CHAPTER XV

Toward the Philadelphia Convention

The Constitutional Convention of 1787 was the climactic and transforming event in the history of the Revolutionary experiment in creating republican governments. After two centuries of interpretation, the task of explaining and analyzing the Convention’s achievement still retains its inherent fascination. Two central concerns have dominated modern approaches to the framing of the Constitution. One, stemming from the much disputed writings of Charles Beard, has sought to reconstruct how specific interests and individuals aligned over the issue of creating a stronger national government. The second approach, which took its initial inspiration from the essays of Douglass Adair, has concentrated instead on tracing the origins and evolution of the ideas that found their fullest expression in the debates conducted first at Philadelphia and then in the state ratifying conventions of 1787-88.

Any convincing explanation of the triumph of the Constitution requires understanding what made the arguments of the Federalists so compelling and their innovative blend of elitist and popular politics so effective. But there is an anterior problem that also deserves consideration. What conditions and circumstances enabled the Convention to transcend the trite and unimaginative terms in which the difficulties of the confederation had been discussed during the mid-1780’s? For on the eve of the
Convention even well-placed observers could not have anticipated the actual course its deliberations were to take. In the early months of 1787 there was little reason to believe that the delegates could even agree on a plan, much less produce comprehensive reforms acceptable to the states. The most sensible predictions about the Convention’s outcome were thus healthily skeptical if not pessimistic. An understanding of the Convention has to begin by explaining how it was able to break through and radically recast the existing terms of debate, and that in turn entails asking how the cautious tactics that the putative reformers of the Articles of Confederation had originally pursued ultimately produced results they had barely hoped to achieve.

Full Circle: The Tactics of Reform

In several respects, the predicament that advocates of a stronger confederation confronted in the mid-1780’s was remarkably similar to the conditions the leaders of American resistance had struggled against in the early 1770’s. The problems of organizing a cohesive movement in thirteen separate states seemed as overwhelming in 1785 as they had in 1772. Proponents of reform recognized that the approval of congressional requisitions and recommendations required the creation of an effective supporting consensus in each of the states. Yet they also believed that their own efforts to foster an enlightened sense of national interest were, by themselves, likely to prove unavailing. However carefully they were worded, the requests and pleas Congress emitted were inherently tainted: if Congress sought powers adequate to its responsibilities, in the eyes of its critics that merely confirmed its aggrandizing designs. Congress thus stood discredited in much the same way that American radicals had found their warnings impeached after the collapse of non-importation in 1770.

Those who thought the union could not survive unless the Articles were revised found themselves relying, as had Samuel Adams before, on a belief that Americans would recognize their true national interest only after they had fully understood and experienced the character of postwar British policy. Robert Morris gave early expression to this theory in the fall of 1783, when
he argued that if Britain actually persisted in closing the West Indies to American commerce, “it will operate in favour of Amendment to our Articles of Confederation,” because “the effects of that Proclamation will very soon apply to our Feelings & like the rest of Mankind we are sooner stimulated to action by our passions than by our reason.” The British had apparently not absorbed the most obvious lesson of the Revolution: that it was only their myopic and vengeful policies that had enabled the colonists to discover their national identity. “Great Britain seems determined to pursue the same ruinous line of conduct, that guided her thro’ the late War,” John Langdon reminded Jefferson late in 1785; “she values not the ruin of her own Commerce, if she can thereby injure us.” Like other American leaders, Langdon believed that “every step Britain takes to prevent our increase of Commerce . . . will be eventually for our advantage, by driving us into manufactures,” and by demonstrating “the absolute necessity of vesting Congress with full power to regulate our Commerce, both external, and internal.”

This argument, which was made repeatedly during the mid-1780’s, presupposed that the specific injuries Britain imposed would gradually bring the people and legislatures of the thirteen states to recognize the existence of a larger national interest. But advocates of reform also encountered resistance based on less tangible yet pervasive fears of the inherent dangers of power itself. Here, too, the rhetoric of the mid-1780’s resembled earlier opposition to the claims of Parliament. If the address and documents Congress had issued in support of its revenue plan were “carefully and impartially examined,” wrote George Mason, “they will be found to exhibit strong proofs of lust of power. They contain the same kinds of arguments which were formerly used in the business of ship money and to justify the arbitrary measures of the race of Stuarts in England.”

Mason’s views were stridently echoed in New England during the polemical campaign that was waged against the impost and commutation in 1783–84. Opposition to commutation, which evoked the traditional resentment of military pensions and standing armies, was particularly strong in Connecticut, where several towns approved resolutions condemning Congress and calling for popular conventions to assemble in protest. “Is it not highly probable that Congress, at present, are feasting their imaginations on the prospect of future pensions?” asked the citi-
zens of Torrington. "For the attainment of which, do they not rejoice at the present opportunity of introducing a custom, into which, they artfully habituate the country under cover of the officers?" Espousing a radical theory of popular government, Torrington declared that because "Congress are delegated by the people, therefore Congress must be responsible to the people, in all cases whatever. And the disputes, which have arisen, respecting the power, assumed by Congress, must be determined by the unanimous voice of the people." Other towns, such as Farmington, were more cautious about challenging the authority of Congress. Yet while the citizens of Farmington were "not disposed to charge Congress with criminal views," and were even willing to concede that it may have acted legitimately in approving half-pay, they too argued that the delegates were ultimately "accountable for their high trust, as servants, to their constituents, the great body of the people, to whose decision they must finally submit." 4

Although the clamor over commutation and (to a lesser extent) the impost subsided after 1784, other issues evoked similar objections rooted in traditionally whiggish suspicions of government. When the Massachusetts General Court was actively supporting proposals to vest commercial powers in Congress, "Jonathan of the Valley" argued that such an amendment to the Articles would work to "pull down the goodly fabric of freedom in this western world." The legislators should consider "whether a grant of this nature, without restrictions and limitations, will not lay a foundation for one consolidated government over the whole union, annihilate all your legislatures, and swallow up the separate sovereignty of the States so carefully preserved in the Confederation." 5 Abraham Yates, Jr., developed similar themes in his writings against the impost. For Yates, even annual elections offered little security against congressional schemes of profit, as an animal fable he was fond of quoting suggested. "'Friend!' says the fox, 'I desire you by no means to disturb those honest bloodsuckers, that are now quartered upon me, and whose bellies are, I fancy, pretty well filled, for if they should leave me, a fresh swarm would take their place, and I should not have a drop of blood left in my body.' " 6

There were reasonable responses to be made against these and other objections, of course. The satirical resolutions attributed to the town of Geeseburnrow—signed by Quack Gander,
town clerk—were meant to show the citizens of Connecticut how little danger they actually faced from Congress.

2. That there is the utmost danger of ruin to these states from the present exorbitant power and wealth of Congress; because Congress have neither wealth, power, nor influence, and were lately unable either for love or money to support their authority against the insults of eighty mutineers. . . .

10. That since we had the utmost difficulty in prevailing on the Delegates from this state to attend on Congress, we have no doubt that Congress intend very soon to retire on pensions and half-pay.7

Supporters of Congress argued that its powers would still be carefully defined by the Articles and whatever additional amendments the states ultimately approved; that its members were subject to “that fundamental part of our constitution—that great palladium of civil liberty, Annual Elections”; that its wartime services demanded postwar confidence. Popular jealousy and the countervailing authority of the states would still provide ample security against any conceivable congressional encroachments on liberty. “This bug bear of the power of Congress . . . is the most flimsy tale of a falsehood ever invented,” wrote “C.S.,” the author of a lengthy essay contesting the anticongressional claims George Mason had advanced in a new set of Fairfax County instructions.

There is some consistency in being jealous of power in the hands of those who assume it by birth, or without our consent and over whom we have no controll, as was the case with the crown of England over America. But to be jealous of those whom we chuse the instant we have chosen them, shews either the folly of our choice, or the absurdity of our politics; and that in the transition from monarchy to a republic, we have unfortunately bastardized our ideas, by placing jealousy where we ought to erect confidence.8

When John Treadwell, Farmington’s representative in the Connecticut assembly, sought to dissuade his constituents from condemning Congress, he reminded them that the doctrine “that no confidence can be placed in any public body” was itself evidence that the people were “incapable of supporting any longer a democratical government, and that nothing can restrain their licentiousness, but the iron rod of monarchy.” What interest did Congress have different from that of the nation as a whole, other than the responsibility for resolving its problems? For, as “Pro Bono-
Republicae” argued, “If they behave remiss, we can remove them: They are chosen annually from the body of the people; they are accountable to us for their conduct; they feel our wrongs the same with ourselves but cannot redress them.”

Congress was not alone in being subjected to what one writer called “that paltry unnatural jealousy of power.” As Gordon Wood has shown, emerging American notions of popular government implied that all branches of government, even those most directly representative of the people, required continuous and close supervision from a vigilant citizenry. The implications of this attitude were, however, perhaps more ominous for Congress than they were for the state governments. Not only was it the most distant element of American government; it was also the least influential and effective, and thus the one most seriously in need of additional powers. Locally based politicians had ways of mitigating these populistic suspicions that were not available to members of Congress, whose carefully articulated defenses of its requests could do little to allay visceral fears of power by now long imbedded in American political consciousness.

All of this helps to explain why the proponents of amendments were content to allow Great Britain to make the most persuasive case for strengthening the confederation. The tone of passivity that runs through the political correspondence of these years—and that also recalls the mood of the early 1770’s—reflects an inability to imagine how more aggressive agitation could materially alter the pace of events. The prevailing ideological aversion against power itself was not something that could be relieved simply through disinterested appeals to the national welfare. Thus beyond the barrier of securing unanimous ratification for any amendment, Congress also had to be mindful of the danger of demanding too much. These considerations were clearly what convinced James Monroe, the leading advocate of the committee report recommending broad commercial powers for Congress, to admit that it would be better not to push this question too strenuously either within Congress or without. Post-war congressional requests for additional powers were therefore confined to the revenue plan of April 1783 and the limited authority over foreign trade solicited a year later.

Moreover, despite occasionally gloomy outbursts, few American leaders believed that the new nation was actually poised on the brink of crisis. After eight years of war and the turbulence
of the pre-Revolutionary years, it was scarcely surprising that most Americans showed little interest in public affairs. "I think great Allowances are to be made for a people just shaking Themselves from the Horrors & Calamities of a War; unused to the great and arduous Task of making and giving Laws to Millions; and of entering into the deep Policy of the great and [illegible] Nations of the World with whom we are now to walk," Henry Marchant reminded Richard Price, the prominent English radical whose *Observations on the Importance of the American Revolution* had candidly criticized the weakness of the confederation. And Charles Thomson wrote to Franklin: "Those who know the difficulty which old established nations experience in their attempts to introduce new arrangements either in government, police or finance, will readily conceive what we have had to encounter." At the start of the Revolution, Thomson recalled, the Americans had long been "kept apart by local interests and prejudices," and British mediation had left them "secluded ... almost from all intercourse with foreign nations." The people had been "thrown into a state of nature," and with "property being equally divided and the feudal system unknown in this country," there were few individuals "who could influence their conduct or opinions." Nor had the new constitutions, with their prevailing "ideas of liberty," provided the "opportunity of acquiring national sentiments. Notwithstanding all this," the secretary of Congress concluded, "we have made remarkable progress in the short period of eight years." 12 That the Articles required amendment seemed obvious to many American leaders, but in 1784 and 1785 the consequences of failing to enact reforms still seemed to exist only in some indefinite future. "We are neither so wise nor so weake as our Friends & Enemies represent us," John Jay wrote in 1785, "and the fact is, that tho' much remains to be done, yet we are gradually advancing towards system & order." 13

A lengthy and characteristically thoughtful letter that Charles Thomson wrote to John Dickinson in July 1785 conveyed this mood remarkably well. Dickinson had initiated the correspondence by proposing several additional measures to aid Congress that went beyond the amendments usually discussed. Confessing that he was "greatly at a loss how to answer" Dickinson's letter, Thomson first suggested that it was difficult to identify the precise causes of the weakness and inefficiency of the federal gov-
ernment. Were they due "[t]o an imperfection in the confedera­
tion or to a defect in the constitutions of the several states?"
Thomson asked; "to a want of energy in the executives or a
disinclination in the people to submit to such regulations restric­
tions & government" as the general welfare demanded? In ei­
er case, the secretary continued,

Will the vesting greater power in the federal council conquer the aver­sion which the people too generally seem to have to a strict govern­ment? Will it reconcile them to a more punctual payment of taxes? Or rather, taught as too many have been of late to think & speak disrespect­fully of Congress, will not an attempt to exercise power, should it be granted, render the federal council odious, & in case of a failure, con­temptible?

It was clear, he admitted, that amendments were necessary; but they had to be solicited cautiously. "I am not unnecessarily for
overturning foundations already laid," he continued, "nor for attempting to give at once all that is necessary." Considering the present temper of the people, Thomson believed it would be useless to propose giving Congress larger powers than those that had already been requested.

It would only tend to awaken jealousy & might enable designing men
to divert the people from what a concurrence of circumstances seems
to be preparing them to grant; and which if granted would in my opin­ion answer our present purpose, give weight to the federal council and
dignity to the nation, and would relieve us from the embarrassed &
humiliating state under which we now labour: I mean the power of
regulating commerce and of imposing duties at least on importations for
the purpose of raising a revenue. The conduct of our late enemy since
the peace has done a great deal towards preparing the minds of the
people to grant this.

If these specific and limited powers could be granted, Thomson
concluded, the people would become "better disposed for grant­ing other necessary powers and the federal government will
without any convulsion be gradually improved as circumstances
require, until it attains some degree of perfection."14

One year later this prudent analysis would have seemed
 naïve. Even in 1785 Thomson's views were perhaps more san­
guine than circumstances warranted. James Madison, for one,
already feared that southern obstruction of commercial powers
could endanger the survival of the union. "Should G. B. persist
in the machinations which distress us,” he warned Monroe in August, “and seven or eight of the States be hindered by the others from obtaining relief by federal means, I own, I tremble at the anti-federal expedients into which the former may be drawn.”15 Where Thomson still believed that foreseeable events would progressively enlighten the people and their representatives, Madison recognized that a strategy of reform based on trusting to external events could just as easily play into the hands of the opponents of American nationalism, both at home and overseas. In one sense, the difference between these perspectives can be overstated. Both men agreed as to what powers Congress should have—revenue and trade remained the two preeminent objects—and both were convinced that the process of reform could go forward only gradually. The principal question, however, involved deciding how that process was to be initiated, and here it was Madison who was soon to emerge as both the leading tactician and theoretician of reform.

The Emergence of Madison

Madison had left Congress in the fall of 1783, an early victim of Article 5 of the confederation, which prohibited an individual from serving in Congress more than three years out of every six. But retirement from Congress did little to slacken his interest in national affairs. Throughout this period he kept in close contact with the Virginia delegates James Monroe and William Grayson, and in the early fall of 1785 he visited Philadelphia and New York, where he had “several conversations” with Grayson and Samuel Hardy, another Virginia member, “on the affairs of the Confederacy.” (Monroe was away on a tour of the west, a journey that was to have important consequences for the development of congressional territorial policy.) From these conversations, Madison apparently concluded that he should attempt to convince the coming session of the Virginia assembly to grant Congress the power to regulate trade. Positive instructions from the largest southern state might help to break the impasse within Congress, defuse the sectional tensions that had already alarmed Madison, and facilitate later ratification by the states. Madison returned to Virginia, and during the ensuing session he vigorously argued the case for vesting permanent regulatory powers in Congress. The
assembly diluted the proposals he favored, however, and Madison concluded that nothing would be gained by granting Congress the restricted and temporary powers his fellow legislators were willing to surrender. "I think it better to trust to further experience and even distress, for an adequate remedy," he informed Washington in early December, "than to try a temporary measure which may stand in the way of a permanent one, and must confirm that transatlantic [i.e., British] policy which is founded on our supposed distrust of Congress and of one another." 16

At the very close of the session, however, the assembly approved a substitute resolution calling for an interstate conference that would consider the utility of uniform commercial regulations and also frame an act vesting appropriate powers in Congress, which could actually be ratified by the states. Madison supported this resolution because it was "better than nothing," but he initially thought that it was "liable to objections and will probably miscarry," if only because the Virginia commissioners themselves seemed unlikely to agree on proper reforms. 17 He remained uncertain through the early months of 1786. Given all the obstacles that had to be overcome, the chances for the conference's success scarcely seemed promising, while the risks of failure were increasingly ominous, for it was in March that New Jersey balked at complying with further congressional requisitions and in April that New York effectively rejected the impost. Should the Convention now set for Annapolis in September prove abortive, further efforts to augment the powers of Congress could not be regarded optimistically.

For Madison, however, the decisive consideration was that there no longer seemed to be any practicable alternative to calling some sort of convention. "Something it is agreed is necessary to be done, towards the commerce at least of the U.S.," he wrote Monroe in March, "and if anything can be done, it seems as likely to result from the proposed Convention, and more likely to result f[rom] the present crisis, than from any other mode or time." Monroe evidently disagreed, arguing that if the defects of the confederation were to be remedied by a convention rather than through the piecemeal recommendations of Congress, the proposed conference was too narrowly conceived to do much good. Madison's reply revealed how closely the idea of a convention and the cautious tenor of other proposals for reform could still be
interwined. "If all on whom the correction of these vices de­
pends were well informed and well disposed, the mode would be
of little moment," he replied.

But as we have both ignorance and iniquity to control, we must defeat
the designs of the latter by humouring the prejudices of the former. The
efforts of bringing about a correction thro’ the medium of Congress have
miscarried. Let a Convention then be tried. If it succeeds in the first
instance, it can be repeated as other defects force themselves on the
public attention, and as the public mind becomes prepared for further
remedies.

The key to Madison’s position was his opinion that the Virginia
assembly would neither approve amendments emanating from
Congress nor give its commissioners broad “plenipotentiary”
powers to revise the Articles. Those objections would not
threaten a convention appointed for limited and carefully
defined purposes and meeting under the auspices of the states
rather than Congress. Despite his continued aversion to “tempo­
rizing or partial remedies,” Madison had now decided that excess­
ive “rigor in this respect . . . may hazard every thing. If the
present paroxism of our affairs be totally neglected,” he con­
cluded, “our case may become desperate.”

In Congress, too, the early months of 1786 saw some delegates
entertaining “serious thoughts . . . to recommend to the States
the meeting of a general Convention” to revise the Articles, an
idea that had been periodically bruited about since 1780 but
never taken seriously. Late in March William Grayson informed
Madison that a motion to that effect had already been intro­
duced. Its probable author was Charles Pinckney of South Caro­
lina, who had been one of the committee sent to convince the
New Jersey legislature to rescind its resolution rejecting further
compliance with the requisitions of Congress. In his speech,
Pinckney had urged the legislators to issue a call for a national
convention, promising that he would support such a proposal
whenever it reached the floor of Congress. On May 3 Pinckney
again urged his colleagues to consider calling a general conven­
tion and moved that Congress appoint a grand committee to
review national affairs. Two months elapsed before this motion
was finally approved, the delay resulting, perhaps, from a desire
to determine first whether New York’s unsatisfactory action on
the impost might not be rectified. The committee’s report, comprising seven additional Articles of Confederation, was delivered in early August but never accepted, although Congress took the unusual step of allowing texts to be published in newspapers and apparently transmitted to the states.20

Substantively, the committee’s report marked a last attempt to propose constitutional reforms consistent with the essential purposes of the Articles. Six of the seven amendments were concerned with the regulation of trade and the collection of federal revenues and requisitions. Following the abandoned recommendations of 1785, Congress would receive “sole and exclusive power” over foreign and interstate commerce, though whatever duties were collected as a result of trade regulations would accrue to the states. Congress would be given limited remedies against states delinquent in paying their share of requisitions. Subsequent revenue amendments would require the assent of eleven states only. The most striking innovation the report proposed involved the creation of a seven-member court to try cases brought against federal officials, and to receive appeals from state judicial proceedings pertaining to questions of foreign relations, international law, or whatever regulations Congress later made in matters of commerce and revenue. A final Article concerned the increasingly annoying problem of maintaining a quorum of delegates.

In scope and detail, these amendments went beyond anything Congress had ever seriously considered. Yet they did not envision a confederation whose responsibilities would be significantly larger than those projected in earlier discussions of the need to amend the Articles. Instead, the report of August 7 represented a final attempt to enable Congress to discharge its duties as traditionally conceived, and to acquire the single additional power that had recently become the focus for so much debate: the regulation of trade. The report did recognize the critical importance of clarifying the constitutional relationship between the union and the states. Yet enforcement of the legitimate actions of Congress would entail not the blunt use of coercive power Madison and others had contemplated in the early 1780’s, but rather the establishment of specific judicial remedies that would give those actions the effective sanction of law. In this respect, perhaps, the report did anticipate the deliberations of
1787; but on balance its proposals stopped well short of scrapping the Articles or reconstituting the union on radically different principles.

There is little in the surviving correspondence of the delegates to reveal what Congress actually thought about the objective merits of these amendments. Issued at the very height of debate over the Spanish negotiations and the navigation of the Mississippi, the report was in part a victim of the sectional tensions that question aroused, possibly shunted aside because many delegates were already assessing the likelihood that the confederation might dissolve before any realistic scheme of amendments could be pursued.\textsuperscript{21}

But it was objectionable for another reason. In May, Pinckney had argued that Congress had to choose between soliciting additional powers directly or issuing a call for a national convention. He was opposed by Monroe, and it is Monroe's position, soon endorsed by Madison, that helps to explain why neither alternative was acceptable. Their evolving strategy of reform was now committed to the success of the forthcoming meeting at Annapolis. They assumed that further congressional requests would be fruitless, for, as Monroe noted, "recommendations from that body are received with such suspicion by the States that their success however proper they may be is always to be doubted." That could not be said, however, of "a body assembled under the particular direction of the States for a temporary purpose in whom the lust for power cannot be supposed to exist." Equally important, they were still convinced that popular opinion was not yet prepared for sweeping constitutional reforms. "Will it not be best on the whole to suspend measures for a more thorough cure of our federal system, till the partial experiment shall have been made[?]" Madison wrote in mid-May, after Monroe had informed him of the renewed discussions of a convention. If the Annapolis meeting went well, its results and the return of its members to "their respective states will greatly facilitate any subsequent measures which may be set on foot by Congress, or by any of the states."\textsuperscript{22}

But the Annapolis Convention itself faced numerous pitfalls. When the Virginia commissioners had set early September as the date for assembling, they had doubtless hoped an interval of six months would encourage appointments by all the states. By mid-August only eight states had complied, and some began to won-
der whether a poorly attended conference might not do more harm than good. For as Jacob Broom, a Delaware commissioner, fretted, "if one half the states should not then have made similar appointments, how ridiculous will all this parade appear?" It was critical that the meeting "run no risque of being rendered contemptible." At least two states refused to appoint commissioners because they were reluctant to condone a meeting that would have, as the Maryland Senate feared, "a tendency to weaken the authority of Congress" by implying that it was no longer competent to handle matters of national concern.²³

Beyond these questions of propriety, the expectations of commissioners and members of Congress alike were inevitably affected by the foreign policy disputes of the summer and the predictions of disunion they evoked. Several New England delegates, already contemplating the idea of separate confederacies, noted that the Virginia commissioners were not commercial experts and began to suspect that the ostensible occasion for the meeting might mask more sinister political ambitions.²⁴ On the other hand, William Grayson feared that if the declared purposes of the conference were actually met, the task of vesting Congress with other necessary powers might grow more, not less difficult. Turning Madison's logic on its head, he argued that affairs are not arrived at such a crisis as to ensure success to a reformation on proper principles; a partial reformation will be fatal; things had better remain as they are than not to probe them to the bottom. If particular States gain their own particular objects, it will place other grievances perhaps of equal importance at a greater distance: if all are brought forward at the same time one object will facilitate the passage of another, & by a general compromise perhaps a good government may be procured.

On balance, Grayson thought it best that the Annapolis meeting not "produce any thing decisive." If it did prove successful, the more commercial states might lose interest in pursuing further reforms.²⁵ Others were less skeptical, however. Writing from Philadelphia in mid-August, Madison was able to inform Jefferson that "Many Gentlemen both within & without Congs. wish to make this Meeting subservient to a Plenipotentiary Convention for amending the Confederation." For his own part, Madison was nonetheless still committed to proceeding cautiously. "Tho' my
wishes are in favor of such an event,” he added, “yet I despair so much of its accomplishment at the present crisis that I do not extend my views beyond a Commercial Reform. To speak the truth I almost despair even of this.” Madison’s pessimism reflected his concern over the Mississippi question, a subject on which Monroe kept him closely informed. The prevailing aura of suspicion that issue had generated, the diverse assessments of the motives underlying the original Virginia invitation for the Annapolis meeting, doubts about how well it would be attended, and the inherent difficulty of framing acceptable resolutions, all conspired to create an atmosphere of confusion and uncertainty. This was a far cry from the initial hope that the commissioners would be able to assemble under conditions favorable to a calm and rational examination of the immediate subject of commerce.

Had the Annapolis Convention actually been well attended, Madison would probably have attempted to carry out the strategy he had come to favor, which was to frame a specific amendment, limited to the regulation of trade, whose adoption would benefit Congress over the short run while creating an attractive precedent for further reforms. But when commissioners from only five states appeared, confirming the possibility of embarrassment Madison and others had dreaded all along, the logic underlying this strategy was effectively destroyed. Any substantive recommendation issued by a meeting so poorly attended would carry little weight with either Congress or the states. Yet if the Convention adjourned without accomplishing anything, the movement to strengthen the confederation would receive a critical, perhaps decisive setback.

It was precisely this predicament that enabled the commissioners to recommend the calling of a second convention, set for Philadelphia nine months later, “to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union.” The celerity with which the Annapolis Convention endorsed this measure has sometimes justified the suspicion that a more radical expedient had been in contemplation from the start. In view of the customary tardiness of eighteenth-century politicians, the Convention does seem to have acted with undue haste. It is possible, too, that Alexander Hamilton, now returning to national politics, had come to Annapolis predisposed to argue for more drastic measures. Nevertheless, the call for a second
convention was more likely the result of desperation than calculated forethought. Given the political situation prevailing in the late summer of 1786, the dozen commissioners who actually assembled had little reason to believe that the appearance of a handful of additional members would materially enhance the authority of the Convention. Nor had they suddenly discovered any evidence to support the idea that a general convention would now prove more compelling than it had been previously. They merely hoped that a further delay of nine months might bring the emergence of a climate more favorable to reform. The decision to call a second convention was recognizably a gamble, justified not by any change in the odds against such a measure actually succeeding but rather by the need to salvage something from the potentially harmful consequences of adjourning without reaching any decision at all.27

In taking this step, the commissioners had consciously concluded that further constitutional reform could not emanate from Congress. "Propriety" dictated that their recommendations be formally submitted only to their own states. When they sent a copy of their report to Congress, it was only done, they noted, "from motives of respect." Those members of Congress who supported the Annapolis recommendation concluded that a congressional endorsement would nevertheless be useful. But this measure "was objected to by the Eastern States," Monroe noted, and while on October 11 the Annapolis report was assigned to a grand committee, Congress took no action on it for another four months. The initial opposition against congressional endorsement was based on two objections: first, that Congress could not approve a blatantly unconstitutional procedure for amending the Articles; second, that the duties of the proposed Convention were too vaguely defined. Several New England delegates, notably Nathan Dane, still harbored the suspicions of constitutional change that David Howell and others had enunciated in the early 1780's.28 Their opinions began to change only after they could assess the defects of the Articles in the light of the political unrest that broke out in western Massachusetts late in 1786.

By February 1787, when Congress finally endorsed the forthcoming Convention, Madison was able to observe that the essential issue that "divided and embarrassed" Congress was "whether their taking an interest in the measure would impede or promote it." Even then, William Irvine noted, "the Eastern
men were all much against the measure,” acceding only when “they saw it would be carried without them.” In exchange for their acquiescence, the Massachusetts delegates extracted a significant concession, for the resolution stipulated that the Convention was to meet “for the sole and express purpose of revising the Articles of Confederation”—a phrase that could be interpreted as imposing carefully limited responsibilities on the delegates who assembled at Philadelphia three months later.  

By the time Congress acted, seven states had already voted to appoint delegates, and New York, whose participation might have been doubted, seemed inclined to do so as well. Those who openly supported the Convention considered a congressional sanction useful but not essential. In the view of Madison and others, establishing the strict legitimacy of the Convention was less important than creating other conditions favorable to the success of its deliberations. As Madison approached this problem during the waning months of 1786, three considerations were paramount. First, the Philadelphia Convention would have to be respectably attended, which meant not only that most states would have to be represented, but also that their delegates should be men of reputation and influence. Second, some restraints had to be placed on growing sectional animosities and loose talk of disunion, notably arising from the continuing debate over American policy toward Spain. Finally, some thought had to be given to devising a suitable agenda for the Convention itself.

By early 1787, the first two of these conditions seemed well on the way to being satisfied. Despite intense resentment against congressional action on the Mississippi question, the Virginia assembly had unanimously approved the Annapolis recommendation for a second convention, issued a circular letter of invitation to the other states, and appointed a delegation made eminently respectable by the inclusion of George Washington and Edmund Randolph, the state governor. Madison was already at work courting Washington’s participation, which could not be taken for granted. 30 By early January five other states had agreed to appoint delegates, and their decisions helped to exert pressure on others, notably Massachusetts, that were at first reluctant to act. Ultimately every state was represented but Rhode Island, whose internal controversies over paper money had made it something of an object of continental derision. 31
Not all the delegates were the luminaries Federalist propaganda and historical mythology later made them out to be. One does not have to accept Forrest McDonald's sardonic claim that well over half the members "were voices that few would have listened to anytime, anywhere" to recognize that the Convention, like any public body, contained mediocrity as well as talent. But the presence of Madison, Hamilton, James Wilson, Gouverneur Morris, John Dickinson, George Mason, Elbridge Gerry, and others did guarantee that the Convention would include a critical nucleus of members capable of addressing fundamental issues and articulating innovative positions. In any event, attaining broad representation from the states was a prerequisite to accomplishing anything, and that was achieved with surprisingly little difficulty. Although very little is known about how this participation was produced, such evidence as there is suggests that the separate state decisions were neither the result of an intensive coordinated effort by committed "nationalists" nor a source of significant partisan divisions within the legislatures. It is difficult to avoid concluding that most legislators simply agreed that something had to be done about the "imbecility" of Congress and found the idea of a special convention relatively acceptable. Had they anticipated the results of its deliberations, they would have been less compliant; but even in early 1787 few discussions of the defects of the Articles foreshadowed the sweeping changes proposed in the Constitution.

Neutralizing the dangers of sectional tensions that could impede either initial agreement on reforms or their subsequent ratification proved more difficult. In late February Madison observed that, "after long confinement to individual speculations & private circles," the idea of separate confederacies "is beginning to shew itself in the Newspapers." Debate over the Mississippi question still continued in Congress, and Madison knew that Patrick Henry was already likely to throw his enormous influence in Virginia against whatever measures the Convention adopted solely out of resentment over this issue alone. On the other hand, there was reason to believe that this most urgent sectional issue had been somewhat defused. The stark north-south division that had emerged within Congress at the height of the Mississippi debate in 1786 had dissolved as Madison, Monroe, and others managed to recruit support for their position against occlusion among delegates from the middle states. Even should John
Jay succeed in negotiating a Spanish treaty inimical to the southern states, which still seemed improbable, it could never be ratified by Congress. At the very least, then, the prospect for a major crisis over the Mississippi had been greatly reduced. Moreover, the aftershocks of Shays’s Rebellion in Massachusetts had made various New England politicians more receptive to the idea of a stronger federal union. Stephen Higginson, once one of the most vitriolic critics of Robert Morris, now found himself “ready for any measures that will promise an efficient government.” “Let it be fair & energetic,” he wrote Samuel Osgood, “& you may christen it by what name you will.” For, Higginson argued, even if Massachusetts succeeded in “brac[ing] up Our Government; what can it avail, or how can it last, while the Union & Our Sister States remain feeble as at present?”

Neither of these developments—the gradual appointment of twelve delegations and the temporary weakening of sectional obstacles—guaranteed that the Convention would meet with success; they merely removed or reduced potential sources of failure. Once the delegates actually assembled, American newspapers began printing optimistic rumors about the course of its deliberations. But in the early months of 1787, leading American politicians were quite skeptical about its prospects. James Varnum had been one of the earliest advocates of a constitutional convention, but his prediction of April scarcely breathed a spirit of optimism. “It cannot be expected,” he wrote from Congress, that the Convention at Philadelphia will frame and recommend a system that will ever be federally adopted. They will probably investigate the defects of our present national government, and point out the means of removing them. The respective states will greatly differ in their ideas upon the subject, and their increasing animosities will precipitate the period of anarchy and confusion. From these exuberant sources will arise a government that may be assisted in its formation and principles by the wisdom of the convention.

William Grayson, who in 1786 had doubted whether “a reformation on proper principles” could yet be secured, still believed “the whole will terminate in nothing”; either the Convention “will not agree, or if they do agree, the States will not ratify; our distresses are not sufficiently great to produce decisive alterations.” Writing to John Adams in late February, John Jay noted that “I do not promise myself much further immediate Good
from the Measure than that it will tend to approximate the public Mind to the Changes which ought to take place.” Rufus King was “rather inclined to the measure from an idea of prudence, or for the purpose of watching, than from an expectation that much Good will flow from it.” In early April he still thought its outcome “doubtful,” for while the southern states were sending “many well disposed men . . . the projects are so various, and so short of the best, that my fears are by no means inferior to my Hopes on this subject.” Even Madison verged toward pessimism. “What the issue of it will be is among the other arcana of futurity and nearly as inscrutable as any of them,” he informed Edmund Pendleton in late February. “In general I find men of reflection much less sanguine as to a new than despondent as to the present System.” As late as April 15 Madison was still wondering whether Washington should “postpone his actual attendance, until some judgment can be formed of the result of the meeting?” His immense prestige would be squandered, Madison feared, if he were to “participate in any abortive undertaking.”

To a large extent, these doubts about the outcome of the Convention reflected the difficulty of imagining the agenda it would actually pursue once it met. Given the constricted boundaries of earlier discussions of reform, the indefinite character of the Convention’s mandate, and the potentially broad field for its deliberations, such diffidence was understandable. More than his colleagues, it was Madison who grasped the advantage this prevailing mood of uncertainty would bestow on anyone who came to Philadelphia prepared to seize the initiative in defining the issues confronting the Convention. Madison had thus reserved for himself the responsibility for fulfilling the third of his preconditions for the Convention’s success. His affinity for such a role was, by now, almost intuitive, for Madison’s own political career and influence rested, quite simply, on the recognition that a man who did his homework and thought through issues and alternatives before debate began could often lead his lazier colleagues—of whom there would always be many—along the avenues he had selected. In a state legislature, of course, where specific interests were represented, such a posture had its limitations. But a national convention offered as promising a field for Madison’s distinctively intellectual approach to politics as he could reasonably desire, and when in 1786 and 1787 Madison committed himself to a study of the history and theory of federal government,
his motives were intensely and consciously pragmatic. That he succeeded in launching the Convention in the direction he desired was thus a tribute to his preeminence at a certain style of elitist politics; but it was also a measure of how little systematic thought the problems of the confederation had previously engendered. When the Convention adjourned in September, the sheer audacity of the proposed Constitution proved no less astonishing to its instinctive supporters than its early detractors. How the Convention was able to transcend and thus transform earlier perimeters of debate remains an immensely intriguing question, to be explained only in part by the catalytic role of Madison.

**The Deadlock of Thought**

In both its origin and its result, the Philadelphia Convention marked a decisive repudiation of all earlier efforts to create a national government adequate to the needs of the new republic. It was thus the beneficiary of previous failures to strengthen the confederation: the Morris program of 1782–83, the revenue plan of 1783, the limited commercial amendments of 1784, the tabled committee reports of 1785–86, and the Annapolis Convention. The adoption of one or more of these proposals would actually have undermined the logic that ultimately justified sweeping reform, either by remedying the outstanding problems confronting the union or by demonstrating that the Articles could be amended when necessary. The idea of a constitutional convention became compelling only after other avenues of reform proved uniformly futile. Even more important, substantive changes of the dimensions proposed in 1787 could not have been formulated without the additional lessons of the mid-1780's. Although at any time after 1780 Madison, Wilson, Hamilton, Washington, the Morries, and others would certainly have favored a stronger confederation, it is unlikely that the full range of nationalist principles embodied in the Constitution would have been either the object or result of their labors before 1787. To argue otherwise would be anachronistic.

Viewed from this perspective, the disappointments of the mid-1780's were significant not only because they created the occasion for the Convention but also because they affected its deliberations in at least two critical ways. In the first place, the
constraints that had inhibited earlier proposals for reform were what ultimately enabled the Convention to attain its distinctive position in the history of Revolutionary political thought—to become, that is, the definitive reassessment of the republican experiment that had been launched with independence. And, in the second place, the cumulative frustrations Congress had experienced in its relations with the states encouraged the delegates at Philadelphia to link two concerns that had hitherto been considered separately: the strengthening of the union and the political reformation of the states.

Far from liberating constitutional thought from the defining assumptions set by the Articles, the difficulties Congress encountered after 1780 ironically hindered efforts to rethink the complex problems inherent in the creation of any federal system. In an almost perverse sense, those difficulties seemed either too obvious or too oppressive to provoke searching thought. The same pragmatic considerations that committed Madison and Monroe to their cautious strategy provided little incentive for devising additional measures to strengthen the confederation. The requirement of unanimous ratification posed one barrier; but equally discouraging was the knowledge that the presentation of comprehensive schemes of reform would merely confirm the suspicion that Congress was grasping for power. Earlier discussions of the character of the confederation had also left an unpromising legacy. No major alteration of the Articles could take place without appropriate adjustments in prevailing conceptions of the location of sovereignty, the nature of Congress itself, and the apportionment of continental representation. Yet it was difficult to imagine how well-hardened opinions on these subjects could be opened for reconsideration or conflicting interests and interpretations reconciled.

Almost all discussions of the additional authority that Congress needed were confined to the familiar subjects of revenue and trade. These were admittedly substantial powers. But the purposes for which they were solicited did not presuppose a radical alteration in the nature of the confederation. Permanent revenues were necessary for Congress to discharge its existing responsibilities and to service the national debt; the authority to regulate trade was justified largely as a means of counteracting European restrictions on American commerce. Both measures were consistent with the existing conception of a confederation
whose principal concerns centered on external affairs rather than “internal police.”

Only occasionally did commentators of the mid-1780’s envisage more radical adjustments of the spheres of authority allotted to Congress and the states. The most drastic suggestion was advanced in a remarkable pamphlet published in 1784, The Political Establishments of the United States of America. Its unknown author argued, quite simply, that “no reformation, or amendment can effectually answer any good purpose, short of the abolition of our state governments and the forming a constitution, whereby the whole nation can be united in one government.” This was a nationalism that went beyond even Hamilton’s sweeping condemnations of the Articles. A similar solution appealed, if only in theory, to “Observator,” who in 1785 argued that a “political system” based on the existence of “so many separate and independent interests” could never “maintain a unanimity in views and measures; nor render any act of government efficacious.” Even if the states did authorize Congress to regulate trade—“the furthest any proposal has extended”—little good would be accomplished, “for every political interest of a nation is so blended together, and dependent on one another, that, unless there be a sovereign power sufficient to govern them all, the end of public measures will be lost.”

Such statements, though evocative, hardly justified optimism, for as “Observator” himself noted, “a sacrifice of this favourite Hobby-Horse” of state sovereignty was “an event scarcely to be hoped for at this time.” Only a few writers attempted to sketch intermediate positions that went beyond the existing agenda of reform while stopping prudently short of demands for national consolidation. Reviving a proposal he had advanced in his initial draft of the Articles, John Dickinson suggested empowering Congress to quell dissensions endangering the constitution of any of the states. This idea was also advanced by a New York writer who in 1786 presented a brief “Plan for a New Federal Government.” But most commentators contented themselves with reiterating the call for state compliance with congressional requisitions and ratification of the amendments of 1783-84. By 1786, if not earlier, there was little new to be said about these questions. “The necessity of some federal adequate regulation of the commerce of the united states has been so often enforced and
descanted on,” one writer observed, “that the subject appears to be worn thread-bare.”

Other restraints on debate could be traced to seemingly unresolvable problems in constitutional theory. The anomalous character of Congress posed strong objections against any increase of its authority. American writers were still groping for a satisfactory description of Congress. To John Adams, writing his *Defence of the Constitutions of Government of the United States* while American minister to London, it seemed clear that Congress was “not a legislative assembly, not a representative assembly, but only a diplomatic assembly.” To Thomas Burke it had been “a deliberating Executive assembly”; others described it as the “Supreme Executive” or “Supreme Executive Council.”

The idea that Congress was essentially an executive body persisted because its principal functions, war and diplomacy, were traditionally associated with the crown, “whose executive, political prerogatives, bear a very striking resemblance to the powers of Congress.” The powers enumerated in the Articles were almost “as extensive as the prerogatives of the crown of Great Britain, about which they make so much noise and bustle.” Opponents of the impost therefore argued that Congress should never be allowed to levy taxes because, as Arthur Lee had reminded Congress, “the purse ought not to be put into the same hands with the Sword.”

This equation between crown and Congress naturally reinforced the position of those who held that sovereignty could reside only in the states. An executive body could not be deemed sovereign, nor could it be entrusted with powers of legislation and taxation. “A supreme executive Council, which Congress represent, can never consonant to republican principles be vested with a full and exclusive right of taxation,” the New Hampshire essayist “Solicitor” wrote; “for the union of these two different rights and powers... constitutes one very essential aspect of despotic government.” Far from fulfilling the underlying purposes of the confederation, the proposed amendments would subvert and ultimately destroy the proper relation between Congress and the sovereign legislatures that were intended to control it. For when the analogy to the British constitution was completed, the assemblies were logically seen to “stand in the same situation, and have the same restraint on Congress that the parliament or rather the commons once had on the
crown; that authority which grants money, most certainly have a right to refuse granting, when they can neither see the necessity or righteousness of the measure for which it is to be granted.”

More radical theorists carried this assault on Congress even further. Those who were now asserting that sovereignty resided continually in the people argued that even the assemblies lacked the authority to ratify amendments to the Articles. It would be “no less than treason in those to whom the people have delegated the exercise of the sovereign power, to attempt, without their constituents’ express consent, fairly and fully given, to assign it over to others.” Whether the state legislatures could be the actual repositories of sovereignty in a republican polity was itself very much at issue in the mid-1780's; ultimately, as Wood has argued, such populist criticisms of the assemblies’ authority did more to weaken the claim that the state legislatures were sovereign than demands for obedience to Congress. But before 1787, proponents of the conflicting doctrines of popular and legislative sovereignty could agree on at least one point: sovereignty was clearly not an attribute of Congress.

Yet while the political climate of the 1780's seemed to demonstrate just how subordinate a status Congress actually possessed, the arguments for unrestricted state sovereignty were far from conclusive. The language of the Articles was, in fact, ambiguous. Article 2 explicitly recognized the sovereignty of the states; but other provisions delegated certain powers expressly and exclusively to Congress and declared its decisions in these matters “binding” on the states. The political history of the Revolution similarly lent support to both interpretations. The notion that Congress was executive militated against the adoption of additional amendments, but it was less effective when applied to the powers it already possessed. It was thus entirely possible for a writer such as “Solicitor” to warn against uniting “legislative, judicial, and executive authority” in Congress, yet simultaneously to assert that Congress was not “amenable to any body of men in the states, for the lawful exercise” of its authority. Other writers put the case for divided sovereignty more plainly. “In all matters that respect the United States in general, the powers of Congress are ascertained by the confederation and they authorize Congress to make laws and regulations that shall be binding upon every State,” one Connecticut writer observed. “But in all
internal matters, each state is still sovereign and independent; nor can Congress by virtue of any prerogative, encroach upon the rights or abridge the privileges of a single State.” 

The ambiguity that Thomas Burke had helped to incorporate in the Articles in 1777 was thus perpetuated into the 1780’s. Its legacy was aptly illustrated in 1787 when John Adams sent Jefferson one of the first copies of his *Defence*. Of the many points that he could have found controversial, Jefferson singled out only one for criticism. “I doubt whether [Congress] are at all a diplomatic assembly,” he wrote from Paris. “Separating into parts the whole sovereignty of our states,” he noted, “some of these parts are yielded to Congress. Upon these I should think them both legislative and executive, and that they would have been judiciary also, had not the Confederation required them for certain purposes to appoint a judiciary.” Adams politely replied that he hoped his statement would be regarded “as a Problem, rather for Consideration, than as an opinion.” Whether Adams or Jefferson was more nearly right matters less than the simple fact that these two statesmen, themselves participants in the framing of the Articles, could still disagree over a point seemingly so rudimentary. 

This exchange symbolizes how little progress had been made in rethinking the problems of federal government. Theoretical discussions of the nature of Congress and the location of sovereignty had reached an impasse, and most writings of the mid-1780’s were confined within the limits it imposed. Only a few essays ventured proposals that anticipated the solutions the Convention would devise to recast the terms of debate.

One obvious response to the anomalous character of Congress was to reconstitute the confederation as a normal government whose structure would conform to the familiar examples of the states. In a pamphlet written in 1783, the political economist Pelatiah Webster proposed dividing Congress into a “senate” and “commons,” whose mutual concurrence would be required for the passage of every act. Webster also suggested appointing two additional bodies to assist Congress: a council of state composed of the heads of the executive departments, and a chamber of commerce, consisting of merchants, who could “relieve Congress from the pain and trouble of deciding many intricate questions of trade which they do not understand.” With the addition of three members of Congress, chosen from each of the major regions, the Council of State would also serve as a national execu-
tive. Three years later, Benjamin Rush advanced a similar proposal, suggesting that Congress be divided "into two distinct, independent branches," which would in turn annually elect a president who would "possess certain powers in conjunction with a privy council, especially the power of appointing most of the officers of the United States." By the summer of 1786, John Jay confessed that he had "long thought and become daily more convinced that the Construction of our federal Government is fundamentally wrong. To vest legislative, judicial and executive Powers in one and the same Body of Men, and that too in a Body daily changing its Members, can never be wise."51

A second solution to the theoretical deadlock of the mid-1780's could have developed had American writers reconsidered the nature of continental representation. Here, too, occasional essays asked why Congress should be considered less representative of the popular will than the assemblies. Its members were subject to annual elections, legislative instructions, and, as citizens, to the consequences of their decisions. "Why in the name of reason should we trust men in Connecticut and yet distrust them in Maryland or New Jersey?" a Connecticut writer asked in 1784 (when Congress was to meet at Annapolis and Trenton). "Does a change of climate corrupt the heart and pervert the understanding?" "Power is as safe in the hands of Congress, as in the hands of the General Assembly," another writer argued three years later, "for the members of both are equally the representatives of the people."52

Such appeals had their force, and they, too, foreshadowed the eventual results of the Convention. Yet none of the commentators of the 1780's actually advocated the popular election of members of Congress, the one step that could have unilaterally placed it on the same footing as the assemblies. As Edmund Morgan has noted, "the idea of popular sovereignty on a national scale began to appear more and more implausible," particularly at a time when many groups were challenging the representative adequacy of the state legislatures.53 Opponents of a stronger confederation never asked for popular election of delegates—though a modified form of it was already in practice in Rhode Island and Connecticut—precisely because the idea would have conceded too much. But the notion probably seemed no more attractive, or feasible, to those who already, in Hamilton's phrase, thought continentally. They, too, were puzzled to understand how direct
representation could work on such a scale, and they must also have doubted whether a people whose current legislators were of questionable ability would act more wisely in choosing members for Congress. The idea of popular election was never given serious attention. Indeed, as late as April 1787 Madison was still uncertain whether the new national legislature he was envisioning should be elected by the assemblies or the people.54

The striking feature of the discussions of these years, then, is that they do not foreshadow the intensity, scope, and sophistication of the debates of 1787–88. The few proposals that did anticipate the deliberations of the Convention can be said to have marked only the outer limits of speculation, not the familiar, dominant terms of debate. Through the waning months of 1786 public essays and private letters differed little, not only from each other but from arguments worked out by the end of the first year of peace. Most writers reiterated old arguments and familiar themes: the just claims of public creditors, the sufferings of widows and orphans, the need to establish public faith and national honor, and the futility of pursuing national interests through the partial and conflicting measures of individual states.

Were more sophisticated and innovative proposals, too controversial for publication, being discussed in cloistered chambers? In some private letters, it is true, one glimpses allusions to conversations not confined to the usual narrow agenda for reform. In the late fall of 1786, Samuel Osgood was able to inform John Adams that “a few Men in every State” were contemplating truly radical alterations in the balance of power between the states and the union. “It is therefore not uncommon to hear the principles of Government stated in common Conversation,” Osgood wrote; “Emperors, Kings, Stadholders, Governors General, with a Senate, or House of Lords, & House of Commons, are frequently the Topics of Conversation.” Still, such allusions to the need for a “more energetic” government were so vague that it is difficult to avoid concluding that whatever discussions did take place were academic rather than conspiratorial. “Many are for abolishing all the State Governments, & for establishing some Kind of general Government,” Osgood observed, “but I believe very few agree in the general Principles; much less in the Details of such a Government.” “Various are the conjectures as to the issue” of the Convention, Edward Carrington informed Jefferson
five months later, “and still more various are the suggested remedies to the defects of our system.”

The search for specific antecedents of the Convention thus proves disappointing—but perhaps it is misguided as well. What may have contributed more to the Convention’s success was a continuing belief that a rational reassessment of the republican experiment was still possible. In the face of all the obstacles the putative reformers of the Articles encountered, this was in itself striking. Politicians in the 1780’s no longer felt the exultation that John Adams had discovered in 1776 at being “sent into life at a time when the greatest lawgivers of antiquity would have wished to live.” That mood had since given way to more sober if not pessimistic views. Yet in 1784 the author of The Political Establishments of the United States could still argue that “America enjoys a privilege, no other nations now existing ever did.” For while other governments had been “established, either by force, or an undue influence” that had paid little interest to “the general good of the people,” the Americans still possessed “the peculiar advantage of establishing a government on the best principles.” Indeed, now that the war was over, they had a better opportunity “of considering and debating the subject, and of making a deliberate choice,” than had existed in 1776, when “the confusion of the times put it out of the power of the people, to pay that attention to the subject, its nature and importance required.” The conclusion to be drawn was accordingly simple: “If therefore our government is defective, (which every candid observer must acknowledge,) why not reform it?”

Benjamin Rush expressed the same sentiments more forcibly in 1786, when he published his famous essay decrying the common tendency “to confound the terms of the American revolution with those of the late American war.” Although the war was over, “nothing but the first act of the great drama is closed. It remains yet to establish and perfect our new forms of government, and to prepare the principles, morals, and manners of our citizens, for these forms of government, after they are established and brought to perfection.” In Rush’s view, the reform of the confederation was the most urgent of the tasks still confronting the Americans, and it was a task he professed to face optimistically. It was this sense of possibility, rather than the skeptical predictions that were still being voiced well into 1787, that ultimately set the tone for the Convention’s deliberations.
AN awareness of the scope of the discussions that were likely to occur at Philadelphia began to dawn early in 1787. Even then few politicians were eager to draft their own sketches of a reconstituted confederation. George Read and John Dickinson discussed the threat that a reapportionment of representation would pose to the small states. Stephen Higginson prepared a carefully reasoned argument recommending that the results of the Convention be submitted not to the assemblies but to popularly elected ratifying conventions. A writer signing himself "Harrington" published an essay that resembled Madison’s emerging theory of the extended republic. At least in elite circles, the gathering of the Convention produced a sudden heightening of hopes and predictions. “I find the Expectations of Politicians from the wisdom & Magnanimity of the Convention are much raised,” Stephen Mix Mitchell reported from Connecticut; “all our Difficulties are to be removed, and we are to have almost a new Earth.”

Nevertheless, the months preceding the Convention did not produce the same sharp clarification of issues and alternatives that had occurred, for example, prior to the meeting of the First Continental Congress. One senses in the early debates of the Convention that most members were individually prepared to draw lessons from their own observations and experiences, but that few arrived inclined to direct the course of debate. Of these Madison was the most important. Yet even Madison apparently began to draft the outlines of what would become the Virginia Plan only in late March. With the unimportant exception of Charles Pinckney, other members were content to postpone formulating their own responses until the initial debate on the Virginia resolutions was completed.

The limited and indefinite character of the earlier discussions of the 1780’s had a liberating effect on the Convention’s actual work. The delegates who assembled at Philadelphia in late May had to explore basic issues not only because events demanded innovation, but more important, because many of the relevant questions had not been systematically canvassed before. A few
problems, notably the apportionment of representation and taxation, were of course too familiar. But a wider range of questions had never been seriously considered in the context of previous discussions of confederation: the proper distribution of power among three branches of government or between two houses of Congress; the extension and variation of terms of office; the proper relationship between the people at large and their elected representatives; a radical transfer of authority from the states to the union; the propriety of a national bill of rights; and so on. The delegates' ability to debate these issues candidly and thoroughly depended in large measure on the absence both of prior discussions and of instructions their constituents could never have issued because such extensive changes were not foreseen. They were thus free to assess these questions afresh and on their merits, and to initiate a wide-ranging and open inquiry into the fundamentals of republican government, precisely because such speculations had previously been pointless. In its very scope, then, the Convention became both the antithesis and the result of earlier failures to probe deeper questions of constitutional theory from the perspective of the problems of the confederation.

These considerations alone do not explain, however, why the Convention was able to accept an agenda whose radical implications would have been inconceivable less than a year earlier. For what enabled the Convention to transcend the old boundaries of debate was the realization that it had to analyze not merely the specific problems of Congress but, in effect, the whole history of the American republican experiment, thereby subsuming the debility of Congress and the political troubles of the states under one common rubric. Before 1786 there had been little if any discussion of the idea of actively using the confederation to correct the internal political vices of the states. Many members of Congress and their correspondents were, of course, freely critical of the shortcomings of the state governments. But their plans for strengthening the Articles were designed to free Congress from its precarious and frustrating dependence on the states, not to remedy the situations of the individual states by creating an overawing national government. The Articles of Confederation had to be reformed for its own sake, not to correct errors incorporated in the state constitutions during the early flushes of republican enthusiasm. Some hoped that a reinvigorated confederation
would provide a useful example for the states to emulate; but even if it did, that process would clearly unfold only gradually and indirectly. Insofar as the weaknesses of both Congress and the states were commonly attributed to a loss of virtue in the people at large, it was difficult to see how constitutional revisions alone could work the necessary reformation in the habits of the people. In the meantime, the immediate object remained simply to strengthen the ability of Congress to meet its existing obligations and new challenges to the national interest.

There was thus no necessary connection between the revision of the Articles and the reformation of state politics. The states could conceivably have granted Congress the powers it sought, thereby allowing it to function more effectively, while continuing to pursue their own uneven courses toward greater stability. Had the states been less indifferent to the plight of Congress, the fusion between these two issues might not have been made even in 1787. But in the end nothing so vividly demonstrated the shortcomings of the state governments as their reluctance to grant Congress a handful of additional powers necessary for the general welfare and their failure to comply with its legitimate requisitions. By late 1786 these failings could no longer be plausibly attributed to the temporary dislocations of the war, but now seemed symptomatic of deeper defects in the state constitutions and the political manners of the people and their representatives. Even Samuel Osgood was complaining that the states were so "weak & selfish" that they would eventually "annihilate" Congress. "Their stubborn Dignity," he wrote Adams, "will never permit a federal Government to exist."61

Reinforcing this general perception were the specific lessons to be drawn from the current controversy over paper money in Rhode Island and from Shays's Rebellion in Massachusetts. Not all national leaders saw in these developments the specter of anarchy that key New England politicians imagined had been unleashed, but there was common agreement that the recovery of domestic order seemed as distant as ever. Nothing that happened in Rhode Island was ever surprising, of course, but if (as appeared likely) other states resorted to similarly ill-secured schemes of currency finance, the resulting monetary instability would doom any plan for supplying the continental treasury. The situation in Massachusetts was different—the disorders in the western part of the state were a reaction against the sort of
program of heavy taxation that orthodox fiscal theorists had demanded all along—but its political implications were no less disturbing. If a state with a history of relative stability and a constitution less radical than many others was prone to insurrection, could other states expect to avoid similar troubles? Few national politicians would have been comforted by Jefferson’s famous calculation of the infrequency of rebellion in America.62

Again it was Madison who most clearly understood how the connection between the defects of the Articles and the internal difficulties of the states could substantially broaden the perspective of the Convention. The association was explicitly forged in his famous memorandum detailing the “Vices of the Political System of the United States,” which Madison drafted only weeks before the Convention opened. The initial items in this catalogue were familiar enough, though compiled with his customary thoroughness. Madison indicted the states for ignoring congressional requisitions, encroaching on federal authority, violating foreign treaties, trespassing on each other’s rights of commerce and property, and refusing to recognize their common interests. He also criticized the Articles for failing to give acts of Congress the sanction of law; for not initially requiring ratification by the people rather than the legislatures, an omission that further compromised the status of the confederation; and for not authorizing Congress to assist the states in protecting themselves against “internal violence.” This last point clearly drew upon the experience of Massachusetts, but not until the ninth item did Madison make the transition in his concerns explicit. “In developing the evils which viciate the political system of the U.S.,” he wrote, in language that conveys his own sense of discovery, “it is proper to include those which are found within the States individually, as well as those which directly affect the States collectively, since the former class have an indirect influence on the general malady and must not be overlooked in forming a compleat remedy.”

The immediate objects of his concern were the “multiplicity” and “mutability” of state legislation, which respectively constituted “a nuisance of the most pestilent kind” and proof that laws were being carelessly framed and rashly revised. But it was in explaining why these “evils” existed that Madison demonstrated how state and federal issues could now be made to converge.63

There were two complementary explanations for the “vi-
cious" character of state legislation, Madison argued. One was that the assemblies were too commonly filled by men who sought office from motives of "ambition" and "personal interest," and who had proved adept at pursuing "base and selfish measures, masked by pretexts of public good and apparent expediency." More serious were the conditions that enabled a majority of interested citizens to coalesce within their states in support of measures injurious either to the national welfare or to the private rights of other citizens. Taken separately or together, these two phenomena of American politics challenged "the fundamental principle of republican Government, that the majority who rule in such Governments, are the safest Guardians both of public Good and of private rights." The antidote to both maladies, Madison concluded, was to construct a national polity whose simple extent would simultaneously inhibit the formation of "the requisite combinations" of self-interested groups of citizens while facilitating the election of those individuals best qualified to act responsibly for the common good. Turning on its head the orthodox notion that only small, homogeneous societies could sustain republican governments, Madison now followed David Hume in concluding that a geographically extensive and socially diverse polity would be more likely to provide the stability and security that republics were known to put at risk. In concurrent letters to Randolph and Washington, Madison suggested that the new federal government could best exercise this function if it were given a veto over state legislation. This would allow it not only to protect itself from obstructive acts by the states but also to prevent factious majorities in individual states from violating the rights of their fellow citizens.

Because Madison's position was incorporated in the Virginia Plan, which in turn defined the initial framework of debate, the Convention was induced to approach the task of reform from the elevated perspective he had fashioned. In this respect, several features of the Virginia Plan were critical. One was that it took almost for granted that the powers to be transferred from the states to the union would be substantial indeed. Rather than enumerating the specific objects of federal concern, the Virginia Plan simply asserted that the new national legislature ought to be impowered to enjoy the Legislative Rights vested in Congress by the Confederation & moreover to legislate in all cases to which
the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation; [and] to negative all laws passed by the several States, contravening . . . the articles of Union. . . . 

The revision of the Articles was now understood to require more than the reinvigoration of Congress. It had become instead a struggle to preserve the republican experiment, not only by saving Congress from the states but the states from themselves. Such a perspective demanded, in effect, that the debates of the Convention involve more than an expedient reapportionment of the powers of government. And how extensive a revision would occur now depended not on the visible weaknesses of Congress but on a reassessment of the character and temperament of the American people. In the end, the delegates' rejection of Madison's pet scheme of a federal veto mattered less than their agreement that what was at stake was the relationship between the institutions of government and the nature of American society, broadly conceived.

A second critical aspect of the Virginia Plan was its application of the still fluid doctrine of separation of powers to the reconstruction of the federal government—a subject that engaged fully six of its fifteen articles. The Virginia Plan called for the establishment of a bicameral legislature, a national executive, and a national judiciary. By outlining the architecture of the new government at the very outset, Madison and his colleagues cleared the way for an open-ended discussion of its powers. As a South Carolina delegate, Pierce Butler, observed on May 30, "he had opposed the grant of powers to Congs. heretofore, because the whole power was vested in one body. The proposed distribution of the powers into different bodies changed the case, and would induce him to go great lengths." But the converse proposition was equally true. Once it was realized that the union's new powers would greatly exceed anything seriously considered before, it became obvious that such powers could never be exercised by the Continental Congress as currently organized. In part this was because Congress had to be protected from its own inefficiency. But more important, neither the people nor the states could be expected to ratify any plan of major reform that did not embody the essential internal safeguards constitutional orthodoxy demanded of all governments. The
confederation had to be reconstituted as a government in the full and normal meaning of the term.

This was a simple, virtually intuitive discovery; but once it was made, the Convention's perspectives were substantially widened. For prior to 1787 the doctrine of separation of powers had not been consciously applied to the case of confederation. The framers of the Articles had been content instead to divide the major functions of government between Congress and the states. When members of Congress had talked of delegating power to subordinate executive agencies, they had been primarily concerned with improving the efficiency of Congress, nothing more. But now it was realized that those notions of separation of powers that were designed to prevent governments from becoming too efficient, and thus dangerous to liberty, had to be applied to the internal organization of the federal government. Moreover, by proposing that the members of the lower house be elected by the people, the Virginia Plan at last established a direct link between the federal government and the people, thus giving its enactments the status of legislation and removing the major obstacle to bestowing powers of taxation.67

These proposals cut through the theoretical anomalies that had complicated previous discussions of the nature of the federal government, and enabled the delegates to draw upon a far more provocative body of critical thought than any that the affairs of Congress had ever generated. For it was in the creation of the state constitutions and ensuing appraisals of their success that American thinkers had most carefully developed their new conceptions of separation of powers and representation. It was the experience of the states that had called into question the Americans' initial commitment to the supremacy of the legislature and the evisceration of the executive. It was in the states that the problem of protecting constitutional charters and rights from legislative encroachment had become apparent and that the doctrine of judicial review had begun to take shape. And it was there, too, that the difficulty of reconciling the traditional forms of mixed government with a republican conception of popular sovereignty had led toward a new understanding of the meaning of representation.68

Only in 1787, then, were the richly detailed and innovative arguments that had accompanied the creation of republican policies in the states brought to bear on the problem of national
government. As a result, the Convention was able to consider the issues inherent in establishing a national government with a sophistication that had been absent from all previous discussions. At the same time, its debates necessarily amounted to a mature reassessment of the merits and defects of the original state constitutions. The new Constitution was thus framed less in reaction to the Articles of Confederation than in response to a seasoned critique of politics and government at the level of the states. More than anything else, it was this shift of perspective that allowed the Convention to acquire its preeminent place in the history of American political thought.

The Virtue of Isolation

There was, as well, one final condition that worked to release the deliberations of 1787 from earlier constraints, and that also represented the peculiar legacy of the Continental Congress. Despite the aftershocks of Shays's Rebellion and the Mississippi controversy, it would be incorrect to assert that the Convention assembled in an atmosphere of true crisis. The popular mood of America in 1787 cannot be compared to the fearful anxieties of 1774–75 or the deepening disillusionment of 1779–80. The First Continental Congress had had “materials to work with & the strong Impression of Fear to support their Influence,” Stephen Mix Mitchell reminded William Samuel Johnson, a member of the Convention from Connecticut. “The Convention is in a very different predicament, no fears of the people to co-operate with them,” and assembled in “a time of profound peace within & without.” Although shrill warnings of social upheaval were occasionally heard from New England, few American leaders believed that the nation was literally ripe for anarchy. On the eve of the Convention, a number of well-placed national leaders, including Washington, still doubted whether affairs had yet plunged to the nadir necessary to ensure the success of a reformation.

Yet the fact that there was to be a convention itself constituted a new variable in political calculations. “Should this plan fall thro, or meeting, should their System be rejected ... what is to become of the confederacy?” asked Tench Coxe, the Philadelphia merchant and political economist. “I confess it appears
to me but short-lived.” Once it was known that the meeting would be well and capably attended, speculation about the consequences of failure proved unavoidable. Would it then be possible to return to the strategy of patient and partial reform that had been pursued since 1781? Would Congress and the Articles then be seen in a newly favorable light? Neither question could be answered confidently. “I cannot sit still & see a Dissolution of the Confederacy without making an effort to save it from Anarchy & Ruin,” wrote the New Jersey congressional delegate, Lambert Cadwalader. “How far the Measure in Question may prevent it I am not Prophet enough to say—in it however we have some chance—but if we leave our Affairs to go to Pieces, silently acquiescing in the Consequences which must ensue, it will in my Idea be criminal in the highest Degree.”71

These considerations were of course apparent to the members of the Convention and help to explain their perseverance through months of deliberation. But the imminence of the Convention had a similarly galvanizing effect on a widening circle of articulate, respectable, but politically inactive citizens—in Coxe’s view, “Men of real Virtue, knowledge, and clear property,” but who had to be “forced into public life.” By the time the Convention assembled, there were clear signs that the political torpor of the preceding years was giving way to a new sense of engagement. “Men are brought into action who had consigned themselves to an eve of rest,” Edward Carrington informed Jefferson, “and the Convention, as a Beacon, is rousing the attention of the Empire.” But more was to be required of these men than attention. If the Convention produced a satisfactory plan, Benjamin Lincoln wrote in early May, “men of property and principle and all who wish for government must combine and carry it down.” Anticipating the reliance on the socially respectable classes that would soon typify the Federalist campaign for ratification, Lincoln argued that “the whole artillery of the wealth & address of the good men of the community must be levelled against” those who would pass judgment on the Convention. “The weakness of some must be managed—the vices of others turned to account—their virtues (and here & there a virtue is yet to be found among them) must be cherished and improved.”72

Brief items inserted in the more cosmopolitan newspapers implied that the people themselves might need little convincing, since there was a “general determination among all classes of
people to receive the government they [the members of the Convention] are now framing.” Such comments were themselves harbingers of the imminent Federalist campaign for ratification, “artfully calculated,” a few skeptics already suspected, “to prepare the minds of the people, implicitly to receive any form of government that may be offered to them.” Whether any meaningful currents of public opinion had as yet taken shape is doubtful, however. Among active politicians and within certain élite circles there was considerable anticipation of the Convention’s outcome. But other writings from the summer of 1787 do not depict a society already chafing to begin the frenetic political activity that did follow the publication of the Constitution. Writing to Coxe in mid-June, Edward Goold of New York could only describe his astonishment at seeing “with what indifference people in general speak of [the Convention] and how little anxiety they betray for an event that in all probability must produce some very important Changes in the Government of this Country.” Yet if the Americans displayed “more Coolness in affairs when they are nearly Concerned than any other People I know,” that in itself was comforting. For, “whatever Revolutions we may undergo,” Goold concluded, “no great violence or enormities will ensue & the property of individuals [will] remain unmolested.”

Deference on the part of those who were predisposed to favor a stronger federal government, indifference or simple ignorance among those who might later see the Constitution as a reaction against local autonomy: this is perhaps the most that can be said about the state of public opinion during the summer of 1787. There are important differences between periods of genuine crisis and the political atmosphere that existed in 1787. It was very much to the Convention’s advantage that it met after the worst fears arising from the developments of 1786 had managed to subside. Had the Convention assembled at a time when public interest in politics had been running high, its deliberations would almost certainly have proved futile. But, as Goold’s comments suggest, that was not the case in 1787. The dominant motif that runs through the public and private writings from these summer months evokes a curious mixture of expectancy and passivity toward the results of the Convention. It is the pervasive expression of this attitude, which was essentially deferential, that sug-
gests a final link between the Convention and the Continental Congress.

For the most remarkable aspect of the Convention's four-month inquiry was that it was conducted in virtually absolute secrecy, uninfluenced by external pressures of any kind. No detailed instructions bound the delegates to specific goals, nor did the Convention even feel constrained to confine itself to proposing mere revisions of the Articles, as some of the members' credentials stipulated. No crowds assembled in the streets outside to shout for the redress of grievances or to protest its decision to meet behind closed doors. Except for the occasional rumors—many of them inaccurate—that American newspapers published, the general public knew nothing of the Convention's deliberations. It was a curious counterpoint to the tumult of state politics in the 1780's and indeed to a whole generation of political ferment, suggesting that the turbulence of the preceding years had crested somewhere below the national level, held within the limits of local conflicts over debts and taxes, roads and banks, and the rights of religious dissenters and loyalist refugees.

And yet the freedom that the Convention enjoyed, and that was indispensable to its success, was hardly accidental. That the Convention wished to deliberate in private could not have been surprising, but its ability to shield itself from public scrutiny was the legacy of the isolation that had traditionally separated the Continental Congress from the other spheres of American politics. The independence and originality the Convention demonstrated could not have been achieved had Congress ever succeeded in establishing efficient channels of influence and habits of communication with the states. The Convention realized that the new government must not remain similarly aloof; but in the meantime it was prepared to extract one last advantage from the tradition that had served Congress so well at the height of its power, and so poorly in its decline.