

Introduction to the Ratification of the Constitution in Virginia

The Declaration of Rights and the Constitution

Virginia was one of the centers of opposition to British colonial rule, especially after 1774 when British policy became increasingly restrictive and non-conciliatory. In late March 1774 Parliament, angered by the Boston Tea Party, adopted the Boston Port Bill, closing the Port of Boston on 1 June. On 24 May the House of Burgesses resolved that 1 June be a day of fasting and prayer. On 26 May Lord Dunmore, the royal governor, dissolved the House. Some of the burgesses then issued a call for the members to meet in Williamsburg on 1 August. The burgesses met in the first revolutionary convention from 1 to 6 August, appointed delegates to the First Continental Congress, and adopted an association calling for complete non-importation. From this point, a succession of revolutionary conventions and the royal governor competed for control of the colony. Between March and August 1775 the second and third revolutionary conventions met and appointed delegates to the Second Continental Congress. Fighting broke out between British troops and the Virginia militia.

On 15 November 1775 Lord Dunmore, flushed with a victory over the patriot militia at Kemp's Landing, proclaimed martial law; freed slaves and indentured servants willing to fight for Great Britain; and established a loyalist association. The next day Robert Carter Nicholas, the president pro tempore of the third revolutionary convention, summoned that body to reconvene on 1 December. On 4 December the Second Continental Congress declared that Dunmore's action was equivalent to "tearing up the foundations of civil authority and government," and it urged Virginia "to resist to the utmost the arbitrary government intended to be established therein." Congress also recommended that if the convention of Virginia found it necessary to establish a new form of government, it should "call a full and free representation of the people, and that the said representatives, if they think it necessary, establish such form of government as in their judgment will best produce the happiness of the people, and most effectually secure peace and good order in the colony, during the continuance of the present dispute between Great Britain and these colonies." Although the second session of the third revolutionary convention (actually called the fourth revolutionary convention) probably received the congressional recommendations on 13 December, no action was taken for some time.

Many of the delegates to the fifth revolutionary convention, elected in April 1776, were

instructed to urge Congress to declare independence. The convention convened on 6 May and unanimously resolved on 15 May to instruct its delegates to Congress to propose independence, and that Congress form foreign alliances and a confederation of the colonies. It also resolved unanimously “that a Committee ought to prepare a Declaration of Rights and such a plan of government as will be most likely to maintain peace and order in this colony and secure substantial and equal liberty to the people.” Convention President Edmund Pendleton appointed twenty-eight men to this committee which was eventually expanded to thirty-six. Included on this committee, in the order of their appointment, were Meriwether Smith, Patrick Henry, Edmund Randolph, William Cabell, Jr., Joseph Jones, John Blair, Cuthbert Bullitt, John Banister, Sr., Mann Page, Jr., James Madison, and George Mason. Mason took the lead in the committee, and within a few days he proposed a draft of the Declaration of Rights, which the committee revised and presented to the convention on 27 May. The convention debated and amended the revised draft, and on 12 June unanimously adopted the Declaration of Rights.

On 24 June the committee reported a draft constitution, also largely the work of George Mason. The convention amended the draft considerably and added a preface that congressman Thomas Jefferson included in his draft constitution that he forwarded from Philadelphia. The convention debated the draft constitution from 26 to 28 June and unanimously ratified it on the 29th. The new form of government went into operation immediately as the convention chose Patrick Henry governor and appointed a Council of State. The convention also ordered that an ordinance be prepared to divide Virginia into senatorial districts.

The Declaration of Rights codified the fundamental principles of government and the rights of a free people as they had developed in Great Britain and America. It also went beyond precedent in some provisions, as when it espoused the principle of separation of powers, prohibited general warrants, and guaranteed the freedom of the press. The Declaration omitted some important rights: the freedom of speech and assembly, the right of the writ of habeas corpus, and the right to legal counsel. Even so, it was an encompassing expression of the rights of freemen as they were understood in the late eighteenth century.

The Virginia constitution created a government divided into “legislative, executive, and judiciary” departments. The bicameral legislature, called the General Assembly, consisted of the House of Delegates and the Senate. Each county elected two delegates to the House, and

the city of Williamsburg and the borough of Norfolk elected one each. The Senate consisted of one senator from each of twenty-four senatorial districts, elected for a four-year term. One-fourth of the senators were elected annually.¹ All bills had to originate in the House and had to pass both houses to become laws. The Senate could propose amendments to all bills, except money bills which it could only accept or reject in toto.

The governor was elected annually by joint ballot of the General Assembly, but he could not serve more than three successive terms. He exercised the executive powers of government with the advice and consent of an eight-member Council of State, which was also elected by joint ballot of the two houses. He could grant pardons and reprieves, but he had no veto power.

The state judiciary consisted of a Supreme Court of Appeals, a General Court, a Chancery Court, and an Admiralty Court. The judges of these courts were appointed by the General Assembly and continued in office during good behavior.

The most powerful institution on the local level was the county court, which exercised executive, legislative, and judicial functions. Justices of the peace, who served for life, were appointed by the governor on the recommendation of the county court, and were generally chosen from among the leading families. The sheriff, often the longest-serving justice, was nominated by the county court and approved by the governor.

Delegates to Congress were elected annually by joint ballot of the legislature. In 1777 and 1779 the legislature passed acts stating that seven delegates were to be elected annually, although, beginning in 1784, it restricted the number to five.

The Payment of the British Debts

At the beginning of the Revolution, Virginians owed about £2,000,000 sterling to British creditors. In January 1778 the legislature suspended lawsuits for debts and permitted debtors to pay creditors by depositing money in the state loan office. Under this act, about 500 planters deposited paper money totalling £274,000, that, in 1786, had a value of only about £12,000 sterling. In 1780 the legislature repealed this act and the next year placed a moratorium upon the payment of foreign and domestic debts. In the spring of 1782 the

¹ For the qualifications of legislators and electors, see "The General Assembly Calls a State Convention," 25–31 October, notes 11 and 12 (RCS:Va., 119–20n).

legislature closed the state's courts to suits by British citizens.

On 30 November 1782 British and American commissioners signed the preliminary articles of peace. The fourth article stated that: "It is agreed that Creditors on either side, shall meet with no lawful Impediment to the Recovery of the full value in Sterling Money of all bona fide Debts heretofore contracted." The fifth article called on Congress to recommend to the states that the confiscated property of British subjects and Loyalists be returned, while the seventh provided that the British would withdraw from all their posts on American soil and would not carry away the slaves in their possession when they evacuated. Congress received the preliminary articles on 12 March 1783 and soon after their contents were known in Virginia.

In the May 1783 session of the House of Delegates, a group of legislators, encouraged from outside the legislature by George Mason, wanted to see the debts paid. Consequently, Thomson Mason (George's brother) presented a bill for paying the domestic and foreign debts in five yearly installments, but the bill failed. The legislature, however, repealed the state laws that had authorized the confiscation of British property. By early 1784, reports circulated that Virginians would not pay their debts until the British compensated them for the slaves confiscated during the war and until the British abandoned their Northwest forts.

In the May 1784 session a group led by James Madison brought in a resolution calling for the repeal of legislation repugnant to the peace treaty, the final version of which had been signed in September 1783. The House defeated this measure and another one that proposed an installment plan to pay the debts. In the fall of 1784, in response to reports that the British were refusing to honor their treaty obligations in the Northwest, the House passed a bill providing for the payment of the debts in seven annual installments that were not to include interest payments for the years 1775 to 1783. The Senate amended the bill. A conference committee of the two houses then considered the bill, but by the time it reached agreement the House no longer had a quorum. In 1785 another effort was made, but the legislature adjourned before any action was taken.

By 1786 it had become increasingly apparent that the British would not evacuate the Northwest posts and that tension with the Indians on the frontier was mounting, in part, because of Britain's position. In October 1786 Secretary for Foreign Affairs John Jay sent Congress a long report concerning American infractions of the Treaty of Peace. The report proposed a resolution stating that treaties could not be interpreted or limited by the states

because once “constitutionally made, ratified and published, they become, in virtue of the Confederation, part of the law of the land, and are not only independent of the will and power of such Legislatures, but also binding and obligatory on them.” Another resolution proposed “That all *such* Acts or parts of Acts as may be now existing in either of the States, repugnant to the treaty of peace, ought to be forthwith repealed,” while a third urged that the states repeal all such laws. Congress unanimously adopted these resolutions on 21 March 1787 and sent them to the states on 13 April.

In the October 1787 session the House of Delegates linked the issue of debts to the proposed Constitution. Much of the opposition to the repeal of laws impeding the collection of British debts derived from “the danger of every defendant being hurried sooner or later to the seat of the federal government.” Granting federal courts jurisdiction in this matter seemed to some “the most vulnerable and odious part of the constitution.”² A vote on the debt question, then, might be a true test of the legislature’s sentiments on the Constitution. On 14 November George Mason and George Nicholas moved that all laws repugnant to the peace treaty be repealed. Three days later, Mason and Nicholas agreed to a clause stating that the repeal law would be suspended until all of the states passed similar laws. Henry, however, moved to suspend the repeal law until Great Britain complied with the provisions of the peace treaty. The House defeated Henry’s motion 75 to 42. William Ronald proposed an amendment providing that the debts be paid in installments, but this motion was defeated by Mason and his supporters by a vote of 69 to 48. The House then passed the original resolution (brought in earlier in the day) by a vote of 72 to 42 and appointed a committee to prepare a bill. The bill reported on 3 December was similar to the original resolution of 17 November. An amendment suspending the repeal act until the British complied with the treaty was again proposed. The House adopted the amendment by a vote of 80 to 31 and the bill became law on 12 December.

Paper Money and Debtor Relief

After the Revolution, Virginia redeemed much of its war debt by accepting its paper money in payment of taxes and for the sale of western lands and confiscated estates. When Virginia paper currency came into the treasury, it was destroyed, and the legislature refused

² Edmund Randolph to James Madison, c. 29 October (RCS:Va., 132–35n).

to emit more paper money after 1781. Gold and silver payments for imports also reduced the amount of circulating currency, and fears of another government issue of paper money further contracted the circulation of gold and silver. This significant reduction of a medium of exchange contributed to the economic depression of 1785–87. During these years, petitions were received by the legislature calling for a new issue of state paper money to provide a circulating medium and a means to pay taxes. The feeling against paper money, however, was stronger than the sentiment for it; its considerable wartime depreciation was still remembered. On 1 November 1786 the creditor faction in the legislature, led by James Madison and allies of George Mason, overwhelmingly adopted a resolution charging that paper money “would be unjust, impolitic, and destructive of public and private confidence and of that virtue which is the basis of a republican government.” The legislature also defeated some other debtor relief measures, although it passed a law permitting the payment of 1786 taxes in tobacco.

In the spring and summer of 1787 petitions for a variety of relief measures were circulated and articles on these subjects appeared in newspapers. John Marshall was worried that debtors would gain control of the legislature in the April elections. Some debtors, however, began to take more drastic actions. They tried to shut down county courts, and they threatened sheriffs who collected taxes. In May the courthouse was burned down in King William County, and in July the prison and county clerk’s office in New Kent County were destroyed by fire. John Price Posey was arrested for the New Kent burning. In August an association was organized in Greenbrier County to oppose the payment of debts and taxes. In the same month, the office of the clerk of Westmoreland County was broken into and records and papers, dating back to 1776, were stolen. These activities were widely reported in newspapers and caused concern among Virginia’s delegates to the Constitutional Convention.

When the legislature met in October 1787, it received a number of petitions for paper money and debtor relief. On 3 November George Mason presented a series of resolutions condemning paper money as “ruinous to Trade and Commerce, and highly injurious to the good People of this Commonwealth.” He challenged its supporters to “come boldly forward, & explain their real Motives.”³ No one came forward and the resolutions

³ Mason to George Washington, 6 November, Robert A. Rutland, ed., *The Papers of George Mason, 1725–1792* (3 vols., Chapel Hill, N.C., 1970), III, 1011.

condemning paper money were adopted unanimously. Archibald Stuart referred to Mason's speech as the "funeral Sermon of Paper Money."⁴ Again, some debtor relief measures were defeated, but two relatively minor ones were passed. The legislature amended the execution act so that it guaranteed that sales under execution would be postponed for a year if the property could not be sold for at least three-quarters of its appraised value. Another measure allowed tobacco to be used for the payment of 1787 taxes. Joseph Jones wrote James Madison that the execution bill was "calculated to give some relief to Debtors, without any direct interference with private contracts."⁵ After exhausting the appeal process, the arsonist John Price Posey was hanged on 25 January 1788.

The Navigation of the Mississippi River

By provisions of its colonial charter, Virginia claimed all the land north of its southern border and west of the Allegheny Mountains. During the Revolution, Virginia sent an expeditionary force led by George Rogers Clark into the Illinois country. The success of this expedition solidified Virginia's claim to the West. In August 1779 Congress voted, with Virginia in the majority, to assert the American right to the free navigation of the Mississippi. In October the Virginia legislature instructed its delegates in Congress to defend American rights to the navigation of the river in diplomatic negotiations. The Treaty of Peace of 1783 established the Mississippi as the western boundary of the United States and it guaranteed Americans the right of free navigation. In June 1784 Spain closed the navigation of the river to Americans, thus infuriating westerners. The Virginia legislature was concerned that some westerners wanted war with Spain. Consequently, in November the legislature instructed its congressional delegates to urge Congress to secure as soon as possible the navigation of the Mississippi, which was "essential to the prosperity and happiness of the western inhabitants of this Commonwealth."

In the spring of 1785 Don Diego de Gardoqui, a Spanish diplomat, arrived in America to negotiate a commercial treaty. In August Congress instructed Secretary for Foreign Affairs John Jay "to stipulate the right of the United States to their territorial bounds, and the free

⁴ To John Breckinridge, 6 November, Breckinridge Family Papers, Library of Congress.

⁵ 18 December, Robert A. Rutland et al., eds., *The Papers of James Madison* (Chicago and Charlottesville, 1975—), X, 330.

Navigation of the Mississippi.” Jay and Gardoqui entered into negotiations. They were soon at loggerheads over the Mississippi because Gardoqui had been instructed to insist upon Spain’s exclusive right to the navigation of the river. In August 1786 Jay asked Congress to forbear the navigation of the river for twenty-five or thirty years so that the two countries could conclude a commercial treaty. Congressional delegates bitterly debated Jay’s request for three weeks, and on 29 August Congress voted seven states to five to repeal Jay’s instructions respecting the navigation of the river. The vote was sectional: the seven Northern States (Delaware was absent) voted for repeal, while the five Southern States, including Virginia, voted against it. Westerners and southerners were outraged when they learned of this vote. The North seemed willing to barter away the interests of the West in order to obtain commercial advantages for itself.

In Virginia, James Madison believed that, if Congress voted to allow Jay to give up the navigation of the Mississippi, “the hopes of carrying this State into a proper federal System will be demolished. Many of our most federal leading men are extremely soured with what has already passed. Mr. Henry, who has been hitherto the Champion of the federal cause, has become a cold advocate, and in the event of an actual sacrifice of the Misspi. by Congress, will unquestionably go over to the opposite side.”⁶ Madison’s concern was understandable because the October 1786 session of the legislature had considered the report of the Annapolis Convention.

On 17 November 1786 the House of Delegates received a petition from its Kentucky members and others, expressing great alarm at the rumor that Congress was about to relinquish the navigation of the Mississippi for twenty-five or thirty years. This was an “unconstitutional” and “dangerous” action and “a violation of the federal compact.” They looked upon the free navigation of the river as a natural right. On 29 November a series of resolutions, probably written by Madison, was adopted by the House of Delegates. The resolutions instructed the state’s congressional delegates to oppose any attempt by Congress to give up the right of navigation. A cession of that right would be a violation of the Articles of Confederation. Moreover, any failure to insist upon that right in negotiations with Spain would undermine the Union itself. The Senate adopted the resolutions on 7 December, and on 19 April 1787 they were laid before Congress, along with the petition from the Kentucky

⁶ To George Washington, 7 December 1786, *ibid.*, IX, 199–200.

delegates and others.

In April 1787 the question of the navigation of the Mississippi became a volatile issue in Congress. On the 18th James Madison, who had returned to Congress after the hiatus of three years required by the Articles of Confederation, became so disturbed by Jay's position on this issue that he tried but failed to get the negotiations transferred to Thomas Jefferson, the American minister in Paris. At this point, Congress dropped the issue. Madison noted on 26 April: "the project of shutting the Mississippi was at an end; a point deemed of great importance in reference to the approaching Convention for introducing a Change in the federal Government, and to the objection to an increase of its powers foreseen from the jealousy which had been excited by that project."⁷ On 31 August, William Grayson, another Virginia delegate, wrote Madison that "The Mississippi is in a State of absolute dormification."⁸

While Congress considered the Mississippi question in the spring of 1787, the West was in a state of turmoil. In late March, the members of the "court party" in Fayette County, Ky., sent a circular letter to the other county courts, expressing alarm about the rumors of the proposed cession of America's right to navigate the Mississippi. Early in the summer, several letters from the West (including Kentucky), also dealing with the Mississippi question, were widely circulated in the newspapers. The issue had died in Congress, but it was still very much in the public mind.

The Mississippi issue had a profound impact on the debates in the Constitutional Convention. Southern delegates realized that, in order to protect their interests, a two-thirds vote in the Senate should be required to ratify treaties. This provision would, in essence, give a united South a veto power over treaties. Some southerners felt that the two-thirds vote requirement should also apply to the passage of all commercial legislation further safeguarding Southern interests.

The debate over the Mississippi did not subside when Congress dropped the issue. On 12 November 1787 the House of Delegates passed three resolutions concerning the Mississippi. First, the navigation of the western waters by Virginians was a right given to them by God and nature. Second, any attempt by Congress to barter away this right was a

⁷ Notes on Debates, *ibid.*, 407.

⁸ *Ibid.*, X, 159.

violation of the principles of the American Revolution and “strongly repugnant to all confidence in the Federal Government.” Third, a committee was to be appointed to instruct the state’s delegates to Congress to oppose “the cession of the western navigation.” The committee that was appointed does not appear to have reported, and as late as 24 September 1788 congressional delegate James Madison asked Governor Edmund Randolph why the resolutions had not been forwarded to the state’s delegates. Unaware of these resolutions, Randolph sent Madison the resolutions of December 1786.

The Efforts to Strengthen the Central Government

Even before the Articles of Confederation were finally ratified on 1 March 1781, most Americans realized that Congress needed an independent source of revenue to finance the war. The issuance of paper money and the requisition system had not proven effective means of giving Congress financial independence. Many believed that import duties would be the best way for Congress to raise money, but the Articles of Confederation had not given Congress the power to tax. Consequently, in February 1781 Congress proposed an amendment to the Articles—the Impost of 1781—that would have given it the power to levy a five percent duty *ad valorem* on imported goods, the revenue of which would go toward the payment of the principal and interest on the war debt.⁹ The Impost would remain in effect until the debt was paid. On 14 June 1781 the Virginia legislature ratified the Impost, and, because it believed that “commercial regulations” throughout the states should be “uniform and consistent,” it also authorized Congress to appoint collectors in Virginia. On 17 December 1781, however, the legislature suspended its ratification until the other states approved the Impost. By the fall of 1782 every state, except Rhode Island, had ratified the Impost. On 7 December 1782 the Virginia legislature repealed its ratification, declaring in the preamble to the act that “permitting any power, other than the general assembly of this commonwealth, to levy duties or taxes upon the citizens of this state within the same, is injurious to its sovereignty, may prove destructive of the rights and liberty of the people, and so far as congress might exercise the same is contravening the spirit of the confederation in the eighth article thereof.” The Virginia delegates to Congress, especially James Madison, were completely surprised by this action. Because amendments to the Articles of

⁹ Merrill Jensen et al., eds. *Constitutional Documents and Records, 1776–1787* (Madison, Wis., 1976), 140–41. Hereafter cited as CDR.

Confederation needed the unanimous approval of the state legislatures, the Virginia repeal (along with Rhode Island's refusal to ratify in November 1782) killed this first attempt to establish a federal revenue.

In April 1783 Congress, still intent on obtaining an independent revenue, submitted a comprehensive economic program to the states. Among other things, the states were asked to grant Congress, for twenty-five years, the power to levy a five percent *ad valorem* duty on imported goods and to grant it annually a supplemental income of \$1,500,000 for the same period of time.¹⁰ The duties were to be collected by officers appointed by the states but “amenable to and removeable by” Congress alone. Opposition arose in the spring session of the Virginia legislature, where the majority was hostile to this extension of congressional power. After considerable debate, a bill was brought forth in which the proceeds of the Impost would go into the state treasury. Supporters of the Impost rejected the idea, as they did a compromise measure that would have kept the collection of the Impost totally under state control, though the proceeds would go to Congress. At an impasse, the legislature postponed the question until its next session. By the end of 1783 the climate of opinion had changed, and the legislature on 18 December granted Congress the Impost, stating in the preamble to its act of ratification that the Impost would “lighten” the burden of taxes on real and personal property. This would be “a great ease and relief to the people.” The legislature, however, did not grant Congress the supplemental funds. (Only five states did.) The Impost, though, was eventually defeated in 1787 when New York refused to ratify it under conditions that were acceptable to Congress.

In December 1783 the legislature also turned its attention to foreign trade, another area in which Congress sought to increase its authority. The legislature on 12 December “authorized and empowered” Congress to retaliate against British restrictions on American ships in the West Indies trade by prohibiting the importation of West Indies goods in British vessels. Other states also encouraged Congress to retaliate, and on 30 April 1784 Congress resolved that the states grant it power to regulate commerce for fifteen years.¹¹ Virginia quickly granted Congress this power on 29 June 1784, the first state to accede. Three days earlier, the legislature had also ratified an amendment to the Articles of Confederation,

¹⁰ CDR, 146–48.

¹¹ CDR, 153–54.

proposed by Congress in April 1783, that would have changed the basis of apportioning Confederation expenses among the states from land value to population.¹²

In late 1784 and early 1785 commerce again became a central issue. Trade had declined significantly, and Congress was only mildly successful in negotiating commercial treaties. Some states feuded over commercial regulations, and there was widespread displeasure with Congress' lack of commercial power. By the end of 1784, only five states had agreed to grant Congress the commercial power that it had requested in April 1784. Congress thus sought an alternative proposal and in December 1784 appointed a committee on "the general regulation of trade." On 28 March 1785, the committee, chaired by James Monroe, proposed an amendment to the Articles of Confederation giving Congress permanent power to regulate foreign and interstate commerce and to levy import and export duties, which would "be collected under the authority and accrue to the use of the State in which the same shall be payable."¹³ Virginia's congressional delegation split over this proposal. Richard Henry Lee believed that if the amendment were adopted, the Southern States would be at the "Mercy" of a "destructive Monopoly" of the Northern States. Such a situation would probably occur because "The Spirit of Commerce thro'out the world is a Spirit of Avarice."¹⁴ The amendment touched off a heated sectional debate in Congress and in July 1785 it was dropped.

Virginia and Maryland, acting in the vacuum created by Congress' lack of power to regulate commerce and seeking to resolve their differences, appointed commissioners to confer in March 1785. These commissioners signed an agreement "to regulate and settle the Jurisdiction and Navigation of Potomack and Pokomoke Rivers and that part of Chesapeake Bay which lieth within the Territory of Virginia." This meeting almost did not take place. Virginia appointed its commissioners (George Mason, James Madison, Edmund Randolph, and Archibald Henderson) on 28 June 1784, while Maryland appointed its commissioners in the fall. Maryland also proposed the time and place of the meeting, but Governor Patrick Henry failed to inform the Virginia commissioners. When the Maryland commissioners arrived in Alexandria, Mason and Henderson learned of the scheduled meeting and decided

¹² CDR, 148-50.

¹³ CDR, 154-56.

¹⁴ To James Madison, 11 August, Rutland, *Madison*, VIII, 340.

to confer with the Marylanders. George Washington invited the commissioners to hold their conference at Mount Vernon.

As the commercial depression deepened, the question of revising the state's trade laws arose in the House of Delegates. Some wanted the state itself to retaliate against Great Britain, while others sought that power for Congress. In November 1785 resolutions were considered that would have authorized the state's congressional delegates to propose that Congress have the power to enact commercial regulations, with the proviso that they be adopted by two-thirds of the states and that they be in force for only thirteen years. A group of delegates opposed a temporary grant of power because it would endanger the adoption of a permanent grant. This opposition doomed the temporary grant on 1 December.

Soon after the grant was tabled, John Tyler introduced a resolution proposing that the states meet to consider the "Trade of the United States" and "to consider how far an uniform System in their Commercial regulations may be necessary to their common Interest and their personal harmony." The states were to report an "act relative to this great Object as, when unanimously ratified by them will enable the United States in Congress assembled effectually to provide for the same."¹⁵ Tyler's motion was submitted to a committee. In the meantime, some delegates recommended several ways to strengthen the state's control over commerce. When these attempts failed, Tyler's resolution was resurrected and passed on 21 January 1786, "by a very great majority."¹⁶

James Madison, Edmund Randolph, and Walter Jones were the first commissioners appointed. St. George Tucker and Meriwether Smith were added, and the Senate completed the roster by naming George Mason, David Ross, and William Ronald. The latter declined the appointment. Madison was dismayed by both the number and composition of the commission, but he thought that a convention might "lead to better consequences than at first occur."¹⁷ The idea of a convention to recommend an increase in the powers of Congress was not new. Joseph Jones had recommended one to Madison in 1785; and the year before John Francis Mercer and Richard Henry Lee had supported a convention.

On 19 February 1786 Edmund Randolph, writing on behalf of the Virginia

¹⁵ Rutland, *Madison*, VIII, 471.

¹⁶ *Ibid.*, 483.

¹⁷ To James Monroe, 22 January, *ibid.*, 483.

commissioners, forwarded the resolution to the executives of the states, seeking their concurrence and recommending that the convention meet in Annapolis, Md., on the first Monday in September. Four days later, Governor Henry also wrote the state executives asking them and their legislatures to consider the matter.¹⁸

Nine states elected delegates to the Annapolis Convention, but the delegates of only five states (including Virginia) attended between 11 and 14 September. The report of the Convention called upon the states to elect delegates to meet in convention in Philadelphia on the second Monday in May 1787 “to devise such further provisions as shall appear to them necessary to render the constitution of the Fœderal Government adequate to the exigencies of the Union.”¹⁹

In the summer of 1786, just before the meeting of the Annapolis Convention, agrarian violence in Massachusetts, known as Shays’s Rebellion, broke out and lasted until February 1787. There were also incidents or threats of violence in Vermont, New Hampshire, Connecticut, Pennsylvania, Maryland, South Carolina, and even Virginia. Many Virginians were unnerved and distressed by the violence. George Washington complained that “There are combustibles in every State, which a spark might set fire to.”²⁰ In this atmosphere, the state legislature considered the report of the Annapolis Convention in November 1786. On the 23rd the legislature passed an act authorizing the election of delegates to meet in Philadelphia in May 1787. The legislature believed “that the crisis is arrived at which the good people of America are to decide the solemn question, whether they will... reap the just fruits of... Independence,” or give “way to unmanly jealousies and prejudices, or to partial and transitory interests.” Paraphrasing the Annapolis Convention’s report, the legislature called for the appointment of seven commissioners to join with those from other states to devise and discuss “all such alterations and further provisions, as may be necessary to render the Federal Constitution adequate to the exigencies of the Union.” These alterations were to

¹⁸ Appendix II: Virginia Calls Meeting to Consider Granting Congress Power to Regulate Trade, 21 January–23 February 1786 (RCS:Va., 538–39).

¹⁹ CDR, 177, 180–185.

²⁰ To Henry Knox, 26 December 1786, John C. Fitzpatrick, ed., *The Writings of George Washington ...* (39 vols., Washington, D.C.), XXIX, 122.

be reported to Congress, and when agreed to by Congress, they were to be confirmed by the states.²¹ On 4 December the legislature appointed George Washington, Patrick Henry, Edmund Randolph, John Blair, James Madison, George Mason, and George Wythe as delegates to the Philadelphia Convention. On 13 February 1787 Henry wrote Governor Edmund Randolph declining the appointment, but he gave no specific reason. Randolph, however, wrote Madison that Henry refused to attend because he was “distressed in his private circumstances.”²² During a debate over the ratification of the Constitution, Henry is alleged to have said that he refused his appointment because he “smelt a rat.”²³ On 22 February Thomas Nelson, Jr., was named in Henry’s place, but Nelson declined. On 20 March Nelson was replaced with Richard Henry Lee, who also refused the appointment.²⁴ On 5 April James McClurg, a member of the Council of State, was appointed.

Unbeknownst to most Virginians, George Washington—the most famous, admired, and popular man in America—also wanted to decline his appointment to the Constitutional Convention. On 21 December 1786 Washington wrote Governor Randolph that he would not go to the Convention. The news was not made public because Randolph, James Madison, and other prominent Virginians hoped to persuade Washington to change his mind. In the next few months, they wrote to Washington entreating him to attend because his presence was indispensable to the success of the Convention. Finally, on 28 March 1787 Washington wrote Governor Randolph that he would go to Philadelphia.²⁵ On 11 April the *Virginia Independent Chronicle* announced “with peculiar satisfaction,” that “our illustrious fellow citizen, George Washington, Esq.” had consented to attend the Convention.²⁶ With Washington, the Virginia delegation was the most prestigious one in the Convention,

²¹ Appendix III: Virginia’s Appointment of Delegates to the Constitutional Convention, 23 November–4 December 1786 (RCS:Va., 540–42).

²² 1 March, Rutland, *Madison*, IX, 301.

²³ Hugh Blair Grigsby, *The History of the Virginia Federal Convention of 1788...*, edited by R. A. Brock, *Collections of the Virginia Historical Society*, new ser., vols. IX–X [Richmond, 1890–1891], I, 32n.

²⁴ For Lee’s reasons for his refusal, see his 3 September letter to John Adams (RCS:Va., 9).

²⁵ CC:10.

²⁶ CC:11.

matched perhaps only by that of Pennsylvania with Benjamin Franklin at its head.

The Virginia Delegates in the Constitutional Convention

The Virginia delegation to the Constitutional Convention played an extraordinary role. The Convention, scheduled to meet on 14 May 1787, did not attain a quorum until the 25th. The lack of a quorum was not the fault of Virginia's delegates. James Madison had arrived in Philadelphia on 5 May; George Washington on the 13th; John Blair, James McClurg, and George Wythe by the 15th; Randolph on the 15th; and Mason on the evening of the 17th. The seven delegates met for "two or three hours every day, in order to form a proper correspondence of sentiments."²⁷ In their discussions, the delegates were dependent upon and influenced by ideas that Madison had been formulating since the spring of 1786. These ideas are embodied in two memoranda: "Notes on Ancient and Modern Confederacies" (April–June? 1786) and "Vices of the Political System of the United States" (April–June 1787); and in letters to Thomas Jefferson, 19 March 1787, Edmund Randolph, 8 April, and George Washington, 16 April.²⁸ The product of the delegates' discussions was the Virginia Resolutions which were presented to the Convention by Governor Edmund Randolph on 29 May.

The Virginia Resolutions provided for a two-house legislature, in which both houses were to be apportioned among the states according to their population or to the taxes they paid to the central government. The first house was to be elected by the people; the second by the first from a list of persons nominated by the state legislatures. The national legislature would have all the power of Congress under the Articles of Confederation, plus the power "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." It could also veto state laws violating "the articles of Union" and use force to compel states to fulfill their duties.

The Resolutions proposed an executive to enforce the laws and "to enjoy the Executive rights vested in Congress by the Confederation." A judiciary was proposed that would have jurisdiction over cases involving foreigners or citizens of different states, the national

²⁷ Mason to George Mason, Jr., 20 May, Farrand, III, 23.

²⁸ Rutland, *Madison*, IX, 3–24, 317–22, 345–58, 368–71, 382–87.

revenue, “and questions which may involve the national peace and harmony.” All state officers were “to be bound by oath to support the articles of Union.” The new form of government was to be approved by Congress and submitted for ratification to state conventions elected by the people.²⁹

The Convention, sitting in the Committee of the Whole, debated the Virginia Resolutions until 13 June, when the Committee reported the amended Virginia Resolutions to the Convention.³⁰ Between 15 and 19 June, the Committee of the Whole compared the merits of the amended Virginia Resolutions with the New Jersey Amendments to the Articles of Confederation.³¹ On the 19th the Committee rejected the New Jersey Amendments, when it again reported the amended Virginia Resolutions to the Convention. These resolutions were debated and revised and were turned over to the Committee of Detail on 24 July. The Committee reported the first draft of the Constitution on 6 August.

In the Convention debates, only about a dozen delegates made substantial contributions, three of them Virginians—James Madison, Edmund Randolph, and George Mason. These three men were among the most frequent speakers: Madison (161), Mason (136), and Randolph (78).³² Randolph was a member of the five-member Committee of Detail, while Madison sat on the five-member Committee of Style that prepared the final draft. Madison, who also kept copious notes of the Convention debates, was the most influential Virginian, but the Constitution finally transmitted to Congress on 17 September was something of a disappointment to him. He believed that the new government was not sufficiently national. In particular, Madison was unhappy that the Constitution did not give Congress the power to veto state laws.³³ Nevertheless, Madison supported the Constitution vigorously and brilliantly in public and in private in the months after the Convention adjourned. Nowhere was this more evident than in his many contributions to *The Federalist*

²⁹ The text of these resolutions is printed in CDR, 243–45.

³⁰ CDR, 247–50.

³¹ CDR, 250–53.

³² *The Historical Magazine*, 1st ser., V [1861], 18.

³³ See Madison to Thomas Jefferson, 24 October (RCS:Va., 97–109n).

and his speeches in the Virginia Convention.³⁴

If James Madison believed that the Convention had not granted sufficient powers to the new central government, Edmund Randolph and George Mason thought that it had gone too far. Randolph introduced and spoke on behalf of the Virginia Resolutions on 29 May. The next day he proposed resolutions declaring that “a union of the States merely federal” was inadequate and calling for a “*national* Government... consisting of a *supreme* Legislative, Executive & Judiciary.”³⁵ In the succeeding debates, he continued to support a “*national* Government,” although he objected to certain provisions of the draft constitution that did not sufficiently protect the liberties of the people or the interests of Virginia. Thus on 29 August, Randolph expressed doubts that he could support the Constitution. Two days later he advocated the idea that state conventions be permitted to propose amendments that would be submitted to a second constitutional convention. He renewed his proposal on 10 September after detailing his objections to the Constitution, and again on 15 September, when he announced that, if his proposal were not adopted, it would “be impossible for him” to sign the Constitution. After the Convention defeated his motion, Randolph refused to sign the Constitution, though he said that “he did not mean by this refusal to decide that he should oppose the Constitution without doors.”³⁶ Before the Convention attained a quorum, George Mason wrote his son, describing the general principles that would be incorporated in the Virginia Resolutions, and anticipating great difficulty in achieving a strong national government while reserving sufficient power to the states. Mason believed, however, that “with a proper degree of coolness, liberality and candor (very rare commodities by the bye), I doubt not but it may be effected.”³⁷

During most of the debates, Mason supported a strong central government, although, like Randolph, he insisted that the liberties of the people be safeguarded and that the

³⁴ For the authorship and impact of *The Federalist*, first published in New York City, see CC:201. See also “The Republication of *The Federalist* in Virginia,” 28 November 1787–9 January 1788 (RCS:Va., 180–83).

³⁵ Max Farrand, ed., *The Records of the Federal Convention of 1787* (3rd ed., 3 vols., New Haven, Conn., 1927), I, 33.

³⁶ See “George Mason and Edmund Randolph in the Constitutional Convention,” 12–15 September (RCS:Va., 10–11).

³⁷ To George Mason, Jr., 20 May, Farrand, III, 23.

interests of Virginia be protected. On 12 September he offered to second a motion for a bill of rights, which “would give great quiet to the people.” Since the texts of the declarations of rights of the states were available, Mason thought that a bill of rights “might be prepared in a few hours.” After Mason spoke, Elbridge Gerry of Massachusetts moved that a committee be appointed “to prepare a Bill of Rights,” and Mason seconded the motion. The Convention defeated the motion by the unanimous vote of the states. On the 15th, Mason seconded Randolph’s motion for a second constitutional convention and warned against “the dangerous power and structure of the Government, concluding that it would end either in monarchy, or a tyrannical aristocracy...”³⁸ On the 17th, Mason, too, refused to sign the Constitution.

Although John Blair attended the entire Convention, there is no record that he spoke. The records do reveal that Blair opposed a single executive and supported the congressional veto of all state laws. James McClurg attended the Convention as late as 20 July. Writing from Richmond on 5 August, McClurg stated his reluctance to return to the Convention.³⁹ George Wythe, the chairman of the rules committee, left the Convention by 4 June, “being called home by the serious declension of his lady’s health,”⁴⁰ and on 16 June he resigned.⁴¹ There is no record that he spoke.

Virginia’s seventh delegate, George Washington, was elected President of the Convention on 25 May. Since the Convention often met in the Committee of the Whole, Washington was frequently not in the chair, but still he did not speak in debate until the last day.⁴² Outside of the Convention, Washington, like other Virginia delegates, advocated a strong central government to replace the one under the Articles of Confederation.

Even though Washington spoke in debate only once, his presence was critical to the success of the Convention since it gave that body a stature that it could not have attained otherwise. “Harrington” (Benjamin Rush), in a widely circulated newspaper essay, expressed

³⁸ See “George Mason and Edmund Randolph in the Constitutional Convention,” 12–15 September (RCS:Va., 10–11).

³⁹ Farrand, II, 67.

⁴⁰ Madison to Jefferson, 6 June, *ibid.*

⁴¹ *Ibid.*, 59–60.

⁴² See CC:233.

this idea well: “Who can read or hear, that the immortal Washington has again quitted his beloved retirement, and obeyed the voice of God and his country, by accepting the chair of this illustrious body of patriots and heroes, and doubt of the safety and blessings of the government we are to receive from their hands?”⁴³

⁴³ *Pennsylvania Gazette*, 30 May, CC:29.