

James Madison to George Washington, New York, 30 September 1787

I found on my arrival here that certain ideas unfavorable to the act of the Convention, which had created difficulties in that body, had made their way into Congress. They were patronized chiefly by Mr. R[ichard] H[enry] L[ee] and Mr. [Nathan] Dane of Massachusetts. It was first urged that as the new Constitution was more than an alteration of the Articles of Confederation under which Congress acted, and even subverted these Articles altogether, there was a constitutional impropriety in their taking any positive agency in the work. The answer given was that the resolution of Congress in February had recommended the Convention as the best mean of obtaining a firm *national government*; that as the powers of the Convention were defined by their commissions in nearly the same terms with the powers of Congress given by the Confederation on the subject of alterations, Congress were not more restrained from acceding to the new plan, than the Convention were from proposing it. If the plan was within the powers of the Convention it was within those of Congress; if beyond those powers, the same necessity which justified the Convention would justify Congress; and a failure of Congress to concur in what was done would imply either that the Convention had done wrong in exceeding their powers, or that the government proposed was in itself liable to insuperable objections; that such an inference would be the more natural, as Congress had never scrupled to recommend measures foreign to their constitutional functions, whenever the public good seemed to require it; and had in several instances, particularly in the establishment of the new western governments, exercised assumed powers of a very high and delicate nature, under motives infinitely less urgent than the present state of our affairs, if any faith were due to the representations made by Congress themselves, echoed by 12 states in the Union, and confirmed by the general voice of the people. An attempt was made in the next place by R.H. L[ee] to amend the act of the Convention before it should go forth from Congress. He proposed a bill of rights, provision for juries in civil cases and several other things corresponding with the ideas of Colonel [George] Mason. He was supported by Mr. Me[lancton] Smith of this state. It was contended that Congress had an undoubted right to insert amendments, and that it was their duty to make use of it in a case where the essential guards of liberty had been omitted. On the other side the right of Congress was not denied, but the inexpediency of exerting it was urged on the following grounds: 1. That every circumstance indicated that the introduction of Congress as a party to the reform was intended by the states merely as a matter of form and respect. 2. That it was evident from the contradictory objections which had been expressed by the different members who had animadverted on the plan, that a discussion of its merits would consume much time, without producing agreement even among its adversaries. 3. That it was clearly the intention of the states that the plan to be proposed should be the act of the Convention with the assent of Congress, which could not be the case, if alterations were made, the Convention being no longer in existence to adopt them. 4. That as the act of the Convention, when altered would instantly become the mere act of Congress, and must be proposed by them as such, and of course be addressed to the legislatures, not conventions of the states, and require the ratification of thirteen instead of nine states, and as the unaltered act would go forth to the states directly from the Convention under the auspices of that body—some states might ratify one and some the other of the plans, and confusion and disappointment be the least evils that could ensue. These difficulties which at one time

threatened a serious division in Congress and popular alterations with the yeas and nays in the Journals, were at length fortunately terminated by the following resolution: "Congress having received the report of the Convention lately assembled in Philadelphia, resolved *unanimously* that the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the Convention made and provided in that case." Eleven states were present, the absent ones Rhode Island and Maryland. A more direct approbation would have been of advantage in this and some other states, where stress will be laid on the agency of Congress in the matter, and a handle taken by adversaries of any ambiguity on the subject. With regard to Virginia and some other states, reserve on the part of Congress will do no injury. The circumstance of unanimity must be favorable everywhere.

The general voice of this city seems to espouse the new Constitution. It is supposed, nevertheless, that the party in power is strongly opposed to it. That [the] country must finally decide, the sense of which is as yet wholly unknown. As far as Boston and Connecticut has been heard from, the first impression seems to be auspicious. I am waiting with anxiety for the echo from Virginia but with very faint hopes of its corresponding with my wishes.

P.S. A small packet of the size of 2 vol. 8. addressed to you lately came to my hands with books of my own from France. General [Charles Cotesworth] Pinkney has been so good as to take charge of them. He set out yesterday for South Carolina and means to call at Mount Vernon.

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