

Center *for the Study of the* American Constitution

NO. 2: PREPARING FOR THE CONSTITUTIONAL CONVENTION

Even before the Articles of Confederation were adopted, attempts were made to amend them by strengthening the powers of Congress. During the early and mid-1780s, various attempts to amend the Articles all failed. In January 1786 the Virginia legislature called for a meeting of the states to discuss commercial matters. Nine of the thirteen states appointed commissioners to the Annapolis Convention, but when commissioners from only five states attended they abruptly wrote a report and adjourned. The report, which was sent to Congress and all of the states, called for a general convention of the states to assemble in Philadelphia in May 1787 to consider broad changes in the Articles of Confederation. Political leaders in Virginia, the oldest, largest, wealthiest, and most populous state in the Union, assumed that they should take the lead.

The two documents presented here were both written by James Madison. The first was an act by the Virginia legislature authorizing the appointment of delegates to the proposed Philadelphia Convention. The second, a private letter to Virginia Governor Edmund Randolph, outlined the changes that Madison wanted the upcoming Convention to propose.

The act had broad political ramifications. Paraphrasing some key Revolutionary era documents, Madison suggested that “the crisis” had arrived at which “the good people of America” could either reap the rewards of their independence or “renounce the auspicious blessings prepared for them by the Revolution.” Madison called upon Americans to demonstrate “the same fraternal and affectionate sentiments” that allowed them to compromise in drafting and adopting the Articles of Confederation during the war. Americans should “lay aside every inferior consideration” and agree in “further concessions.” Printed in newspapers throughout the country, the act prepared the mind of the American people for the Constitutional Convention.

Madison’s letter to Randolph, as well as other letters he wrote at the time, calls for sweeping changes that would replace the Articles with a new system of government never tried before. Much of the sovereignty of the states would be shifted to the federal government. Madison called for Congress to have the power to veto any state act—a measure he audaciously called “the least possible abridgement of the State Sovereignties.” Madison also called for a federal council of revision made up of the president and some federal judges that would have a veto power over every act of Congress. Although Madison failed to get these two radical provisions included in the proposed Constitution, many of his suggestions were incorporated into the new Constitution sent to the states for ratification.

[Because Madison’s letter is sometimes hard to understand, we have added a few words within square brackets to help “translate” what he meant to say.]■

VIRGINIA ACT AUTHORIZING THE ELECTION OF DELEGATES TO THE CONSTITUTIONAL CONVENTION, 23 NOVEMBER 1786

Section I. Whereas the Commissioners who assembled at Annapolis, on the fourteenth day of September last, for the purpose of devising and reporting the means of enabling Congress to provide effectually for the Commercial Interests of the United States, have represented the necessity of extending the revision of the Federal System to all its defects; and have recommended that Deputies for that purpose be appointed by the several Legislatures, to meet in Convention in the City of Philadelphia, on the second day of May next; a provision which seems preferable to a discussion of the subject in Congress, where it might be too much interrupted by the ordinary business before them, and where it would besides be deprived of the valuable counsels of sundry individuals, who are disqualified by the Constitution or Laws of particular States, or restrained by peculiar circumstances from a seat in that Assembly: And whereas the General Assembly . . . can no longer doubt that the crisis is arrived at which the good people of America are to decide the solemn question, whether they will by wise and magnanimous efforts reap the just fruits of that Independence, which they have so gloriously acquired, and of that Union which they have cemented with so much of their common blood; or whether by giving way to unmanly jealousies and prejudices, or to partial and transitory interests, they will renounce the auspicious blessings prepared for them by the Revolution, and furnish to its enemies an eventual triumph over those by whose virtue and valour it has been accomplished: And whereas the same noble and extended policy, and the same fraternal and affectionate sentiments, which originally determined the Citizens of this Commonwealth to unite with their brethren of the other States in

establishing a Federal Government, cannot but be felt with equal force now, as motives to lay aside every inferior consideration, and to concur in such further concessions and provisions, as may be necessary to secure the great objects for which that Government was instituted, and to render the United States as happy in peace, as they have been glorious in war:

Sect. II. *BE it therefore enacted by the General Assembly of the Commonwealth of Virginia*, That seven Commissioners be appointed by joint ballot of both Houses of Assembly, who, or any three of them, are hereby authorized as Deputies from this Commonwealth, to meet such Deputies as may be appointed and authorised by other States, to assemble in Convention at Philadelphia, as above recommended, and to join with them in devising and discussing all such alterations and further provisions, as may be necessary to render the Federal Constitution adequate to the exigencies of the Union; and in reporting such an Act for that purpose, to the United States in Congress, as, when agreed to by them, and duly confirmed by the several States, will effectually provide for the same.

Sect. III. *AND be it further enacted*, That in case of the death of any of the said Deputies, or of their declining their appointments, the Executive are hereby authorised to supply such vacancies. And the Governor is requested to transmit forthwith a copy of this Act to the United States in Congress, and to the Executives of each of the States in the Union. ■

JAMES MADISON TO EDMUND RANDOLPH, NEW YORK, 8 APRIL 1787

I am glad to find that you are turning your thoughts towards the business of May next. My despair of your finding the necessary leisure as signified in one of your letters, with the probability that some leading propositions at least would be expected from Virginia had engaged me

in a closer attention to the subject than I should otherwise have given. I will just hint the ideas which have occurred [to me], leaving explanations for our interview.

I think with you that it will be well to retain as much as possible of the old [Articles of] Confederation, tho' I doubt whether it may not be best to work the valuable articles into the new System, instead of engrafting the latter on the former. I am also perfectly of your opinion that in framing a system, no material sacrifices ought to be made to local or temporary prejudices. An explanatory address must of necessity accompany the result of the Convention on the main object [the new Constitution]. I am not sure that it will be practicable to present the several parts of the reform in so detached a manner to the States as that a partial adoption will be binding. [Madison is saying that whatever changes the Convention comes up with, the states must accept all of them or none at all. He explains why in the following sentences.] Particular States may view the different articles as conditions of each other, and would only ratify them as such. Others might ratify them as independent propositions. The consequence would be that the ratification of both would go for nothing. I have not however examined this point thoroughly. In truth my ideas of a reform strike so deeply at the old Confederation, and lead to such a systematic change, that they scarcely admit of the expedient.

I hold it for a fundamental point that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty. [Madison is saying that it will be impossible to have power as a nation in the world—to compete with Britain and France, for example—if the national government isn't more powerful than the state governments.] I think at the same time that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. Let it be tried then whether any middle ground can be taken which will at once support a due supremacy of the national authority, and leave in force the local

authorities so far as they can be subordinately useful.

The first step to be taken is I think a change in the principle of representation. [Madison opposes the equal state representation in the Confederation Congress.] According to the present form of the Union, an equality of suffrage if not just towards the larger members of it, is at least safe to them, as the liberty they exercise of rejecting or executing the acts of Congress, is uncontrollable by the nominal sovereignty of Congress. [A weak Confederation Congress cannot force the large states like Virginia, Massachusetts, and Pennsylvania to obey Congress' treaties and acts.] Under a system which would operate without the intervention of the States, the case would be materially altered. A vote from Delaware would have the same effect as one from Massachusetts or Virginia.

Let the national Government be armed with a positive & compleat authority in all cases where uniform measures are necessary. As in trade &c. &c. Let it also retain the powers which it now possesses.

Let it have a negative in all cases whatsoever on the Legislative Acts of the States as the K. of G. B. [King of Great Britain] heretofore had. This I conceive to be essential and the least possible abridgement of the State Soveriegnities. Without such a defensive power, every positive power that can be given on paper will be unavailing. It will also give internal stability to the States. There has been no moment since the peace at which the federal assent would have been given to paper money &c. &c.

Let this national supremacy be extended also to the Judiciary department. If the judges in the last resort depend on the States & are bound by their oaths to them and not to the Union, the intention of the law and the interests of the nation may be defeated by the obsequiousness of the Tribunals to the policy or prejudices of the States. It seems at least essential that an appeal should lie to some national tribunals in all cases which concern

foreigners or inhabitants of other States. The admiralty jurisdiction may be fully submitted to the national Government.

The supremacy of the whole in the Executive department seems liable to some difficulty. Perhaps an extension of it to the case of the Militia may be necessary & sufficient. [The President should command the state militia when brought up into federal service.]

A Government formed of such extensive powers ought to be well organized. The Legislative department may be divided into two branches: One of them [the House of Representatives] to be chosen every _ years by the [state] Legislatures or the people at large; the other [the Senate] to consist of a more select number, holding their appointments for a longer term and going out in rotation. Perhaps the negative [veto] on the State laws may be most conveniently lodged in this branch. A Council of Revision may be superadded, including the great ministerial officers [the president and judges].

A National Executive [a president] will also be necessary. I have scarcely ventured to form my own opinion yet either of the manner in which it ought to be constituted or of the authorities with which it ought [to be] clothed.

An article ought to be inserted expressly guaranteeing the tranquility of the States against internal as well as external dangers.

To give the new system its proper energy it will be desirable to have it ratified by the authority of the people, and not merely by that of the [state] Legislatures. [Special state conventions (not referendums) should decide on the new Constitution.]

I am afraid you will think this project, if not extravagant, absolutely unattainable and unworthy of being attempted. Conceiving it myself to go no further than is essential, the objections drawn from this source are to be laid aside. I flatter myself however that they may be less formidable on trial than in contemplation. The change in the principle of representation will be relished by a majority of the States, and those too of most influence. The Northern States will be reconciled to it by the *actual* superiority of their populousness: the Southern by their *expected* superiority in this point. This principle established, the repugnance of the large States to part with power will in a great degree subside, and the smaller States must ultimately yield to the predominant Will. It is also already seen by many & must by degrees be seen by all that unless the Union be organized efficiently & on Republican Principles [equitable representation], innovations of a much more objectionable form may be obtruded, or in the most favorable event, the partition of the Empire into rival & hostile confederacies, will ensue. ■



TEACHING TOOLS

Discussion Questions for the Virginia Authorizing Act and James Madison's Letter to Edmund Randolph

- To what extent is Madison's agenda, as revealed in his letter to Randolph, consistent with the Virginia act?
- In his letter to Randolph, Madison suggests that the idea of state sovereignty is particularly troublesome. Do you think that Madison is overstating the case? Why might this idea appear in Madison's letter but not in the Virginia act?
- In Madison's letter to Randolph, he mentions many proposals that would curb the authority of the states. Are any of his ideas too extreme in your opinion?
- In the preamble to the Virginia act, the legacy of the Revolution is invoked. Why might these references be used as a rationale for appointing delegates to the Philadelphia Convention?
- The act's preamble suggests that the Revolutionary War served as a suitable basis for national identity? Do you agree or disagree with this idea?

Lesson Suggestions

I. The States' Rights Detective Agency (Sniffing Out "Threats" in James Madison's Letter to Edmund Randolph)

1. Divide the class into groups of 3-5 students.
2. Have the students assume the role of a person who believes that state governments are the best at protecting the freedoms and liberties of the people. You may want to have the groups brainstorm for a couple of minutes and compose a list of reasons a person might hold this view. You can have each group report its findings to the entire class. Reasons may include:
 - state governments are closer to the people
 - state government officials are more accountable to the people
 - state government officials are easier to access and speak with
 - people often know state government officials personally
 - state governments are cheaper
 - national governments have to balance a wider and more diverse set of interests
 - national governments are often distant from the people
 - national governments often have large bureaucracies
 - representatives at the national level are more likely to be wealthy
 - national/consolidated governments can lead to tyranny
3. Have students in their groups read Madison's letter and, as the States' Rights Detective Agency, look for threats to the authority of state governments. Students should discuss each threat they discover and decide the severity of each of the threats. You may want to have students use the T-chart below to assist them in categorizing and organizing the threats they have discovered in their reading.

Mild ThreatModerate ThreatSevere Threat

4. After the groups have discussed and organized their findings, you may want to have them report their findings to the entire class. As groups share their findings, you may want to lead a discussion using the following questions:

- What “threats” do the groups seem to see as severe? Why?
- What “threats” do the groups seem to see as mild? Why?
- If you had to choose one threat as the most menacing in Madison’s letter, which one would it be?

5. A possible extension activity would be to have students write a letter back to Madison. It would be best if students reference a document addressing the situation facing Americans in the 1780s under the Articles of Confederation.

II. What Am I to Do? (Analyzing Instructions in the Virginia Authorizing Act)

1. Explain to the class that they are going to analyze the instructions that were given to the Virginia delegates to the Philadelphia Convention.
2. Each student should have a chart that has the phrase “to join with them in devising and discussing all such alterations and further provisions, as may be necessary to render the Federal Constitution adequate to the exigencies of the Union” at the top of the page and have a listing of possible interpretations of the Virginia act. You may want to use a chart similar to the one below.

The Task Assigned by the Virginia Legislature

“to join with them in devising and discussing all such alterations and further provisions,
as may be necessary to render the Federal Constitution
adequate to the exigencies of the Union.”

The Possible Interpretations

Alter the ArticlesWrite a New ConstitutionOther Task

3. Each student should select key words or phrases from the Virginia act that suggest that delegates were being asked to “Alter the Articles,” to “Write a New Constitution,” or to do something else altogether (i.e., the “Other Task” category).
4. After the students have completed their reading and filled in the chart, making appropriate decisions about where to place words or phrases from the document, have the students divide into three groups based on the column on their handout having the most words or phrases. Hopefully, there should be an “Alter the Articles” group, a “Write a New Constitution” group, and an “Other Task” group. Have each group select a spokesperson to make a presentation in which he/she will attempt to persuade his/her classmates that his/her group’s interpretation is the best. If the groups are not evenly divided, you might have a discussion about why there is such consensus.
5. After each spokesperson has presented, you may want to lead a discussion using the following questions:
 - Are delegates obligated to follow the instructions? Why or why not?
 - What if the instructions from other states were worded differently? For background information on this you may want to look at the CSAC website which has all of the instructions from the states sending delegates to the Philadelphia Convention.

III. Is Jimmy Following the Assignment? (Comparing the Instructions of Virginia and Madison’s Private Letter to Randolph)

Article II of the Articles of Confederation reads as follows: “Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.” The task assigned to the delegates by the Virginia act was “to join with them in devising and discussing all such alterations and further provisions, as may be necessary to render the Federal Constitution adequate to the exigencies of the Union.”

1. Write these two quotations on the board or type them to hand out to students.
2. Divide the class into groups of 3-5 students.
3. Each student should read Madison’s letter to Randolph.
4. Using the chart below, students should evaluate Madison’s proposals in his letter to Randolph. Consider Madison’s letter in light of Article II of the Articles of Confederation and the task given by the Virginia legislature. Students should circle 1 if the proposal seems very consistent with the instructions to delegates and 5 if it seems to challenge the instructions.

Madison’s Proposal in Letter to Randolph	Consistent/Inconsistent with Assigned Task				
■ leave . . . the local authorities so far as they can be subordinately useful	1	2	3	4	5
■ Let the national Government be armed with a positive & compleat authority in all cases where uniform measures are necessary	1	2	3	4	5
■ Let it [Congress] have a negative [a veto] in all cases whatsoever on the Legislative Acts of the States	1	2	3	4	5

■ The Legislative department [Congress] may be divided into two branches	1	2	3	4	5
■ A Council of Revision may be superadded, including the great ministerial officers [the president and judges]	1	2	3	4	5
■ A National Executive [president] will also be necessary	1	2	3	4	5
■ An article . . . expressly guarantying the tranquility of the States agst. internal as well as external dangers	1	2	3	4	5
■ the new system . . . ratified by the authority of the people, and not merely by that of the [state] Legislatures	1	2	3	4	5

4. After the groups have completed their discussion, you may want to have each group share its findings with the entire class. You may want to conclude by leading a discussion with the following questions:

- Is it surprising to you that Madison is the author of both documents?
- What motives might have caused Madison to write these two different items?

Vocabulary

The Virginia Authorizing Act

1. *commissioners*: people authorized to do certain things
2. *sundry*: various
3. *solemn*: arousing feelings of awe, very impressive
4. *magnanimous*: generous in overlooking injury; rising above pettiness
5. *partial and transitory interests*: one-sided and temporary benefits
6. *valor*: courage, bravery
7. *fraternal*: brotherly, friendly
8. *concur*: agree with, join, unite with
9. *concession*: something given up
10. *commonwealth*: a group of people united by common interests; the people of a nation or state
11. *exigencies*: condition of needing urgent and immediate action
12. *transmit*: send

Madison to Randolph

1. *engrafting*: join into one
2. *expedient*: a means to an end
3. *aggregate society*: a nation of smaller units
4. *subordinately*: under the power or control of another; submissively; less important
5. *nominal*: in name only, not in fact; slight, very small compared to what was expected
6. *abridgement*: a reduction
7. *obsequiousness*: much too willing to serve or obey; overly submissive
8. *tribunal*: a court of justice
9. *admiralty*: naval affairs
10. *superadded*: adding another, an extra (in this case a third branch of the legislature consisting of the president and some judges)
11. *obtruded*: to force upon, to impose