broad spectrum of popular opinion in the country at large, for those vehemently opposed to any change in the Articles had chosen to boycott the convention, and those who found the whole question of political reform irrelevant to their daily lives, probably a statistical majority of the American people, were wholly oblivious to some distant conclave in Philadelphia.

On the latter score—the proper shape of the new government—Madison harbored no doubts. To be sure, there were still many highly specific and even technical questions that would require answers. But Madison knew he was more fully armed to fight these political skirmishes than anyone else. (If God were in the details, so the saying went, Madison would be present to greet Him upon arrival.) The larger contours of a truly national American republic were what mattered most, and Madison saw them clearly in his mind's eye.

First, the new government needed to benefit from the accumulated wisdom generated in drafting the state constitutions, where the proper political recipe dictated three separate branches—executive, judicial, and legislative—each with clearly prescribed powers and overlapping jurisdictions. Second, the legislative branch should be bicameral and, most crucially, both branches should be proportional according to popu-
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A new convention, thereby decisively shifting the core definition of representation from states to the citizenry itself. Third, and Madison regarded this as his most controversial but nonnegotiable proposal, all state laws must be subject to approval at the federal level in order to leave no doubt where sovereignty now resided. Finally, the new convention must be ratified by special state conventions elected for that exclusive purpose rather than by the state legislatures, thereby making a clear statement that it was a creature of the people at large and not a compact among the states.33

Although Madison spoke over two hundred times during the course of the ensuing summer, his most important contribution to the Constitutional Convention occurred before it officially convened. Because a quorum could not be reached until late May, Madison enjoyed about two weeks in which to lobby his fellow delegates from Virginia. Washington required little lobbying, in fact had already extracted a promise from Madison that nothing less than "radical remedies" should be proposed regardless of the political risks they ran. "The situation of the General Government (if it can be called a government) is shaken to its foundations," Washington observed upon arrival in Philadelphia. "In a word, it is at an end, and unless a remedy is soon applied, anarchy & confusion will inevitably ensue."34

Other members of the Virginia delegation, chiefly Edmund Randolph and George Mason, were more disposed to go for half a loaf rather than risk total failure. But in several unrecorded meetings of the Virginia delegation in mid-May the ultra-national agenda favored by Madison and Washington won out and became the basis for the initial negotiating position of the entire delegation. The result was the fifteen-point Virginia Plan, which embodied all of Madison's major proposals with the exception of the federal veto over state laws, which Randolph and Mason insisted on softening with more ambiguous language.35

As a result, when a quorum was reached and the Constitutional Convention officially assembled on May 29, all of Madison's pre-convention homework bore immediate fruit in the form of the Virginia Plan, which established radical reform as the initial agenda defining the terms of the debates. No one on the moderate side of the argument had come with equivalently clear alternative proposals, so the ultra-national agenda as embodied in the Virginia Plan commanded the field by default. For those defenders of the status quo who regarded the Convention itself as an orchestrated coup d'etat, or at least a gathering of dubious legitimacy, insult was now added to injury. For, as they saw it, the calling of the Constitutional Convention had represented a hijacking of the political debate about the Articles by an organized minority of alarmists, and now the Convention itself had been captured by a radical minority of the delegates.

From Madison's perspective, events were flowing in a perfect pattern. The radical agenda was in the proverbial saddle, poised to ride forward to victory. And George Washington was selected to occupy the chair as presiding officer over all deliberations, the ultimate trump card against all who questioned the legitimacy of the Convention itself. One could hardly have hoped for more.36

Most of June was taken up with the composition of the new congress, which according to the Virginia Plan should be bicameral, with representation in both houses proportioned to population. On June 6 Madison unveiled his theory of the extended republic for the first time as part of his argument for direct election to the House of Representatives. Given the originality of the idea that a larger-scale republic would prove more stable and less coercive than a smaller one, the virtual silence greeting the idea seems strange. (Perhaps the novel idea was so novel that no one quite understood it.) At any rate, by mid-June the moderate delegates, who had been unprepared for the radical initiative of the Virginia Plan, recovered their balance with an initiative of their own. Called the New Jersey Plan after the home state of its chief advocate, William Paterson, its distinctive feature was a proposal to merely amend the Articles and to insist on retaining representation by state in the congress. The fact was now in the fire, since the core issue at stake—whether sovereignty should reside at the state or federal level—had been raised in the all-important context of congressional representation.37

The eventual resolution, which has come to be called "The Great Compromise," effectively set the political agenda for the remainder of the Convention and defined the abidingly ambiguous meaning of the
constitutional sentiment ever after. By making representation proportional to population in the House and by state in the Senate, "The Great Compromise" essentially declared the theoretical question of state versus federal sovereignty politically unsolvable except by a split-the-difference structure that neither camp found satisfactory. The only workable solution was to leave the sovereignty question unclear.

Both Madison and Washington interpreted the compromise as a devastating defeat. Washington thought it was a death knell for the national cause he had left retirement to champion and expressed his deep regret "at having any agency in this business." Madison was too dogged a political warrior to give up, but he was forced to concede that his radical vision of a nation-state that was much more than a loose federation of states was politically impossible at this time. Allegiances remained encased in local and state-based compartments that simply could not be ignored or discarded. The clinching evidence for this realistic conclusion arrived in the form of three separate votes on his proposal for a federal veto of state legislation, each presented in somewhat different versions but all failing by a decisive majority. With their defeat, the Madisonian project of radical reform was essentially dead.38

Though it might seem somewhat sacrilegious to suggest it, the remaining debates in August and early September over the judicial and executive branches were really an extended epilogue. The members were tired, the weather was hot, and the chasm between moderate and radical camps was obviously unbridgeable. Madison threw his best energies into these debates, determined to rescue some sliver of federal power. But the language describing the judiciary was purposely vague and open-ended, creating a Supreme Court that was anything but supreme. The more extensive debates over the executive branch produced several frustrating moments, as the delegates argued endlessly over how to elect and impeach a president, while studiously avoiding any clear mandate for what he should actually do.

Even before the final draft of the document was completed, Madison wrote in code to Jefferson, lest any prying eyes read his pessimistic assessment. Madison believed that he had lost the big battles, which were his arguments for a federal veto of all state legislation and for propor-
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House of Representatives implied a fundamental change that "embraced the alternative of a Government which instead of operating on the States, should operate without their intervention on the individuals comprising them." This was a major improvement. The net result was "to draw a line of demarkation which would give to the General Government every power requisite for general purposes, and to leave to the states every power which might be most beneficial to them." What Madison did not say was that the delegates had been unable to agree where that line was drawn and had returned to their different states with fundamentally different interpretations of where the balance of power in the Constitution actually resided.

If the delegates had only embraced his proposal for a federal veto over state legislation, Madison explained, this ambiguity would have been resolved. But rejection of his proposal left a huge question mark hanging over the new government, "for without such a check in the whole over the parts, our system involves the evil of imperia in imperio," in other words an almost deliberate blurring of the crucial sovereignty question. An alternative solution was to vest authority in the federal judiciary and thereby "keep the States within the proper limits, and supply the place of a negative on their laws." But the powers accorded the judiciary under the proposed Constitution were extremely vague and wholly inadequate to the task.51

Lurking beneath the unresolved conflict between state versus federal sovereignty, Madison explained, lay a fundamental difference of opinion over who "the people" actually were. Madison almost surely knew that Jefferson himself needed to be educated on this point, so there was nearly a lecturish tone to his analysis:

Those who contend for a simple Democracy, or a pure republic, actuated by the sense of the majority, and operating within narrow limits, assume or suppose a case which is altogether fictitious. They found their reasoning on the idea... that they all have precisely the same interests, and the same feelings in every respect... We know however that no Society ever did or can consist of so homogenous a

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mass of Citizens... In all civilized Societies, distinctions are variable and unavoidable... There will be rich and poor; creditors and debtors; a landed interest, a monied interest, a mercantile interest, a manufacturing interest. Those classes may again be subdivided according to the different productions of different situations of commerce and manufactures.52

Madison then unfurled his counterintuitive idea that the only remedy for this toxic social chemistry was to expand the size of the area and population over which the government operated: "In a large Society," Madison argued, "the people are broken into so many interests and parties, that a common sentiment is less likely to be felt... Divide et impera, the reprobated maxim of tyranny, is under certain qualifications, the only policy by which a republic can be administered on just principles." Contrary to all conventional wisdom about republican government, in order to avoid its generic weaknesses "it must operate not within a small but an extensive sphere." Here, in the letter to Jefferson, Madison offered the clearest and fullest formulation to date of his novel argument about republican size and scale, so there is some reason to believe that Jefferson grasped the point more readily than the delegates in Philadelphia.53

But Madison's major point was that the new Constitution, while a significant improvement over the anemic Articles and therefore deserving of Jefferson's support, was itself fatally flawed because of its failure to resolve the sovereignty question. Madison was still reeling from his multiple defeats at the Convention, so his quite brilliant exegesis of the debates and the document that emerged from them reflected his own throbbing disappointment.

Over the ensuing months, however, as he observed the ratification debates in the other states and prepared for the all-important debate in Virginia, Madison began to change his mind. What he initially regarded as the fatal weakness of the Constitution gradually grew into its greatest strength.
During the ten months after the Constitutional Convention the most far-reaching and consequential political debate in American history raged throughout every state in the union. As it was nearing conclusion, Washington described the fullness and openness of the debate as another “standing miracle,” equivalent to the victory over the British army. “We exhibit at present the novel & astounding spectacle of a whole people deliberating calmly on what form of government will be most conducive to their happiness, and deciding with an unexpected degree of unanimity in favour of a system which they conceive calculated to answer the purpose.” In truth, there was nothing like unanimity in the final verdict, which remained in doubt until the very end, and the votes in the three most crucial states—Massachusetts, Virginia, and New York—were extremely close.44

Unlike the debates in the Constitutional Convention, which occurred behind closed doors and between two sides—moderates and radicals—who agreed that the existent government required revision, the ratification debates were open to the public and covered by the press. (Virginia even provided stenographers to produce transcripts of the full debate.) Most importantly, the two sides differed over the fundamental question of revision or retention of the Articles. This was the reason why, late in his life, Madison argued that any judgment about the “original intentions” of the framers must be based on the ratification debates rather than the debates at the Constitutional Convention.

All attempts to explain the debates in primarily or exclusively economic terms have been discredited by modern scholars. The messy truth is that there was a maddening variety of voting patterns from state to state, and within states from county to county, that defied any single explanation, economic or otherwise. The labels affixed to the two sides also defied logic, for both sides were federalists, meaning that they advocated a confederated republic, but disagreed over the relative power of the states and the central government in the confederation. In the same way that the Virginia delegation had seized the political initiative at Philadelphia, the pro-ratification side stole the rhetorical march by calling themselves Federalists. This left the opponents of ratification in the awkward posture of accepting the wholly negative connotation of Antifederalists. Even before the state-by-state debates had begun, the Federalists had won the preliminary round.

The newly named Federalists also enjoyed two additional strategic advantages. First, the opponents of ratification lacked any alternative to the Constitution other than the Articles. Although most Antifederalists probably preferred a moderate revision of the Articles, that option was not available. Madison was convinced from the start that “the question on which the proposed Constitution must turn is the simple one whether the Union shall or shall not be continued.” As he put it, “There is no middle ground to be taken.” Those delegates who found the Constitution excessively nationalistic and the Articles hopelessly inadequate had nowhere to go. It was a take-it-or-leave-it decision that the Federalists could plausibly characterize as a choice between union and dissolution.45

Second, the Virginia and New York conventions were scheduled at the end of the ratifying sequence, which meant that political pressure would gather momentum on these, the most crucial and problematic states, to ratify or risk being left isolated after nine states, the minimum required for approval of the Constitution, had already voted. As Madison put it, “It is generally believed that nine of the states at least will embrace the plan, and consequently the tardy remainder must be reduced to the dilemma of either shifting for themselves, or coming in without any credit for it.” Taken together, the misleading labels, the limited pro or con options, and the political calendar all worked to the Federalist advantage.46

On the other hand, the Antifederalists enjoyed advantages of their own, primarily the quite potent claim that they spoke for the true “spirit of ’76.” The Antifederalist argument was anchored in the revolutionary ideology that regarded any powerful central government as a domestic version of the very British government they had supposedly repudiated forever. If the watchword for the Federalists was “anarchy,” the watchword for the Antifederalists was “consolidation,” meaning a nefarious clustering of political power in secretive conclaves (like the Constitu-
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the transient circumstances and fugitive performances which attended the crisis shall have disappeared,” he predicted, “that work will merit the notice of posterity.” Posterity has tended to confirm Washington’s judgment, as twentieth-century historians and constitutional scholars have made The Federalist the seminal source for interpreting the original intentions of the framers and the most profound deliberation ever on the American experiment with republican government.49

As prescient as Washington proved, our semi-sacred sense of The Federalist somewhat distorts an accurate understanding of its role while the ratification debates raged. First, the great deliberation on republican government was composed hurriedly, without much time for deliberation at all. Rather than serene political philosophers, both Hamilton and Madison conducted themselves like harried journalists turning out copy on a deadline, or perhaps like beleaguered lawyers producing briefs for a crucial client. Second, as an embodiment of “original intent,” The Federalist represented only one side of the argument, an avowedly partisan case for ratification that made no pretense of detachment. Third, there is reason to believe that The Federalist has exerted more influence on modern-day constitutional arguments than on the eighteenth-century debates that occasioned it. Its distribution beyond New York was spotty; with a few exceptions, the language of the essays was inaccessible to ordinary readers; and its greatest impact was to galvanize support among Federalist delegates already committed to ratification.50

What's more, both Hamilton and Madison were forced by the political exigencies of the moment to frame their argument on behalf of the Constitution around a core idea that they had both strenuously opposed at the Philadelphia Convention. As we have seen, Madison had argued for the clear supremacy of the federal government and for the resolution of the sovereignty question at the national rather than state level. If anything, Hamilton was more of an outright nationalist, preferring that the states disappear altogether. Both men had regarded the more blurred resolution reached at Philadelphia as a terrible defeat that left the all-important question of sovereignty undecided. Now, however, they embraced the very ambiguity they had condemned as a fatal weakness of the Constitution as its central strength.
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Madison's conversion did not occur because of intellectual conviction—he still preferred a sovereign nation-state—but rather because he now realized that if he had won the argument at Philadelphia and produced a constitution with an unambiguously sovereign central government, it would have enjoyed no chance at ratification. Like a politician who must accommodate himself to unwelcomed evidence about public opinion, Madison shifted his ground to become the chief advocate for the very argument he had opposed in Philadelphia: namely, that the Constitution institutionalized a unique form of shared sovereignty.

He came to this conclusion gradually and grudgingly. His earliest Publius essays, written in November and December of 1787, reiterated the arguments he had made in Philadelphia: confederacies were inherently unstable forms of government, a conclusion documented by a rather tedious review of virtually all the confederacies in European history; then the more original argument about the greater stability of an extended republic, rendered public for the first time in Federalist 10. Both of these arguments were in accord with his strongly nationalistic convictions.51

Starting in January of 1788, his message began to change, most probably in response to the obviously effective Antifederalist charge that the Constitution created a consolidated federal government. It was no such thing, Madison now insisted, for the Constitution vested the central government with only those enumerated powers essential for preservation of the union. All residual powers remained with the states. The persistent potency of the state governments thereby assured that the bogeyman depicted by the Antifederalists was a complete fabrication, and the clearly delineated and separate powers of the three federal branches provided added assurance that no full-blooded consolidation could occur at the national level.

The Antifederalists seemed to believe that sovereignty needed to reside in one location, which in fact was the very mistake the British had made when insisting on parliamentary sovereignty (and, conveniently forgotten, Madison himself had insisted on it at the Constitutional Convention). But the political architecture of the new government defied the old orthodoxy of singular sovereignty by creating a unique diffusion of power. Whatever one wanted to call this new version of federalism, the one thing it clearly was not was a consolidation. In what amounted to a cross-examination of the Antifederalist side, Madison had discovered the beauty of ambiguity, or perhaps shifting sovereignties. Though driven to this novel argument by necessity rather than choice, Madison had, willy-nilly, come upon an agreement just as original as his counterintuitive case for an extended republic.52

By the spring of 1788 it had become clear that the decisive battle in that larger fight would occur in Virginia. Madison had hoped that the magic number—nine states—would have ratified before the Virginia Convention assembled in June. But both New Hampshire and North Carolina decided to defer their votes, presumably waiting for Virginia and New York to point the way. And Rhode Island, true to its maverick reputation, chose to boycott the entire ratification process, just as it had boycotted the Convention. As a result, the Federalist side in Virginia would not enjoy the incalculable advantage of debating a fait accompli.

In April Madison abandoned his more theoretical role as Publius—the Federalist essays were complete—and reverted to his practical identity as the assiduous vote counter, working the numbers to tally the delegates selected for the convention in Richmond. After an initial burst of optimism, apprising both Jefferson and Washington that the Federalists had a clear majority, he became more circumspect. It was going to be extremely close, he concluded, with the delegates from the northern part of the state firmly for ratification, the Tidewater counties firmly against, and the balance of power belonging to the western delegates and the delegates from the Kentucky district, still part of Virginia.53

The wild card that upset any rational calculation of the outcome was Patrick Henry, who had refused to serve on the Virginia delegation to the Philadelphia Convention, ominously observing, "I smell a rat." Madison somewhat caustically apprised Washington that Henry's absence in Philadelphia "proceeded from a wish to leave his conduct unfettered on another theatre, where the result of the [Virginia] Convention will receive its destiny from his omnipotence." Washington knew that Henry intended to oppose ratification because Henry had already expressed his deep regret that he found himself on the other side of the one man for
whom he had "the greatest Reverence." Apart from Washington, Henry was not only the most popular figure in Virginia, but also the most famous and formidable orator in America, forever enshrined in the American pantheon for hurling his verbal thunderbolts at George III over a decade before independence was declared.54

Madison had been on the receiving end of Henry's eloquence on several occasions, most painfully when Henry blocked passage for several years of the bill for religious freedom drafted by Jefferson and defended by Madison. Jefferson was especially irritated by Henry's mesmerizing way with the spoken word, which he regarded as a crudely emotional appeal that ought not defeat his own lyrical and logical prose. But so often it did. Jefferson explained to Madison that Henry's oratorical power was an inexplicable and unpredictable force of nature, like a hurricane, and the only thing to do when confronted by it was to "devoutly pray for his imminent death." Not only had such prayers gone unanswered, but Henry was now poised to work his magic as the leading voice against ratification of the Constitution in the debate destined to determine its fate. Even more than the Lincoln-Douglas debate over slavery, or the Darrow-Bryan debate over evolution, the Henry-Madison debate in June of 1788 can lay plausible claim to being the most consequential debate in American history.55

Despite Madison's diminutive size, it was a clash of titans with diametrically different personalities and styles. Henry was animated, passionate, spoke without notes, and combined the appearance of an actor on the stage and an evangelical minister at the pulpit. Madison spoke calmly, in a voice so low that the stenographer complained he could not catch his every word. He held his hat in one hand, which contained notes that he consulted like a professor delivering an academic lecture. But as a result his arguments arrived without flourish or affectation, in a sense the more impressive because of their austerity. As John Marshall put it, "Mr. Henry had without doubt the greatest power to persuade," while "Mr. Madison had the greatest power to convince."56

In his maiden speech on June 5, Henry fired a full salvo aimed to strike every premise in the Federalist case for ratification. First, where did the alarmist notion come from that America was on the verge of anarchy and the Articles were about to expire? As far as Henry could tell, the Virginia economy was humming along nicely, the people were going about their business and their lives with conspicuous serenity. It was almost a perfect example of Jefferson's famous phrase about the "pursuit of happiness." And arguments that the government under the Articles was inadequate to the task flew in the face of all the evidence. "The Confederation . . . carried us through a long and dangerous war. It rendered us victorious in that bloody conflict with a powerful nation. It has secured us a territory greater than any European monarch possesses. And shall a Government this strong and vigorous be accused of imbecility for want of energy?"57

Second, by what elusive authority did the delegates at Philadelphia justify the phrase "We, the people"? This apparently innocent expression fully exposed the truly radical character of this new Constitution, which dispensed with the states and claimed to operate directly on the citizenry: "Have they said, 'we, the states'? Have they made a proposal of a compact between States? If they had, this would be a confederation. It is otherwise, most clearly a consolidated government. The question turns, Sir, on that poor little thing—the expression 'We, the people,' instead of the States of America." It seemed transparently clear, then, that Virginians were being asked to approve an exact replica of the British leviathan that patriotic Americans had sacrificed so much blood and treasure to escape. Consider, for example, the all-important issue of taxation: "Suppose every delegate from Virginia opposes a law levying a tax. What shall it avail? So . . . you are taxed not by your own consent, but by people who have no connection with you." The echoes of '76 were unmistakable.58

Third, given the alarmist justifications and the patently radical recommendations, what was the unspoken agenda that guided those secret sessions in Philadelphia? Was it not abundantly clear that Great Britain had become our new model and that we now proclaimed our desire to become a powerful nation-state with imperial pretensions of our own?

Some way or other we must be a great and mighty empire; we must have an army, and a navy, and a number of things. When the Ameri-
can spirit was in its youth, the language of America was different. Liberty, Sir, was the primary object. . . . You make the citizens of this country agree to become the subjects of one great consolidated empire of America. . . . When I come to examine these features, Sir, they appear to me horribly frightful. Among other deformities it has an awful squinting; it squints toward monarchy.59

Finally, Henry objected to the claim that Virginia’s deliberations were merely an irrelevant epilogue to a story with a foregone conclusion. “It is said that eight States have already adopted the plan,” which makes eventual ratification virtually certain. But if this is so, Henry asked rhetorically, why are we gathered here? Is it not an insult to the largest and most powerful state in the union? “I declare,” Henry concluded, “that if twelve States and a half had adopted it, I would with manly firmness, and in spite of an erring world, reject it.”60

Over the next two days Madison delivered two lengthy speeches that took the form of a point-by-point rebuttal of Henry’s presentation. During the course of the Convention there would be multiple speakers on both sides—Edmund Randolph and John Marshall most prominently for the Federalists, George Mason for the Antifederalists—but the undisputed champions of each side were Henry and Madison. As a result, when Madison rose to speak, he fully realized that Henry’s prowess and prestige made him the central target and the proper focus for all the finely tuned, well-rehearsed arguments Madison had developed over the past two years. In this dramatic, all-important venue, his meticulous homework paid off.

Madison found Henry’s glowing description of the government under the Articles to be the kind of incredulous remarks made by someone living on another planet. During the war the states had failed to pass taxes or meet troop quotas, and after the war the Confederation Congress and the state legislatures had only continued the pattern of fiscal irresponsibility. All the European markets and bankers regarded the American government as wholly untrustworthy. Madison then unfurled, once again, his argument about the systemic weakness of all previous confederacies, unloading his research on the Achaean League, the Ger-

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man system, the Swiss and Dutch confederations, then asking rhetorically: “Does not the history of these confederacies coincide with the lessons drawn from our own experience?” He then answered his own question with the obvious conclusion: “A Government which relies on thirteen independent sovereignties for the means of its existence is a solecism in theory, and a mere nullity in practice.” Far from being alarmists, critics of the Articles were in fact historically informed realists.61

Next came Henry’s argument that the Constitution created a consolidated government that essentially annihilated state power in favor of an omnipotent federal government. If Henry were to read the Constitution carefully, Madison observed, his fears would quickly evaporate, for he would discover that it was truly a unique creation: “It is in a manner unprecedented. . . . It stands by itself. In some respects it is a Government of a federal nature; in others it is of a consolidated nature.” This hybrid creature rendered Henry’s flamboyant accusations irrelevant because “We, the people” did not refer to “the people as composing one great body—but the people as composing thirteen separate sovereignties.” Apparently Mr. Henry needed to be reminded of the abiding significance the states would have in the new order. The Senate represented states and was elected by the state legislatures. The states appointed the electors who chose the president. All subsequent constitutional amendments must be ratified by the states. Thus the proposed Constitution “is of a complicated nature,” concluded Madison, “and this complication, I trust, will be found to exclude the evils of absolute consolidation, as well of a mere confederacy.” As for the fact that eight states had already ratified, instead of regarding this fact as unsolicited political pressure on Virginia to comply, perhaps it should be seen as a measure of wisdom on the part of our fellow Americans from which we should learn.62

The genius of Madison’s argument for a version of sovereignty that was at once shared and divided raised the wholly pragmatic and politically painful compromises reached at the Constitutional Convention to the level of a novel political discovery: to wit, the notion that government was not about providing answers, but rather about providing a framework in which the salient questions could continue to be debated.
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Much like his extended republican idea, Madison’s argument about the efficacy of argument turned an orthodox assumption on its head.

To be sure, at the rhetorical level several prominent Federalists, including Hamilton and Madison in The Federalist and James Wilson at the Pennsylvania ratifying convention, had argued that the Constitution had in fact located ultimate authority in one source, which was that hallowed collective called “the people,” even though Madison was on record privately as believing that no such entity existed. At the practical level, however, the Constitution had created a political framework in which state versus federal sovereignty was an ongoing negotiation to be resolved on a case-by-case basis. Embedded in the document, as Madison now read it, was an argument about the political efficacy of argument itself. Instead of a fatal weakness, the deliberate blurring of sovereignty was an abiding strength. In that sense Henry and his Antifederalist colleagues were being invited to hop aboard this more modern, capacious, and exciting political train and continue the debate. But the trip itself was the true destination.

This proved to be the clinching argument and the true genius of the Constitution in the long run. At the Virginia Convention, however, it is unclear if it, or any argument, made the decisive difference. Most of the delegates, after all, had arrived in Richmond already knowing how they would vote. And in Virginia, as in all the state ratifying conventions, very specific and highly localized concerns tended to trump theoretical arguments. The Tidewater delegates, for example, were most concerned that ratification would require them to honor the provisions of the Treaty of Paris to pay outstanding debts to British creditors. The western and Kentucky delegates voted in accord with their expectations about the posture of a newly empowered federal government on the Mississippi Question and the pace of westward expansion. The conversion of Edmund Randolph to the Federalist cause—he had attended the Constitutional Convention but refused to sign—might have influenced some delegates. But the beauty of Madison’s argument, and what made it so powerful, is that it made the ongoing clash of all such interests the operative principle, so in a sense the conflicting interests within the Virginia Convention embodied the new Madisonian theory.

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Sensing defeat, Henry transformed the latter days of the convention into a debate about the essential addition of a Bill of Rights, crafted to more clearly limit the powers of the federal government and leave the bulk of domestic policy to the states. Madison regarded Henry’s efforts on this score as a tactical ploy designed to confuse undecided delegates. His response was to accept recommended amendments but not binding conditions to ratification. Thus the warp and woof of the convention debates near the end focused on desperate political maneuverings that ignored Madison’s larger argument.63

Henry’s final speech, on June 29, in which he proposed forty amendments to the Constitution, was halted by an intense thunderstorm, suggesting that even the gods wished to hear no more arguments against ratification. The final vote was close but decisive (89–79). When the Antifederalists caucused afterward to consider drafting a challenge to the verdict, Henry summarily rejected the proposal. He had done his best, he said; they had all done their best. But they had lost, and now “they had all better go home.” With all its faults, the Constitution was clearly destined to become the law of the land.64

Not that Henry’s argument on behalf of sovereign states ever completely died. In what must be one of the richest ironies in American history, over the next decade the man who most forcefully advocated Henry’s position was none other than Madison himself. Even later, long after Henry was gone, the Confederate States of America adopted his argument as the central rationale for secession from the union. The ultimate resolution of the argument did not occur in the political arena but on the battlefields of the Civil War, where both of Madison’s ingenious arguments—about the stability of an extensive republic and an institutionalized forum for everlasting debate—became casualties in the bloodiest war in American history.

It would be inappropriate to offer a last word on this story, since the whole point of Madison’s most insightful argument for the new Constitution was that it enshrined an argumentative process in which no such thing as a last word would ever be uttered. But since Washington proved, in so many different contexts, to be the exception that proved the rule, perhaps there is some basis for giving him the last word here.
AMERICAN CREATION

After the vote in the Virginia Convention made ratification assured, Washington, in an uncharacteristically philosophical mood, observed that history worked in strange ways. "A multiplicity of circumstances . . . appear to have cooperated in bringing about the happy resolution," he mused, citing Shays's Rebellion as a near calamity that nevertheless prompted the Philadelphia Convention, which then "ushered us towards permanent national felicity." A few months earlier, when the victory was still in doubt, he offered a different version of the same ironic point. The very potency of the Antifederalist argument, as misguided as Washington regarded it to be, served a useful purpose. For it called forth, in opposition, "abilities which would otherwise not perhaps been exerted that have thrown new lights upon the science of Government, that have given the rights of man a full and fair discussion." No man was better equipped to understand the irony of it all than James Madison.65

CHAPTER FOUR

The Treaty

On the face of it, the biggest loser in the American War for Independence was Great Britain, which lost most of its North American empire. But Great Britain rebounded from this devastating defeat to become the dominant world power for the following century and a half. Before history finally happened to the British Empire, its projection of imperial power around the globe enjoyed a level of success not seen since the headiest days of Rome. In that sense, the American Revolution was only a disappointing first act, followed by unparalleled British ascendancy.

There was no second act for the Native American population. For the roughly 100,000 Indians living between the Appalachians and the Mississippi, the American victory in 1783 proved an unmitigated calamity from which history would provide no rescue, unless forced removal to land west of the Mississippi can be regarded as such. The British defeat triggered a tidal wave of western migration on the part of settlers who understood the phrase "pursuit of happiness" to mean owning their own land. This demographic surge into Indian Country proved relentless and ultimately unstoppable. If only in retrospect, after the American Revolution the Indian population east of the Mississippi was fighting a holding action against the odds—ultimately it was a matter of numbers—in which the tragic conclusion seems inevitable.1

But the clairvoyance of hindsight actually obscures the choices perceived by the participants caught in the moment. On the Indian side, it