



This Week at the Constitutional Convention: Federalism and the Role of States

As it so happens, the days of the week in 2018 match up with the days of the week in 1787. Why is this bit of calendar trivia important? Because it makes it very easy to follow the events that happened on this day at the Constitutional Convention of 1787.

During this week, the delegates continued debating the Virginia Plan (drafted by James Madison and presented by Edmund Randolph), with particular focus on the federal relationship that would exist between the states and the general (we call it “federal”) government if the representatives were to adopt the Virginia Plan on behalf of their states.



As with most other days during that historical summer, the days in the week of June 11 to June 16 featured fierce debates over fundamental provisions of the Virginia Plan and other plans put forward by other delegates.

Remarkably, one of the chief causes of controversy that week was nullification. Readers unfamiliar with the day-to-day goings-on at the Constitutional Convention likely will be surprised to learn that the nullification that James Madison unsuccessfully promoted was the nullification of state laws by the national legislature.

The sixth resolution of the Virginia Plan empowered the national legislature “to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union.”

Under this article, the national legislature would have the authority to veto any state law that it believed encroached upon the powers proposed to be granted to the national legislature.

This is precisely the reverse of the position that Madison would espouse in the Virginia Resolution, written 11 years later in response to the Alien and Sedition Acts passed by Congress and signed into law by President John Adams.

Remarkably, all the states present except Maryland provisionally agreed to the nullification of state laws by the national legislature. The debate would not end there, however, and would be reconsidered again on July 17.

Among the leading lights of our founding generation were many who supported the grant to the national legislature of this substantial power over state governments.

Madison himself argued that this arrangement was necessary “for the security of private rights and the



Written by [Joe Wolverton, II, J.D.](#) on June 12, 2018

steady dispensation of justice.” He claimed at the convention that several state laws “threatened danger not to the harmony only, but the tranquility of the Union,” adding that “experience in all the states had evinced a powerful tendency in the legislature to absorb all power into its vortex.”

Observing the trajectory of tyranny from this end of the tunnel of time, however, we see that the national legislature habitually acts as Patrick Henry warned. “This government will operate like an ambushade. It will destroy the state governments, and swallow the liberties of the people, without giving previous notice,” Henry said during the Virginia ratifying convention in 1788.

Yet at the convention, Charles Pinckney even argued in a motion that “the States must be kept in due subordination to the nation,” calling this situation “the corner stone of an efficient national [government].”

Gouverneur Morris came down on Madison’s side of the question of which authority — state or federal — would more regularly usurp power. He believed that “the public liberty was in greater danger from legislative usurpations than from any other source.”

John Dickson’s opinion matched those held by Madison and Morris, as well. “All were convinced,” Dickinson wrote, “of the necessity of making the general government independent of the prejudices, passions, and improper views of the state legislatures.”

Most remarkable and surprising of all the statements made in favor of giving the federal government power to nullify state laws it considered unconstitutional was made by Madison in a letter to his friend and author of the Kentucky Resolutions that would bring the word “nullification” into the national spotlight.

Regarding this “reverse nullification” that he supported so strongly, Madison told Jefferson:

Without this defensive power, experience and reflections have satisfied me that however ample the federal powers may be made, or however clearly their boundaries may be delineated on paper, they will be easily and continually baffled by the legislative authorities of the states. The effect of this provision would be not only to guard the national rights and interests against invasion, but also to restrain the States from thwarting and molesting each other.

Despite the passionate push by Madison, Pinckney, and others to give the federal government this immense superiority over the states, the measure was defeated 7-3, with the Delaware delegation divided.

With this rehearsal of James Madison’s view of the proper balance of state and federal powers, it is clear why Madison himself rejected the title “Father of the Constitution.”

Madison, of course, would later recognize that the federal government, rather than being weakened by aggressive, power-hungry state legislatures, was itself the perpetrator of policies and laws that not only violated the terms of the Constitution, but threatened “to consolidate the states by degrees, into one sovereignty, the obvious tendency and inevitable consequence of which would be, to transform the present republican system of the United States, into an absolute, or at best a mixed monarchy.”

Viewed in this way, then, it seems that perhaps Madison’s position is not as mercurial as some have suggested, for by his recommendation of federal nullification of state laws and the reverse he sought to “secure its [the union’s] existence and public happiness.”

In fact, as he would write about 11 years later in the Virginia Resolution, when the federal government ranged outside of the constitutional boundaries of its power, James Madison believed states not only



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had a right, but were “duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.”

Madison may not have believed this at the time of the Constitutional Convention of 1787, but his experience with Alexander Hamilton and the John Adams administration convinced Madison that the states would need to serve as barricades between an always-overreaching federal behemoth and the rights and liberties of the people of the states.



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