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# One great and noble source: The development of Democratic thought in Early America, 1776-1787

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One Great and Noble Source: The Development of Democratic Thought in Early America, 1776-  
1787

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JAMES MADISON UNIVERSITY

In  
Partial Fulfillment of the Requirements  
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## Dedication

To my wife, Kathryn, and to my daughter, Grace, for their inspiration and their endless encouragement for my endeavors. And to my parents, who have always encouraged me to seek out my limits, not run from them.

## Acknowledgments

First, I would like to thank Dr. Kevin Hardwick for his guidance, his kindness, and most of all his patience. Dr. Hardwick gave me outstanding guidance and direction with regards to the intellectual origins of the early republic as well as the relevance and history of democracy in America. I would also like to thank Dr. Rebeca Brannon who provided me with further insight into the thinking of the Founding Fathers as well as the constitutional implications of the American Revolution. Finally, I would like to thank Dr. David Dillard who provided guidance and insight, but also provided me with a fellow soldier to converse with on days when those conversations were sorely needed. For his friendship and confidence in me, I am truly thankful.

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## Abstract

It had been a long summer, filled with hot and muggy forecasts with temperatures ranging from the low 60s to the high 90s. One can imagine what it must have felt like, anywhere between forty and fifty men crowded into the small chamber at Independence Hall in Philadelphia over the course of the summer which was described by many to be “hot and oppressive.” For the past four months and change, delegates to the Federal Convention had come together to accomplish what, at the beginning of the summer, seemed to be an impossible task: to form a new government. Perhaps it was fitting that on this day, September 17, 1787, the remarks in the records of the Federal Convention, list the weather as being “clear” and “quite cool.”<sup>1</sup> It was on this day, that General George Washington, President of the Constitutional Convention in Philadelphia, sat down and wrote a letter to Congress explaining the actions of “the friends of our country,” and the reasons why the Constitution drafted that day was considered by them to be “the most advisable.” The power to make war, peace and treaties, levying money and regulating commerce, and the executive and judicial authorities “should be fully and effectually vested in the general government of the Union: but the impropriety of delegating such extensive trust to one body of men is evident. Hence results the necessity of a different organization.” Washington continued, criticizing the current system of government in America, saying that it was “impracticable” for the federal government of the states “to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all.” And it was for these reasons, Washington insisted, for the new system of government to work that “individuals entering into society, must give up a share of liberty to

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<sup>1</sup> Weather Recordings, in *Supplement to Max Farrand's The Records of the Federal Convention*, ed. by James H. Huston (New Haven: Yale University Press, 1987), 325-337.

preserve the rest.” Washington assured the Congress that during all the deliberations at the convention, “the greatest interest of every true American” was always considered.<sup>2</sup>

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<sup>2</sup> George Washington Letter to Congress, September 17, 1787, in *To Secure the Blessings of Liberty: Selected Writings of Gouverneur Morris*, ed. by J. Jackson Barlow (Indianapolis: Liberty Fund, Inc., 2012), 221-222.

## CHAPTER 1

### Introduction

Washington's letter to Congress does provide some insight into the monumental task the delegates faced over the summer in 1787. However, was his statement true, that the delegates at the convention considered it to be for "the greatest interest of every true American?" I also pose the question, what kind of government was it that the delegates thought they had framed? The answers to these questions are not easy to answer, for we live in a much different world, one the framers could not have ever imagined. To us, the word *democracy* means something much different than it did to the Founding Fathers. In the twenty first century, as one historian has noted, since the American Revolution, "scholars, and political leaders have latched onto one or another aspect of government or politics as democracy's essence." For some people, democracy is a matter of widened political rights and for others it is for individuals to be able to pursue happiness. But as Sean Wilentz points out, the early republic was not democratic, "Nor, in the minds of those who governed it, was it supposed to be." This quote will be revisited in a later chapter but it is important to note here an example of scholars ignoring a basic principle that this study will focus on. What did the Founders think about democracy, and is it true, as Sean Wilentz claims, that the idea of democracy never really entered into the minds of the Founding Fathers?<sup>3</sup>

As a student of American history, claims like these are not uncommon. It is true, that America has certainly always been a republic in one form or another but that does not mean that the men who framed the governments during the early republic did not have other notions about what they were doing. Woody Holton's thoughtful study, *Unruly Americans and the Origins of*

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<sup>3</sup> Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York: W.W. Norton and Company, 2005), Preface.



*the Constitution* considers the economic circumstances that plagued the early Confederation which lead the delegates at the Federal Convention to create a form of government that was undemocratic, believing that “the policies adopted by the state legislatures in the 1780s proved that ordinary Americans were not entirely capable of ruling themselves.” For Holton, the road to the Federal Convention was thought of as an entitlement to the “well-to-do and well-educated Americans” but had an opposite effect on the people as a whole. Holton’s claims do have substance, but the idea of a government not founded on the principle of the people is lost when considering how the framers of the early constitutions and the Federal Constitution of 1787 were debated and interpreted.<sup>4</sup> For modern historians, Charles Beard’s *An Economic Interpretation of the United States Constitution* was the first real new approach to the Framing. Beard criticized past historians, and rightfully so, for treating the founders as “people acting under divine guidance” and lacking any professional analysis. Beard suggests that because the Constitution was supported by rich interested individuals and opposed by non-slaveholding debtors “would it not be pretty conclusively demonstrated that our fundamental law was not the product of an abstraction known as the “whole people,” but a group of economic interests which must have expected beneficial results from its adoption?”<sup>5</sup>

The focus of this study is the development of democratic thought in early America. It will begin with an analysis of the American Revolution and the early constitutions which were a result of it. The first chapter will rely heavily on the works of John Adams and his contribution to the early conversations about democracy and the development of the early state constitutions. The study will trace Adams’ thoughts through the aftermath of the American Revolution and the need

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<sup>4</sup> Woody Holton, *Unruly Americans: and the Origins of the Constitution* (New York: Hill and Wang, 2008), 15-17.

<sup>5</sup> Charles Beard, *An Economic Interpretation of The United States Constitution* (Middletown: Pantianos Classics, 2017), 6-11.

for a convention to fix the problems of the Confederation Congress. The next chapter will revolve around James Madison and his *Vices* which show a real argument for democracy at the Federal Convention. Chapter three will revolve around James Wilson of Philadelphia and his contribution to the Federal Convention. Wilson provides an excellent example into how thoughts about democracy had drastically changed since before the American Revolution and reveal a real commitment to democracy at a time when most scholars would agree that the founders had gone on the defensive against democracy in America. Throughout these chapters, a very real consideration of democracy emerges during the early republic and certainly, in the minds of some, democracy was an embraced idea, not a condemned one. This study will argue that the early founders did have a commitment to democracy which developed slowly throughout the early republic. The American Revolution produced a constitutional revolution which led to the development of a national government founded on democratic principles most important of which was “the people.” It was because of this fundamental principle, “the people,” which allows us to look at how these early founders interpreted these new frames of government and shows that democracy was not always considered as bad of an idea nor as silent that has been previously argued by scholars.

What this study will provide, is hopefully new insight into how early America’s political institutions came into being, and how early thoughts about government contributed to those institutions. But in order to do that, a focus on the political thoughts and philosophies are essential for understanding the development of those institutions. The scholarly works mentioned above are just a few very influential works which have contributed to the study of the early republic. More recently, James Kloppenberg’s *Towards Democracy: The Struggle for Self-Rule in European and America Thought* has brought to light the importance of understanding how democracy is essential

for understanding American history. For Kloppenberg, American history is just that; a history of democracy. But Kloppenberg also makes a distinct point in his analysis. Democracy is not an institution but rather an idea. According to his analysis, “democracy has been, and remains, an ethical ideal rather than merely a set of institutions. It requires the willingness to allow differences to persist, a commitment to toleration that has long dissatisfied idealists.”<sup>6</sup> And so rather than trying to understand the structure of government and its particular functions, it is important for understanding democracy and its influence on the founders, to focus on the ideas and thoughts of the founders. This will be done by looking at the conversations that were taking place during these important events in American history; what was being said, how it was being said and to whom. It is the hope that through this study, by doing these things, perhaps some light can be shed on the thoughts of the individuals involved and how they interpreted what was going on. By doing so, a very clear argument can be made for the idea of democracy in America and how it contributed to the framing of the state governments and finally the Federal Constitution of 1787, a process that began long before the era of Jacksonian democracy.

The primary source basis for these arguments makes research both encouraging and at times confusing. The founders left a paper trail that today is readily available for anyone to indulge. The works of John Adam, James Madison, and Patrick Henry, just to name a few, have contributed greatly to this project. Max Farrand’s *The Records of the Federal Convention of 1787* have proven to be invaluable for this study. While Farrand’s Records can be confusing and at times seem like a maze of legal and political ideas, it does allow the scholar to look at the records of the Federal Convention of 1787 from many different points of view, as there were many others at the

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<sup>6</sup> James T. Kloppenberg, *Toward Democracy: The Struggle for Self-Rule in European and American Thought* (New York: Oxford University Press, 2016), 4.

convention who took notes and made off-handed comments about what was transpiring at the convention. Along with the notes of the debates, Farrand collected many letters and other accounts which provide insight into the thoughts and interpretations of the proceedings, which is of course the goal of this study. What makes these primary sources so valuable is that the information has been interpreted by so many other scholars throughout the years and yet, so much of the information they provide has been either ignored or simply interpreted differently to fit particular arguments. No source is one hundred percent reliable, but these sources are certainly sound and provide the best evidence to support the argument of this study.

## CHAPTER 2

### A Constitutional Revolution

The origins of American democratic thought can be traced by its very name to the American Revolution. After all, America did not come to be until it decided to separate from Great Britain, and it was the American Revolution that created a unique opportunity for the early founders to establish state constitutions, and forever change the idea of democracy in America. It is no easy task to associate democracy with the American Revolution, as some scholars realize. As Gordon Wood points out, the revolution did not free the slaves, nor did it create equal voting rights across the political spectrum. However, the revolution did help mold the idea of democracy as Americans have come to know today.<sup>7</sup> In what ways though, and through what processes, did democracy evolve out of the American Revolution will be the focus of this chapter.

The decision to separate from Great Britain has been described by scholars as ideologically, or intellectually, and even constitutionally motivated. Whether or not one is more influential than the other is beside the point, for in reality, it is most likely a mixture of all three. However influential these concepts or approaches may be, it is certainly worth talking about the constitutional arguments that helped create the American Revolution. As Jack Green notes, a constitutional argument offers the only “satisfactory explanation of the event.”<sup>8</sup> Indeed, the American Revolution can certainly be attributed to a dispute over the British Constitution and the protections of English subjects under that constitution. But what of the constitutions that were created as a result of the American Revolution and what role if any did democracy play in the early

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<sup>7</sup> Gordon S. Wood, “The Origins of American Democracy, or How the People Became Judges in their Own Causes” (The Sixty-Ninth Cleveland Marshall Fund Lecture, 47, Cleveland, 1999).

<sup>8</sup> Jack P. Green, *The Constitutional Origins of the American Revolution* (New York: Cambridge University Press, 2011), xxiii.

founding? When the decision to declare independence became a reality, the most important task at hand was how to establish new governments, American governments, and under what structure would those governments succeed. The result was a written form of government with written constitutions which would break away from the mythical idea of the “ancient constitution” and create firmly established and written constitutions in America. John Adams was perhaps the most influential person regarding state constitution making in early America. For Adams, new constitutions were paramount, and he considered himself, as well as other founders at the time, to be ambassadors so to speak, to the formation of the new American Republic. It was through Adams’ genius and the establishment of written American constitutions that the idea of democracy in America would begin down a path and never look back.

The events leading up to and following the American Revolution created for John Adams a rare opportunity which constantly kept him busy during a time when some of the most important events in American history transpired. Adams was one of many colonists who spoke out against the Stamp Act, publishing his *Dissertation on the Canon and Feudal Law* in August 1765. The essays illuminated general topics such as “human nature, religion and government” focusing on “the arbitrary power exercised by religion and government.” Adams proclaimed that British liberties were not simply granted by parliament, but that they had been inherently established well before parliament ever existed. Adams’ ideas about fundamental liberties would turn up repeatedly in his writings, constantly invoking John Locke’s notion of natural rights, and would become the foundation of America’s decision to separate from Great Britain. By the fall of 1765, Adams had established a reputation as a writer and was asked to draft instructions to the Massachusetts General Court to oppose the Stamp Act on the grounds that it was unconstitutional. In the aftermath of the Boston Massacre, it was Adams who represented the British soldiers in court, defending them

against charges of murder. Adams was certainly a busy man becoming a member of the first Continental Congress and a signer of the Declaration of Independence.<sup>9</sup> But of all the problems the American Revolution presented to the colonists, Adams had a clear grasp on what would turn out to be the most important obstacle for the young nation to overcome - the establishment of new state governments.

In the spring of 1776, Adams admitted that the governments in the colonies had weighed heavily on his mind. And when the opportunity presented itself, Adams instructed Congress that new governments needed to be established immediately. Believing that North America was too large for a national government, Adams proposed “a confederacy of States, each of which must have a separate government.” Consulting both ancient and modern confederacies which he believed were “huddled up in a hurry,” Adams believed that Americans were more intelligent and “and we must realize the theories of the wisest writers and invite the people to erect the whole building with their own hands, upon the broadest foundation.” Adams suggested that the colonies must hold conventions with representatives chosen by the people “and set up governments of their own, under their own authority; for the people were the source of all authority and original of all power.” Without mentioning republic and democracy, both terms which were used interchangeably at the time, Adams was suggesting to the Congress, separate governments established by the people insisting the people should be the source of all political power.<sup>10</sup>

In the spring of 1776, John Adams presented a resolution to Congress advising them to instruct the American colonies to establish permanent constitutions on the principle of popular sovereignty. Time was of the essence and Adams believed that Congress should instruct the

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<sup>9</sup> Richard Beeman, *Our Lives, Our Fortunes and Our Sacred Honor* (New York: Basic Books, 2013), 65-74.

<sup>10</sup> John, Adams, “Online Library of Liberty,” Edited by Charles Francis Adams. *The Works of John Adams, 10 Vols.* Accessed July 24, [http://oll.libertyfund.org/titles/2101#Adams\\_1431-03\\_69](http://oll.libertyfund.org/titles/2101#Adams_1431-03_69).

colonies to establish forms of government where the source of all political power was invested in the people, and in May of 1776 Congress adopted the resolution. Adams had already shown a keen understanding of government and political thought and now found his ideas in demand from other colonies. It was in response to William Hopper of North Carolina that Adams sketched out his *Thoughts on Government*. It soon found its way to John Peen of North Carolina and Richard Henry Lee and George Wythe of Virginia, and was ultimately published by a printer in Philadelphia.<sup>11</sup>

As one historian has suggested, “when Congress voted to adopt the resolution on May 15, 1776, the history of democracy in America entered a new stage.”<sup>12</sup> It wasn’t long before delegates from other colonies began to write to Adams asking for advice about how these new state constitutions should be constructed. The result was one of the most influential political writings to have come out of the American Revolution. Adams at the time, was considered by many to be the most knowledgeable on government, and Adams was only too happy to respond with what came to be called *Thoughts on Government: Applicable to the Present State of The American Colonies*. Adams’ *Thoughts* would turn out to be widespread and most influential in Virginia, North Carolina, New Jersey, New York, and Massachusetts. Between the resolution passed by Congress and Adams’ influence on the new state constitutions, democracy in America became solidified in American Government.<sup>13</sup>

In Adams’ *Thoughts*, he considered what the nature of government was. Adams believed, as did most politicians of the time, “that the happiness of society is the end of government.” From this principle, Adams believed that any government “which communicates ease, comfort, security,

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<sup>11</sup> Kloppenberg, 318.

<sup>12</sup> Kloppenberg, 315.

<sup>13</sup> C. Bradley Thompson, *The Revolutionary Writings of John Adams*, ed. C. Bradley Thompson (Indianapolis: Liberty Fund Inc., 2000), 286.



or, in one word, happiness,” to the population at large is the best form of government to be instituted. Adams believed that all happiness in society, whether Christian, pagan, or any other social belief, “consists in virtue.” If government was constructed on the principle of virtue, Adams asked “will not every sober man acknowledge it better calculated to promote the general happiness than any other form?” Adams explained further that most governments at the time were founded on the principle of fear. Fear, Adams explained, “is the foundation of most governments.” However, “Americans will not be likely to approve of any political institution which is founded on it.”<sup>14</sup>

Adams’ solution to the problem of fear and the idea of the general welfare of the population was to keep the people involved as much as possible in the political process. The participation of the people and their connection to the individuals who instituted the government would become the backbone of American democracy. Adams believed that “the foundation of every government is some principle or passion in the minds of the people.” Good nature and virtuous behavior of the people would “support the noblest and most generous models of government.” This is not meant to imply that Adams believed that all men in society are good natured. Adams expressed contempt for society many times in his life. But Adams also knew that great care should be taken to include the people in the political process. Taking power away from the many and putting in the hands of the few who would become representatives was no easy task. Adams insisted that “the greatest care should be employed” when electing a representative body. “It should be in miniature an exact portrait of the people at large. It should think, feel, reason, and act like them.”<sup>15</sup>

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<sup>14</sup> John Adams, Thoughts on Government, in *The Revolutionary Writings of John Adams*, ed. C. Bradley Thompson (Indianapolis: Liberty Fund Inc., 2000), 287-288.

<sup>15</sup> John Adams, *The Revolutionary Writings*, 288-289.

The structure of government that Adams proposed is strikingly familiar when compared to future constitutions and structures of government. He also thought that the mode of government established should be one “that the people have been familiarized by habit.” When considering representation of the people, Adams argued that a single assembly embodied with “all the powers of government,” being the “legislative, executive, and judicial,” would be a mistake. Adams believed that a single assembly would be too apt to produce “hasty results and absurd judgements.” He also cautioned that it would be vulnerable to ambition and could, after some time, “vote itself perpetual.” He used Holland as an example in which a single assembly had “voted themselves from annual to septennial, then for life.” Eventually, “all vacancies happening by death or otherwise” were filled simply by the remaining assembly “without any application to constituents at all.” While a legislative body is necessary, it should not have executive powers mainly for the want of “secrecy and dispatch.” It must, in some form, be transparent with the people. A single representative body should not be able to legislate on its own due to the possibility of making laws for “their own interest, and adjudge all controversies in their own favor.”<sup>16</sup>

To remedy these problems, Adams suggested a simple separation of the three branches of government and suggested a bicameral legislative body. One assembly, as Adams suggested, should represent the people directly. The representative body would then “elect by ballot, from among themselves or their constituents, or both, a distinct assembly” which Adams called a council. While not giving any distinct names, Adams was suggesting a lower house, much like the future house of representatives, and an upper house, which would later become the senate. These two bodies of the legislature could then “unite and by joint ballot chose a governor.”<sup>17</sup> While

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<sup>16</sup> John Adams, *The Revolutionary Writings*, 289.

<sup>17</sup> John Adams, *The Revolutionary Writings*, 290.

Adams' *Thoughts* did not expressly outline a true democracy, the plan that he constructed helped put early America on a path that would create a truly democratic world. The recommendations made in *Thoughts* reflected Adams' acknowledgement that not every colony was like New England, where, Adams believed, equality was much more tolerated in the political process. And so, while Adams' *Thoughts* were important to the early constitutions that came out of the American Revolution, Adams still advised some States differently believing that "the difficulty lies in forming Constitutions for particular colonies." Adams was insistent that "each colony should establish its own government," but the southern colonies would be where any "Misfortunes" would lie due to their reluctance "to republican government."<sup>18</sup> As for the colony of Virginia, Adams advised Patrick Henry to do what best suited the colony, telling Henry that if he thought his plan was too democratic, or "too popular," that the "manners of the people must be consulted."<sup>19</sup>

The impact of Adams' *Thoughts* and its democratic ideas was quickly felt. Both Virginia and New Jersey produced new constitutions which were modeled after Adams' *Thoughts*. While Adams' commitment to democracy has been challenged by scholars, his early writings, particularly his *Thoughts*, show "the depth of his commitment to democracy," and many others saw this as well, as one scholar points out.<sup>20</sup> When talking about eighteenth century government and Americans' understanding of what kind of government they participated in, it is important to note that Americans had been participating in government directly more than "any other people on earth" at the time. Adams, as with most of the other founders, was familiar with the works of scholars like Harrington and Locke enough so that the new governments to come out of the

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<sup>18</sup> John Adams to Horatio Gates, in *John Adams: Revolutionary Writings 1775-1783*, edited by Gordon Wood (New York: Literary Classics of the United States, 2011), 47-48.

<sup>19</sup> John Adams, *Revolutionary Writings*, 77.

<sup>20</sup> Kloppenberg, *Toward Democracy*, 327.

American Revolution would be framed with the consent of the people.<sup>21</sup> This faith in the people was narrowly defined which made it easier for the men like Adams to use it as the logical base of his political thought. For Adams, “the only moral foundation of Government is the Consent of the People.” Adams asks however, “to what an extent shall we carry this principle?” And his answer of course was land owning white men who were acquainted enough with the political issues of the time. Women were more suitable for domestic work and children were not capable of making important decisions due to immaturity. Servants and slaves were not considered the general public at the time of the founding.<sup>22</sup> But even while narrowly defined, through the vast number of landowners at the time, Americans participated in the broadest electorate of the time. The advocates of democracy such as Adams, may have been “naïve” enthusiasts, but they all agreed on the principle of consent by the people.<sup>23</sup>

The evolution of Virginia’s State Constitution and the discussion that took place in the early months of the Revolution reveals how democracy was at the forefront of dialogue at the time. On May 27, 1776, George Mason drafted a declaration of rights which was read twice by Congress and discussed repeatedly by the drafting committee. Virginia arguably worked harder than any other state when drafting their constitution, and on June 12 it passed unanimously and finally a full draft of the constitution was passed on the 29<sup>th</sup>.<sup>24</sup> Virginia began its new constitution with a bill of rights proclaiming that “all power is vested in, and consequently derived from, the people;

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<sup>21</sup> Forrest McDonald, *Novos Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: The University of Kansas Press, 1985), 1.

<sup>22</sup> John Adams to James Sullivan, in *John Adams: Revolutionary Writings*, 71-74.

<sup>23</sup> Forrest McDonald, *Novos Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: The University of Kansas Press, 1985), 160-162.

<sup>24</sup> Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era* (Lanham: Rowman & Littlefield Publishers, 2001), 70-71.

that magistrates are their trustees and servants, and at all times amenable to them.”<sup>25</sup> Praising Adams’ model for government, Patrick Henry described himself as “a Democrat on the plan of our admired friend, J. Adams, whose pamphlet I read with great pleasure.”<sup>26</sup> Others described the new Virginia Constitution as “very much of the democratic kind.”<sup>27</sup> Writing to Charles Lee, Richard Henry Lee professed that it “will shew you that this country has in view a permanent system of Liberty.”<sup>28</sup> It has been suggested by some scholars that the constitutions that came out of the revolution retained some continuity with the British models. Gordon Wood argues that “while their constitutions made new and radical changes in the structure of power,” the nature of government remained the same as it had been under the British models.<sup>29</sup> In the case of Virginia’s new State Constitution, perhaps another analysis can provide some insight.

As historian Marc Kruman points out, the argument that Wood makes does not make sense, particularly in the case of the Virginia Constitution. Kruman points out that “the extent to which Americans attempted to maintain constitutional continuity may be measured by examining the fate of Carter Braxton’s plan for a Virginia constitution.” Braxton argued that the British Constitution was near perfect, therefore Virginians should model their new form of government after it. Closely following Virginia’s colonial government, the governor would be elected for a term of good behavior and a council for life terms. As Kruman points out, Braxton’s model “came remarkably close to proposing kingship and lordship” positions in the new Virginia structure of government

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<sup>25</sup> Edmund S. Morgan, *The Birth of the Republic, 1763-89*, 4<sup>th</sup> edition (Chicago: The University of Chicago Press, 2013), 91.

<sup>26</sup> Patrick Henry to Charles Lee, June 29, 1776, in *Patrick Henry: Life, Correspondence and Speeches*, vol 1, (New York: Charles Scribner’s Sons), 411.

<sup>27</sup> Richard Henry Lee to Charles Lee, June 29, 1776, in *The Letters of Richard Henry Lee*, ed. by James Curtis Ballagh (New York: The Macmillan Company, 1911), 203-204.

<sup>28</sup> Richard Henry Lee to Charles Lee, in *Between Authority and Liberty: State Constitution Making in Revolutionary America* by Marc W. Kruman (Chapel Hill: The University of North Carolina Press, 1997), 19.

<sup>29</sup> Gordon Wood, *The Creation of the American Republic 1776-1787* (Chapel Hill: The University of North Carolina Press, 1998), 134.

and its repudiation “reveals how many American revolutionaries dismissed out of hand any consideration of retaining the colonial constitutional order.”<sup>30</sup>

Adams’ *Thoughts on Government* and Braxton’s plan for a more traditional English model reveal an intellectual discussion about popular government and the changing political atmosphere at the time of the revolution. Virginia adopted a new constitution with a bicameral legislative branch, having both houses popularly elected with an independent executive and judicial branch as Adams suggested in his *Thoughts*. But as Braxton’s arguments reveal his distrust of leaving too much power in the hands of the people, believing Adams’ *Thoughts* too democratic, it can easily be argued as Kloppenberg suggest, that “plans for government, like those advanced by both Paine and Adams, were blueprints for democracy.”<sup>31</sup>

Virginia’s State Constitution serves as the first example of what historian Richard Beeman describes as one of the best “glimpses of the possibilities for social and political reform inherent in the American Revolutionary movement.” The creation of new independent state governments helped premise the idea that the American Revolution was a truly radical one, as Gordon Wood later suggested. Virginia’s Declaration of Rights was important to say the least, but it meant very little without a fully written and established constitution to implement it. The Declaration of Rights guaranteed for the people of Virginia relatively familiar things such as trial by jury, unlawful search and seizure, freedom of the press, all things that were protected under English law, but now in the form of an established written constitution. These rights were spelled out plainly for the people of Virginia as fundamental liberties that were protected against government. Possibly the most important of those liberties being freedom of religion stating “that religion, or the duty which

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<sup>30</sup> Marc Kruman, *Between Authority and Liberty*, 2-4.

<sup>31</sup> Kloppenberg, *Towards Democracy*, 328.

we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence: and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience.” This serves as an important statement for the people of Virginia during a time when certain religious groups were still persecuted, most notably Catholics. Virginia’s State Constitution was also a crucial step in that by not allowing its people to go on in a theoretical state of nature, which men like Adams quickly realized as a serious threat, it created what was considered by Adams a means to an end for the people, a secure government to serve as the means for happiness for the whole community.<sup>32</sup>

Adams’s *Thoughts on Government*, and its influence on constitution making during the revolution should by now seem obvious. Even more so however, was his impact on the Massachusetts State Constitution. The Massachusetts State Constitution, and its eventual ratification, is a complex story and one that took much longer than other constitutions at the time. But as will be shown, it was Adams who eventually stepped in and his genius and handy work in the process had much greater influence than he perhaps realized at the time. As one historian notes, “the Massachusetts Constitution is generally regarded as the most sophisticated and influential constitution produced during the Revolutionary period.” Other states turned to it for guidance as did the framers of the United States Constitution as well.<sup>33</sup>

In Adams’ *The Report of a Constitution, or Form of Government, for the Commonwealth of Massachusetts*, he begins in the Preamble, with a clear democratic charge. Government, as the Preamble reads, government should be instituted “to furnish the individuals who compose it with the power of enjoying, in safety, and tranquility, their natural rights and blessings of life.” When

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<sup>32</sup> Richard Beeman, *Patrick Henry: A Biography* (New York: McGraw-Hill, 1974), 99-105.

<sup>33</sup> C. Bradley Thompson, *The Revolutionary Writings of John Adams*, 296.

these natural rights are not secured by the government instituted, “the people have a right to alter the government” and take the necessary steps for “their safety, happiness, and prosperity.” The Preamble makes clear that it is not the individual who is sovereign, but the people as a whole. It is a social compact “by which the whole people covenants with each citizen, and each citizen with the whole people, that shall be governed by certain laws for the common good.” The ideas laid out in the preamble describe a people as a group who make a compact with each other in which the people as a whole are sovereign and not the government. The government belongs to them, instituted by them, and accountable to them “the people.” The delegates of Massachusetts made this statement in the Preamble, “to be laid before” their “constituents, according to their instructions” for their approval.<sup>34</sup>

Popularly established constitutions did not have a good record of accomplishment well before the United States Constitution was ratified. As one legal scholar points out, only two states had ever brought a constitution to the public for approval, Massachusetts being one of them.<sup>35</sup> Adams believed that the consent of the people was absolute and necessary for the social compact to be valid. After the constitution was popularly adopted in Massachusetts, Adams was more than happy with the process. For Adams, “there never was an example of such precautions as are taken by this wise and jealous people in the formation of their government. None was ever made so perfectly upon the principle of the people’s rights and equality. It is Locke, Sidney, and Rousseau and De Mably reduced to practice, in the first instance. I wish every step of their progress printed and preserved”<sup>36</sup> As expressed in Adams’ reflection of the adoption of the Massachusetts State Constitution, it was the rights of the people and equality that Adams defended and advocated the

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<sup>34</sup> John Adams, *The Revolutionary Writings*, 297-298.

<sup>35</sup> Akhil Reed Amar, *America’s Constitution: A Biography* (New York: Random House, 2005), 6.

<sup>36</sup> John, Adams, “Online Library of Liberty,” Edited by Charles Francis Adams, *The Works of John Adams, 10 Vols*, Accessed July 24, [http://oll.libertyfund.org/titles/2102#Adams\\_1431-04\\_640](http://oll.libertyfund.org/titles/2102#Adams_1431-04_640).



most in his political thoughts and writings which is evident when reading further into Adams' *Report on the Constitution*.

In the first chapter, titled *A Declaration of the Rights of the Commonwealth of Massachusetts*, it expressly gives the people of Massachusetts authority to hold the government accountable. The people “have the sole and exclusive right of governing themselves” with “all power residing originally in the people.” Every officer, whether executive, judicial, or legislative, was undoubtedly “accountable to them,” the people. There is no title, hereditary, or by blood that ordained anyone to a specific position within the government and any idea “of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.” Government, as outlined by the declarations, was for the “common good...and the happiness of the people.”<sup>37</sup>

The common good of the community and the responsibility of officials in charge of constituting it for the people was at the forefront of Adams' political thought in his model for the state constitution. The popular will of the people would be the judge of how the government preformed. For the people who were given the authority to govern, Adams insisted that “the people have a right” to replace any official who was not invested in the interest of the will of the people. As for elections, Adams insisted that they “ought to be free” and all male inhabitants “have an equal right to elect officers, and to be elected, for public employments.” No taxes in any form could be imposed by the government “without the consent of the people.”<sup>38</sup>

Adams' concern for the common good, the will of the people, and their right to govern themselves, reveals his commitment to democratic government. Perhaps the most democratic portions of his plan were the frequent elections and the mode of which officials were to be elected.

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<sup>37</sup> John Adams, *The Revolutionary Writings*, 298-299.

<sup>38</sup> John Adams, *The Revolutionary Writings*, 299-302.

Members of the Senate, the House of Representatives, and the Governor, would all be elected annually and by the free inhabitants of the State.<sup>39</sup> If chosen representatives were not accountable to the people, or were free to exercise their authority without some form of control, Adams instituted another measure which was essential to the idea of democracy at the time of the revolution. It was the peoples expressed right, “to assemble to consult upon the common good” and to give “instructions to their representatives” and to petition any wrongdoings or grievances they may suffer.<sup>40</sup>

The Massachusetts Constitution serves as an excellent example for the development of democracy in early America. The process which produced it, and the influence of Adams during that process, further establishes his importance during the revolutionary period, and the impact that written state constitutions had on the development of democracy in America. In 1777, a drafted constitution was submitted to all the towns in which all adult males voted and ultimately rejected it. Then in 1779, for the first time in America and perhaps, as one scholar notes, “in the world,” a popularly elected convention was put together for the sole purpose of drafting a constitution for the State of Massachusetts. The constitution would then be sent out under the rule that two thirds of all the towns must agree to it for it to be adopted. Even when an absolute veto for the governor over the legislative body was rejected, it was argued by some that even the governor was the embodiment of the people who was ordained to protect the people if oppressive legislation was passed. As Edmund Morgan points out, “on the face of it, the view of a governor as a representative of the whole people, like the idea of a constitutional convention independent of and superior to government, would appear to be an affirmation of popular power.” As the years followed, it would

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<sup>39</sup> John Adams, *The Revolutionary Writings*, 304-311.

<sup>40</sup> John Adams, *The Revolutionary Writings*, 301.

become common practice for conventions to place the people above their own governments asserting the democratic idea that the people were the only legitimate source of power.<sup>41</sup>

Adams believed, as did other founders at the time, that they were living “at a time when the greatest lawgivers of antiquity would have wished to live.” No other population in the world had “ever enjoyed an opportunity of making an election of government... for themselves or their children!” Adams described the time they were living in with amazement and tranquility, writing, “When, before the present epocha, had three millions of people full power and fair opportunity to form and establish the wisest and happiest government that human wisdom can contrive?”<sup>42</sup> It is hard to capture the excitement that the founders experienced on the eve of the revolution. As Adams expressed, indeed, the ancient philosophers would have been jealous of the founders’ opportunity to create forms of government expressly for securing life, liberty and happiness for the people and exercised by the people. And when Adams spoke of the “lawgivers of antiquity,” he was indeed speaking of the philosophers of ancient Greece and Rome, the very heroes of the founders’ generation. The American Revolution did more than establish independence from Great Britain. It created a unique opportunity for the founders. After independence was declared, the need for government in the separate colonies was quickly realized. And in the minds of the founders, like Adams, they believed that “the divine science of politics is the science of social happiness, and the blessings of society depend entirely on the constitutions of government.”<sup>43</sup> Adams’ awareness of the extraordinary constitutional circumstances of the times in which he lived is palpable even now in his correspondence and other writings.

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<sup>41</sup> Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W.W. Norton & Company, 1988), 258-260.

<sup>42</sup> John Adams, Thoughts on Government, in *The Revolutionary Writings*, 293.

<sup>43</sup> John Adams, Thoughts on Government, in *The Revolutionary Writings*, 287.

The popular nature of government that Adams laid out for the State of Massachusetts was the most democratic at the time of the American Revolution and the most influential as far as early constitution making is concerned. What is more at the heart of the issue, and the key theme of this analysis is that Adams' *Thoughts on Government*, his model for the State Constitution for Massachusetts, and the surrounding conversations reveal a much more complex definition of democracy in early America and a more open idea about what men like Adams thought about democratic or popular government. This analysis is only the first chapter with regards to the origins of American democracy. The future of American government was still murky in the aftermath of the revolution, and the idea of democracy took an unexpected turn before the summer of 1787. But as will be shown, the idea of democracy was not dead because of the American Revolution. In its aftermath, new ideas about government and other promising geniuses would emerge that would further define the intellectual origins of democracy in America. These ideas and innovations would come from men like James Madison and James Wilson who had their predecessors like Adams to guide, inform, and perhaps inspire them to create a "more perfect union."

## CHAPTER 3

### James Madison and The Virginia Plan

On May 29<sup>th</sup>, 1787 in Philadelphia, delegates from the thirteen states came together to resolve a serious problem. In the aftermath of the American Revolution and the country's independence, the United States found itself on the verge of collapse. Many people viewed the Articles of Confederation as weak and in need of amending. Until the Constitution came into existence, most of the power in government centered on the individual states without any interference from a federal or national government. Shays' Rebellion, which was one of many movements in Massachusetts, showed the weakness of the Confederation Congress as they were unable to raise federal troops to combat the rebellion. As exaggerated as the rebellion might have been by some people, it certainly struck fear into the minds of government officials. The Annapolis Convention was something of a realization to the few delegates that attended. It was supposed to enable solving of some of the problems revolving around trade and interstate commerce, but even Maryland, the state hosting the convention, did not send delegates to it. In the aftermath of Shays' Rebellion and the Annapolis Convention, it was men like James Madison, George Washington, and Edmund Randolph who took it upon themselves to serve at the Convention in Philadelphia. James Madison is said to be the "Father of the Constitution," and while that title may be deserving, it is important to understand not only his role in the framing of the Constitution, but how much of the Constitution already existed in his great Virginia Plan which had outlines for an Executive, Legislative, and Judicial Branch of government. James Madison was not the author of the Constitution, but he was the one who established the framework of the convention and put into motion a series of events that led to the creation of a new Constitution for the United States of America. Madison achieved this by using his Virginia Plan as a guide while collaborating with

delegates from Virginia and Pennsylvania during the days leading up to the convention. While the Virginia Plan was essential in building a consensus among the states, the outcome of the Convention produced a document much different from Madison's Virginia Plan. His Virginia Plan set the tone for the Convention, but it was not the finished product that he hoped for. In retrospect, the men of the Constitutional Convention faced significant challenges and were burdened with a great responsibility.

The issues confronting America before the Federal Convention got underway were far reaching. The Articles of Confederation created a weak government where most government power was centered around the State Governments. In the Articles of Confederation, it specifically states that "each state retains its sovereignty" and that "the said states hereby severally enter into a firm league of friendship with each other." The Articles were a binding contract of friendship between the States, leaving the Confederation Congress with no power to enforce any laws in any of the separate and sovereign states. There was no way for the Congress to collect taxes from any of the states unless the states chose to pay. For any amendment to be approved, all the members of Congress had to agree on it unanimously. In short, the Articles prevented America from being able to protect itself from foreign invaders, and it did not provide substantial authority for Congress to generate money to pay back any of the war debts produced by American Revolution.<sup>44</sup>

While James Madison was certainly not the only statesman who saw the flaws in the current system, his intellectual and creative mind was among the most cherished and respected. By the time the Federal Convention convened, Madison had spent years in public life and was well known by men such as James Wilson of Pennsylvania, who worked with Madison in the Confederation

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<sup>44</sup>The Articles of Confederation, in *The Constitutional Convention and the Formation of the Union*, ed. by Winton Solberg (Chicago: University of Illinois Press, 1990), 42-53.

Congress. William Pierce described Madison as someone who was well known, stating it was remarkable that “every person seems to acknowledge his greatness.” Madison was described as a scholar and politician by Pierce, who said that Madison “cannot be called an orator” but “he is a most agreeable, eloquent, and convincing speaker.” No other delegate at the Federal Convention understood the affairs of the United States better than Madison. He was a man of “great modesty, with a remarkable sweet temper” and “a most agreeable style of conversation.”<sup>45</sup> To conclude, Madison was a well-respected man at the convention and his performance certainly stuck out in the minds of the other delegates. More importantly, however, is not only the significance of the Virginia Plan, which Madison helped write, but the experience of Madison and the other delegates at the convention and their reaction to the Virginia Plan's resolutions.

The revolutionary implications of the Virginia Plan should not go unnoticed. The Articles of Confederation included a single legislative authority made up of individuals selected by the different state legislators with no direct input from the people. So, while the states themselves still retained their sovereignty, there was certainly room for distrust by the people in the frame of government that the Articles of Confederation produced.<sup>46</sup> Madison arrived to Philadelphia early, weeks before many other delegates, and on May 14, the day of the Convention, Madison was disappointed. Only he and George Washington showed up for work that first morning. In those first days of the Federal Convention, Madison was certainly worried about the turnout of the delegates. Writing to Thomas Jefferson, Madison expressed his disappointment saying that while he was optimistic for a productive convention, “there is less punctuality in the outset than was to

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<sup>45</sup> William Pierce, Character Sketches of Delegates to the Federal Convention, in *The Records of the Federal Convention of 1787*, ed. by Max Farrand, vol. 3 (New Haven: Yale University Press, 1966), 94-95.

<sup>46</sup> The Articles of Confederation, in *The Constitutional Convention and the Formation of the Union*, ed. by Winton Solberg (Chicago: University of Illinois Press, 1990), 42-53.

be wished.”<sup>47</sup> However, because of the small turnout in those early days, in small part due to inclement weather, the socially awkward Madison was able to interact with the delegates of Pennsylvania in a small setting. It was during these early days in Philadelphia that Madison hashed out the final changes to the Virginia Plan. In addition, this time allowed for the arrangement of Edmund Randolph of Virginia to be acknowledged first at the Convention by George Washington of Virginia, the sitting President of the Convention, so he could present the Virginia Plan to the delegates on the first day of business.<sup>48</sup>

Madison's thinking on democracy, or “popular government,” deserves close inspection before considering how the Virginia Plan impacted the U.S. Constitution which still survives to this day. Popular government can sometimes be misrepresented as a simple majority rule, however, that is not exactly what James Madison had in mind. Madison believed that it was misleading to accept “that the interest of the majority is the political standard of right and wrong.” On the contrary, by stepping back and looking at it from a more “popular sense,” when considering the difference between “property and wealth...In the latter sense it would be the interest of the majority in every community to despoil & enslave the minority of individuals.”<sup>49</sup> From this example, Madison envisioned a system where both the majority and the minority interests would be considered. Differences of opinion and a discussion about the needs of all parties involved would lead to a better understanding of those needs. Competing interests and opposing points of view would lead to various alternatives and perhaps to a more precise understanding of the people

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<sup>47</sup> James Madison Letter to Thomas Jefferson, May 15, 1787, in *The Records of the Federal Convention of 1787*, ed. by Max Farrand, vol. 3 (New Haven: Yale University Press, 1966), 20.

<sup>48</sup> For analysis of Madison's first days in Philadelphia, see Richard Beeman, “Chapter Three: The Delay That Produced a Revolution,” *Plain, Honest Men: The Making of the American Constitution*, (New York: Random House, 2009).

<sup>49</sup> James Madison, “To James Monroe, 5 October 1786,” Edited by J.C.A. Stagg, *The Papers of James Madison*, The University of Virginia Press, Accessed July 24, <http://rotunda.upress.virginia.edu/founders/JSMN-01-09-02-0054>.



as a whole. Under the current Articles of Confederation, the majority and minority were clearly not working together, therefore endangering the good of the whole. Experiences from the American Revolution proved this fact. When it was left up to the state governments whether to comply or not with the needs of the Continental Congress, most of the states failed to comply, and the burden would always fall unevenly between the states. This uncooperative process would eventually lead to the collapse of the Union, according to Madison.<sup>50</sup>

Madison's observations gave him the conviction that a national structure of government was certainly needed. His time spent as a state legislator showed him many of the causes of problems in the current system, most notably the state legislatures which were revealed among the worst. Madison articulated those problems in his *Vices of the Political System of the United States*. Here, Madison laid out a working argument which would later be woven into his Virginia Plan. Madison pointed out many problems that plagued the Confederation. In general, Madison argued that the states failed to comply with certain policies of the Articles of Confederation, and that even if the Confederation Congress passed some legislation, the states would often choose not to comply. Also, the high rate of turnover of representatives in the state legislatures created a vast amount of new laws at an extremely high rate. This problem was further compounded by the state representatives themselves. Madison pointed out that within the states, "representative's appointments are sought from 3 motives. 1. Ambition, 2. Personal interest. 3. Public good. Unhappily the two first are proved by experience to be most prevalent." Through this example, Madison suggested that only the most industrious and successful people formed the legislative

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<sup>50</sup> Kloppenburg, *Toward Democracy*, 387.

bodies, in turn creating a Majority with only certain interest in mind, leaving the interests of other groups of people unrepresented in the state governments.<sup>51</sup>

Madison's *Vices* is perhaps the most important analysis of government during the founding period, and it provides insight into what “The Father of the Constitution” thought about government at the time. Madison's observations about the legislative branches of government and his criticism of majority rule does not mean that he devalued democratic systems or “popular rule,” but instead believed in a system of government which, if expanded, would provide a larger group of representatives to better serve the national public. The fear of excessive democracy was certainly apparent at the convention. However, as will be shown in the following analysis, Madison did not shy away from the term democracy at the Convention, but rather he embraced the idea of democracy openly.<sup>52</sup>

Madison's Virginia Plan was a significant leap forward regarding eighteenth-century popular government. The Virginia Plan essentially took constitutional authority away from the state governments and put it in the hands of the people instead. The plan called for a bicameral legislative branch which would consist of an upper and lower house. The upper house was to consist of individuals selected by the lower house. The lower house, being the more popular branch, would consist of representatives elected directly by the people of the several states. A national legislative body elected directly by the people was a crucial step toward popular government and one that Madison was passionate about at the convention. Introducing this concept gave national authority to the people through popular sovereignty. The plan also contained a judicial branch as well as a national executive who would be chosen by the national legislature.

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<sup>51</sup> James Madison, *Vices of the Political System*, in *James Madison: Writings*, ed. by Jack Rakove (New York: Literary Classics of the United States, 1999), 69-80.

<sup>52</sup> Kloppenborg, *Toward Democracy*, 400.

Additionally, the Virginia Plan called for an absolute veto on all state legislation that was considered unconstitutional. It also called for an amendment process in which representatives would vote, but that the representatives should be “expressly chosen by the people to consider & decide thereon.”<sup>53</sup> So, while twenty-first-century politics may look alien next to this plan, in the eighteenth century this was a large leap forward. America had been electing their representatives, but not on this level. Representatives were chosen at the local and regional levels, and finally the state levels, but now they would be able to choose them at the national level. The Virginia Plan did not mention voter qualifications. There was no mention of age, sex, or property requirements when voting for representatives. The specific as well as the vague language of the plan reveals Madison's thinking about democratic government at the time of the founding. His goal was certainly to expand the sphere of government, but he also allowed for direct and popular participation in the political process on a scale not yet seen in America.<sup>54</sup>

For this analysis, it is important to pay particular attention to the convention debates which took place between May 29, and June 13. These early days at the convention were crucial with regards to the Virginia Plan and the founders' interpretations of it, as well as their thoughts about the type of government the Virginia Plan was outlining. Some of the early reactions of the delegates are telling and show the difficulty of the task they faced. Robert Yates, delegate of New York, expressed in his notes a sense of dissatisfaction with the Virginia Plan. Yates sarcastically referred to Randolph as “his excellency Governor Randolph” and described his speech as “long and elaborate.” Yates made it clear that the resolutions being proposed by Randolph were not intended for a federal system of government but a “strong consolidated union, in which the idea

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<sup>53</sup> The Virginia Plan, Proposed by Edmund Randolph at the Federal Convention, in *James Madison: Writings*, 89-91.

<sup>54</sup> Kloppenborg, *Toward Democracy*, 396-397.

of states should be nearly annihilated.”<sup>55</sup> Yates's reaction to the Virginia Plan is not surprising, and he was not the only delegate who expressed those concerns. Charles Pinkney of South Carolina asked Randolph “whether he meant to abolish the State Governments altogether,” to which Randolph replied that he only intended to introduce particular resolutions “which explained the outlines of the system he had in view.”<sup>56</sup> While there was a certain level of confusion and perhaps shock amongst some of the delegates, it became quite certain very early at the convention what was being proposed and who the main proponents were of the new system.

As mentioned earlier, one of the central flaws of the Articles of Confederation lay in the states’ ability to operate with little or no threat of punishment by the Confederation Congress. George Mason, delegate from Virginia, agreed that under the Articles, Congress did not have the ability to punish certain states but also “that punishment could not, in the nature of things be executed on the States collectively, and therefore that such a Government was necessary as could directly operate on individuals, and would punish those only whose guilt required it.” And so, the real question in the back of the delegates minds, which certainly considered exactly what system of government was being proposed, was answered by Gouverneur Morris of Pennsylvania. Morris explained the difference between a “federal and national, supreme, Government; the former being a mere compact resting on the good faith of the parties; the latter having a complete and compulsive operation.” In all communities, there must be “one supreme power, and one only.”<sup>57</sup>

To what extent would a national community be allowed to participate in a supreme national government? Like all republican governments, that participation would rely on the representation

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<sup>55</sup> Robert Yates Notes, May 29, 1787, in *The Records of the Federal Convention of 1787*, ed. by Max Farrand, vol. 1 (New Haven: Yale University Press, 1966), 23-24.

<sup>56</sup> James Madison, Notes of the debates in the Philadelphia Convention, May 30, 1787, in Farrand, vol. 1, 33-34.

<sup>57</sup> James Madison, Notes of the debates in the Philadelphia Convention, May 30, 1787, in Farrand vol. 1, 33.

of the people within that government and the people's ability to elect their representatives. It has been suggested by scholars that the framers of the Constitution thought the states had proven themselves incapable of successful self-rule, and in response an undemocratic form of government was the result of the Federal Convention. Response to this claim can be extracted from the debate over the Virginia Plan and its resolution, which gave unprecedented participation to the people of America in the late 1700's.<sup>58</sup> The fourth and fifth resolutions of the Virginia Plan laid out the process of electing members to the National Legislature or what today we call Congress. The lower house (the House of Representatives) would be elected directly by the people of the several states with the upper house (the Senate) being chosen by members of the lower house.<sup>59</sup>

The fear of too much democracy was clear almost immediately at the convention. One of the first things to be criticized was the election of representatives in the National Legislature. Roger Sherman responded to the resolution insisting that the people “should have as little to do as may be about government.” Sherman believed that the people were constantly misled and could not be trusted with any form of government. Elbridge Gerry of Massachusetts followed Sherman saying that “the evils we experience flow from the excess of democracy.” Gerry also agreed with Sherman that the people were constantly misled by “false reports circulating by designing men.”<sup>60</sup> Both Gerry and Sherman are excellent examples of delegates at the Convention who, to some extent, did not trust the people and would have been happy to place the power of politics in the hands of the few elite. However, as often was the case at the Convention, democracy would challenge that view.

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<sup>58</sup> Woody Holton, *Unruly Americans: and the Origins of the Constitution* (New York: Hill and Wang, 2008).

<sup>59</sup> The Virginia Plan presented by Edmund Randolph at the Federal Convention, in *James Madison: Writings*, 89.

<sup>60</sup> James Madison, Notes of the debates in the Philadelphia Convention, May 31, 1787, in Farrand, vol. 1, 48.

The view that prevailed in the early days of the convention was one that was argued adamantly by men like Madison and James Wilson of Pennsylvania. In particular, the most popular branch of government was “to be the grand depository of the democratic principle of Government.” It should be the people, according to George Mason of Virginia, that elect their representatives who should “know and sympathize with every part of the community” and should “attend to the rights of every class of people.” As to the fear of the government being too democratic, Mason cautioned against running “into the opposite extreme.” Whether being too democratic or not democratic enough, Mason was willing to say, at least to some extent that democracy was still the better solution. James Wilson of Pennsylvania “contended strenuously” that the most popular branch of the government should be drawn “immediately from the people.” James Wilson believed that no government “could long subsist without the confidence of the people.” And so, in this instance, the people’s participation was considered and thought to be of the utmost importance to some of the delegates. It should be the people who elect their representatives, and this was considered “essential to every plan of free Government.” Madison emphasized this further saying “the great fabric to be raised would be more stable and durable if it should rest on the solid foundation of the people themselves.”<sup>61</sup>

The first five proposals of the Virginia Plan “amounted to an entirely new conception of the fledgling American government.” The Virginia Plan was a shift away from a Confederation and a movement toward national government which would leave the States inferior to a new supreme system. The Virginia Plan also sought to change the relationship between the state legislatures, the states, and “the people of the country at large.” Allowing the people to elect their representatives to the first branch directly, and in turn, those representatives electing the members

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<sup>61</sup> James Madison, Notes of the debates in the Philadelphia Convention, May 31, 1787, in Farrand, vol. 1, 48-50.

of the second branch, created a National Legislature “whose members would have very different relationships both to their state governments and to the people they were supposed to serve.”<sup>62</sup> While it is impossible to grasp the thoughts of all the delegates at the convention, it is clear that the Virginia Plan did intend to create a larger government in which the people would be able to participate in on a much greater scale. While the fear of too much democracy was certainly evident at the convention, what the Virginia Plan proposed, whether intended or not, was a new form of American Government in which it was the people, not the state legislatures, from where national politics would ultimately flow.

When the debate turned to resolution seven of the Virginia Plan, “that a national executive be instituted to be chosen by the national legislature,”<sup>63</sup> no other delegate argued in favor of democratic principles more than James Wilson of Pennsylvania. The debate over the Executive during the early days of the Convention was short lived but sparked heavy debate amongst the delegates nonetheless. While the Virginia Plan was quite vague on the structure of the Executive branch, the reactions of the delegates reveal the numerous ideas that were proposed and the struggle over the idea of popular government. Wilson’s comments quieted the crowd when he suggested that the National Executive consist of a single person. Dr. Franklin believed that the issue was of the greatest importance and that much more time was needed for the delegates to contemplate the structure of the Executive branch. Roger Sherman of Connecticut disagreed with Franklin on the importance of the Executive branch. Sherman insisted that the Executive was “nothing more than an institution for carrying the will of the Legislature into effect” and that it should be held “accountable to the Legislature only... As they were the best judges of business of

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<sup>62</sup> Beeman, *Plain Honest Men*, 88-89.

<sup>63</sup> James Madison, Notes of the debates in the Philadelphia Convention, June 1, 1787, in Farrand, vol. 1, 64.

the business which ought to be done by the Executive department.”<sup>64</sup> If Sherman's words are taken as they appear in the record then the Executive is nothing more than a symbolic position with very little significance. The people and the Executive position itself are nothing more than a second thought in the mind of Sherman.

Wilson's reaction to Sherman's comments is revealing and illustrates how different ideas were exchanged at the Federal Convention. Wilson preferred a single Executive “as giving most energy dispatch and responsibility to the office” and did not believe that the British model was acceptable in “defining the Executive powers.” The objections to a single executive should not be surprising. Edmund Randolph considered the idea to be “the fetus of Monarchy,” believing that a council or some mixture of individuals would prevent tyranny from happening. Wilson, however, had his reasons and his response was tactful and intelligent. Wilson claimed that it was “inapplicable” for a single executive to be the fetus to Monarchy. In the country's current situation, “the extent of which was so great, and the manners so republican, that nothing but a great confederated Republic would do for it.”<sup>65</sup> Wilson believed that the spirit of public opinion and the confidence of a popularly elected government was the only form of government that could protect against tyranny. In his forward-thinking mind, America simply was not suited to be ruled by a Monarch, nor would it allow itself to be, and his comments regarding the election of the Executive reaffirm this concept.

Wilson believed, although he knew that most everyone would disagree with him, that the executive should be appointed directly by the people, and he emphatically stated this idea numerous times and in more ways than one. Wilson argued that “not only both branches of the

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<sup>64</sup> James Madison, Notes of the debates in the Philadelphia Convention, June 1, 1787, in Farrand, vol. 1, 65.

<sup>65</sup> James Madison, Notes of the debates in the Philadelphia Convention, June 1, 1787, in Farrand, vol. 1 65-66.



Legislature” should be derived from the people “without the intervention of the State Legislatures but the executive also.”<sup>66</sup> If this mode of election were not possible, Wilson suggested a different mode which would still allow the people to participate indirectly. Wilson suggested that the states be divided into districts and that qualified voters in those districts, “elect members for their respective districts to be electors of the Executive magistracy.” It is the early version of the electoral college that Wilson substituted for his direct popular election of the Executive. Wilson wanted the election of the Executive “without the intervention of the States.” By doing this, Wilson argued, it would allow for “more confidence among the people in the first branch of the legislature” without having to rely on the National Legislature to pick the Executive on their own.<sup>67</sup>

James Wilson's thoughts and his contributions to the debates at the Federal Convention show his amazing intellectual, political, and legal thinking process to be amongst the brightest at the convention. William Pierce's portrait of Wilson describes a person who “ranks among the foremost in legal and political knowledge.” Wilson was quick to show off his advantage at times and though “he is no great orator... He draws the attention not by the charm of his eloquence, but by the force of his reasoning.” Wilson seemed to be the most acquainted delegate with the nature of man. He understood “all the passions that influence him.” Wilson understood all the political institutions of the world, and he could “trace the causes and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time.”<sup>68</sup> Second only to Madison, Wilson's political commentary at the Federal Convention was invaluable to the debates, and to the concept of popular government in eighteenth century America.

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<sup>66</sup> James Madison's Notes, in *Collected Works of James Wilson*, ed. by Kermit L. Hall and Mark David Hall, vol. 1 (Indiana: Liberty Fund Inc, 2007), 84-85.

<sup>67</sup> James Madison, Notes of the debates in the Philadelphia Convention, June 2, 1787, in *Collected Works of James Wilson*, vol. 1, 85.

<sup>68</sup> William Pierce, Sketches of the delegates at the Philadelphia Convention, Farrand, vol. 3, 91-92.

As the debates continued at the convention, Charles Pinkney of South Carolina had taken his seat. Pinkney objected to the election of the first branch of the National Legislature because “the people were less fit judges in such a case.” It should be the State Legislatures, argued Pinkney, because “if they were to be excluded” from the process, it “would be less likely to promote the adoption of the new Government.” James Wilson’s response to Pinkney was perhaps one of his best speeches at the Convention echoing ideal democratic principles for popular government. There should be “vigor in government” argued Wilson, “but that vigorous authority” should “flow immediately from the legitimate source of all authority.” The government, argued Wilson, should possess the force as well as “the mind or sense of the people at large.” The Legislature should represent the whole society. Wilson argued that it was impossible for society to act collectively and because of that fact, “representation is made necessary.” Wilson contended that the State Governments were to be losers, in this case, yes. But since, in theory, government flowed from the authority of the people, the people “would be rather more attached to the national government than to the State Governments as being more important in itself.” By expanding the sphere of government as James Madison had suggested, there would be no “danger of improper elections if made by large districts. Bad elections proceed from the smallness of the districts which give an opportunity to bad men to intrigue themselves into office.”<sup>69</sup>

There were combating views and ideas about the mode of election in the National Legislature. Surely there was no stronger proponent of democracy than Wilson, but other views were just as critical to the debate and revealing regarding the delegates’ thoughts about popular government. Elbridge Gerry of Massachusetts did not object to the participation of the people in

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<sup>69</sup> James Madison, Notes of the debates in the Philadelphia Convention, June 6, 1787, in *Collected Works of James Wilson*, vol. 1, 90-91.

government. He thought “it was necessary on the one hand that the people should appoint one branch of the Government.” However, Gerry's perception of the people's participation was much different from Wilson or Madison for that matter. Gerry's idea was to modify the election process “to secure more effectually a just preference of merit.” Gerry wanted to allow people in certain districts to select persons for nomination to the National Legislature and in return, “the State Legislatures should make the appointments.”<sup>70</sup> It is fair to say that Gerry shared other delegates distrust of the people. It is also fair to say that given the nature of government at the time, Gerry was taking a step forward regarding popular government. As noted before, participation by the people in elections was common at the local and state levels. It was the thought of their involvement at the federal or national level that seemed to worry delegates such as Gerry. The State Governments elected members of Congress under the Articles of Confederation, not the people.

Roger Sherman, had a different take on how and under what circumstances the people would be permitted to participate in the national government. Sherman submitted to the idea that if the State governments were abolished, “elections ought to be by the people.” If the State governments continued to exist, “it is necessary in order to preserve harmony between the national and State Governments that the elections to the former should be made by the latter.” In Sherman's eighteenth century political mind, the people would be adequately represented and would enjoy “the right of participating in the national government” through the election of their State Legislatures. All that was needed was the connection through the state governments for popular participation to be achieved. And Sherman argued that “the people are more happy in small than large States. States may indeed be too small as Rhode Island, and thereby be too subject to faction.”

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<sup>70</sup> James Madison, Notes of the debates in the Philadelphia Convention, June 6, 1787, in Farrand, vol. 1, 132.

On the other hand, some states were too large leaving the government incapable of serving the population as a whole.<sup>71</sup>

George Mason had a straightforward response to Sherman and Gerry alike. Mason argued that under the Articles of Confederation, “Congress represent the States not the people of the States: their acts operate on the States not on the individuals.” Mason, along with Wilson and Madison, argued that the Virginia Plan was changing the relationship so that “the people will be represented” as well as allowed “to choose the Representatives.” Mason argued strenuously that representatives of the people should be able to “think as they think, and feel as they feel.” Mason would go as far to say that representatives “should even reside among them” allowing them to fully “sympathize with their constituents.” Mason concluded, asking his colleges to imagine a form of government, “this form in favor of the rights of the people, in favor of human nature.” Mason was advocating for the very basic principle that the voice of government flows from the people and the people alone. A popular elected House of Representatives was considered to him the most fundamental principle of popular government.<sup>72</sup>

In one of his strongest speeches, Madison strategically used democracy against the other delegates who argued against popular government. While democratic government was often described as problematic, Madison embraced it as eloquently as he could. He considered the election of the first branch of government “by the people immediately, as a clear principle of free government.” In response to Sherman’s comments on factions, Madison pointed out that the evils that plagued the small states were the same as the ones that plagued the larger states. By enlarging the sphere of government, the evils would be defended “against the inconveniences of democracy.”

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<sup>71</sup> James Madison, Notes of the debates in the Philadelphia Convention, June 6, 1787, in Farrand, vol. 1, 133.

<sup>72</sup> James Madison, Notes of the debates in the Philadelphia Convention, June 6, 1787, in Farrand, vol. 1, 133-134.

By doing this, Madison argued, the government would maintain a “democratic form of government.”<sup>73</sup>

By June 13, the delegates had debated, revised, and sought middle ground on certain issues. The revised Virginia Plan revealed a shift toward a national government with provisions that reflected what men like Madison and Wilson considered essential for democratic government. For now, the Virginia Plan succeeded in establishing a House of Representatives that would be elected by the people of the states directly. The Senate would be chosen by the state legislatures, which, for the moment, appeased the delegates who worried about losing state participation on the national level. James Wilson's proposal for a single executive survived in the Revised Virginia Plan, but the mode of electing the Executive was not quite set in stone. What is telling about the close of business on June 13 is that a consensus was reached which favored both the Virginia and Pennsylvania delegations; a national government should be instituted consisting of the three branches of government proposed by the Virginia Plan.

The early debates of the Federal Convention show two overwhelming ideologies. One idea is that the people should not be able to participate in government at the national level. The other is that the people have every right to participate and that is a basic fundamental principle of free government. It should be no surprise that the most debated topic in these early days that the Virginia Plan produced surrounded the nature of the National Legislature. The Legislative Branch was where all laws began and were instituted. Allowing the people a direct voice in that branch was a monumental step forward regarding democratic government which Madison and other delegates adamantly supported. Under the Articles of Confederation, as George Mason reminded

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<sup>73</sup> Madison, Notes of the debates in the Philadelphia Convention, June 6, 1787, in Farrand, vol. 1, 134-135.

the other delegates, Congress represented only the states as individual entities and not the people. Allowing the people to participate in the National Government on such a large scale was considered “to be the grand depository of the democratic principle of Government.”<sup>74</sup>

Should the Virginia Plan be considered a democratic system of government that might give the people of America more power in the political process? To answer this question, particular attention should be given to the fact that the government under the Articles of Confederation did not allow direct participation in the Confederate Congress. Once the Virginia Plan was introduced at the Convention, it was calling for the people of the states to participate in what was considered at the time the most important branch of any government – the Legislative branch. So, in this respect, I would argue yes, it was allowing the people a stronger voice than had ever been practiced at the time. While the Virginia Plan is only a blueprint for government, the voices behind the Virginia Plan reveal all that is needed to know about it. From late May until June 13, the proponents of the Virginia Plan used words like democracy, popular government, and free government to describe what the Virginia Plan was proposing. In the minds of Madison, Wilson, and Mason just to name a few, they were advocating for what they considered democratic government. It is not easy to determine what an eighteenth-century delegate to the Federal Convention thought of democracy on an exact basis. In a twenty-first century political world, the delegates views look narrow-minded and sometimes conservative. However, during the Federal Convention it was a progressive action that they were attempting, and the revised Virginia Plan, while only a small step, was a progressive one nonetheless.

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<sup>74</sup> Madison, Notes of the debates in the Philadelphia Convention, May 31, 1787, in Farrand, vol. 1, 48.

## CHAPTER 4

### A Commitment to Democracy?

John Adams' influence on democratic thought and James Madison's proposal for a national democratic frame of government are wonderful examples of democratic thought evolving during the early republic. However, the events that unfolded at the Federal Convention show a very real commitment by the delegates to democracy in America. Certainly, the arguments and ideas put forth by Madison, constitute a new direction for American Government in the eighteenth century. As previously argued, participation of the people at the level that Madison was suggesting had never existed in America. On that basis, Madison, with the help of other delegates, was in a way introducing the idea of democracy within a national frame of government. But as will be shown, for some delegates, Madison did not go far enough with his Virginia Plan nor with democratic processes within this new national frame of government.

Of all the delegates at the Federal Convention, no other person showed a commitment to democracy greater than that of James Wilson of Philadelphia. A Scottish immigrant, and student of the Scottish enlightenment, Wilson had a vision of government that was well ahead of his time. His contributions to the Federal Convention cannot be underestimated. Many scholars have theorized that Wilson may have been as important or more so than James Madison. While the Federalist Papers may have enshrined James Madison and the other authors into history, Bernard Bailyn notes that in the "transient circumstances of the time it was not so much the Federalist Papers that captured most people's imaginations as James Wilson's speech of October 6, 1787" in defense of the U.S. Constitution.<sup>75</sup> Wilson was a signer of the Declaration of Independence as

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<sup>75</sup> Bernard Bailyn, *The Ideological Origins of the American Revolution*, (Cambridge: Harvard University Press), 328.

well as of the U.S. Constitution, and he was one of only a handful of delegates that attended the Federal Convention from start to finish. No other delegate spoke more than Wilson at the Federal Convention, except Gouverneur Morris, and on many occasions Wilson “responded to the most serious attacks on the concept of a strong and democratic national government.”<sup>76</sup>

Wilson had an outstanding ability to take into account many subjects surrounding legal theory and political philosophy. John Adams described Wilson in 1775 to his wife as someone “whose fortitude, rectitude, and abilities too, greatly outshine his masters.”<sup>77</sup> Perhaps the best description of Wilson and his abilities comes from William Pierce:

Mr. Wilson ranks among the foremost in legal and political knowledge. He has joined to a fine genius all that can set him off and show him to advantage. He is well acquainted with Man, and understands all the passions that influence him. Government seems to have been his peculiar Study, all the political institutions of the World he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time. No man is more clear, copious, and comprehensive than Mr. Wilson, yet he is no great Orator. He draws the attention not by the charm of his eloquence, but by the force of his reasoning.<sup>78</sup>

Thus, Wilson was a man of great intellect and impressionable character. People who interacted with him were generally impressed with him. It should be no surprise then, that Wilson played a monumental role at the Federal Convention and even more so during the ratification process. The arguments he made and his commitment to democracy give us some insight into how the Constitution was drafted, as well as its interpretation by men like Wilson.

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<sup>76</sup> Mark David Hall, *The Political and Legal Philosophy of James Wilson 1742-1798* (Columbia: The University of Missouri Press, 1997), 20-21.

<sup>77</sup> John Adams to Abigail Adams, in *The Founders on the Founders: Word Portraits from the American Revolutionary Era*, ed. John P. Kaminski (Charlottesville: University of Virginia Press, 2008), 529.

<sup>78</sup> William Pierce, in *The Founders on the Founders: Word Portraits from the American Revolutionary Era*, ed. John P. Kaminski (Charlottesville: University of Virginia Press, 2008), 530-531.



A consideration of where Wilson derived his political theory and how it was that he was such a proponent of democracy is needed. Wilson drew his ideas about human nature from the concept of natural law. His moral theory was based on the Christian conception of natural law and a set of moral standards that are meant to guide the people and as well as the legislators who create laws. Natural law and Wilson's conception of morality gave him an optimistic view of society in general. His commitment to Lockean principles and natural law theory was what made him such an advocate of democracy.<sup>79</sup>

In the years leading up to the American Revolution, Wilson advanced his own ideas about the sovereignty of the people and the questionable right of parliament to legislate on behalf of the colonists in America. His pamphlet, *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*, advanced the idea that the law of nature required all governments to be based solely on the people. Wilson reasoned that "oppression is not a plant of the British soil" but was the doings of the British Parliament. The oppressive acts by parliament, Wilson contended, can only be fought off by "the principles of justice and freedom, and of the British constitution." All happiness in society, Wilson believed, was "the first law of every government." He believed the representatives of the people are accountable to their constituents and "that all power is derived from the people- that their happiness is the end of government." Wilson asks, "is British freedom denominated from the soil, or from the people of Britain?" Wilson makes no distinction between the people of Britain or the American Colonists except that they are all intitled to the protection of the King. In this regard, Parliament had no authority to legislate on behalf of people who were not represented properly and that without the consent of the people

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<sup>79</sup> Mark David Hall, *The Political and Legal Philosophy of James Wilson 1742-1798*, (Columbia: The University of Missouri Press, 1997), 5.

being governed, parliament had no right to pass certain acts on them. Wilson believed then, as he always did that the source of governing power should always derive from the people.<sup>80</sup>

A useful example of Wilson's legal and political thinking which shows his commitment to the individual and where sovereignty is based is a speech he delivered at the state convention in Philadelphia. As a legal scholar, Wilson was familiar with Sir William Blackstone, as were most influential people of the time. But while the works of Blackstone were certainly useful for the legal scholar in the late eighteenth century, Wilson was critical of him nonetheless. All Governments, Wilson pointed out, must have "a power established from which there is no appeal, and which is there fore called absolute, supreme, and uncontrollable." The only question therefore, Wilson asked, is "where that power is lodged?" According to Blackstone, that power rested in the "omnipotence of the British Parliament" or whenever that power is transferred, say to the King, it did not matter whether acts were unconstitutional because of the divine nature of natural law.<sup>81</sup> The basis for this point that Wilson makes, comes from Blackstone and his *Commentaries on the Laws of England*. According to Blackstone, "man...must necessarily be subject to the laws of his creator, for he is entirely a dependent being. A being independent of any other, has no rule to pursue, but such as he prescribes to himself." Any state of dependence on the ruler makes the ruled absolutely inferior to the ruler.<sup>82</sup> Wilson however, strays away from Blackstone in his remarks. He posed the question to his colleges saying if "we ask some politicians who have taken a faint and inaccurate view of our establishments, where does this supreme power reside in the United States?"

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<sup>80</sup> James Wilson, Considerations on the Nature and Extent of the Legislative Authority of the British Parliament, in *The Collected Works of James Wilson*, ed. by Kermit L. Hall and Mark David Hall, vol. 1 (Indiana: Liberty Fund Inc, 2007), 3-30.

<sup>81</sup> James Wilson, in *Pennsylvania and the Federal Constitution 1787-1788*, ed. by John Bach McMaster and Frederic D. Stone (Indianapolis: Liberty Fund Inc., 2011), 229.

<sup>82</sup> Sir William Blackstone, *Commentaries on the Laws of England*, ed. by Wilfrid Prest (Oxford: Oxford University Press, 2016), 33-34.

Wilson theorized that the answer would most likely be “in their Constitutions.” But even the constitutions were not the answer to the question posed “for in truth, it remains and flourishes with the people.”<sup>83</sup>

The concept of the consent of the people was something that Wilson never strayed from during the Federal Convention. During the first weeks of the convention, Wilson agreed with some of Madison’s resolutions but consistently expanded on them. Madison proposed a two-house legislature with one house being elected by the people, and even when Roger Sherman of Connecticut shunned the thought of “the people” being involved in this political process on such a large scale, Wilson “contended strenuously” that the election of both houses of the legislature should be chosen by the people.<sup>84</sup> The debates in those first weeks were telling, as noted in the previous chapter. The Virginia Plan stood the test of time and now it was time to consider other plans. It was during the second half of the convention that many ideas were thrown around and heated debate ensued. And while the end of the convention is known to all, Wilson and his arguments can tell us much about the political environment and the concept of democracy during this fragile time in American history.

The Convention adjourned at the end of the day on June 13<sup>th</sup>, and the following day the delegates reconvened for what would be a brief session. At the open of business on the 14<sup>th</sup>, William Patterson of New Jersey immediately announced “that it was the wish of several deputations” that a different plan be submitted to take into account, a plan that was to be “purely

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<sup>83</sup> James Wilson, in *Pennsylvania and the Federal Constitution*, McMaster and Stone, 229.

<sup>84</sup> Madison, Notes of the debates in the Philadelphia Convention, May 31, 1787, in Farrand, vol. 1, 48-52.

federal, and contradistinguished” from the Virginia Plan. Patterson asked for a day to form a draft of the new plan, and it was agreed to and the delegates adjourned for the day.<sup>85</sup>

Patterson had misgivings about the Virginia Plan from the very first day it was presented to the delegates. One of his first observations was the proposal for proportional representation in the legislative branch which, Patterson characterized as “the basis upon which the larger States can assent to any Reform.” Patterson believed that the Virginia Plan was intent on undermining the sovereign power of the states as he no doubt scribbled irritably “We ought to be one Nation.” Even when he considered the proposal for one house of the legislative branch being elected by the people, Patterson wrote with hesitance that “this the democratic Branch...perhaps if convenient, may be elected by the several Legislators.”<sup>86</sup> Patterson’s Plan was strictly federal and only mentioned amendments to the Articles of Confederation. There was nothing dealing with the structure of congress or how they were to be elected. What the New Jersey Plan did contend was that the sovereignty of the states would stay intact under the Articles of Confederation. One crucial aspect however, of the New Jersey Plan, was the election of a federal executive. It was left to the individual states represented in Congress for the election of the executive, which would consist of more than one person. These persons would be “removable by congress on application by a majority of the executives of the several states.” An idea that Wilson would address the next day. What is telling about this portion of the plan, is that it would, in essence, make the executive branch completely dependent through congress on the states. After the New Jersey Plan was presented, all the delegates were given the opportunity to take copies for study and it was agreed that the proponents of the plan would be given time to prepare a proper defense for their arguments.<sup>87</sup>

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<sup>85</sup> Madison, Notes of the debates in the Philadelphia Convention, June 14, 1787, in Farrand, vol. 1, 240.

<sup>86</sup> William Patterson, Notes of the debates in the Philadelphia Convention, May 29, 1787, in Farrand, vol. 1, 27-28.

<sup>87</sup> Madison, Notes of the debates in the Philadelphia Convention, June 15, 1787, in Farrand, vol. 1, 242-245.

The 16<sup>th</sup> of June was the beginning of a long and dynamic discussion, to say the least, for the delegates at the Federal Convention. As Richard Beeman describes it, “the eighteen days between the introduction of the New Jersey Plan on June 15 and the Convention’s temporary recess at the end of the day on July 2...were the most confusing, contentious, and unproductive of the summer.”<sup>88</sup> Confusing and unproductive from a logistics standpoint maybe, but the preceding days at the convention provide insight into some themes that are important and Wilson provides those insights.

On June 16<sup>th</sup>, John Lansing of New York (one of the architects of the New Jersey Plan), pointed out that the plans that had been presented to the delegates were both in contrast of each other. The New Jersey Plan, “sustains the sovereignty of the respective states” and the Virginia Plan, “destroys it.” Lansing preferred the New Jersey Plan for two reasons: “Want of power in the Convention to discuss and propose it. The improbability of its being adopted.” Lansing believed that the Convention only had the power to discuss amendments to the Articles of Confederation, not to propose a new national government. Lansing went further saying that, as a delegate from New York sent to the convention, “New York would never have concurred in sending deputies to the convention, if she had supposed the deliberations were to turn on a consolidation of the States, and National Government.”<sup>89</sup>

Patterson then spoke with an elaborate analysis of the system being proposed by Virginia, and the reasons why his plan was the most logical. Patterson believed that his plan was the most logical arguing that it stayed within the power of the convention and also that it was more agreeable “with the sentiments of the people.” Patterson argued that if the confederacy “was radically wrong”

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<sup>88</sup> Richard Beeman, *Plain, Honest Men: The Making of the American Constitution* (New York: Random House, 2009), 163.

<sup>89</sup> Madison, Notes of the debates in the Philadelphia Convention, June 16, 1787, in Farrand, vol. 1, 249-250.

then everyone should return to the states and “obtain larger powers.” Patterson argued that the delegates at the convention were the voice of the people through the state legislators, saying “if sovereignty of the States is to be maintained, the Representatives must be drawn immediately from the States, not from the people.”<sup>90</sup>

Wilson mounted a clever attack to both Lansing and Patterson’s comments about the two plans in question. He commented on the distinct differences in each plan and then proceeded to give reason why the Virginia Plan was the most promising of the two. Wilson cleverly noted, as for the power of the convention, he could conclude nothing but believed that he and the delegates “to be at liberty to propose anything.” As for knowing “the sentiments of the people” that Patterson claimed to be speaking for, Wilson believed that it was difficult “to know precisely what they are.” Some people, the delegates included, moved in circles of society which “were commonly mistaken for the general voice” of the people. It was not at all the case, in Wilson’s mind, that state governments and their sovereignties “were so much the idols of the people.” For these reasons, Wilson argued, the people would be more inclined to a national government. Furthermore, the new frame of government proposed by the Virginia Plan would be “submitted to them” the people “and not to the Legislatures, for ratification.” Here Wilson is drawing a fine line between the Virginia Plan and that of New Jersey. Sovereignty is left to the people and not to the states or their governments and under the Virginia Plan, and Wilson believed that this was what best achieved that. And to the structure of the “federal magistrate”, Wilson simply replied that having three rather than one executive would only incite competition between the three until one of them becomes the master over the others.<sup>91</sup>

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<sup>90</sup> Madison, Notes of the debates in the Philadelphia Convention, June 16, 1787, in Farrand, vol. 1, 250-251.

<sup>91</sup> Madison, Notes of the debates in the Philadelphia Convention, June 16, 1787, in Farrand, vol. 1, 252-254.

Wilson's notes, taken from the Federal Convention which analyze the defects of the New Jersey Plan are telling. It is more of an outline which he more than likely used for the speech previously noted, but in his notes, he is much more critical of Patterson and his disregard for the sovereignty of the people of the United States. One of Wilson's main points, is that he expressly acknowledged that the Virginia Plan was Founded "on the original authority of the people" whereas Patterson's plan was founded on "the derivative authority of the Legislatures of the States." The Virginia Plan was founded on the principle of "a Majority empowered to act" whereas the Patterson's Plan was founded on "A small Minority able to control." The National Government was to be ratified "under the authority of the People by delegates expressly appointed for that purpose." Patterson's plan gave that authority to the state legislatures. Wilson described the New Jersey Plan in his notes as "instituted in an improper manner" flowing from "illegitimate sources." Those sources being "the Legislative and Executive Powers of the States, and not the people at large."<sup>92</sup>

Taken from a panoramic view, these examples suggest that Wilson saw the Virginia Plan, or for a broader definition, the new National frame of government being proposed, as a system of government where the ultimate authority flowed from the people. It was the people who were the sovereign and only through them could a government be properly constituted. If Wilson understood the plan in this manner, it is not at all unlikely that he viewed it as a democratic form of government. One where a majority was empowered to act. It has been suggested by Forrest McDonald that Wilson believed that sovereignty passed to the Congress after separation from Great Britain, but as this case shows, Wilson either believed quite differently or his conception of

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<sup>92</sup> James Wilson, Notes of the debates in the Philadelphia Convention, June 16, 1787, in Farrand, vol. 1, 276-279.

sovereignty had changed since.<sup>93</sup> The New Jersey Plan was voted down, leaving the Virginia Plan as the most favorable set of resolutions to be considered at the Federal Convention. The issue of representation however, would be the large elephant in the room for the remainder of the debates in Philadelphia.

The days following the introduction of Patterson's New Jersey Plan, provides insight into how complex the issues were confronting the delegates and the various interests and ideas of the delegates themselves. One example is the speech delivered by Alexander Hamilton on the floor of the convention on the 18<sup>th</sup> of June. Hamilton disagreed with both plans and laid out a frame of government that probably put most of the other delegates in a state of confusion. He proposed a government not too dissimilar to that of Great Britain calling for an Executive to serve for life much like a King would. However, Hamilton's speech was met with silence and the delegates simply adjourned for the day.<sup>94</sup> And at the beginning of the day on June 20<sup>th</sup>, the issue of state pride or sovereignty was still creating a problem for the nationalists at the convention. Oliver Ellsworth of Connecticut wanted to "drop the word national" altogether and retain "the United States." He also pushed to keep the Virginia Plan as simple amendments proposed so that the Legislatures would be able to ratify them. It was Ellsworth's belief that if the Legislatures were "unwilling" to ratify the so-called amendments, "the people will be so too." What Oliver Ellsworth was really trying to do was ease the fears of the delegates from the small states who were worried about the abolishment of the state governments<sup>95</sup>

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<sup>93</sup> Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), 149-150.

<sup>94</sup> Madison, Notes of the debates in the Philadelphia Convention, June 18, 1787, in Farrand, vol. 1, 283-293.

<sup>95</sup> Madison, Notes of the debates in the Philadelphia Convention, June 20, 1787, in Farrand, vol. 1, 335.



One of the earliest attempts at compromise came from Doctor William Johnson of Connecticut. Johnson who was familiar with both plans, realized that the real fear of the small state delegates was that the Virginia Plan destroyed the “individuality” of the states all together. Hamilton, Johnson pointed out, “boldly and decisively contended for an abolition of the State Governments,” and he was the only man to suggest doing so. Johnson pointed out to the other delegates that neither Madison nor James Wilson for that matter, advocated for such but wished to “leave the States in possession of a considerable” amount of jurisdiction. Johnson simply asked that this fact be made more obvious to the other delegates, and by doing so, “many of their objections would no doubt be removed.”

Wilson had a lot of respect for Dr. Johnson, but he certainly did not accept the fundamental idea of divided sovereignty. Wilson explained that as the plan stood, “one branch of the General Government was to be appointed by the State Legislatures,” but as Madison notes this was “contrary to [Wilson’s] opinion.” From this point, Wilson could not find anything in the Virginia Plan that would take away from the individuality of the states. If anything, Wilson added it would be the General government who “would be in perpetual danger of encroachments from the State Governments.”<sup>96</sup>

The issue of whether or not the state governments would be abolished was a trivial issue, to say the least. I would argue that for most of the delegates, that issue would take a side seat to the greater complication of the National Legislature and how it would be constituted. It was agreed that the National Legislature would consist of two branches. Charles Pinkney of South Carolina spoke first. Pinkney wanted the election of the first branch, the House of Representatives, to be

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<sup>96</sup> Madison, Notes of the debates in the Philadelphia Convention, June 21, 1787, in Farrand, vol. 1, 354-356.

left for the states to decide, believing that state legislatures would be able to gage the people of districts best. John Rutledge of South Carolina contended that he made no “distinction between a mediate and immediate election by the people.” He considered both forms the same, believing that the State Legislatures would choose the wisest men.<sup>97</sup>

On this matter, Wilson once again shows his commitment to democracy believing elections by the people to be “not only as the corner stone, but as the foundation of the fabric” of government. He was also adamant in believing “the difference between a mediate and immediate election was immense.” The state legislatures “are actuated not merely by the sentiment of the people, but have an official sentiment opposed to that of the General Government and perhaps the people themselves.” Allowing state legislatures to select representatives for the national government was risky according to Wilson. Wilson believed that only the people could select representatives to serve them in this function and that self-interested men who were jealous of the General Government could not be trusted to do so. That was one point, but Wilson’s main objection was that it separated the people too far from the national legislature.<sup>98</sup> Wilson went further with his conception of the National Legislature by advocating for annual elections. It was Wilson’s belief that this mode of election was the most convenient and familiar to the people. The people were in the habit of meeting annually locally and Wilson hoped, that this practice would coincide with meeting annually to elect their own representatives to the National Legislature.<sup>99</sup> More so, whenever the question for election qualifications came about, Wilson was again, the foremost advocate for democratic principles and popular sovereignty. Wilson wanted to expand the electorate as far as possible. He was adamantly “against abridging the rights of election in any

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<sup>97</sup> Madison, Notes of the debates in the Philadelphia Convention, June 21, 1787, in Farrand, vol. 1, 358-359.

<sup>98</sup> Madison, Notes of the debates in the Philadelphia Convention, June 21, 1787, in Farrand, vol. 1, 359.

<sup>99</sup> Madison, Notes of the debates in the Philadelphia Convention, June 21, 1787, in Farrand, vol. 1, 360.

shape” He also opposed age qualifications for Congress saying “It was the same thing whether this were done by disqualifying the objects of choice, or the persons chusing.”<sup>100</sup>

On the question of the second branch of the National Legislature, Wilson proceeded to give his opinion and laid out a concept that certainly the delegates were familiar with, but also one that went against many of their ideas about the upper house, including Madison’s. It could be said that this speech laid out an idea of dual citizenship. But, it is truly an idea that was familiar to all at the time, one that speaks of the idea popular sovereignty:

It is Improper that the state legislatures should have the power contemplated to be given them. A citizen of America may be considered in two points of view-as a citizen of the general government, and as a citizen of the particular state, in which he may reside. We ought to consider in what character he acts in forming a general government. I am both a citizen of Pennsylvania and of the United States. I must therefore lay aside my state connections and act for the general good of the whole. We must forget our local habits and attachments. The General government should not depend on the state governments.<sup>101</sup>

Wilson was making a clear point to the other delegates. He was of course advocating that the members of the upper house should be chosen directly by the people, but this does not mean that by doing so the state somehow loses its individuality. It was a necessity for the upper house to be another embodiment of the people because the people were Americans first, rather than simply citizens of the state. As for direct election of senators, Wilson advocated for direct election by the people. Not satisfying the other delegates on that note, he advocated that the people elect electors for the purpose of electing senators, but even that idea was not considered for the time being. Wilson would constantly fight for the concept of one man one vote, never truly compromising.<sup>102</sup>

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<sup>100</sup> Madison, Notes of the debates in the Philadelphia Convention, June 22, 1787, in Farrand, vol. 1, 375

<sup>101</sup> Robert Yates, Notes of the debates in the Philadelphia Convention, June 25, 1787, in Farrand, vol. 1, 413.

<sup>102</sup> Madison, Notes of the debates in the Philadelphia Convention, June 25, 1787, in Farrand, vol. 1, 406.

Representation in the National Legislature would plague the Convention from the 27<sup>th</sup> of June until July 16<sup>th</sup>. It is during this phase of the convention that one sees how Wilson's ideas about who or what was going to be represented in this branch of government truly differ from Madison's conception of representative democracy. The threat of small states leaving the convention if equal votes were not allowed in the Senate was a growing concern for Nationalists like Wilson, and Madison for that matter. David Brearly, delegate from New Jersey, requested that a letter be written to the executive office of New Hampshire and break silence to inform him to send all the representatives he could spare because "the business depending before the Convention was of such a nature as to require the immediate attendance of the deputies of that state." Things were heating up and with delegates threatening to leave or even separating from the Union certainly called for alarm. Even in the face of such hostility, Wilson did not abandon his principles. Wilson "hoped the alarms exceeded their cause and that they not abandon a country to which they were bound by so many strong and endearing ties." Wilson asked the other delegates, did they "forget for whom we are forming a government? Is it for men, or for the imaginary beings called States?" Wilson urged the delegates to see things more clearly. Wilson claimed that the right of suffrage should be proportioned in both houses saying "we talk of states, till we forget what they are composed of."<sup>103</sup>

Here, Wilson is touching on a principle that would be echoed in his later works: the fundamental idea that all government or body politic is founded on the individual human being. The state governments were simply an instrument for promoting the interests of the states. Wilson's view here is distinct and breaks very strongly with Madison's view on representation. For Wilson, representation was always about representing the individual whereas for Madison, it

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<sup>103</sup> Madison, Notes of the debates in the Philadelphia Convention, June 30, 1787, in Farrand, vol. 1, 481-483.

was about representing interests.<sup>104</sup> But even with these two distinctions between Madison and Wilson, the issue of proportional representation still needed more debate. The key issue, as Madison saw it, was not as simple as interests. It was ideological as well as economical.

That same day, Madison laid out what he deemed to be the looming problem. The evils of slavery in America was not a predominantly discussed topic at the convention. It was an issue that the delegates at the Federal Convention did not have an answer for. It is highly likely, that if the delegates had tried to get rid of slavery outright, there would have been no hope for a national government to be framed. Wilson himself was a slaveowner, owning one slave in his life and eventually setting him free. Madison and many of the other delegates at the convention owned slaves as well. But the understanding of slavery at the convention was that it was a political issue, not a moral issue. Perhaps Roger Sherman summed it up best explaining that while “He disapproved of the slave trade,” the states were, at the moment, legally free to import slaves. Sherman “observed that the abolition of slavery seemed to be going on in the U.S. and that the good sense of the several States would probably by degrees complete it.”<sup>105</sup>

Madison came to the realization that it was the different interests rather than the size of the small states from the North that mattered. It was not “their difference of size,” but their difference in circumstance. The difference, Madison said, was “principally from the effects of their having or not having slaves.” Slavery formed a “great division” in the United States. The problem “did not lie between the large and small states: it lay between the Northern and Southern.” This issue had been on Madison’s mind and it weighed heavy on him throughout the convention. Madison

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<sup>104</sup> William Ewald, “James Wilson and the Drafting of the Constitution”, *Faculty Scholarship*, (Paper 998, 2008) 978.

<sup>105</sup> Madison’s Notes, in *The American Debate over Slavery, 1760-1865: An Anthology of Sources*, ed. by Howard L. Lubert, Kevin R. Hardwick, and Scott J. Hamond (Indianapolis: Hackett Publishing Company Inc., 2016), 36.

suggested a plan that he thought might bring some kind of compromise. He suggested having “the slaves in the ratio of 5 to 3. They should be represented in one branch according to the number of free inhabitants only; and in the other according to the whole number counting the slaves as if free.” By doing this, Madison reasoned that the South would carry the advantage in one house while the North carried the advantage in the other.<sup>106</sup>

Other views were expressed about how to incorporate proportional representation into Legislative branch. Gouverneur Morris of Pennsylvania not only wanted property to be a basis for representation, but also wanted to limit the newly acquired Western states’ ability to acquire more representation. Wilson, however, took a very philosophical approach on the subject and again provides an example of his insight and ability to reason through complex ideas:

If a general declaration would satisfy any gentleman he had no indisposition to declare his sentiments. Conceiving that all men wherever placed have equal rights and are equally entitled to confidence, he viewed without apprehension the period when a few states should contain the superior number of people. The majority of people wherever found ought in all questions to govern the minority. If the interior country should acquire this majority they will not only have the right, but will avail themselves of it whether we will or no. This jealousy misled the policy of Great Britain with regard to America. The fatal maxims espoused by her were that the colonies were growing too fast, and that their growth must be stinted in tie. What were the consequences? First. Enmity on our part, then actual separation. Like consequences will result on the part of the interior settlements, if like jealousy and policy be pursued on ours. Further. If numbers be not proper rule, why is not some better rule pointed out. No one has yet ventured to attempt it. Congresses have never been able to discover a better. No State as far as he had heard, has suggested any other. In 1783, after elaborate discussion of a measure of wealth all were satisfied then as they are now that the rule of numbers, does not differ much from the combined rule of numbers and wealth. Again he could not agree that property was the sole or the primary object of Government and Society. The cultivation and improvement of the human mind was the most noble object. With respect to this object, as well as to other personal rights, numbers were surely the natural and precise measure of Representation. And with respect to property, they could not vary much from the precise measure. In no point of view however could the establishment of numbers as the rule of representation in the 1<sup>st</sup> branch vary his opinion as to the impropriety of letting a vicious principle into the 2<sup>nd</sup> branch.<sup>107</sup>

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<sup>106</sup> Madison, Notes of the debates in the Philadelphia Convention, June 30, 1787, in Farrand, vol. 1, 486-487.

<sup>107</sup> Madison, Notes of the debates in the Philadelphia Convention, July 13, 1787, in Farrand, vol. 1, 605-606.

Both Wilson and Madison continued to argue against compromise for proportional representation, but on July 2<sup>nd</sup> a committee was selected to do just that.

Due credit must be given to one of the oldest members of the delegation at the convention. By the time the 4<sup>th</sup> of July weekend came about, the delegates must have been exhausted, and any sign of compromise surely shook the nerves of nationalists like Madison and Wilson. But it was Ben Franklin who would play the role of grandfather at times and even host some of the delegates at his house. At one point during the convention, Franklin called daily prayer at the beginning of the session saying, “how has it happened, sir, that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understandings? In the beginning of the contest with Great Britain, when we were sensible of danger we had daily prayer in this room for the divine protection.” Franklin’s call to prayer fell on deaf ears of course. But that did not stop him from trying to bring all the delegates together in an attempt to try and keep things civil and possibly make some progress towards an end goal. He even hosted delegates, one from each state, at his house on the evening of July 2<sup>nd</sup> with hopes that they could come together in food and drink and compromise with one another.<sup>108</sup>

Both Madison and Wilson were for proportional representation in the National Legislature. The debate had been dragging on for weeks until it was decided that a committee be formed to try and hash out the problem. Neither Wilson or Madison would be placed on the committee. Instead, Dr. Franklin and George Mason would represent their respected states on the matter at hand. To some degree, both Madison and Wilson had been somewhat alienated during the debate over

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<sup>108</sup> Madison, Notes of the debates in the Philadelphia Convention, June 28, 1787, in Farrand, vol. 1, 451. For Franklin’s role as host on July 2, see Richard Beeman, *Plain, Honest Men*, 200.

representation. Most of the other delegates were in favor of the committee being formed, most likely because they knew a compromise was the only thing that would allow further business to continue at the convention.

The compromise that saved the debates at the convention came from the committee that was formed specifically to discuss the issue of representation. On July 16<sup>th</sup>, this compromise was adopted, and both Madison and Wilson were at a loss. The second branch of the Legislature would all have equal votes in the Senate. For the next week, the delegates went over technical wording of the resolutions that had been proposed. Up to this point, the delegates had been striking out and replacing nothing but words on a piece of paper that started with the resolutions of the Virginia Plan. Ultimately, the final stage of the convention was to be drafting a Constitution. “The house then produced to ballot for the Committee of detail when the honorable Mr. Rutledge, Mr. Randolph, Mr. Gorham, Mr. Ellsworth, and Mr. Wilson were chosen.”<sup>109</sup> Four of the five men chosen were lawyers, Wilson being arguably the most talented of them. What transpired on the Committee of Detail is a mystery, but what is undeniably apparent is the document that came out of it. It went through nine different stages of modification. It was no mistake that delegates chosen for the committee were established lawyers. What is important to note is that James Wilson served on this committee and had a hand in the wording of the Constitution, while Madison's role at the convention was finished.

But what of the new U.S. Constitution and the Nationalists who fought so hard for its adoption? Madison was more than disappointed about the results of the Federal Convention. Writing to Thomas Jefferson before the Federal Convention finished its business, Madison tells

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<sup>109</sup> Journal of the Federal Convention, Notes of the debates in the Philadelphia Convention, July 24, 1787, in Farrand, vol. 2, 97.



Jefferson, "I hazard an opinion nevertheless that the plan, should it be adopted, will neither effectually answer its national object, nor prevent the local mischiefs which everywhere excite disgusts against The State Governments."<sup>110</sup> Madison's Virginia Plan in the end, was nothing but a blue print for government that helped the larger, more Nationalistic delegates lead the debates for most of the convention. Madison did not get his executive veto nor proportional representation in the Senate. Wilson however, for all of his arguments, probably got more of what he wanted from the convention. Wilson was more than happy to embrace the new Constitution and was one of the first outspoken defenders of it. Why is that? For one, Wilson more than likely knew that many of his ideas would be considered outlandish by many of the delegates at the convention. But he did make progress towards a more democratic national government. A single executive who was elected by an electoral college system that put the people indirectly in charge of who would be president. Of course, the House of Representatives was elected popularly which made America the most democratic country in the world at the time. So, Wilson had a lot to be excited about. But did Wilson think that the new frame of government was democratic in nature or a democracy?

On October 6, 1787, James Wilson stood and delivered a speech to the public of Philadelphia in defense of the new Constitution drafted the previous summer. It was no surprise to Wilson that the "constitution offered to your consideration, should meet with opposition." Wilson proclaimed that "it was the nature of man to pursue his own interest, in preference to the public good." Wilson continued, warning the people that many "powerful, and respectable" people would advocate to "counteract and destroy the excellent work produced by the late convention." Anyone who "enjoys or expects to enjoy, a place of profit under the present establishment" will object to the new Constitution. Wilson contended that the current system under the Articles of

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<sup>110</sup> James Madison to Thomas Jefferson, September 6, 1787, in Farrand, vol. 3, 77.

Confederation was not working for or representing the very source from which government was meant to flow - the people. Like all governments, there were parts of the Constitution that Wilson would certainly alter. “But,” Wilson continued, “when I reflect how widely men differ in their opinions, and that every man (and the observation applies likewise to every state) has an equal pretension to assert his own, I am satisfied that anything nearer to perfection could not have been accomplished.” Wilson regarded the Constitution, in his “candid and disinterested mind” to be the “best form of government which has ever been offered to the world.”<sup>111</sup>

A brilliant speech to say the least but Wilson does not even mention democracy here. Perhaps a more decisive example comes from Wilson as he explained the proceedings at the Federal Convention as well as the U.S. Constitution to the members of the Pennsylvania ratifying convention in November of 1787. Addressing the President of the convention, Wilson went through the “three species of simple government.” Wilson discusses a Monarchy in which “supreme power is vested in a single person.” He discusses an aristocracy and described it as a form of government that was not “formed upon the principle of representation” but “by election among themselves.” The last form of government Wilson spoke of was democracy, a form of government that “is inherent in the people and is either exercised by themselves or by their representatives.” Wilson realized that “each of these systems has its advantages and its disadvantages.” Monarchy relied on strength and unity, aristocracy on experience and wisdom, and the “advantages of a democracy are liberty, caution, industry, fidelity, and an opportunity of bringing forward the talents and abilities of the citizens, without regard to birth or fortune.” Wilson explained that “the leading object of the late convention was to harness all of the advantages and

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<sup>111</sup> James Wilson, State House Yard Speech, in *Collected Works of James Wilson*, ed. by Kermit L. Hall and Mark David Hall, vol. 1, (Indiana: Liberty Fund Inc, 2007), 176-177.

avoid the disadvantages of these three systems of government.” And so, Wilson asked the assembly, “what description is the constitution before us?” Wilson eloquently replied, “in its principles, Sir, it is purely democratical.” Wilson ended on this note:

But when we take an extensive and accurate view of the streams of power that appear through this great and comprehensive plan, when we contemplate the variety of their directions, the force and dignity of their currents, when we behold them intersecting, embracing, and surrounding the vast possessions and interests of the continent, and when we see them distributing on all hands beauty, energy and riches, still, however numerous and wide their courses, however diversified and remote the blessings they diffuse, we shall be able to trace them all to one great and noble source, THE PEOPLE.<sup>112</sup>

There continues to be discussion about the nature of the Constitution and its origins, the concepts and ideals that were behind the words of the founding document. Perhaps one of the most critical aspects of the U.S. Constitution of 1787 is its failure to abolish slavery in all forms. After all, how could America continue to be a place of liberty and independence while the institution of slavery still continued? I believe there is no right or wrong answer to this question. The Founders failed miserably to destroy an institution that led to the Civil War roughly 80 years later. And most comments on slavery were ambiguous to say the least. For the sake of this study, Wilson’s critique of the Constitution and slavery is insightful:

But I will tell you what was done, and it gives me high pleasure that so much was done. Under the present Confederation, the states may admit the importation of slaves as long as they please; but by this article, after the year 1808, the Congress will have power to prohibit such importation, notwithstanding the disposition of any state to the contrary. I consider this as laying the foundation for banishing slavery out of this country; and though the period is more distant than I could wish, yet it will produce the same kind, gradual change, which was pursued in Pennsylvania... I am sorry it was no more; but from this I think there is reason to hope.<sup>113</sup>

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<sup>112</sup> James Wilson, in *Pennsylvania and the Federal Constitution 1787-1788*, ed. by John Bach McMaster and Frederick D. Stone, (Indianapolis: Liberty Fund, 2011), 230-231.

<sup>113</sup> James Wilson, in *Collected Works*, Hall, 210.

Wilson, along with other founders of his time, looked at the U.S. Constitution as a means to an end in regard to slavery. Other founders looked at the Constitution as a protection for the institution. Regardless, Wilson's contribution to the debates at the Federal Convention, and his remarks during ratification, tell us more about the nature and meaning of the document. For Wilson, it was a new form of government, a new kind of American government. A form of government founded on the principle of the individual and his or her right to decide for themselves how or by whom they would be governed. A government he described as "democratical" and traced back to the noblest source of all, "THE PEOPLE."

## Conclusion

Recognizing how or even when the development of democratic thought began to take place in America is no easy task. Scholars from many different departments and concentrations have tried to determine the process, but the answers are always circumstantial or left to future scholars for different interpretations. If we are to accept Kloppenberg's approach to democracy, then the origins of American democracy began when settlers first set foot on North America and began to set up various forms of local governments as they saw fit. As noted in a previous chapter, the colonists at the beginning of the American Revolution knew they were fighting for their right to self-govern because they had always done so. But the American Revolution was not about democracy, it was about the preservation of liberties with which Englishmen believed they were born and rightfully entitled to under the British Constitution. And so, from a constitutional standpoint, as Adams helped make clear in his early arguments, separating from Britain was about violations of liberties which were supposed to be protected by the British Constitution. Thus, Adams's role in the American Revolution becomes all the more important in terms of the development of democratic thought in America. His *Thoughts on Government* and its influence on the early constitutions in America provides a beginning for the development of democracy in America. It may not have been the goal of the American Revolution, to create democracy, but it did, as Gordon Wood notes, "create democracy as Americans came to know it."<sup>114</sup>

Despite its success, the American Revolution left the young country in a vulnerable position. America was a republic with thirteen states, each operating in its own best interest. The Articles of Confederation offered no avenue through which the Confederated Congress could

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<sup>114</sup> Gordon S. Wood, *The Origins of American Democracy, or How the People Became judges in Their Own Causes*, *The Sixty-Ninth Cleveland-Marshall Fund Lecture*, 47 Clev. St. L. Rev. 309 (1999), 309.

entice any of the states to cooperate in any fashion for the best interest of the country as a whole. State Legislatures were out of control, often having too many representatives pursuing the interest of too many people. This created an unstable environment in the state governments. It is no surprise that influential men like Madison and Hamilton advocated for a new form of government which would not only keep the union together but would ensure the best interest of the country as a whole would be considered. The answer as Madison saw it, was of course to expand the frame of government, but also create one that would allow representation of the people to engage in the political process at a national level, a level that had never existed before in America. If allowing the States to govern without any oversight was too democratic, then allowing them to do so at both the state and national level was something else entirely. What was it exactly? What was Madison thinking at the Federal Convention when his Virginia Plan was proposed? The reactions of the delegates at the Convention are telling. While there were delegates like Roger Sherman who argued against the participation of the people in the political process, Madison agreed with delegates including George Mason and James Wilson who advocated for democratic principles, acknowledging that “the great fabric to be raised would be more stable and durable if it should rest on the solid foundation of the people themselves.”<sup>115</sup> Madison did not shy away from the term democracy but instead, on many occasions outwardly embraced it acknowledging that there were inconveniences within democratic frames of government but the Virginia Plan in its infancy was intended to maintain a “democratic form of government.”<sup>116</sup>

No other Founding Father defended democracy more than James Wilson at the Federal Convention. Wilson’s interpretation of the new U.S. Constitution is certainly worth noting. His

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<sup>115</sup> Madison, Notes of the debates in the Philadelphia Convention, May 31, 1787, in Farrand, vol. 1, 48-50.

<sup>116</sup> Madison, Notes of the debates in the Philadelphia Convention, June 6, 1787, in Farrand, vol. 1, 134-135.

disappointments are worth noting as well. It is more than likely that Wilson knew many of his ideas would be considered as outlandish at the Federal Convention, but his optimism in its aftermath should enlighten us. Perhaps Wilson was willing to push the envelope as far as he could during the debates at the convention as means to an end. Imagining early America as a democracy is hard for the twenty-first century political thinker, but Wilson embraced it as democratic regarding it as the “best form of government which has ever been offered to the world.”<sup>117</sup>

Democratic thought was a process in early America. It developed slowly, often becoming elusive when considering Americans commitment to republicanism. Whatever the speed of the process, it does reveal that the basic principle that government should be founded on the consent of the people was most certainly in the minds of the founders at almost every step. The American Revolution may not have been about democratic government but in its aftermath, we see a real discussion about democracy and at every corner of the debates a reasonable commitment to it. When looking at the discussions taking place during these monumental historical moments, we read Patrick Henry’s comments about Adams’ plan for a new state constitution, saying that “I own myself a Democrat on the plan of our admired friend, J. Adams, whose pamphlet I read with great pleasure.”<sup>118</sup> In addition, we hear Richard Henry Lee calling the new Virginia Constitution “very much of the democratic kind.”<sup>119</sup>

To disregard these ideas, thoughts, or discussions which took place during the early development of American government is to ignore the relevance of the concept of democratic

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<sup>117</sup> James Wilson, State House Yard Speech, in *Collected Works of James Wilson*, ed. by Kermit L. Hall and Mark David Hall, vol. 1 (Indiana: Liberty Fund Inc, 2007), 176-177.

<sup>118</sup> Patrick Henry to Charles Lee, June 29, 1776, in *Patrick Henry: Life, Correspondence and Speeches*, vol 1, (New York: Charles Scriber’s Sons), 411.

<sup>119</sup> Richard Henry Lee to Charles Lee, June 29, 1776, in *The Letters of Richard Henry Lee*, ed. by James Curtis Ballagh (New York: The Macmillan Company, 1911), 203-204.

thought during this time. I again pose the question, what form of government did these early founders believe they were creating at these crucial moments in American History? It is impossible to extract their exact thoughts and claiming to do so would be false and furthermore irresponsible. But we can make educated assumptions about what they might have thought they were doing. It has been claimed that the idea of democracy never entered into the minds of the founders “Nor, in the minds of those who governed it, was it supposed to be” a democracy.<sup>120</sup> In fact, the likely truth is quite the opposite, as the evidence presented in this study proves.

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<sup>120</sup> Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York: New York, W.W. Norton and Company, 2005), Preface.



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