Madison's Opponents and Constitutional Design

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Understanding what James Madison's opponents sought and won at the U.S. Constitutional Convention revises our understanding of the founders' original intentions for the durable framework that has structured American political development. The Constitution is the by-product of expedient accommodations forced on Madison. Madison sought broad national authority independent of state governments and a swift victory for population-based congressional representation. Delegates from economically disadvantaged states opposed these plans, seeking instead to nationalize only selective public goods, to maintain most state policy autonomy, and to minimize contingencies imposed by other governments. Connecticut's delegates, particularly Roger Sherman, played a pivotal role in spoiling Madison's agenda and altering his substantive plans for Constitutional design. Madison's Convention opponents are responsible for a Constitution that nationalized only enumerated public goods and imposed potentially high transaction costs on any further nationalization of policy authority. They helped make federalism a lasting political weapon used to win substantive policy outcomes.

Understanding American politics since 1789 requires a clear understanding of the founders' reasons for designing the Constitution the way they did. The Constitutional Convention of 1787 built the basic framework for making public policy in the United States. The Convention delegates understood that they were establishing the vital ground rules for future political battles over the control of the national government. As it turned out, the basic constitutional framework has endured, accompanied by unending disputes about the original intentions of its architects. That basic framework shaped the development of American politics for two centuries. It is shaping the development of American politics now.

James Madison's compelling *Federalist* essays left the mistaken impression that the Constitution's final design closely matched his own ideas for American government, and that these ideas essentially shaped the document. But Madison's Virginia Plan, presented at the start of the Constitutional Convention, was very different from the Constitution he later urged the states to ratify. Initially, Madison placed a high priority on giving the national government very broad powers to tax, to regulate all commerce and currency, and to veto state laws. Initially, his proposals aimed to sever the connection between state governments and national policy-makers and to allocate seats in the Senate as well as the House of Representatives in proportion to state population or wealth. But the Constitution signed on September 17, 1787, differs from Madison's initial plan on all these important dimensions. The final Constitution vested the national government with much less authority than Madison wanted and allowed the states much more authority than Madison thought safe. It gave state governments considerable influence in national policy-making and an equal share of power in the Senate. Even as he was preparing a spirited public defense of the Constitution in the fall of 1787, in private correspondence Madison was expressing disappointment and pessimism about the Convention's final product (PJM 10: 163–64, 209–14; see Hobson 1979, 217; Matthews 1995, 15).

Madison's disappointments resulted from political compromises on Constitutional design forced on him by Convention opponents whose goals, effectiveness, and impact are far too little understood and appreciated. Scholars who analyze the workings of the Convention have stopped short of providing a systematic explanation of the opposition that Virginia's proposals provoked. Instead, the Convention often is presented as a rather disjointed sequence of individual design choices structured by the Virginia agenda, with each choice sparking a discrete conflict aligning different delegates in different ways. Analysts usually have drawn a simplified portrait of the Virginia Plan's opponents, often a portrait overshadowed by a broad interpretation of the early American republic rather than the actual Convention itself. For many recent historians, for example, the disputes in Philadelphia marked an episode in America's continuing struggle to define and implement republican ideals (Wood 1969). An older historical tradition, still lively in the social sciences, has interpreted the Convention's disputes as an early manifestation of the chronic conflict between economically advantaged elites and their less privileged adversaries (Beard 1913; McGuire 2003). In all cases, authors have tended to present Madison and his allies as a coherent band of sophisticated nationalists challenged by a relatively formless, parochial, somewhat reactionary, and largely leaderless opposition. But opponents of the Virginia Plan's provisions included some of the shrewdest and most experienced republican politicians in the world. This group could be expected to include at least a few individuals with

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a consciously different strategy for Constitutional reform, and the will and ability to fight for it with some success. A more systematic account of Madison's opposition can provide a more thorough explanation for Madison's numerous political failures in Philadelphia, for the Constitution's final design, and for its subsequent impact on American politics.

Who opposed Madison's ideas for Constitutional reform at the beginning of the Convention? What were they trying to achieve? How well did they achieve it? Delegates from the economically disadvantaged states that lie between Virginia and Massachusetts composed the core of the opposition to the Virginia Plan. They mobilized against the coalition of six large and southern states that Madison expected to unite behind his initial agenda. These delegates sought to strengthen the central government selectively, nationalizing only a narrow set of public goods, while defending most of their state's policy autonomy and its equal influence in the national policy-making process. Connecticut's delegation played a pivotal role in this opposition, and Roger Sherman, a skilled Connecticut politician, emerged as Madison's most relentless antagonist. As they defended their states' interests, the delegates from Connecticut, New Jersey, Delaware, and Maryland substantially reshaped Madison's initial blueprint. During the course of the meeting, they derailed Madison's agenda, united a cohesive opposition against broad national powers, won delegates over to an innovative theory of dual national and state authority, and earned important victories for state policy autonomy and influence. They turned the process of Constitutional design into a series of interdependent political negotiations, lasting three and a half months.

Understanding what Madison's opponents sought and won in Philadelphia revises our understanding of the enduring framework that has structured American politics since 1789. The Constitution was largely an unanticipated by-product of politically expedient compromises rather than the product of a single plan. With pragmatic imprecision, the delegates constructed an unfinished national policy workplace and stocked it with a limited range of policy tools, expecting future politicians to use and add to these tools in pursuit of their own political agendas. Nothing better exemplifies this thoroughly political nature of Constitutional design than dual state and national sovereignty, a conceptual innovation pressed by Connecticut's delegates over Madison's objections. The Constitution's distribution of national and state authority represents a series of political accommodations between the two sides. The delegates nationalized only a limited set of enumerated public goods, established strong political defenses for the states' existing advantages, and imposed high transaction costs on the further nationalization of public goods. Federalism was designed the way it has been used ever since, as an opportunistic political battlefield with ambiguous boundaries, one that makes it possible to displace substantive policy conflicts with perpetual quarrels over the boundary between state and federal power.

THE POLITICAL LANDSCAPE OF THE PHILADELPHIA CONVENTION

The states sent politicians to represent them in Philadelphia, not philosophers, professors, or investors. Most of the delegates had served in state legislatures, offices, or courts. Many of the most active participants, such as James Madison and Roger Sherman, had made politics a career. Literally, they were state builders who had helped design new republican constitutions for their states, built new governing institutions, filled new public offices, and assembled working political coalitions (McDonald 1958; 1979, 258–70; 1985, 185–224; Rossiter 1966, 79–156). Many were unusually conversant with leading theorists of statecraft and republicanism. By 1787, their state governments had survived war and depression as sovereign political entities that levied taxes, circulated currency and notes, and regulated debts, vices, economic associations, public safety, and the electoral franchise.

Many an American politician had a vital stake in his state's independent control over public policy. In practice, these republican political leaders could not separate public policy from politics. Public policy constructed political alliances and support, while political contests turned on the control of the policy-making process and its outcomes. They had learned to calibrate tax, currency, debt and regulatory laws to create distinct and dynamic political republican regimes (on using policy to construct political orders, see Skowronek 1982, 1997; Bensel 2000). They were inventing and using policy tools to balance the conflicting demands of democracy, order, economic stability and economic development (John 1997; Main 1973; Novak 1996). Like organization builders more generally, they placed a priority on the survival and autonomy of the states they had nurtured along (on organizational behavior, see Thompson 1967). By early 1787, however, Shays's Rebellion, state currency policies, and other problems in state governance expanded political support for far-reaching national government reforms (Brown 1993; Matson 1996, 382–84). The delegates shared with a number of constituents a deep anxiety about the nation's political future, and were willing to consider seriously substantial increases in specific national powers. Though they expressed concern for economic stability, development, investment and property rights, these politicians were not simply the agents of wealthy constituents (Ferguson 1961, 251–86; McDonald 1958, 25, 37, 86–92). In theory, more effective national governance of currency, commerce, and military security would provide valuable public goods for their constituents. In practice, though, any specific addition to national power might be used to the detriment of one or more states.

The delegates' central political dilemma, then, was to reconstitute the national government so it could provide the national public goods they believed necessary, without endangering the vital interests of their constituents and the polities they had built. Each state legislature charged its delegates to render the national government "adequate to the Exigencies of the

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Union." There was widespread agreement that the national government needed a steady stream of income and some specific additional powers to deal with national security, civil unrest, commerce, and currency problems. Because the states had different economic assets (McCusker and Menard 1985), cultures, histories, policy commitments, and political equilibria, however, each delegation specifically defined "adequate" in a different way. Delegates from New Jersey and Connecticut advocated the nationalization of tariffs and currency while they defended other state prerogatives (RFC August 16, II, 309; August 28, II, 439). Several delegates, including William Paterson, George Mason, and John Dickinson, hoped to ban the slave trade (RFC June 9, I, 561; August 22, II, 370, 372). While Luther Martin fiercely resisted the expansion of many national powers at the Convention, he also insisted on nationalized control over public lands (RFC August 30, II, 464). Each delegate made his own evaluation about the benefits and risks of any *specific* national power for his own state and the nation (see also McGuire 2003 and Siemers 2002).

Designing the Constitution required three types of choices (Robertson 2005). These choices can be distinguished analytically, but the delegates did not make them in sequence or independently of one another. The first group of choices involved policy agency, that is, who would fill national offices, how these offices would be filled, and on whom officeholders would depend. The second group of choices involved national policy authority, that is, the specific policy areas in which the national government would exercise authority and the conditions placed on the exercise of this power. Examples of these choices included national authority to regulate interstate and intrastate commerce, lay taxes, govern currency, build infrastructure, and protect contracts and property. The third group of choices involved the national policy process, that is, the rules for formulating, legitimating, and implementing and adjudicating public policy, including specific provisions for enacting legislation and exercising the veto.

It is impossible to specify with precision how philosophical principles affected these Constitutional design choices. No delegate disputed the wide support for republican ideals, for example, but these ideals provided little help for making virtually any of the specific design choices the Constitution required. Republicanism specified little beyond the ultimate sovereignty of the people and the principle of separation of powers. Specific decisions about the selection of policy-makers, their authority, and the national policy process could not be settled decisively by examples from imagined republics or existing states. None of the new state republics produced fully acceptable results (Kruman 1997, 123–26; Wood 1969, 433). Nothing in republican theory *per se* specified the precise distribution of powers and selection of policy-makers in the final Constitution.

Historian Jack Rakove (1996) observed that "what is elusive is the interplay between ideas and interests" (15). Rakove, political scientist Calvin Jillson (1988), and other authors have argued that the delegates veered back and forth, clashing over ideas at some points and over interests at others. It is not possible, of course, to penetrate the thinking of any delegate and distinguish the way each weighed principle against interest on each design issue. The high-minded defense of national authority may have masked a delegate's driving ambition for the prestige and power of national office (most of the signers went on to hold elected or appointed offices in the new government). On the other hand, an individual's defense of state prerogatives may reflect a mix of not only parochialism but also pragmatism, sincere loyalty to the principle of constituent representation, and a deeply held belief in the superiority of the social, economic, and political order in any given state. By expanding the concept of interest beyond personal pecuniary gain and selfish parochialism, to include the representation of any state's autonomy and economic interests, it is much easier to see that the delegate' ideas and interests aligned closely with one another.

The delegates frequently invoked philosophical principles in the Convention debates, but these claims almost always dovetailed with each delegate's constituents' interests. His constituents' interests colored each delegate's arguments about the true nature of the nation's interests. Political calculations, conceived broadly in this way, shaped delegates' views of the stakes in most of these design choices. Political calculations and negotiations, rather than isolated philosophical syllogisms, settled the disputes these choices engendered. James Madison skillfully tried to structure the Convention agenda to align the ideas and interests of a majority of state delegations with his plan.

JAMES MADISON'S AGENDA FOR CONSTITUTIONAL DESIGN

The delegates' anxiety about the nation's future, combined with the hazy status of specific solutions, opened a window of political opportunity for James Madison. He prepared for the Convention more thoroughly than any other delegate (Banning 1995; Rakove 1996, 46–56, 59; Robertson 2003). As a member of the Confederation Congress, Madison had supported stronger national revenue and commercial powers. He approached the Convention with a much bolder agenda for reform and a strategy for getting the Convention to adopt it.

Madison sought three kinds of far-reaching changes in national government design. First, Madison sought to transfer to the national government the complete authority over taxes, commerce, and other basic tools of economic policy. Madison had become convinced that the states had too much authority over economic policy, and their abuse of that authority was harming the nation's interests and its republican experiment. Much like Adam Smith, Madison believed that government had an important but limited role, primarily facilitating trade and market-driven economic development (Fleischacker 2002; Matthews 1995, 314). The states' debt, currency, and trade policies were inhibiting free markets and the nation's prosperity. In

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letters to George Washington, Thomas Jefferson, and Virginia Governor Edmund Randolph, Madison insisted on the establishment of a fully sovereign national government, "armed," he told Randolph, "with a positive & compleat authority in all cases where uniform measures are necessary" (PJM 9: 370; 317–22, 382–87). The delegates took it for granted, he claimed, that the U.S. national government should "have powers far beyond those exercised by the British Parliament when the States were part of the British Empire" (RFC June 29, I, 464). National officials' ambitions should be driven by a material concern for national advantage and nothing else. Madison reasoned by analogy that, if state policy authority resulted in the incentive to pursue parochial interests, expanded national authority could give national government officials the incentive to pursue purely national interests. To the end of the Convention he argued that complete authority over the nation's commerce, including intrastate commerce, was indispensable (RFC August 28, II, 442; September 15, II, 625). Madison also believed that taxation should be nationalized, on the grounds that a "compleat power of taxation" was "the highest prerogative of supremacy" (RFC June 28, I, 447) and "no line could be drawn between" authority to regulate trade and authority to levy taxes" (RFC August 13, II, 276). Madison also sought broad national authority to govern the militias, to charter corporations, to develop canals and other infrastructure projects, to found a national university, and to establish patents and copyrights (RFC August 18, II, 324–25, 332; August 23, II 332; September 14, II, 615). To anchor this broad national authority, Madison proposed the extraordinary national power to veto *state* legislation at will, asserting at the Convention that "an indefinite power to negative legislative acts of the States" was "absolutely necessary to a perfect system" (Hobson 1979; PJM 9: 383–84; RFC June 8, I, 164–68, 171–72; June 19, I, 319; July 17, I, 28).

Second, Madison's basic plan aimed to minimize the state governments' role in choosing national policymakers. Madison believed it essential to avoid "too great an agency of the State Governments in the General one . . . " (RFC June 6, I, 134). The Virginia Plan proposed that the voters directly choose the members of the House of Representatives, the foundation of the national policy-making system. The House then would elect the Senate from slates proposed by the states, and the national legislature would choose the national executive and judiciary. Madison described this scheme as a "policy of refining the popular appointments by successive filtrations" (RFC May 31, I, 49–50), and it would disconnect national policy making from the states, stabilize popular control of government, and deliver better policy outcomes for the nation. The third basic element of Madison's plan was tactical as well as substantive: The Convention would have to establish what he termed "proportional representation" (that is, apportioning seats in the national legislature according to population size) as the first order of business. Proportional representation in both houses of Congress would further nationalize policy, by reducing the influence of state governments as units of representation, and it would substantially increase the influence of Madison's own constituents by giving Virginia the largest delegation in Congress.

Tactically, Madison depended on a swift victory for proportional representation to bind together a winning Convention coalition of six states. The three lar–gest states, Massachusetts, Pennsylvania, and Virginia, would gain from proportional representation in the short run. Georgia and the Carolinas would gain in the foreseeable future as their rapidly growing populations eclipsed the eastern states (PJM 9: 318–19, 369–70, 383). The success of this strategy depended on winning early agreement for proportional representation in both chambers of the new legislature (Jillson 1988, 47) and on delaying debate on the substance of national authority, particularly the divisive issues of tariffs, trade, and public lands. Once the Convention adopted proportional representation in the new national legislature, this coalition would gel and sweep his remaining agenda through the Convention. He wrote hopefully to Jefferson that "if a majority of the larger States concur, the fewer and smaller States must finally bend to them. This point being gained, many of the objections now urged in the leading States ag[ain]st renunciations of power will vanish" (PJM 9:319 see also Lee and Oppenheimer 1999, 36–37). Virginia's delegates gambled that smaller states could be prevailed upon "in the course of the deliberations, to give up their equality for the sake of an effective Government" (RFC May 28, I, 10–11, note).

At the Convention's first working session on May 29, Virginia Governor Edmund Randolph offered Virginia's plan in 15 resolutions based on Madison's ideas (Rakove 1990, 55; RFC III, 525). The Virginia Plan laid out a sequence of decisions consistent with Madison's tactics. It made the change from state-based representation to proportional representation the first order of business. The Virginia Plan's first five resolutions established the rules for selecting legislators. Not until its sixth resolution did the Plan propose to authorize the national legislature "to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation; to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union; and to call forth the force of the Union ag[ain]st any member of the Union failing to fulfill its duty under the articles thereof" (RFC May 29, I, 20–22).

Madison's Convention strategy tacitly acknowledged that the Virginia Plan posed two threats to the state polities. First, by targeting the states' authority to manage their economies, the plan imperiled states' autonomy and existing state political regimes. Second, his proposals aimed to create a national government capable of systematically devaluing some state assets and extracting and redistributing others. The breadth of Madison's plan to nationalize economic authority, then, enabled a wide range of opponents to unite around concerns about what government would do with that power. The very ambition of Madison's plan increased its political vulnerability to delay and

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dismemberment. To alter Madison's design fundamentally, Madison's Convention opponents had to slow the progress of his agenda and draw some of his expected allies away from his coalition.

INTERPRETATIONS OF MADISON'S CONVENTION OPPOSITION

Most scholars have not given the same careful, systematic attention to the Virginia Plan's opponents as they have to Madison and his Convention allies, such as Gouverneur Morris, James Wilson, and Alexander Hamilton.[1] The most familiar narrative of the Convention frames Madison and his allies as strong nationalists and the opposition as small states simply opposed to the loss of their equal vote in the Confederation Congress. As John P. Roche (1961) put it, Madison's "dedicated nationalists" squared off against "self-interested spokesmen of various parochial interests" (800). Rakove's *Original Meanings*, a peerless and penetrating analysis of the Convention's politics, concluded that the "basic purpose" of the authors of the New Jersey Plan "was not to narrow the agenda of reform but to indicate that they would accept the broad changes of the Virginia Plan only if the small states retained an equal vote in one house of Congress" (Rakove 1996, 65). Many delegates themselves spoke in the terms of small and large states. "Give N[ew] Jersey an equal vote," Charles C. Pinckney notably accused, "and she will dismiss her scruples, and concur in the Nat[ional] system" (RFC June 16, I, 255; see Roche 1961, 806). William Riker (1996) concluded that Madison and his allies indeed "had converted most of the moderate nationalists, like Roger Sherman, to their extreme position" (18).

This conventional understanding of Madison's Convention opposition, however, seriously misspecifies the interests of Madison's opponents and, therefore, underestimates their impact on the Constitution's design. It is more accurate to understand Madison's opponents as delegates from the states outside of the coalition of six large and southern states he expected to form the core support for the Virginia Plan. This group of seven states outside his expected coalition—New Hampshire, Rhode Island, Connecticut, New York, New Jersey, Delaware, and Maryland—cannot be understood simply as small states focused simply on defending their equal vote in Congress. First, the distinction based on size is misleading. South Carolina had a smaller population than Maryland or New York and about the same population as Connecticut. Georgia was one of the four least populous states. Second, several delegates outside of Madison's expected coalition were strong supporters of national reconstitution despite their opposition to many features of the initial Virginia Plan. Shlomo Slonim (2000) showed that the small states' views were more complex than the conventional portrait, and they enjoyed more successes than equal state representation in the Senate. Four of the states most opposed to the Virginia Plan at the Convention ratified the Constitution relatively quickly and by large margins: Delaware and New Jersey unanimously, Maryland by 85%, and Connecticut by 76%. Virginia, in contrast, ratified the Constitution with by only a 53% margin. Third, some of the delegates from whom Madison anticipated strong support came to oppose the final Constitution. Virginia's George Mason and Massachusetts' Elbridge Gerry, for example, refused to sign the document and opposed ratification.

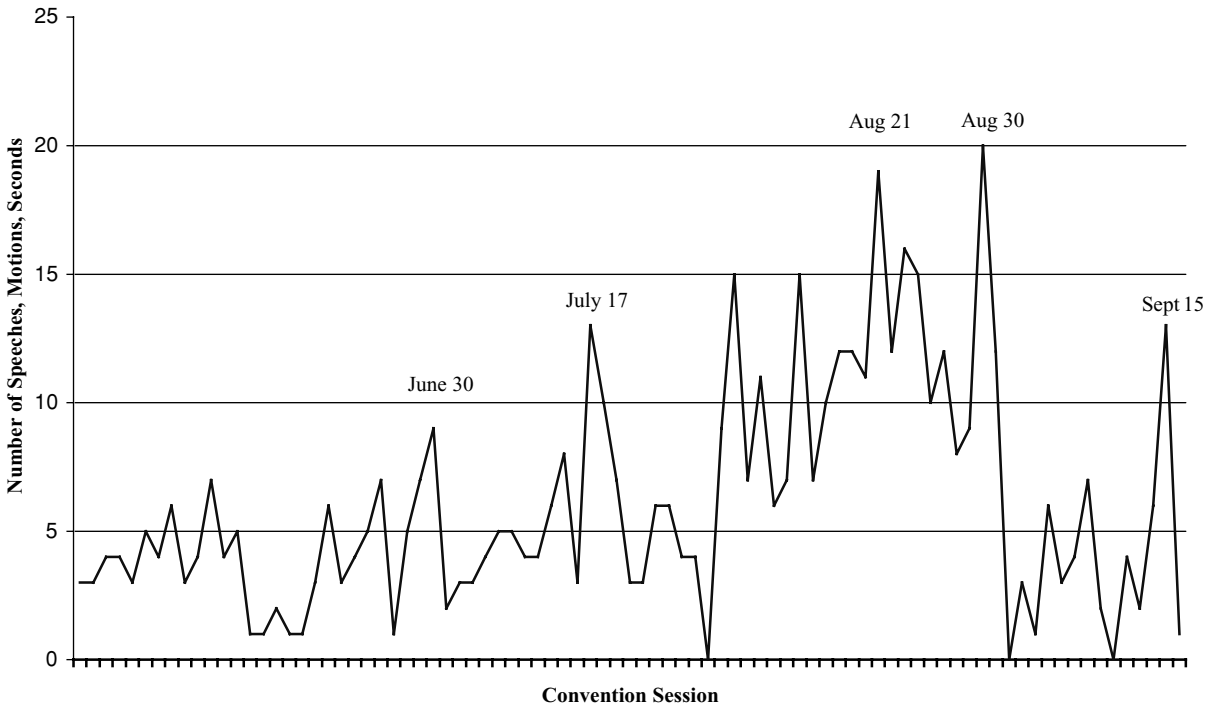
Finally, if Madison's Convention opponents simply sought equal representation in Congress, then the states outside of his expected six-state coalition should have been assuaged after the acceptance of the bicameral (Connecticut) compromise on July 16 and less inclined to challenge Madison's positions. Yet the delegates from the four states represented throughout the Convention (Connecticut, New Jersey, Delaware, and Maryland) were more active in debate after July 16 than before (Figure 1). These later debates often turned on issues of policy authority and relative institutional power instead of legislative apportionment. Slonim argued that conflict continued because of philosophical disagreements about state sovereignty in the abstract. But the delegates were not struggling over abstract principle. Rather, they were battling over the relative position of their diverse state political economies, over the surrender of specific public goods to the national government, and over the states' agency in determining how national power would be used. Given that different delegates from these states defined adequate national powers in different ways, Slonim's (2000) conclusion that "these delegates opposed every attempt to engulf the states in a tidal wave of national authority" (19) greatly oversimplifies their political motivations, constituency interests, tactics, and influence on the outcome.

By distinguishing three groups of delegates at the Convention instead of two, Thornton Anderson (1993, 62) greatly furthered our understanding of those delegates who opposed the Virginia Plan but embraced the final Constitution. Anderson's first group was the "nationalist" bloc, including Madison and such allies as James Wilson and Gouverneur Morris. The second group, "state's rights proponents," included Maryland's Luther Martin and John Francis Mercer and New York's Robert Yates and John Lansing, all of whom left the Convention and opposed the ratification of the Constitution. Anderson labeled the third group "state federalists." These 15 "state federalists" occupied a middle ground on state powers. He labeled as "state federalists" all of the delegates from Connecticut as well as John Dickinson from Delaware. The category also includes a number of delegates from states

[1] Because this paper analyzes the design of the Constitution produced by the Convention on September 17, 1787, it limits its evidence to the records of the Convention debates and excludes information from the subsequent debates over ratification. Ratification tracts, such as the *Federalist Papers*, were polemical essays written to urge support for ratification (Finer 1997, 3, 1495–96; Roche 1961) and provide a partisan account of the Convention's design choices. James Madison's notes on the debates provide the most complete and reliable record of the Convention proceedings. The notes of some other of the other delegates provide reliable supplementary notes information (Hutson 1987).

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FIGURE 1. Speeches, Motions, and Seconds from Connecticut, Delaware, New Jersey, and Maryland Delegates at the Convention



Madison counted on to support his plan, including all four of the South Carolina delegates, two from North Carolina, and three delegates from large states who refused to sign the Constitution (Elbridge Gerry of Massachusetts and George Mason and Edmund Randolph of Virginia). Anderson's typology identifies the need for a closer analysis of those "state federalists" outside Madison's expected coalition. Given Madison's experience, skill, and preparation, it is implausible to believe that Madison was politically naïve when he included the southern "state federalists" in his expected coalition. The more likely explanation is that his political strategy broke down during the Convention and that some of these "state federalists" from *outside* of Madison's expected coalition caused a critical mass of expected supporters *within* it to defect from key parts of his plan during the course of the Convention.

THE ECONOMICALLY DISADVANTAGED STATES

Madison initially may have been encouraged by the weaknesses of his potential opponents. Because New Hampshire's delegates did not arrive until July 23 and Rhode Island was not expected to send a delegation (Hutson 1987, 67), Madison's anticipated coalition of six states could have outvoted the five remaining states during the Convention's first two months. The two New York delegates who walked away from the Convention left their state without a sufficient number to cast an official vote on behalf of their state during final three-fifths of the Convention's working sessions. The complete absence of Rhode Island and the long absences of New York and New Hampshire placed the burden of opposing Madison squarely on four states represented throughout the Convention. These delegates proved to be superbly adept at defending their political interests.

Virginia's plan particularly sparked opposition from specific states south of Massachusetts and north of Virginia—Connecticut, New Jersey, Delaware, and Maryland—because these states had substantial economic and political disadvantages compared to their neighbors. They lacked the expanses of land and the long growing season enjoyed by the states to their south. They also lacked the lucrative ports of Boston, New York, and Philadelphia and were very vulnerable to exploitative tariffs and regulations from nearby states with these large ports. The architecture of the Confederation had leveled the playing field somewhat for these states because their equal vote in the Confederation Congress substantially offset their relative economic disadvantages. With limited resources and significant economic exposure, these states actually had the most stake in nationalizing specific public goods such as coastal defense and tariffs, in blocking other states from restricting commerce, and in enforcing the states' financial obligations to the Confederation (on the problem of collective action in the Confederation, see Dougherty 2001). These states could not adequately provide such public goods as national defense

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and needed protection from economic damage spilling over from the tariffs, paper emissions, and credit policies of contiguous states. But these states' relatively limited economic assets and their vulnerability to larger neighbors made it even more vital for them to defend their remaining economic prerogatives and political advantages forcefully. New York was a special case. New York faced the surrender of its lucrative tariff revenues to the national coffers. Because these tariffs allowed the state to export some of the costs of its government, it potentially confronted the largest political sacrifice of any state (De Pauw 1966, 31–32).

The representatives from Connecticut, New Jersey, Delaware, and Maryland formed the core of Madison's Convention opposition. Delegates from these four economically disadvantaged states generally shared three goals for Constitutional design. First, they sought to maintain their state government's control over taxes, internal commerce, regulation, and other policy tools critical for managing republican politics and development inside their borders. Second, they sought to minimize contingencies imposed by other governments, including negative spillovers from the tariff and currency policies of neighboring states and harmful policies that might be pursued by a stronger national government. Third, they sought to maintain their economic capabilities and economic position relative to other states. They feared not only the superior resources of other states, but also future relative gains by these privileged states, gains that could allow other states to benefit themselves at the expense of less advantaged neighbors. Grieco (1990, 27–50) argued that nation-states in international relations should not be understood simply as atomistic actors seeking to maximize gain. Independent nation-states are motivated not only to protect against the absolute gains of other states and compliance with any international agreement, but also to protect their relative position. Greico termed these nation-states "defensive positionalists." The delegates from the economically disadvantaged American states acted as "defensive positionalists" at the Convention.

These delegates claimed that Virginia's plan would create not only absolute gains for states in Madison's coalition, but also relative gains for these states compared to those states outside his coalition. Madison's strategy raised understandable suspicions among these unsentimental political realists. Delaware's Attorney General, Gunning Bedford, Jr., characterized Madison's Convention strategy explicitly and darkly during the Convention's most bitter day of debate:

> If political Societies possess ambition avarice, and all the other passions which render them formidable to each other, ought we not to view them in this light here? Will not the same motives operate in America as elsewhere? If any gentleman doubts it let him look at the votes. Have they not been dictated by interest, by ambition? Are not the large States evidently seeking to aggrandize themselves at the expense of the small? They think no doubt that they have right on their side, but interest had blinded their eyes. Look at Georgia. Though a small State at present, she is actuated by the prospect of soon being a great one. [South] Carolina is actuated both by present interest & future prospects. She hopes too to see the other States cut down to her own dimensions. [North] Carolina has the same motives of present & future interest. Virg[inia] follows. Mary[land] is not on that side of the Question. Pen[nsylvania] has a direct and future interest. Mass[achusetts] has a decided and palpable interest in the part she takes. Can it be expected that the small States will act from pure disinterestedness. (RFC June 30, I, 491)

THE PIVOTAL ROLE OF CONNECTICUT AND ROGER SHERMAN

Connecticut's delegates led the opposition, relentlessly disputing Madison's most important Convention proposals. Connecticut also became the pivotal delegation by taking a key role in framing and then defeating the New Jersey Plan, pressing for the "Connecticut" compromise on House and Senate apportionment, providing northern support for protecting the slave trade, and injecting state agency into presidential selection. The concept of pivotal delegation draws on Congressional scholars' concept of pivotal legislators (Brady and Volden 1998; Krehbiel 1998; Rodriguez and Weingast 2003). At the Constitutional Convention, the pivotal unit was the state delegation instead of individual delegates, because delegates from any state cast votes together as a single unit, as in the Confederation Congress.

In the 85 working sessions of the Convention after the presentation of the Virginia Plan on May 29, Connecticut's three delegates spoke, made motions, or seconded motions 265 times—more than the contributions of the five delegates from Maryland (119 times), five from Delaware (103), and five from New Jersey (38) combined (Table 1). Thorton Anderson's (1993) factor analysis confirms that Connecticut played a distinctive role in the Convention (207–14; see also Ulmer 1966).

Roger Sherman led an unusually cohesive and pragmatic three-man Connecticut delegation (Rakove 1996, 86). At the Convention, Sherman was the most active spokesman among the Virginia Plan's opponents. Madison and Sherman took positions explicitly opposed to one another on 39 occasions. Sherman spoke, made motions, or seconded motions 160 times, much more often than John Dickinson or Maryland's Luther Martin and 10 times more often than any delegate from New Jersey. Madison himself spoke, made motions, or seconded motions 177 times. Sherman's talented younger colleague, Oliver Ellsworth, greatly admired Sherman and looked to him as his model. Sherman and his protégé Ellsworth rarely expressed differences (though when they did, Ellsworth was willing to provide marginally more power to the national government than was Sherman; RFC August 9, II, 232; August 23, II, 385). William Samuel Johnson, who was somewhat more open to national authority than Sherman, had been Sherman's legal mentor (Collier 1971, 234). Thirty years older than Madison, Sherman came to the Convention with a formidable political reputation as a leading American statesman. He had

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TABLE 1. Convention Speeches, Motions, and Seconds of Motions by Delegates from Four Continuously Represented States Outside Madison's Expected Six-State Coalition

Connecticut total	265
Roger Sherman	160
Oliver Ellsworth	85
William S. Johnson	20
Delaware total	103
John Dickinson	49
George Read	30
Jacob Broom.	13
Gunning Bedford, Jr.	11
Richard Bassett	0
New Jersey total	38
Jonathan Dayton	18
William Paterson	15
David Brearly	5
William C. Houston	0
William Livingston	0
Maryland total	119
Luther Martin	56
Daniel Carroll	29
John F. Mercer	21
James McHenry	9
Dan'l of St. Thomas Jenifer	4

served on the congressional committees that wrote the Resolves of 1774, the Declaration of Independence, and the Articles of Confederation. Only Sherman signed all three of these documents and the Constitution. In the mid-1780s Sherman was serving—simultaneously—as mayor of New Haven, a member of the Connecticut's Council of Assistants (which functioned as the state senate), a judge on the Connecticut Superior Court, and a delegate to the Confederation Congress.

Sherman had strong intellectual differences with Madison and aimed to achieve a much narrower agenda of reform. He advocated as much direct, equal-state agency in national policy-making as feasible, as little nationalization of public goods as necessary, and as much state control of everyday economic management as possible. While he also supported certain stronger national powers, Sherman preferred that the scope of national authority should be expanded in a much more limited and specific ways. No one argued earlier and more forcefully against the conventional wisdom that sovereignty could not be divided. Instead, he argued for the idea of dual sovereignty, insisting that the state and national governments should have discrete areas of policy responsibility (RFC May 30, I, 34–35; June 6, I, 133; June 7, I, 150). He conceded that the Confederation government required additional powers, "particularly that of raising money" and the national management of currency and interstate commerce, both pressing interests for a state squeezed by Rhode Island's paper currency and New York's tariffs. Circumstantial evidence indicates that he supported national authority to assume the states' debts (Currie 1997, 77; RFC August 18, II, 326–68, August 21, II, 355–56). States should be prohibited from issuing currency or interfering with contractual obligations. But Sherman insisted from the start that states should retain control of "matters of internal police . . . wherein the general welfare of the United States is not affected" (Collier 1971, 230–33; RFC May 30, I, 34). While Madison believed that the burden of proof for retaining economic policy authority rested on the states, for Sherman, the burden for absorbing such authority rested on the national government. Sherman argued, for example, that states should retain even the power to embargo goods. A plan he wrote early in the Convention would have retained the Confederation system of requisitions, which allowed the states to fund the national government through revenues of their choosing. Congress should be the agent of the states, he believed, with national policy-makers ultimately selected and paid by the state governments (Collier 1973, 10, 47, 61, 68, 71–73; RFC II, 439–40; III, 615–16). Madison ally Rufus King thought Sherman favored "a sort of collateral Government" (RFC June 6, I, 142–43).

Roger Sherman's direct confrontations with James Madison demonstrate Sherman's influence on the Constitution's design. Madison lost many battles at the Convention. By Forrest McDonald's (1985) count, "Of seventy-one specific proposals that Madison moved, seconded, or spoke unequivocally in regard to, he was on the losing side forty times" (208–9). Table 2 lists the 39 occasions on which Sherman and Madison took explicitly conflicting positions at the Convention. Three of these disagreements involved differences of interpretation that did not bear on a specific issue under consideration. Seven resulted in compromises between their positions. Of the remaining 29 disputes, the Convention ultimately adopted Sherman's position 19 times and Madison's position 10. Conspicuously, the Convention chose Sherman's position over Madison's more frequently as the Convention wore on. After a Committee of Detail produced a draft Constitution on August 6, the Convention took Sherman's position 13 times and Madison's only twice.

Sherman's leading role among Madison's Convention opponents becomes clearer in comparison to role of prominent delegates such as Delaware's John Dickinson, Maryland's Luther Martin, and New Jersey's William Paterson. Dickinson, a more renowned national figure than Sherman, could not participate during important stretches of the Convention because of his health (Hutson 1983). Like Sherman, Dickinson also strongly supported equality of state votes in the Senate, but he was much more supportive of Madison's expansive vision of national authority. Dickinson explicitly agreed with Madison more often than he disagreed with him. While he agreed with Madison on 10 occasions, including the defeated national veto of state laws, he disagreed with Madison on only seven occasions, and of these disagreements, the final outcome reflected his position only four times (Sherman agreed in two instances and took

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TABLE 2. Explicit Conflicts between James Madison and Roger Sherman at the Constitutional Convention

	Date	Issue	Madison Position	Sherman Position	Outcome
(1)	May 31	Popular election of House	For	Against	Madison
(2)	June 5	Popular ratification	For	Against	Madison
(3)	June 5	Inferior federal courts	For	Against	Madison
(4)	June 6	Direct election of House	For	Against	Madison
(5)	June 7	State legislatures elect Senators	Against	For	Sherman
(6)	June 12	House term	3 years	1 year	Compromise
(7)	June 12	Senate term	7 years	5 years	Compromise
(8)	June 13	Congress appoints Supreme Court	Against	For	Madison
(9)	June 26	Senate term	9 years	6 years	Sherman
(10)	June 28	Proportional representation in the House	For	Against [interpretive	Madison
(11)	June 29	Faults of Confederation	—	dispute]	—
(12)	July 2	Commit representation dispute to committee	Against	For	Sherman
(13)	July 10	Double size of House to 130 members	For	Against	Sherman
(14)	July 13	Direct taxation determined by number of Representatives	For	Against	Madison
(15)	July 14	Moderate plan for proportional representation in Senate	For	Against	Sherman
(16)	July 17	National veto of state laws	For	Against	Sherman
(17)	July 18	President appoints judges	For	Against	Madison
(18)	August 7	Fix Congress meeting date	Against	For	Compromise
(19)	August 13	States control citizenship rights of naturalized citizens	—	[Interpretive dispute]	—
(20)	August 15	Joint veto exercised by president & judges	For	Against	Sherman
(21)	August 16	National authority to tax exports	For	Against	Sherman
(22)	August 17	Congress authority to “declare” rather than “make” war	For	Against	Madison
(23)	August 18	Broad national militia authority	For	Against	Compromise
(24)	August 20	Broad definition of treason	For	Against	Sherman
(25)	August 21	National authority to tax exports	For	Against	Sherman
(26)	August 23	National appointment of top militia officers	For	Against	Sherman
(27)	August 23	Commit national veto of state laws	For	Against	Sherman
(28)	August 24	Joint House–Senate ballot for electing president	For	Against	Madison
(29)	August 28	Absolute prohibition on state embargoes	For	Against	Sherman
(30)	August 28	Absolute prohibition on state tariffs	For	Against	Compromise
(31)	August 30	Specify U.S. claims to lands	Against	For	Compromise
(32)	August 31	States required for ratification	7 with a majority of population	Unanimous or 10	Compromise
(33)	August 31	Ban states from requiring duties for throughbound ships	Against	For	Sherman
(34)	September 8	Senate trial of Impeachments	Against	For	Sherman
(35)	September 8	Increase number of Representatives	For	Against	Sherman
(36)	September 12	Reduce veto override to 2/3	Against	For	Sherman
(37)	September 14	National authority to cut canals and charter corporations	For	Against [interpretive	Sherman
(38)	September 15	National authority over commerce	—	dispute]	—
(39)	September 15	Specify congressional power to delegate inferior appointments	Against	For	Sherman

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no position in the other two).[2] Maryland's querulous Attorney General, Luther Martin, arrived two weeks late and left two weeks early. While Martin defended state prerogatives more stridently than any other delegate, he proved strikingly ineffective in translating this antagonism into concrete results. Martin took positions on 43 items acted on by the delegates, but only four of these positions successfully translated into a substantive provision in the final Constitution. Moreover, only two of these four "wins" for Martin's position constituted "losses" for Madison's: the defeat of the national veto of state laws and the defeat of an executive veto exercised in conjunction with other national officers (although a majority of Martin's Maryland colleagues voted for it). A third Martin win was significant but uncontroversial. Immediately after the defeat of the national veto, Martin made the motion that injected the New Jersey Plan's supremacy clause into the Constitution. No delegate dissented (RFC July 17, II, 27–29; July 21, II, 76–80).

American politics textbooks often give New Jersey's William Paterson the premiere role as an opponent of the Virginia Plan, and like Madison himself, these texts use the terms "New Jersey Plan" and "Paterson Plan" interchangeably (Cummings and Wise 2001, 41; RFC June 19, I, 315). But Paterson was neither the sole author of New Jersey's proposal nor a particularly effective opponent of the Madison coalition. The New Jersey Plan resulted from the collaboration of those excluded from Madison's expected coalition: the delegations from Connecticut, New York, New Jersey, and Delaware, along with Martin (O'Connor 1979, 145–47; RJC III, 174, 178–79). Beyond introducing the plan on June 15 (it was defeated four days later), Paterson's own contributions consisted almost entirely of five speeches defending small states and seven efforts on procedural issues that affected his state. He seconded only two substantive motions, one of which supported Madison ally Rufus King's plan to select the president with state-designated electors (RFC June 19, I, 30). Although Paterson himself said that it was necessary to "mark the orbits of the States with due precision" (RFC June 9, I, 179), he contributed nothing to the proceedings after July 23, when the Convention dealt with the importation of slaves, the rules for making commercial treaties, control over public lands, presidential and Senate powers, the amendment process, and many other controversial issues.

It has been as easy to underestimate Sherman's influence on the Constitution's design as it has been to overestimate Paterson's. Unlike Madison, he left virtually no written record of his Convention preparations or participation. His reported Convention speeches tended to be brief and pragmatic. He did not help write the Federalist papers, and his subsequent political career pales in comparison to Madison's. He lacked Madison's talent for academic theory, James Wilson's earnest support for popular government, and Gouverneur Morris's talent for sound bites. But his engagement in Constitutional design was far-reaching. The ongoing, implicit discourse between Madison and Sherman is indicated by the strong day-to-day correlation between their speeches and motions ($r = .565$). The rivalry between Madison and Sherman gave the Convention "much of its drama and fascination," according to Rakove (1996, 92).

A close reading of Madison's own Convention notes shows how Sherman put his formidable political skills to work for his agenda. Fellow politicians considered Sherman shrewd and "cunning as the devil" (RFC III, 88–89; Rossiter 1966, 91). They credited him with such political coups as the acquisition of Connecticut's Western Reserve in Ohio, an area physically the size of Connecticut itself (Boardman 1938, 160; Collier 1971, 15, 146–48; PJM 9, 61). Sherman was the first delegate to inject concerns about political feasibility into the debates, warning the Convention against making "too great inroads on the existing system . . . by inserting such as would not be agreed to by the States" (RFC May 30, I, 34–35). On some of the most critical Convention issues—representation in the Congress and presidential power and selection—Sherman skillfully declared an impasse, urged that the issue be delegated to a committee, and then served on the committee and shaped its solution (RFC July 2, I, 511; July 9, I, 560; August 31, II, 481). These *ad hoc* committees took up the Convention's most divisive design issues, forged a coalition of committee members (generally one from each state delegation) around mutually dependent design agreements, and reported a plan that structured the subsequent voting agenda on these issues. In all, Sherman managed to serve on five key Convention committees that played a large role in settling many of the Convention's most fundamental and sensitive political issues: congressional representation, the apportionment of House seats, the national assumption of state debts, the regulation of tariffs and ports, and presidential selection and powers (RFC July 5, I, 526; July 9, I, 652; August 18, II, 322; August 25, II, 418; August 31, II, 481). For the most part, the reports of these five committees became incorporated into the final Constitution.

Sherman skillfully used rhetoric, timing and compromise to manipulate the design agenda and alternatives (Riker 1996 termed these skills "heresthetics"). Sherman slashed at Madison's abstractions with Ockham's Razor, incisively questioning the need for

[2] Dickinson agreed with Madison and disagreed with either Sherman or Ellsworth on: national inferior courts (RFC June 5, I, 125), direct election of the House (June 6, I, 136), the national veto (June 8, I, 167), a three-year term for House members (June 21, I, 360), limiting the national electorate to freeholders (August 7, II, 202), state provision of salaries for national legislators (August 14, II, 292), the definition of rebellion against the United States (August 17, II, 318), the definition of treason (August 20, II, 349), and the national taxation of exports (August 21, 361). He also supported Madison on the creation of an executive council (September 9, II, 542). Dickinson opposed Madison on: the joint exercise of the executive veto (June 6, I, 140), the selection of the Senate by state legislatures (June 7, I, 153), specifying property qualifications for federal office holders (July 26, II, 123), the origination of revenue bills in the House (August 13, II, 278), the definition of felonies on the high seas (August 17, II, 316), national government control of the militia (August 18, II, 331), and delegating an unresolved presidential election to the entire Congress instead of the Senate (September 5, II, 513).

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such proposals as the national veto, proportional representation in both houses of Congress, and special ratifying conventions for the new Constitution. Sherman used his adversaries' own claims to frame issues in a way that weakened their resolve and united Madison's opponents. By comparing states to individuals, for example, Sherman drew on the emotionally powerful and widely shared narrative of republicanism itself to defend equal state influence (RFC June 28, I, 450). While Madison reasoned that "extending the sphere" of government would strengthen the national government by helping control factions, Sherman reversed Madison's logic with the pithy equation that "[t]he small States have more vigor in their Gov[ernmen]ts than the large ones, the more influence therefore the large ones have, the weaker will be the Gov[ernmen]t" (RFC July 7, I, 550). Sherman displayed a keen sense of political timing, injecting a telling point or exploiting his opponents' concessions at opportune moments. Most notably, Sherman proposed a bicameral compromise on representation at the start of the week's business on Monday morning, June 11, an optimal moment for undercutting the Virginia Plan with an alternative agenda. He staked out positions diametrically opposed to Madison and then expressed a readiness to compromise on a middle ground, drawing the delegates to his apparently moderate position while making Madison's position seem unwarranted or extreme (Collier 1971, 147; RFC June 21, I, 359; June 28, I, 450; July 7, I, 550). Like Madison, Sherman pressed his agenda when he perceived an advantage and tacked toward conciliation when the political winds were less favorable (Collier 1971, 177; 1973, 10, 47, 61, 68, 71–73; Rossiter 1966, 91).

Madison's Convention opponents changed his proposed design for the Constitution by derailing his political strategy for the Convention and then altering his substantive plans for national authority and policymaking. As a result, Constitutional design emerged more as a by-product of many specific design choices than as a deliberate choice of one plan instead of another. The Convention's choices were path-dependent, made in a sequence in which choices reflected political calculations set in motion by earlier choices and then affected subsequent political calculations (on path dependence, see Pierson 2000).

SPOILING MADISON'S POLITICAL STRATEGY

Madison's attack on state influence in the national government immediately began to mobilize his opponents. On the first full day of debate, Madison groped for language that would commit the Convention to population-based representation in both legislative houses. The Convention tabled the issue after Delaware's delegates invoked their instructions to protect equal state votes in Congress (RFC May 30, I, 34–35, 37, 42). The longer the delegates put off the resolution of the representation issue, the greater the opportunity for Madison's opponents to raise pointed questions about the fairness and the consequences of proportional representation. Dickinson and Sherman struck at the heart of Madison's Convention strategy by urging the delegates to focus on the specific authority required for the national government instead of abstract principles of representation in it (RFC May 30, I, 34–35, 42; June 7, I, 150). This tactic invited the delegates to factor the nation's most divisive interstate conflicts into their decisions about the rule of representation. Sherman's claim that "the objects of the Union . . . were few" lured Madison himself into discussing the acutely divisive race issue openly for the first time (RFC June 6, I, 133–36).

Opposition to population-based representation in Congress was only a part of a broader defense of state agency in national policy-making. At every turn, Sherman pressed to enlarge the state legislatures' influence over national policy-makers. He questioned the need for direct election of the House, selection of the Senate by the House, presidential veto power, creation of inferior national courts, and bypassing of state legislatures to ratify the Constitution. He insisted that the national executive be "absolutely dependent" on Congress (RFC June 1, 4–5, I, 65, 68, 99, 122; June 5, I, 122, 125; June 6, 133; June 7, 151, 154). When Madison ally James Wilson warned that state officials, the principal "losers of power," were the chief obstacles to popular control of Congress, Sherman portrayed his opponents' position as radical (RFC June 6, I, 133). On June 7, Dickinson moved that members of the Senate be chosen by the state legislatures. Sherman seconded him. The motion forced Madison to concede that, if adopted, the provision would either require a huge Senate or would "depart from the doctrine of proportional representation" (in a footnote, Madison implied that the motion was meant to undermine proportional representation in the Senate). Nevertheless, the Convention gave the proposal unanimous approval. Virginia's George Mason made the important concession that the state legislatures "ought to have some means of defending themselves" against the "encroachments" of the national government (RFC June 7, I, 150–52).

Madison's Convention opponents provided increasingly precise and credible warnings about the threat to the rest of the states if the largest ones could dominate national policy. Gunning Bedford accused Virginia and Pennsylvania of conspiring to exercise "an enormous & monstrous influence" that would shape commercial and manufacturing policy (RFC June 8, I, 167–68, 172). David Brearley, Chief Justice of the New Jersey Supreme Court, then postulated that proportional representation would allow three states, Virginia, Pennsylvania, and Massachusetts, to "carry every thing before them in Congress" (RFC June 9, I, 177). Sherman soon argued that, without equal state representation in at least one branch of Congress, "three or four of the large States would rule the others as they please" (RFC June 20, I, 343). Oliver Ellsworth hypothesized a commercial treaty enacted by three or four large states to benefit their ports at the expense of other states. He warned that in a Congress entirely based on proportional representation, "4 States will Gov[er]n 9 States . . . " (RFC June 30, I, 484–85,

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TABLE 3. Votes Cast in Opposition to the Virginia Delegation on 28 Contested Convention Votes, May 31–June 19

	CT	NJ	SC	DL	NY	MD	GA	NC	PA	MA
Votes cast against Virginia's position	22	17	14	13	11	10	9	8	5	4
Percentage	79%	61%	50%	46%	39%	36%	32%	29%	18%	14%

I, 503). The more Madison and Wilson denied that the largest states would collude to dominate rest, the more the apparent Convention alliance of the Virginia, Pennsylvania and Massachusetts delegations belied that argument (see Table 1, McDonald 1985, 219, and RFC June 19, I, 321; June 28, 447–48).

When Madison needed quick and decisive victories in the Convention's first three weeks, Connecticut's delegation fought him more than any other. Table 3 shows the number of times a state cast a vote contrary to Virginia's "aye" or "nay" vote on the 28 contested votes through June 19, when the delegates rejected the New Jersey Plan. The notion of contested votes at the Convention is inspired by the idea of *Congressional Quarterly*'s "key votes;" fixed rules were used to identify the most closely divided votes.[3] This table provides a rough approximation of opposition to Madison's own preferences (as the Convention slowly progressed into July, Virginia's vote occasionally departed from Madison's preferences). Connecticut voted against Virginia most of the time. New Jersey, Delaware, and South Carolina voted against Virginia about half the time. South Carolina, which also sent a politically talented delegation, consistently backed Virginia on proportional representation, while it tended to vote against Madison in favor of protecting state agency in national policy-making. At the same time, the partnership of Virginia, Massachusetts and Pennsylvania on most votes could hardly be missed by friend or foe.

The opposition congealed. On Monday morning, June 11, Sherman moved that suffrage in the first house be proportional to free inhabitants and that states be equally represented in the Senate. "[E]ach State ought to be able to protect itself," claimed Sherman, throwing Mason's concession back at Madison (RFC June 7, I, 152–55; June 11, I, 196). When Sherman and Ellsworth pressed for a quick vote, Madison's coalition of large and southern states turned back Sherman's motion by a six-to-five margin. This ballot showed that Connecticut, New York, New Jersey, Delaware and Maryland had solidified into an opposition bloc instead of drifting individually to Madison's position, as he had hoped. Four days later, Madison's opponents introduced their collective "New Jersey" Plan, aiming to change the agenda by enumerating a limited number of specified public goods minimally necessary for ensuring adequate national power. The New Jersey Plan included most of the additional enumerated powers favored by Sherman and Dickinson, including authority to impose tariffs on foreign goods, to impose taxes on postage and to regulate interstate and international commerce. The plan added that national laws would "be the supreme law" and binding on the states, subtly a much more passive form of national authority that invited the national courts, rather than Congress, to set limits on state policy discretion. Congress would continue as a unicameral body with equal representation for each state, would appoint a national executive for a single term, and would remove the executive if a majority of State executives petitioned for it (Hutson 1987, 85–86; O'Connor 1979, 145–47; RFC I, June 15, 242–45; III, 178–79, 611–15).

Connecticut's delegates increased their political leverage as a pivotal delegation by voting against the New Jersey Plan they themselves had helped write (RFC June 19, I, 322). This vote made the Sherman and Dickinson bicameral compromise an appealing, practical, and necessary position halfway between the New Jersey and the Virginia plans. Mutual wariness increased as substantive economic issues, such as the Western lands, trade, and slavery, became indivisibly intertwined with representation. Connecticut's delegates relentlessly emphasized the need to arm the states for political self-defense by providing them agency in national policy-making institutions (RFC June 25, I, 401–3; June 29, I, 461, 466; June 30, I, 485–86, 490–92, 500). Individual delegates from the large states such as Mason, Pennsylvania's Benjamin Franklin, and Massachusetts's Elbridge Gerry were beginning to concede that argument and bend toward compromise (RFC June 25, I, 404, 407, 417; June 30, I, 488; July 2, I, 514). Madison sounded a desperate note when he used slavery to try to redefine the Convention's fundamental cleavage to protect the slave states and hold them in his coalition (RFC June 30, I, 486–87).

As soon as Madison's six-state coalition held together to win a final vote on proportional representation in the House of Representatives, Oliver Ellsworth moved to establish equal state representation in the

[3] The official Convention journal recorded 569 numbered votes. Of these, 205 met the following criteria for contested votes. First, these were votes in which no fewer than 25% of the states opposed no more than 75% of the states; when 10, 11, or 12 total votes were cast, at least three states voted "aye" or "no" against the majority, and when eight or nine total votes were cast, at least two states voted "aye" or "no" against the majority (a borderline vote was included as a contested vote; for example, Vote 5, a vote of six for, two against, and two divided, on the issue of popular election of members to the House, also was included). Second, these were politically substantive votes; procedural votes (such as adjournment or to commit a provision to committee) were excluded unless the record provided some sort of evidence that the vote was a proxy for a substantive issue. Third, the votes had to be confirmed by two sources; because both Madison and the official Journal are sometimes inconsistent, all votes were excluded that were not confirmed by both sources or by one source and another delegate's notes. Twenty-eight contested votes occurred from May 29, when the Virginia Plan was presented, through June 19, when the New Jersey Plan was defeated.

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Senate (RFC June 29–30, I, 468–69, 484–85). The Convention deadlocked on Senate representation on July 2, with the three large states and the Carolinas in favor, the five states involved in drafting the New Jersey Plan opposed, and Georgia divided. According to Luther Martin, Daniel of St. Thomas Jennifer, a Maryland ally of the Madison coalition, was absent when the vote was taken. Jennifer's vote would have divided the Maryland delegation and decided the outcome in Madison's favor. Rufus King asked that the vote be reconsidered after Jennifer arrived but was refused (RFC III, 188, note). Sherman declared that "we are at a full stop" and convinced the delegates that political expediency required a committee to iron out the differences. Madison strongly opposed the idea of a committee, but the Convention approved it anyway. Even a majority of the Virginia delegation abandoned him. The committee, stacked with Madison opponents and compromisers, initially included Ellsworth, Martin, Yates, and Bedford from the states outside Madison's coalition and the conciliatory Gerry, Franklin, and Mason from the large states. Sherman managed to replace Ellsworth when the latter "was kept away by indisposition." (Ellsworth's indisposition was providentially brief, perhaps suspiciously so, because the delegates must have considered Ellsworth sufficiently fit to serve on the committee when it was elected at the end of the day on Monday July 2, and he attended when the delegates reconvened the following Thursday.) The committee proposed the bicameral compromise, later known as the "Connecticut compromise," on July 5 (RFC June 30, I, 484–85, 492; July 2, I, 511–16; July 5, I, 526–27, 532).

Madison's initial ambitions for the reconstituted government's design were demolished during the next eleven days. In this period, a few potential allies defected to the compromise plan for bicameral representation, while key southern delegates defected from Madison's plan for broad national authority.

Though the issue receives little attention in accounts of the Convention, the apportionment of the House of Representatives now played a major role in tipping the Convention's balance against Madison. The delegates recognized that the first Congress would make portentous, path-setting decisions about "principle acts of government" (Gerry, RFC August 21, II, 357), including tariff schedules, the disposal of state and national debts, the creation of new offices and courts, major appointments, and the location of the national capital. The committee that reported the bicameral compromise did not specify each state's allocation of seats in the first House of Representatives; instead, it simply allocated one representative in the lower house for each 40,000 inhabitants, counting three-fifths of slaves. Madison ally Gouverneur Morris moved to specify each state's apportioned seats in the first House. The delegates appointed a new committee of five to propose definite numbers. This committee included Morris, Nathaniel Gorham, and Rufus King of Massachusetts, Edmund Randolph of Virginia, and John Rutledge of South Carolina—all representing states in Madison's coalition. The Convention put off debate on Senate apportionment pending the report of the committee (RFC July 5, I, 533–34; July 6, I, 540, 543). On July 9, this committee of five recommended a House with 56 seats: Virginia would have nine seats, Pennsylvania eight, Massachusetts seven, New York and the Carolinas five seats each, Connecticut and Maryland four each, New Jersey three, New Hampshire and Georgia two, and Rhode Island and Delaware one each. The report proved that Sherman's and Ellsworth's warnings were right: Proportional representation could indeed put national power in the hands of as few as four states. Massachusetts, Pennsylvania, and Virginia together held 43% of the proposed House seats. New York, North Carolina, or South Carolina individually could play a pivotal role in creating a four state coalition in the House that controlled a majority of the chamber's votes (RFC July 9, I, 559).

This proposal met with a swift backlash. Sherman challenged the report, pointing out that it "did not appear to correspond with any rule of numbers, or of any requisition adopted by Cong[ress]." He moved to refer the report to a committee of 11 members, one from each state present. Morris and Randolph quickly backed away from their own report, and the Convention overwhelmingly approved this new committee. Revealingly, South Carolina and New York voted against the creation of a second committee. On July 10 this committee on House apportionment, on which Sherman served, proposed a 65-seat House (that is, a multiple of thirteen). Compared to the previous plan, smaller states gained seats relative to larger ones, and four states could no longer form a majority in the House. This allocation was approved and written into the final Constitution, despite repeated efforts to add a seat here or subtract a seat there. By making it impossible to form a four-state majority, the new House apportionment reduced the potential political clout of New York and each of the Carolinas, compared to the preceding report. North Carolina's Hugh Williamson responded with alarm: "The South[ern] interest must be extremely endangered by the present arrangement." Two New York delegates left the Convention after July 10 and never returned. South Carolina's delegates began to battle furiously to increase their leverage by insisting on full representation of slaves in apportioning representatives, reducing the apportionment of seats to the northern states, and increasing the apportionment of seats to the south (RFC July 10, I, 566–68; July 11, I, 580). The Convention's dynamics had shifted against Madison irreversibly.

Massachusetts, North Carolina, and Georgia abandoned Madison's coalition and joined with Connecticut, New Jersey, and Delaware to defeat an eleventh-hour proposal to rescue proportional representation in the Senate. At the start of the next week, North Carolina joined Connecticut, New Jersey, Delaware, and Maryland to form a majority for the final vote on the Connecticut compromise. Because Massachusetts divided on this vote, Madison could only muster the votes of Virginia, Pennsylvania, South

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Carolina, and Georgia against the bargain (RFC July 14, II, 12; July 16, II, 15).

ALTERING MADISON'S SUBSTANTIVE PLANS FOR THE CONSTITUTION

With Madison's political strategy for the Convention now spoiled, large and southern states pursued independent strategies to defend their comparative advantage. Many southern delegates decisively aligned with Sherman's position that national authority should be limited and enumerated. At the same time, Madison and his closest allies fought to assure that the president would have authority to pursue national interests against a Senate they now viewed as the agent of the states.

Dividing Government Authority

Prior to the Convention, Americans took for granted the principle that sovereignty could not be divided among governments in the same area. They accepted British legal scholar Sir William Blackstone's contention (1765–69) that sovereignty must be lodged in a single "supreme, irresistible, absolute, uncontrolled authority" (49). Accordingly, Madison, Gouverneur Morris, James Wilson, Alexander Hamilton, and Rufus King insisted that national authority could not be shared with the states (RFC May 30, I, 43–44; June 8, I, 167, 172; June 9, I, 180; June 19, I, 322–24). At first, the delegates raised few questions about broad national sovereignty, voting for Madison's national veto of state laws. Only Sherman voted against this early endorsement of the national veto (RFC May 31, I, 54).

From the start, Sherman took the lead in making the innovative counterargument that the state and national governments "should have separate and distinct jurisdictions" (RFC June 7, 1, 150). When Gouverneur Morris argued "that in all communities there must be one supreme power, and one only," Sherman merely conceded "that the General & particular jurisdictions ought in no case to be concurrent" (RFC May 30, I, 34–35, 42). By linking this admission to the claim that the existing system should not be greatly changed, Sherman subtly established the framework for separate realms of policy authority for both the state and the national governments. Later, he dexterously used core republican values to defend states' rights, reminding the delegates that "each State like each individual had its peculiar habits usages and manners, which constituted its happiness. It would not therefore give to others a power over this happiness, any more than an individual would do, when he could avoid it" (RFC June 20, I, 341–43; see Ellsworth, RFC June 30, I, 492). Ellsworth's succinct formulation, "We were partly national; partly federal," irked Madison at the Convention, but it accurately expressed Connecticut's aspiration for Constitutional design as well as the working rules of the existing political system (RFC June 29, I, 469; RFC July 14, II, 8–9). A vote to broaden the national veto was defeated soundly in early June, supported only by the three large states and opposed by the rest of the south (RFC June 8, I, 164–68, 171–72). Madison's plan for broad national authority was beginning to crack.

As soon as the Convention adopted the bicameral compromise, several delegates from the South decisively shifted to become "state federalists" who supported explicit protections for the states' policy prerogatives. Edmund Randolph and most of South Carolina's delegates broke with Madison's original plan and called for limited, enumerated national powers (RFC July 16, II, 17). "The security the South[er]n States want," said Pierce Butler of South Carolina, "is that their negroes may not be taken from them" (RFC July 13, I, 605; see General Pinkney, July 23, I, 95). South Carolina's urge to protect its vital economic assets played into Connecticut's hands. On July 17, Sherman asserted that the national veto of state laws approved in May was not necessary. Pennsylvania, South Carolina, and Georgia joined the four economically disadvantaged states to remove the national veto from the plan (RFC July 17, II, 27–28). Nine days later, the Convention turned over its work to a five-member Committee of Detail, which included Oliver Ellsworth, John Rutledge, James Wilson, the conciliatory Nathaniel Gorham, and the back pedaling Edmund Randolph. Ellsworth, Rutledge, and Randolph now constituted a committee majority for limited and enumerated national powers (Hueston 1990). The Committee of Detail's August 6 draft dropped the Virginia Plan's broad grant of national authority and marked out a list of suitable national powers and of powers forbidden to the states. It authorized the national government to make all laws "necessary and proper" for implementing these powers (Rakove 1996, 178; RFC II, 167–68). It limited national authority to commerce "with foreign Nations & amongst the several States," in effect excluding intrastate commerce from national control (RFC II, 142–43, 168–69, 183). The Committee thus underwrote the states' power to manage economic affairs within their borders and narrowed the national authority to international and interstate relations.

When Madison and his closest allies subsequently fought to expand national economic powers, Sherman and his allies defeated them almost entirely. To the very end of the Convention, Madison insisted that interstate and intrastate commerce were inseparable and should be regulated wholly by the national government (RFC September 15, II, 625). Sherman thought the distinction was largely self-evident and urged that the states should retain the authority to regulate their internal commerce, with disputes resolved by the courts or Congress (RFC III, 615). Sherman's position prevailed because the defeat of proportional representation caused southern delegates to defend their state policy prerogatives against a national government whose policy direction seemed ever more uncertain. Southern delegates sought supermajority rules in Congress for commercial treaties, aiming to impair national treaties that could harm their export economies. While many northerners inside and outside

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Madison's original coalition resolutely opposed slavery, Connecticut played a pivotal role as a New England delegation that defended the South's policy prerogatives. Sherman argued that, "as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, & as it was expedient to have as few objections as possible to the proposed scheme of Government, he thought it best to leave the matter as we find it" (RFC August 22, II, 369, 372–75). Yet another committee developed a grand compromise on these sticky issues of commercial authority. The committee's "understanding" allowed the import of African slaves until 1800 while requiring only simple legislative majorities to enact commercial treaties (RFC August 24, II, 400). This compromise more clearly demarcated the spheres of national and state policy authority. The national government could provide commercial treaties required by national sovereignty, but it could not interfere with the way a state managed economic assets it considered vital, even when state policy protected a practice as reprehensible as slavery (RFC August 29, II, 449–53).

Sherman also successfully fought proposals by Madison and others to authorize national canal construction, corporate charters, a national university, and militia regulation (RFC August 18, II, 326, 330–33; September 12, II, 587–88; September 14, II, 615–16). Sherman, though, showed no hesitation to use national law to limit negative externalities of policy made by other states. He supported an absolute national prohibition on states' power to issue currency (RFC June 8, I, 165; August 28, II, 439).

Protecting State Agency in National Policy-Making

After July 16, the struggle to control the national policy-making process focused on specific choices about the powers and selection of Congress, the president, and the courts. Once the Convention had agreed to make the Senate the agent of the state governments, Madison and several allies took up the fight to make the president independent of Congress, or, as Madison put it, to give the president "free agency with regard to the Legislature" and to broaden presidential powers (RFC July 17, I, 34; July 19, I, 56). Confident that the most vulnerable states had a credible defense in the Senate, Sherman advanced proposals to make national policymakers as dependent on the Senate as possible (RFC July 17, I, 29; July 18, II, 41–43; August 24, II, 405–6). The Committee of Detail's August 6 draft was more consistent with Sherman's preferences than Madison's. State legislatures would directly choose and pay U.S. Senators and would determine voter qualifications, districts, and time for U.S. House elections. Congress would appoint the president, and the states' national policy agent, the Senate, had sole power to appoint Supreme Court judges and ambassadors, make treaties, and settle disputes among states. Because the plan provided that the House and Senate would vote separately to appoint the president, the Senate had the power to veto a presidential candidate favored by the House. Sherman relished that possibility (RFC August 6, II, 177–89; August 7, II, 196–97).

Confronting the prospect of a powerful Senate serving as the agent of the state governments, Madison and his allies redoubled their efforts to separate the president from the Senate. When the Convention reached an impasse on presidential selection, Sherman again urged the delegates to create a committee to deal with such unfinished business. This Committee on Postponed Matters consisted of several of the Convention's prominent protagonists, including Madison, Sherman, Dickinson, and Gouverneur Morris. On September 4, the committee recommended in effect a grand compromise on the presidency. State legislatures would determine how presidential electors would be chosen. The number of electors allocated to a state would equal the sum of its House and Senate seats, a formula equivalent to a joint vote of the House and Senate and one that modestly equalized the weight of the states in choosing the president. The Senate would appoint the president if all candidates fell short of a majority (RFC August 24, II, 403; August 31, II, 481; September 4, II, 497–500; III, 132). The committee also compromised on the selection of other officers and judges by providing for presidential appointment with a Senate veto (RFC September 6, II, 523; September 7, II, 538–40). Finally, the committee provided that the president would have power to make treaties but would need the approval of a two-thirds majority of the Senate (Rakove 1996, 89–90; RFC September 4, II, 493–94, 498–99). Sherman, Rutledge, and others with judicial experience particularly supported an independent policy role for the courts. Accordingly, the courts' role expanded incrementally and with little opposition (Rakove 1997).

When the Convention reconsidered the Constitutional amendment process in its final week, debate turned on whether that process posed a greater threat to the states or to the national government. Sherman proposed that Congress submit amendments to the states. The Convention approved this method, specifying ratification by three-quarters of the states, a provision that became the most common method for amending the Constitution. Madison then moved to include the other amendment alternatives, while Rutledge insisted that the slave trade be place beyond amendment until 1808. The Convention overwhelmingly approved both proposals (RFC September 10, II, 557–59).

On its last full day of debate, Sherman sandbagged the Convention. Calling attention to the precedent set by Rutledge's slave trade provision, he moved to add that "no State shall without its consent be affected in its internal police, or deprived of its equal suffrage in the Senate." The Convention defeated Sherman's last minute motion, with only Connecticut, New Jersey, and Delaware in favor. However, the "circulating murmurs of the small states" prompted an immediate reassessment of the provision for Senate representation. By a unanimous vote, equal state representation in the Senate became the only provision that could never be changed by Constitutional amendment (RFC September 15, II, 629–31).

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THE INFLUENCE OF MADISON'S CONVENTION OPPONENTS

James Madison played a principal role in bringing the U.S. Constitution into existence. Without his pre-Convention efforts to build an agenda, a supportive coalition, and Convention legitimacy, it is hard to imagine how the delegates would have produced a document endorsed by political leaders from every state but Rhode Island. His Convention notes remain the most definitive record of its proceedings. His tactic for popularly elected state ratifying conventions (which succeeded despite Sherman's opposition) and his vigorous advocacy of the Constitution in New York and Virginia probably were necessary for the Constitution's adoption. Perhaps the most important proponent of religious freedom in the United States (Wills 2002), Madison shepherded the Bill of Rights through the first Congress. As a leader in the House of Representatives, President George Washington's sometime ghostwriter, founder of the Democratic Republican party, Secretary of State, President, and esteemed elder statesman, Madison subsequently exercised a singular influence in Constitutional development.

Bringing the Constitution into existence was very different from designing its provisions, however. Madison failed to persuade the delegates to include the three most significant features of his spring, 1787 plan for reconstituting government. First, he sought very broad national authority to regulate commerce, levy taxes, guide economic development, and veto state laws. Instead, the Convention produced a national government with comparatively narrow, specified authority. The original Constitution underwrote the state governments' authority to govern routine activities of most Americans, and it made national preemption of state authority much more difficult than Madison hoped. Second, Madison sought to eliminate state agency in national policy-making entirely. Instead, the Convention thrust into the middle of the national policy process an assembly of state agents, a Senate that would represent each state government on an equal basis. The Constitution gave to this Senate the special privileges of consenting to treaties, approving presidential appointees, and potentially convicting the president of impeachable offenses. Third, Madison sought to establish relative population or wealth as the basis for apportioning seats in both the House and Senate, and he needed to achieve this goal very soon after the start of Convention deliberations. Instead, the Convention compelled him to accept an unwanted compromise on this central goal. Roger Sherman, John Dickinson, and other delegates from the economically disadvantaged states defeated Madison's aspiration for a relatively brief meeting driven by a swift agreement on proportional representation in both houses of Congress. Instead, they changed the Convention's dynamics, forcing a three and a half–month political struggle largely defined by Madison's aspirations for the nation's political future and Sherman's defense of the nation's political present.

Endorsements by Roger Sherman and his Connecticut colleagues legitimized several other Constitutional provisions, thus facilitating their inclusion: a bicameral legislature, an independently selected president checked by the Senate, temporary tolerance of the slave trade, and an independent judiciary with the power of judicial review of state laws. Sherman also legitimized a host of less important provisions, such as the designation of the Vice President as President of the Senate and of the House of Representatives as the final arbiter of presidential selection (RFC September 6, II, 527; September 7, II, 537).

Evidently, the states outside of Madison's coalition considered the Constitution a success for their interests. They had reduced the two main threats posed by the Virginia Plan by retaining control over their internal policy and by making it hard to use the national government to harm their constituents and their economic assets. They achieved their three main objectives. The Constitution nationalized specific public goods, established strong defenses for their existing advantages, and allowed for the nationalization of further public goods only if proponents could meet the high transaction costs required for making public policy in the new national system. Soon after the signing of the Constitution, Roger Sherman and Oliver Ellsworth declared victory in a letter to their governor. The Convention "endeavoured to provide for the energy of government on the one hand, and suitable checks on the other hand, to secure the rights of the particular states, and the liberties and properties of the citizens." Just as in the Confederation Congress, Connecticut would continue to enjoy a one-thirteenth share in selecting important national policy-makers: Connecticut would fill one-thirteenth of the seats in the new U.S. House of Representatives and Senate and cast one-thirteenth of the votes in the Electoral College. Connecticut's delegates had secured a satisfactory distribution of national and state public goods. "Some additional powers are vested in congress, which was a principal object that the states had in view in appointing the convention. Those powers extend only to matters respecting the common interests of the union, and are specially defined, so that the particular states retain their sovereignty in all other matters" (RFC III, 99–100). Madison would not have been able to disagree with this assessment.

MADISON'S CONVENTION OPPONENTS AND AMERICAN POLITICS

The original Constitution's design is not the product of a systematic philosophical plan, but the by-product of a path-dependent sequence of political compromises largely forced on Madison and his allies by their Convention opponents. No one in May 1787 anticipated the final product. No delegate told the Convention that the result was philosophically superior to any other theoretical plan. Instead of fully solving their central political dilemma—getting better national public policy from a republican national government that would not itself threaten vital interests—the framers

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narrowed the scope of the problem, allocating some authority clearly while delegating to the political process the divisive issues that remained too intractable in the summer of 1787. Constitutional rules about policy agency and policy-making set constraints on this political process. For 39 signers, the document met the criteria for republican government and seemed likely to produce better policy outcomes than the status quo. Subsequently, constructing the Constitution essentially has been a political task (Whittington 1999).

The political accommodations on which Madison's Convention opponents insisted have had an enduring impact on American political development. Federalism illustrates this impact as well as any Constitutional feature. American federalism was not designed simply to check national power, because too many of the Convention delegates wanted the national government to have some very effective powers to provide for currency regulation, commercial treaties, a national revenue stream, national defense, and other nationalized public goods beneficial to their constituents and the nation. While Madison battled for extensive national sovereignty, Roger Sherman advanced the idea of dual sovereignty as a justification for nationalizing some public goods while protecting the states' remaining autonomy and political prerogatives. Federalism in the Constitution emerged from a long series of interdependent, issue-by-issue compromises, guided by the ongoing clash between the Madison and the Sherman positions on *which* level of government would control *which* tools of public policy and how each level would use those tools to govern politics. Sherman and his allies got a limited nationalization of public goods, a list of enumerated national powers, state control of residual policy authority, and some defensive tools that states could use to fight the aggregation of power by the national government. Despite Madison's efforts, the national government would manage only international and interstate commerce, while the states would govern commerce within their borders. Madison and his allies got a sort of ersatz national veto vested in the federal courts through the supremacy clause and some Constitutional language that could be used to press for the expansion of national power on a case-by-case basis.

The delegates artfully blurred many politically portentous terms and boundaries between state and national authority and then handed the ensuing boundary issues over to the politicians who would contest them according to the newly established policy-making rules. They neither defined this boundary clearly nor provided definitive guidelines for resolving these future conflicts (see also Rakove 1996, 201). The delegates never specified precisely what kinds of public goods would be provided by the states and which by the national government. They did not specify a list of the civil rights and liberties to which Americans would be entitled; instead, Madison put forward a bill of rights in the first Congress after promising his constituents he would do so. Sherman's own list of essential national powers was glaringly vague (RFC June 6, I, 133), and the delegates collectively were at a loss to define key warrants of national authority such as "direct taxes" (RFC August 20, II, 350). The Committee of Detail's insertion of the "necessary and proper" clause strongly suggests that even Connecticut's delegates were willing to permit the expansion of national power to cover hard cases and unexpected contingencies. The delegates' explicit rejection of Sherman's proposal to place state police powers beyond Constitutional amendment demonstrates their desire to leave the range of national authority fungible. National power could be expanded but could not be expanded at will. They could not agree on precisely how elastic national power should be, but they could agree that by raising institutional defenses to lower the probability of outcomes they feared, they could reduce the threat that the national government would take advantage of their constituents. States would influence national policy outcomes, and their agents could delay, defeat, or extract concessions for the expansion and use of national powers (see also Wechsler 1955).

Political opponents have been using federalism as a political weapon ever since the first meeting of the reconstituted Congress in 1789. The most wrenching conflicts in American political development repeatedly have been displaced by battles over the definition of the dividing line between state and national authority. Competing claims of states' rights and national responsibility have structured the most substantive political conflicts of American political development, including slavery, the regulation of business and investment, civil and criminal rights, religion, welfare, health, education, the environment, alcohol, and a host of other issues. The ambiguous boundary between interstate and intrastate commerce became a flashpoint for many significant struggles over the control of the nation's economic development. In the political struggle between employers and workers since the Civil War, political opponents have used federalism as a weapon to allocate policy authority over the hours Americans work, the wages they are paid, the conditions of their workplaces, the age at which they begin worklife, and the terms on which they can organize trade unions to advance their interests. The Constitution's ambiguous allocation of policy authority contributed to an American trade union strategy that left the United States, uniquely, without a distinct social democratic or labor political party (Robertson 2000).

Political interests still utilize the Constitution's unsettled political frontier of federal authority as an expedient tool for achieving substantive policy outcomes. Often, "states rights" and decentralization are associated with conservative policy agendas, such as that of Ronald Reagan. Liberals, however, regularly use states' rights arguments when they help achieve the policy outcomes they advocate, just as conservatives regularly invoke national authority to engineer the outcomes they prefer. In the 1990s, liberal state attorneys general used state policy authority to extend consumer protection, prosecute tobacco companies, and challenge Microsoft's market dominance. Democrats on the Federal Communications Commission supported continued state regulation of telecommunications

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services in 2003, while Republican chair Michael Powell insisted on national telecommunications rules permitting more latitude to economic actors. When the gay marriage issue arose early in the 2004 presidential campaign, Democratic candidate Howard Dean sought to deflect the issue from the national campaign by arguing that the states should exercise authority over the issue. Three days after Missouri voters overwhelmingly approved an amendment to the state constitution banning gay marriage, Democratic Vice-Presidential nominee John Edwards made a similar argument for states' rights (Mannies 2004). Though liberal Democrat Al Sharpton and conservative Republican George Bush had completely different agendas and constituencies, both candidates argued that the gay marriage issue should be nationalized rather than left to state discretion.

Dual federal and state sovereignty, then, fundamentally is a political invention, devised by skilled politicians with deliberate and expedient imprecision. Searching for the definitive original intent for the specific division of powers between the nation and the states is a fool's errand.

CONCLUSION

The Convention delegates who opposed James Madison's Virginia Plan have had a far greater impact on American politics than most Americans appreciate. Opponents of the Virginia Plan aimed to add a few carefully chosen powers and offices to the national government while, at the same time, protecting most of the states' policy prerogatives and ensuring that the state governments would influence the way the national government used its powers. Undeniably, Madison's opponents achieved much of what they sought. Led by Roger Sherman and the Connecticut delegation, they spoiled Madison's strategy for the Convention. They altered key features of his Constitutional plan and engineered substitute provisions better suited to their states' political interests. Because of Sherman and his Convention allies, the Constitution established a national government with less authority and less independence of the states than Madison initially wanted. Madison's Convention opponents, then, made the basic, enduring rules of American politics much more protective of the states, and more resistant to geographical redistribution, than the rules Madison set out to put in place.

Because American politicians have had to play by these basic rules since 1789, Sherman and his allies have had a cumulative and lasting effect on the way American politics has evolved. Madison's Convention opponents helped produce government that is more complicated and harder to use than any delegate expected (Robertson 2005). Their influence endures in Constitutional provisions that protect the states' policy authority, that safeguard equal state influence in national policy-making through the Senate, and that provide for a state-based system for selecting the president. If Madison had had his way, for example, the national government would have enjoyed unambiguous authority to control *intra*state commerce. If the national government exercised this uncontested commercial authority from the beginning, America's most explosive policy conflicts, including slavery, trade unions, and civil rights, would have played out differently, changing Americans' political inheritance in fundamental ways.

Yet if either Madison or his main opponents had walked away from the Constitutional Convention, it is difficult to imagine how the meeting would have produced a comparable political success. The political synergy between Madison and Sherman, then, very well may have been necessary for the Constitution's adoption. Ironically, his opponents' achievements also became indispensable for the success of Madison's own subsequent political career. During the Convention, Madison concentrated on strengthening political institutions to pursue national interests and ignored the possibility that national interest could be pursued in ways antagonistic to his own vision for the nation's future. But their inherently incompatible visions of national interest opened a political chasm between U.S. Representative Madison and Treasury Secretary Alexander Hamilton in the early 1790s. During the Convention, Sherman concentrated on defending the political economies of the states and ignored the difficulties of drawing a clear distinction between state and national authority. It was Madison, not Sherman, who was among the first American politicians to seize on this distinction. Madison, defending "state's rights," used Constitutional guarantees of state policy authority to build a national coalition of diverse interests opposed to Hamilton's program for national economic direction. Madison's political career after 1787, like America's political development, owes a considerable—if unappreciated—debt to his opponents' influence on the Constitution's design.

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