

Catherine Drinker Bowen, Miracle at Philadelphia

X

The Great Debate. June 19-28.

The situation of this Assembly, groping as it were in the dark to find political truth.

BENJAMIN FRANKLIN, *in Convention*

JAMES MADISON was on his feet almost as soon as the meeting opened. It was Tuesday, June nineteenth, and the Convention still in Committee of the Whole. Madison was primed and ready for what he had to say. He did not so much as mention Hamilton, or his six-hour speech of the previous day, which certainly had been no help to the nationalists. Hamilton had gone too far; such extreme statements would scare off possible adherents. The talk must have been busy, Monday night, in tavern and club. Had delegates rebuked young Hamilton for his rashness? Had they agreed that the best strategy was to ignore what he had said and press on to the matter at hand—the vote, the final choice between the New Jersey and Virginia Plans?

In any event, Madison on Tuesday morning did not waste a minute, but proceeded to tear the New Jersey Plan to pieces, coldly, logically, point by point, with each point phrased as a question. Would the New Jersey Plan prevent the states from trespassing upon each other, as debtor states had done by issuing paper money in retaliation against creditor states? Would the Plan prevent internal state turmoils such as Massachusetts had experienced in Shays's Rebellion? Would it protect the Union against the influence of foreign powers? Had the small states considered the expense of the New Jersey Plan, by which each state must pay its entire delegation to Congress? Could a nation survive under a compact which did not bind the whole?

And had the small states stopped to think where they would be if their stubborn adherence to Mr. Paterson's Plan prevented the adoption of *any* plan? New Jersey delegates had declared it would not be "safe"—that was their language—to allow Virginia sixteen times as many votes as Delaware. These gentlemen preferred to throw all the states into one mass and make a new partition into thirteen parts. Were they not, Madison hinted, becoming entangled in their own self-spun cobwebs? The history of confederations was filled with such snares and hazards.

When Madison had finished, Rufus King of Massachusetts at once put the question: Was Mr. Randolph's Plan preferable to Mr. Paterson's? The states voted. Seven to three the motion won, with Maryland divided. The New Jersey Plan was dead, finished. Madison had given it the crowning blow. Had the plan been introduced to the Convention earlier, it might have prevailed—who knows? But delegates had had three weeks to think things over, talk, argue, become used to what at first seemed shocking, impossible. Henceforward the Convention would proceed according to Virginia's nineteen Resolves—though much would be altered before September seventeenth. The Constitution as signed was to be very different from Randolph's original proposals—a far more flexible instrument.

But when on June nineteenth delegates voted down the New Jersey Plan, it did not mean the small states had capitulated. The battle over Congressional representation would rage for another month, right up to July sixteenth when the Convention adopted the Great Compromise, giving equal representation in the Senate—two votes to a state whether large or small—and in the House, proportional representation. Until then, the drama in the Pennsylvania State House would heighten week by week, the tension increasing and the atmosphere darkening until it seemed there could be no solution, no daylight at the storm's end, no strong new Constitution for thirteen harassed, vigorous, quarrelling American states.

Next morning, June twentieth, delegates met in full Convention. Washington resumed the chair; it would be the first day he had sat through a full debate since the fateful May twenty-ninth

when Randolph and Charles Pinckney presented their separate plans. Nathaniel Gorham, having acted all this time as chairman in Committee of the Whole, stepped down to take his place among the Massachusetts delegates. A plain, forceful speaker, Gorham now could have his say.

The Convention's initial move that morning was to expunge the word "national" from the First Virginia Resolve. Instead of reading, "Resolved, that a national government ought to be established, consisting of a supreme Legislative, Judiciary, and Executive," Ellsworth of Connecticut moved the resolution read, "that the Government of the *United States* ought to consist. . . ."

It was a highly politic suggestion; Gorham seconded it. This word national, Ellsworth pointed out, would frighten people. The states would not ratify a constitution — any constitution — unless it appeared as an amendment to the old Articles of Confederation. Leave out the word national! The motion went through. "*Nem. com.*," wrote Madison.

At this point John Lansing of New York rose with a long, heated protest against things in general. Lansing was not easy to listen to; he had what Pierce of Georgia called "a hesitation in his speech." This Convention, Lansing said, had no powers to create a two-branch legislature. Concerning the proposal that Congress should have a negative on the state laws — "Is it conceivable," demanded Lansing, "that there will be leisure for such a task? There will on the most moderate calculation, be as many acts sent up from the states as there are days in the year. Will the members of the general legislature be competent judges? Will a gentleman from Georgia be a judge of the expediency of a law which is to operate in New Hampshire? Such a negative would be more injurious than that of Great Britain heretofore." This general government now under consideration, Lansing insisted, was "utterly unattainable, too novel and complex."

George Mason of Virginia, with the fierce vigor of an old man, spoke out against the extensive powers being granted to Congress. "Is it to be thought that the people of America, so watchful over their interests, so jealous of their liberties, will give up their all, will surrender both the sword and the purse to the same body, and

that, too, not chosen immediately by themselves?" How were the national taxes to be gathered in? — Mason demanded. "Will the militia march from one state to another in order to collect the arrears of taxes from the delinquent members of the Republic?" Fire and water themselves are not more incompatible than such a mixture of civil liberty and military execution! "Will not the citizens of the invaded state assist one another till they rise as one man and shake off the Union altogether?" He was struck with horror at the prospect, Mason concluded.

It was now that Luther Martin of Maryland stood up with the first of his intoleraably long-winded speeches, which were to be a feature of the Convention until Martin's angry — and merciful — departure on September fourth, thirteen days before the Constitution was signed. Martin was about forty, broad of shoulder, carelessly dressed, with short hair, a long nose, a rough voice and a convivial liking for the bottle which later was to lead him into insolvency and disgrace. He was impulsive, undisciplined, altogether the wild man of the Convention, furious defender of state sovereignty, by no means foolish in all he said, though he could talk fatuously about "the rights of free men and free states." That perceptive historian Henry Adams described Martin as "the rollicking, witty, audacious Attorney General of Maryland, drunken, generous, slovenly, grand . . . the notorious reprobate genius."

This however was said a century later. In the Federal Convention it is to be doubted if anyone would have called Luther Martin a genius. Delegates were too irked by his verbosity, which chose to erupt on the hottest of Philadelphia days, when the Convention sat in moist discomfort. What Martin actually said was that he saw no necessity for a Congress with two branches. One was preferable. . . . A national judiciary extended into the states would be ineffectual and resented. . . . To grant unnecessary powers to the general government might well defeat "the original end of the Union." Congress represented and was meant to represent not the people but the state legislatures. Also, he was against state conventions for ratification of the Constitution.

"This," wrote Madison, "was the substance of a very long speech" — and then crossed out the sentence.

Unable to agree or even discuss the paramount issue — proportional representation in Congress — a stalemated Convention referred back to lesser questions, hashing them out, arguing, wrangling, in the process finding out about their country and inching slowly toward the day when compromise must be reached, or — every delegate knew it in his heart — the Convention dissolve in failure. Much was said that had been heard before; to the more experienced delegates this repetition was plainly irritating. Even so, new arguments were raised, old issues approached from a fresh viewpoint, and things said that would influence court decisions generations later.

On the question of pay for congressmen, James Wilson suggested Congress itself should fix the amount and pay it from the national treasury. . . . But this was indecent, Madison countered. The legislature should not put their hands in the public purse to convey it to their own. Let the stipend be fixed by the Constitution. If the state governments decided the amount, what of "the poor states beyond the mountains"? Western states hereafter arising ought to be considered as equals and brethren, and provision made so they could send their best men to Congress. . . . As for senators, they ought not to be paid at all. (This from General Pinckney.) Senators were supposed to represent the wealth of the country; *ergo*, they should themselves be wealthy. Dr. Franklin repeated that he was against payment for all government officers. In this chamber, he said, were young men who no doubt would be elected senators. The Convention might be charged with having carved out lucrative places for themselves.

There was hot discussion over the question of whether congressmen should be permitted to hold other government offices during their terms. Many delegates present did hold such offices, state and national; it was the accepted custom, people were used to it. James Wilson was in favor, not wishing to discourage merit. Had not our Commander in Chief of all the armies been selected out of Congress?

It was a telling argument. Did Washington permit himself to smile? Although Rufus King agreed with James Wilson, Pierce Butler of South Carolina objected, warning of Great Britain, where men got into Parliament in order to secure place and office

for themselves and their friends. The English government had been ruined by this practice. George Mason was of like mind; he said the door must be shut against corruption. Nathaniel Gorham disagreed. The corruption of the English government could not be applied to America. Our elections were frequent, we had no rotten boroughs.

The argument ran back and forth, Madison saying flatly that it was hard enough in Virginia to persuade the best citizens to serve in the legislature. Were the states then to rely on *patriotism*? "If this be the only inducement," said Madison, "you will find a great indifference in filling your legislative body."

Elbridge Gerry spoke bluntly, after his fashion. (It was once remarked of Gerry in Congress that he was always satisfied to shoot an arrow without caring about the wound he caused.) "At the beginning of the war we possessed more than Roman virtue. It appears to me it is now the reverse. We have more land and stock-jobbers than any place on earth. . . . We have constantly endeavored to keep distinct the three great branches of government. But if we agree to this motion," Gerry finished, ". . . legislators will share in the executive [branch], or be too much influenced by the executive, in looking up to him for offices."

Young Charles Pinckney declared fervently that Americans were perhaps "the only people in the world who ever had sense enough to appoint delegates to establish a general government." Why, therefore, imitate older governments, endeavoring to create in our Senate a body like the House of Lords? In the United States, property was more evenly divided. Few could be called rich, as men were esteemed rich in Europe, or whose riches might have dangerous influence. Perhaps there were not a hundred such on our Continent. "The genius of the people . . . is unfavorable to the rapid distinction of ranks." The people of the United States, said Pinckney, may be divided into three classes: professional men, commercial men, and the landed interest. Why not bear this in mind and make a government for our people as they are, and as we know them? With unconscious arrogance, Pinckney ignored the artisans and mechanics, whose sole property was in their labor. The state governments, finished Pinckney, must remain. They must not be erased.

The Convention seized upon this point with as much zeal as though it had never been broached. The senatorial ratio of representation would determine whether the small states were to be rendered powerless. Once more, delegates voted to postpone this vital question, then voted aye to the motion that senators be chosen by the state legislatures, and voted unanimously that senators must be not less than thirty years old. On the motion for a nine-year senatorial term the Convention voted no, eight to three. Nathaniel Gorham's motion for a six-year term — one-third to go out biennially — carried, seven to four. (Six days earlier, the Convention had voted a two-year term for representatives.)

Here James Madison lost out; he had favored a nine-year term for senators, just as from the beginning he had wished the Senate elected by the state legislatures, as balance against a popular House. He was also for Congress having a negative on state laws. Only one of these three measures was to go into the Constitution — the method of Senate election — and that would last until the Seventeenth Amendment (1913). Looking ahead, Madison saw a United States peopled very differently from the year 1787. "In framing a system which we wish to last for ages," he told the Convention, "we should not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who will labor under all the hardships of life, and secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence." Power, Madison said, could then slide into the hands of the numerous poor rather than the few rich. Symptoms of a leveling spirit had already appeared in certain quarters. How was this danger to be guarded against "on republican principles"? A body in the government (a senate) "sufficiently respectable for its wisdom and virtue," with an elective term of nine years to render it stable — surely this would provide a safeguard for liberty.

Present-day readers may be a trifle dashed to find the Father of our Constitution urging, in effect, that the American rich put up barriers against the American poor, who with power in their hands could be dangerous. By symptoms of a leveling spirit, Madison meant riots and rowdyism under Pennsylvania's popular

government, the recent unrest in Maryland, the agrarian paper-money troubles of Rhode Island, and of course Shays's Rebellion. Yet it is unfair to make judgment in terms of today. In the year 1787 the Convention's proposals were essentially new, untried. And before they could take effect the people must approve them.

That senators should be paid was now finally agreed, ten states to one, though on the source of payment the vote was close; six to five on its coming from the national treasury rather than the state legislatures. George Mason (he of the fertile Virginia acres) suggested a property qualification for senators. Nobody seconded him and the question was dropped. That both houses should have the right to originate bills was agreed on, and that members of both houses were eligible to state office but not to office in the United States government.

All this was progress and looked encouraging. Beneath it however still lurked the prime question before which the Convention stood embattled: How was America to be represented in Congress — by population or equally, state to state? On June twenty-seventh, debate on this question began in earnest, with the delegates still sitting in full Convention, Washington in the chair.

The weather continued hot. In the past two weeks there had been only three cool days. This Wednesday morning, delegates must have been tired to start with, and edgy. Luther Martin rose again — "chose this most inopportune time," wrote a member afterward, "to deliver a lengthy harangue." For over three hours, Martin contended "at great length and with great eagerness," Madison noted. All that Martin said was stale, a repetition of his earlier speech. . . . The powers of the general government must be kept within narrow limits, its function being merely to preserve the state governments, not to govern individuals. . . .

Martin paused to read passages from Locke, Somers, Vattel, Dr. Priestley, an exercise the Convention had thus far avoided. Every experienced politician knew of these authors and of their respected and well-worn arguments about the law of nature . . . man in a state of nature . . . the compact between ruler and ruled. During the Revolution the phrases had become almost as familiar as the Bible, and had been made the most of by every

penny politician who could find a crowd to harangue. Was it necessary now to plow over this old ground? "I have never heard of a confederacy having two legislative branches," Martin went on. "Even the celebrated Mr. Adams, who talks so much of checks and balances, does not suppose it necessary in a confederacy." He would never, Martin argued, trust a government so organized for "all the slaves of Carolina or the horses and oxen of Massachusetts! . . . What are called human feelings in this instance are only the feelings of ambition and the lust for power."

At this point the speaker announced that he was "much too exhausted to finish his remarks," and would resume them tomorrow. Delegates stumbled out into the street; it was time for adjournment. Wearily they faced the morrow. And on the morrow Martin made good his word. His discourse was delivered, wrote Madison, "with much diffuseness and considerable vehemence."

A long speech is a hazard on any count. But a long speech delivered with vehemence is scarcely endurable. If the three large states leagued themselves together, Martin shouted, then the other ten could do the same! For himself he would rather see such partial confederacies than submit to the Virginia Plan.

Luther Martin was to suffer for this speech. During the ratification battle in the ensuing winter, Ellsworth attacked Martin's anticonstitutional stand via the newspapers, addressing his opponent directly, after the fashion of the era. "The day you took your seat [in the Convention] must be long remembered by those who were present . . . You had scarcely time to read the propositions which had been agreed to after the fullest investigation, when, without requesting information, or to be let into the reasons of the adoption of what you might not approve, you opened against them in a speech which held during two days and which might have continued two months, but for those marks of fatigue and disgust you saw strongly expressed on whichever side of the house you turned your mortified eyes."

Martin defended himself with equal vigor; it was not a time of nicety in the public prints. Newspapers today would not dare to publish insults such as the founding fathers hurled at each other with joyful abandon. In the Federal Convention, however, Mar-

tin's long effort provoked little reaction beyond disgust. The debate continued, baffling, seemingly getting nowhere, yet actually serving the purpose of airing all views. . . . If combinations of large states were to be feared, said Williamson of North Carolina, then what about the new states from the westward? Their distance from market would inevitably tempt them to combine, thus laying commercial burdens on the old states. . . . Madison here demanded which was more to be feared—a superior central force or the selfishness of feeble associates? What common interest could cause Virginia, Massachusetts and Pennsylvania to combine? None! In point of staple productions they were as dissimilar, said Madison, as any other three states in the Union. Tobacco, fish, flour: these were their respective products. And were not large states everywhere more apt to be rivals than partners? Great powers are always hostile. To the enmity and rivalry between England and France, said Madison, America perhaps owed her liberty.

Old Dr. Franklin, sitting with the famous double spectacles low on his nose, now broke silence; he had said little these past days. Addressing himself to Washington in the chair—"The small progress we have made," Franklin said, "after four or five weeks close attendance and continual reasonings with each other—our different sentiments on almost every question . . . producing almost as many noes as ayes, is methinks a melancholy proof of the imperfection of the human understanding. We indeed seem to feel our own want of political wisdom, since we have been running about in search of it. We have gone back to ancient history for models of government, and examined the different forms of those republics which, having been formed with the seeds of their own dissolution, now no longer exist. And we have viewed modern states all round Europe, but find none of their constitutions suitable to our circumstances."

"In this situation of this Assembly, groping as it were in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, Sir, that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understandings?" Franklin here reminded the Con-

vention how at the beginning of the war with England, the Continental Congress had had prayers for divine protection — and in this very room. "Our prayers, Sir, were heard," said Franklin, "and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a Superintending providence in our favor. To that kind providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend? . . . I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth — *that God governs in the affairs of men.*"

On the Doctor's manuscript of this little speech, the word God is twice underscored, perhaps as indication to the printer. But whether or no Franklin looked upon the deity as worthy of three capital letters, his speech was timely. . . . If a sparrow cannot fall to the ground unseen by him, Franklin continued, was it probable an empire could arise without his aid? "I firmly believe this, and I also believe that without his concurring aid we shall succeed in this political building no better than the builders of Babel. We shall be divided by our little partial local interests; our projects will be confounded and we ourselves shall become a reproach and byword down to future ages. And what is worse, mankind may hereafter from this unfortunate instance despair of establishing governments by human wisdom and leave it to chance, war and conquest.

"I therefore beg leave to move that henceforth prayers imploring the assistance of heaven and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business, and that one or more of the clergy of this city be requested to officiate in that service."

Benjamin Franklin was possessed of so much wisdom and political acumen that there is no telling which quality was uppermost, impelling this speech. Roger Sherman at once seconded Franklin's motion. But Hamilton "and several others" — wrote Madison — feared that calling in a clergyman at so late a stage might lead the public to suspect dissensions in the Convention. To this Franklin countered dryly that a measure of alarm out of doors might do as much good as ill. Williamson of North Carolina made the flat

statement that everyone knew the real reason for not engaging a chaplain: the Convention had no funds.

There was general embarrassment. Nobody liked to move against the distinguished Dr. Franklin, and in such a matter. Later on, fantastic stories arose; it was rumored that Hamilton had said ironically the Convention was not in need of "*foreign aid.*" This is palpable nonsense. Nevertheless the scene had urgency, danger, drama. A Georgia delegate, William Few, described that morning of June twenty-eighth as "an awful and critical moment. If the Convention had then adjourned, the dissolution of the union of the states seemed inevitable." Franklin's motion failed, though Randolph proposed tactfully that on the approaching Fourth of July a sermon be preached at the request of the Convention and that thenceforth prayers be used.

Yet whether the Doctor had spoken from policy or from faith, his suggestion had been salutary, calling an assembly of doubting minds to a realization that destiny herself sat as guest and witness in this room. Franklin had made solemn reminder that a republic of thirteen united states — venture novel and daring — could not be achieved without mutual sacrifice and a summoning up of men's best, most difficult and most creative efforts.

Who shall ratify? The people or the states?

I consider the difference between a system founded on the legislatures only, and one founded on the people, to be the true difference between a league or treaty and a constitution.

JAMES MADISON, *in Convention*

AUGUST thirtieth. The Convention had but sixteen working days left. No date had been set for dissolution. But since the beginning, members had planned to sit no longer than September. Now at the end of August adjournment was in sight. It heightened debate, made members uneasy and tempers short. Of the original fifty-five delegates, eleven had already defected on excuse of illness in the family or private business — or, like Lansing and Yates of New York, frank opposition to the proceedings.*

The Convention's work was nearly done. And it was high time; the country waited the outcome. Yesterday the *Pennsylvania Gazette* had reported that "the states neglect their roads and canals till they see whether those necessary improvements will not become the objects of a national government. Trading and manufacturing companies suspend their voyages and manufactures till they see how far their commerce will be protected and promoted by a national system of commercial regulations. The lawful user locks up or buries his specie till he sees whether the new frame of government will deliver him from the curse or fear of paper money and tender laws."

The *Gazette*, of course, was very pro-Constitution; it did not mind stretching a point for the good of the cause. But in truth,

* See chapter note, page 311.

time was of the essence; the Convention could not drag on into autumn. On September fifth the Pennsylvania legislature — the Assembly, they called it — was due to convene in the State House; they would need the east room where the Federal Convention was sitting. On August thirtieth delegates reached the last point of the Constitution to be considered. In the Committee Report, Articles XXI, XXII, and XXIII concerned ratification and certain practical steps toward setting up a new government. Article XXI was brief and extremely controversial: "The ratifications of the Conventions of — States shall be sufficient for organizing this Constitution."

A blank had been left for the number of states. And the number could be vitally significant. Once the document was signed in Philadelphia it must go straight to Congress for its "approbation," after which Congress would recommend it be sent out to the states for ratification at home. But suppose all thirteen states were required to ratify? Obviously, Rhode Island would vote against the Constitution in Congress; so probably would New York and Maryland, whose delegates at the Federal Convention grew daily more hostile.

Concerning the number thirteen there was moreover a basic difficulty to be got round. Legally, the Federal Convention sat to amend the Articles of Confederation, an action which required the agreement of every state in the Union. Strategically, the opposition could make much of this, in Convention, in Congress, or later when the Constitution went out to the states. To agree upon ratification by less than thirteen states would be to acknowledge the new Constitution as a revolution in government, with the old Confederation abrogated and overthrown. Every delegate knew by now that such was actually the case; they could not have arrived at Article XXI without knowing it. Until today, however, this acknowledgment had been passed over or argued away by such strong-government men as Madison, Wilson, Gouverneur Morris. Article XXI brought it to a head.

James Wilson had sat in the Continental Congress which devised and ratified the Articles of Confederation. He knew the implications of ratification by fewer than thirteen states. He must

have determined upon the attack direct, for no sooner was Article XXI read aloud than Wilson moved that the blank space be filled with the number seven — that being, he said, a majority of the whole. At once, argument broke out. Maryland moved to postpone the question; very likely her delegation wanted time for an evening caucus, a recruiting of the forces. There was bargaining to and fro, with one member for ten states, another for nine. Wilson, seeing which way the wind blew, raised his number to eight. Madison objected that ratification by seven or eight or even nine states would put the "whole body of the people" under a Constitution which less than a majority had ratified.

That Madison should say this is surprising. Wilson stepped in quickly: only the states which ratified would be bound by the new Constitution. "We must," said Wilson, "in this case go to the original powers of society. The house on fire must be extinguished without a scrupulous regard to ordinary rights."

It was the old Revolutionary argument resurrected; Wilson had heard it often in the Continental Congress during the winter of 1775-1776: when a nation is ill ruled, men must have recourse to a higher law, a law above kings, princes and parliaments. But in the Federal Convention, Wilson avoided the phrase "law of nature," preferring "the original powers of society." Immediately, Pierce Butler came out for ratification by nine states; he "revolted at the idea that one or two states should restrain the others from consulting their safety."

Butler's move was clever. When going outside legality it is well to remind one's colleagues that they are voting not for innovation and dangerous new doctrines but for "safety" and order. Carroll of Maryland now declared for ratification by all thirteen states, which seemed tantamount to wishing the Constitution defeated. He said a confederation which had been unanimously established could not be dissolved without unanimity. Himself a strong-government man, Carroll perhaps thought it strategic (and at this point safe) to side with his dissident Maryland colleagues.

The time had come to adjourn for the day. As the Convention rose, McHenry of Maryland scribbled in his notes, "Proposed to have a private conference with each other tomorrow before meet-

ing of the convention to take measures for carrying out propositions, etc —”

There must have been other conferences and caucuses that Thursday night. Next morning the Committee's Article XXI, as amended, “was then agreed to by all the States,” wrote Madison, “Maryland excepted.” The blank space had been filled with the number nine.

There arose now the question of whether the new Constitution should be ratified by the state legislatures or by the people at large. The original Virginia Plan had provided for “assemblies of Representatives . . . expressly chosen by the people.” As early as June fifth a motion to this effect had been favorably voted on in Committee of the Whole, though Roger Sherman had been against it and Elbridge Gerry skittish; it was then he remarked that the people had “the wildest ideas of government in the world.” The states were not accustomed to popular ratification. By whatever method their several constitutions had been drafted — by provincial convention, by the local legislature or a combination of both — when it came to ratification, only Massachusetts and New Hampshire had taken the step of submitting their constitutions to town meetings for approval.

Why not, therefore, let the state legislatures ratify the federal Constitution? To many minds it seemed a far less hazardous procedure than the calling of thirteen separate conventions. Yet how to present so new, so novel a system to state legislatures which were solemnly obligated to uphold the old? Pierce Butler said it could not be done. The Convention had earlier debated the point with heat, Randolph pointing out that if the state legislatures were allowed to ratify, then local demagogues, fearful of losing their places in a new governmental system, would surely vote against it or manage somehow to block its passage. “Designing men,” Nathaniel Gorham had said, “will find means to delay from year to year, if not to frustrate altogether the national system.” Legislators were well aware how to interrupt an important measure “by artfully pressing a variety of little businesses.”

Gorham, that old political warhorse, knew whereof he spoke, having served as president of Congress and speaker of the Massa-

chusetts House; at the Federal Convention he had presided over stormy sittings in the Committee of the Whole. Now in his fiftieth year, Gorham had a pleasant manner; it seemed he was propitiatory about everything except the state of Rhode Island, whose recalcitrance never ceased to irritate him. But by whatever system of ratification — were all the states to suffer themselves to be ruined, he asked, if Rhode Island should persist in her opposition?

Ellsworth of Connecticut said outright that a “new set of ideas seems to have crept in since the Articles of Confederation were established. Conventions of the people, or with power derived expressly from the people, were not then thought of. The legislatures were considered as competent.” To Madison, however, it was clear that the state legislatures were “incompetent to make the proposed changes.” It would be a novel and dangerous doctrine indeed, if a legislature could change the constitution under which it held its existence. “I consider,” said Madison, “the difference between a system founded on the legislatures only, and one founded on the people, to be the true difference between a *league* or *treaty* and a *constitution*.” George Mason said the same thing, but more emotionally. “Legislators,” he declared, “are the mere creatures of the state constitutions and cannot be greater than their creators. . . . Whither then must we resort? To the people . . . It is of great moment that this doctrine should be cherished as the basis of free government.”

On the day Mason said it the Convention voted for popular ratification, nine to one. But they would not let the matter rest. The word ratification brought the new Constitution alarmingly near, suggesting a *fait accompli* and conjuring up every bogey its opponents most feared. Maryland kept on repeating that her state officers were sworn not to let alterations in government be made by any agency but themselves.

All summer the Convention had been fighting this argument, expressed in a dozen different forms: let the states have the power; do not hand it over to Congress and to this vague entity called the people at large. But Madison was adamant. The people, he said, “were in fact the fountain of all power, and by resorting to them, all difficulties were got over.” The people “could alter

constitutions as they pleased. It was a principle in the [state] bills of rights, that first principles might be resorted to."

This was too high-toned for Luther Martin. With a wry irony he retorted that there was "danger of commotions from a resort to the people and to first principles in which the government might be on one side and the people on the other." Martin was sure that Maryland would not ratify unless rushed into it — hurried by surprise. Rufus King retorted that Massachusetts had sworn not to alter her constitution for a decade, yet she had sent deputies to Philadelphia. She too, said King, must have been thinking in terms of first principles.

First principles meant, among other things, the right to overturn a bad government; to the opposition the words at this late date must have sounded unbearably self-righteous. Elbridge Gerry had sat in the Continental Congress of '76; he had signed the Declaration of Independence. What right had a Johnny-come-lately like Rufus King to recite Revolutionary principles? Gouverneur Morris suggested that each state be left to pursue its own system of ratification. Gerry, tried beyond caution, said the new system was full of vices and it was wholly improper to destroy the Confederation without the unanimous consent of those who had created it. He moved that the vote on Article XXII be postponed. George Mason seconded him, declaring (Madison noted), "that he would sooner chop off his right hand than put it to the Constitution as it now stands. He wished to see some points not yet decided brought to a decision before being compelled to give a final opinion on the Article. Should these points be improperly settled, his wish would then be to bring the whole subject before another general convention."

The notion of another general convention was to Madison and his friends anathema; it meant failure, the end of all their work and all their hopes. Gouverneur Morris said curtly that he had long wished for another convention that would have the firmness to provide a vigorous government, "which we are afraid to do." Gerry lost his motion for postponement and Article XXII was voted through. But ten days later Gerry brought the whole thing up again in connection with discussing Article XIX, on the amending power. After the Constitution was ratified and effectual, how

many states must be required to vote for a proposed amendment? Two-thirds? Three-fourths? Or was unanimity necessary?

Round and round went the argument. South Carolina showed herself fearful that the articles relating to the slave trade would be affected. This was on September tenth, a Monday. Alexander Hamilton was present; he had come back to Philadelphia and would be there for the signing. Rather surprisingly he took Gerry's side, reverted once more to Article XXI, and said he thought it wrong to allow nine states to institute a new government on the ruins of the existing one. Madison must have been sorely tried by Hamilton in this Convention. Having missed the summer's arguments, the summer's slow skillful buildup by the strong-government men, here was Hamilton back again and arguing with the opposition. But Gerry, perhaps heartened by this support from an unexpected quarter, declared it would be indecent and pernicious to dissolve the solemn obligations of the Confederation in so slight a manner. "If nine out of thirteen can dissolve the compact, six out of nine will be just as able to dissolve the new one hereafter."

Edmund Randolph announced that if no change were made in this part of the plan he would be obliged to dissent from the whole system. Nearly two weeks ago he had made this threat, saying that as the Constitution then stood, there were features so odious he doubted if he would be able to agree to it. Now he declared that "from the beginning he had been convinced that radical changes in the system of the Union were necessary." Under this conviction he had "brought forward a set of republican propositions as the basis and outline of a reform."

Randolph referred of course to the Virginia Plan. But his propositions, Randolph went on, had been widely, irreconcilably departed from. He proposed therefore that state conventions "should be at liberty to offer amendments to the Plan, and that these [amendments] be submitted to a second general Convention with full power to settle the Plan finally." He did not expect to succeed in this proposition, Randolph finished, "but the discharge of his duty in making the attempt would give quiet to his own mind."

Hamilton here suggested a substitute resolution (for Article

XXI) concerning congressional approbation, and a subsequent mode of sending the new Constitution out to the states. Gerry seconded it. But James Wilson, deeply roused, said it was "necessary now to speak freely." Expressing himself in what Madison called "strong terms," Wilson declared against seeking the approbation of Congress. It would be "worse than folly" to rely on Rhode Island's voting *aye* in Congress — or on New York or Maryland. "After spending four or five months in the laborious and arduous task of forming a government of our country, we are ourselves at the close throwing insuperable obstacles in the way of its success."

It was a strong statement, quite plainly true, and it brought Randolph to his feet again, ready to list his specific objections: the small number of representatives in Congress . . . the want of limitation on a standing army . . . the want of some particular restraint on navigation acts . . . the presidential power to pardon treason. . . . Was he then, Randolph demanded, "to promote the establishment of a plan which he verily believed would end in Tyranny?" Madison put a capital T to the word. "He was unwilling," he said [Madison wrote on], "to impede the wishes and judgment of the Convention — but he must keep himself free, in case he should be honored with a seat in the Convention of his State, to act according to the dictates of his judgment. The only mode in which his embarrassments could be removed, was that of submitting the plan to Congress to go from them to the State Legislatures, and from these to the State Conventions having power to adopt, reject or amend; the process to close with another general Convention with full power to adopt or reject the alterations proposed by the state conventions, and to establish finally the government."

Randolph put his plan in the form of a resolution; Franklin seconded it. The two were a strong team, but their motion never reached a vote. George Mason stepped in to urge that the motion lie on the table for a day or two, and won his point. In the end the matter would be settled by strategy, an immensely clever, altogether successful maneuver in committee which avoided a renewal of debate on the floor, yet satisfied the Convention.

Of this maneuver delegates were of course ignorant. After

Mason's motion had been accepted, Charles Pinckney moved that an address to the people be prepared, to accompany the Constitution, and that this be referred to the proper committee.

"Adjourned," wrote Madison at the foot of the page.