

Representing the Nation: Gouverneur Morris’s Nationalist Constitutionalism

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INTRODUCTION

Few truisms have proved as enduring as the belief that there was little nationalism at the time of the American Founding. As one standard account goes, most citizens of the new American union thought in terms of their home states. These were their individual nations and the ultimate basis of their loyalties and identities. The union mattered, but to many, if not most, it was understood as a composite of unit states, each of which had their own history, laws, customs, manners, and sources of affection, none of which the Revolution had undone.¹ Early

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1. See John M. Murrin, *A Roof without Walls: The Dilemma of American National Identity*, in *BEYOND CONFEDERATION: ORIGINS OF THE CONSTITUTION AND AMERICAN NATIONAL IDENTITY* 333–48

constitutionalism seemingly reflected these habits of mind; the individual states claimed most meaningful governmental power during the decades following independence, and the union's first constitution, the Articles of Confederation, recognized this state-centric order.² While the federal Constitution drafted in 1787 to replace it undoubtedly altered that order, the dominance of the states, it is often presumed, did not change.³ While the Constitution expanded federal power and enabled the new government to act directly on individuals, it did not equip that government with general police powers nor the expectation that it would supersede the state governments in core areas of internal governance. The states retained control over their internal police and, for decades to come, were the primary site of most regulation and governance.⁴ In spite of anything else the Constitution changed, the United States remained the United *States*—separate corporate entities united in a federal, rather than consolidated, system of continental governance.⁵ Sometimes this was a source of bitter complaint. But such frustrations otherwise confirmed the basic pattern of early American loyalty and identity. The nation *as a nation* had few committed champions and even fewer sophisticated defenders.⁶

There is truth in this portrait, but it leaves out much of the story. Not only was the early national government considerably more active, muscular, effective, and present than was once thought.⁷ Not only was there an initial willingness on the

(Richard R. Beeman, Stephen Botein, and Edward C. Carter, II eds., 1987); JACK P. GREENE, PERIPHERIES AND CENTER: CONSTITUTIONAL DEVELOPMENT IN THE EXTENDED POLITIES OF THE BRITISH EMPIRE AND THE UNITED STATES, 1607–1788, at 172–80 (1986); GORDON S. WOOD, THE CREATION OF THE AMERICAN REVOLUTION, 1776–1787 (1998); ALAN TAYLOR, AMERICAN REPUBLIC: A CONTINENTAL HISTORY OF THE UNITED STATES, 1783–1850, at xxiii–xiv (2021).

2. See MERRILL JENSEN, THE ARTICLES OF CONFEDERATION: AN INTERPRETATION OF THE SOCIAL-CONSTITUTIONAL HISTORY OF THE AMERICAN REVOLUTION, 1774–1781 (1970); DAVID C. HENDRICKSON, PEACE PACT: THE LOST WORLD OF THE AMERICAN FOUNDING (2003).

3. See MAX M. EDLING, PERFECTING THE UNION: NATIONAL AND STATE AUTHORITY IN THE U.S. CONSTITUTION (2021); HENDRICKSON, *supra* note 2; JENSEN, *supra* note 2; Michael P. Zuckert, *Federalism and the Founding: Toward a Reinterpretation of the Constitutional Convention*, 48 REV. POL. 166, 174 (1986); Anthony J. Bellia Jr. & Bradford R. Clark, *The International Law Origins of American Federalism*, 120 COLUM. L. REV. 835, 857–71 (2020); PETER ONUF & NICHOLAS ONUF, FEDERAL UNION, MODERN WORLD: THE LAW OF NATIONS IN AN AGE OF REVOLUTIONS, 1776–1814 (1993); Daniel H. Deudney, *The Philadelphian System: Sovereignty, Arms Control, and Balance of Power in the American States-Union, Circa 1787–1861*, 49 INT'L ORG. 191, 194–216 (1995); Robbie J. Totten, *Security, Two Diplomacies, and the Formation of the U.S. Constitution: Review, Interpretation, and New Directions for the Study of the Early American Period*, 36 DIPLOMATIC HIST. 77, 77–80, 89–110 (2012); FORREST McDONALD, STATES' RIGHTS AND THE UNION: IMPERIUM IN IMPERIO, 1776–1876 (2000); AARON N. COLEMAN, THE AMERICAN REVOLUTION, STATE SOVEREIGNTY, AND THE AMERICAN CONSTITUTIONAL SETTLEMENT, 1765–1800 (2016).

4. See WILLIAM J. NOVAK, THE PEOPLE'S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA (1996); GARY GERSTLE, LIBERTY AND COERCION: THE PARADOX OF AMERICAN GOVERNMENT FROM THE FOUNDING TO THE PRESENT 55–68 (2015); EDLING, *supra* note 3, at 75–89.

5. See EDLING, *supra* note 3; HENDRICKSON, *supra* note 2; Zuckert, *supra* note 3.

6. See Jack P. Greene, *Colonial History and National History: Reflections on a Continuing Problem*, 64 WM. & MARY Q. 235 (2007); TAYLOR, *supra* note 1.

7. For a comprehensive overview of the new literature, see Gautham Rao, *The New Historiography of the Early Federal Government: Institutions, Contexts, and the Imperial State*, 77 WM. & MARY Q. 97 (2020). For important works, see MAX M. EDLING, A HERCULES IN THE CRADLE: WAR, MONEY, AND THE AMERICAN STATE, 1783–1867 (2014); GAUTHAM RAO, NATIONAL DUTIES: CUSTOMS HOUSES AND

part of a great many leading statesmen to see the national government's powers in expansive terms.⁸ But additionally, nationalism itself—the idea that the United States, properly understood, *was* a nation—found meaningful expression in these early years, constituting an important, and often neglected, feature of the period's intellectual, political, and constitutional history.⁹

Few Founding-era Americans were quite as committed to the idea of the American nation as was Gouverneur Morris—the colorful New York politician, lawyer, and businessman who represented Pennsylvania at the Constitutional Convention. Indeed, Morris's distinctive approach to the problems and possibilities of American constitutionalism—and particularly the construction of a new national constitution in 1787—are best understood as a commitment to a form of nationalism: to the essential priority of the nation, not simply the union, and the essential belief that most constitutional problems could be traced to this single factor. To understand Morris's thought is to grasp why constitutionalism and the nation were so tightly entangled in his mind—to understand how his nationalist constitutionalism was a form of constitutional nationalism.

THE MAKING OF THE AMERICAN STATE (2016); BRIAN BALOGH, A GOVERNMENT OUT OF SIGHT: THE MYSTERY OF NATIONAL AUTHORITY IN NINETEENTH-CENTURY AMERICA (2009); William J. Novak, *The Myth of the "Weak" American State*, 113 AM. HIST. REV. 752 (2008); RICHARD R. JOHN, SPREADING THE NEWS: THE AMERICAN POSTAL SYSTEM FROM FRANKLIN TO MORSE (1995); Richard R. John, *Governmental Institutions as Agents of Change: Rethinking American Political Development in the Early Republic, 1787–1835*, 11 STUD. AM. POL. DEV. 347 (1997); GERSTLE, *supra* note 4, at 25–54; JERRY L. MASHAW, CREATING THE ADMINISTRATIVE CONSTITUTION: THE LOST ONE HUNDRED YEARS OF AMERICAN ADMINISTRATIVE LAW (2012); Andrew J. B. Fagal, *The Political Economy of War in the Early American Republic, 1774–1821* (Ph.D. diss., Binghamton University, State University of New York, 2013); LINDSAY SCHAKENBACH REGELE, MANUFACTURING ADVANTAGE: WAR, THE STATE, AND THE ORIGINS OF AMERICAN INDUSTRY, 1776–1848 (2019); PATRICK GRIFFIN, AMERICAN LEVIATHAN: EMPIRE, NATION, AND REVOLUTIONARY FRONTIER (2007); LEONARD J. SADOSKY, REVOLUTIONARY NEGOTIATIONS: INDIANS, EMPIRES, AND DIPLOMATS IN THE FOUNDING OF AMERICA (2009); BETHEL SALER, THE SETTLERS' EMPIRE: COLONIALISM AND STATE FORMATION IN AMERICA'S OLD NORTHWEST (2015); PAUL FRYMER, BUILDING AN AMERICAN EMPIRE: THE ERA OF TERRITORIAL AND POLITICAL EXPANSION (2017); GREGORY ABLAVSKY, FEDERAL GROUND: GOVERNING PROPERTY AND VIOLENCE IN THE FIRST U.S. TERRITORIES (2021).

8. See David S. Schwartz, Jonathan Gienapp, John Mikhail, and Richard Primus, *Foreword: The Federalist Constitution*, 89 FORDHAM L. REV. 1669 (2021); Jonathan Gienapp, *In Search of Nationhood at the Founding*, 89 FORDHAM L. REV. 1783 (2021); Calvin H. Johnson, *The Dubious Enumerated Power Doctrine*, 22 CONST. COMMENT. 25 (2005); John Mikhail, *The Constitution and the Philosophy of Language: Entailment, Implicature, and Implied Powers*, 101 VA. L. REV. 1063 (2015); Richard Primus, "The Essential Characteristic": *Enumerated Powers and the Bank of the United States*, 117 MICH. L. REV. 415 (2018); David S. Schwartz, *Recovering the Lost General Welfare Clause*, 63 WM. & MARY. L. REV. 857 (2022).

9. Some aspects of this history have received the attention they deserve. Important scholarship has emphasized the importance early U.S. statesmen attached to international legal recognition of the United States and the ways in which they drew on the law of nations to establish that fact. See DAVID ARMITAGE, *THE DECLARATION OF INDEPENDENCE: A GLOBAL HISTORY* (2007); David M. Golove & Daniel J. Hulsebosch, *A Civilized Nation: The Early American Constitution, the Law of Nations, and the Pursuit of International Recognition*, 85 N.Y.U. L. REV. 932 (2010); ELIGA H. GOULD, *AMONG THE POWERS OF THE EARTH: THE AMERICAN REVOLUTION AND THE MAKING OF A NEW WORLD EMPIRE* (2012). For a suggestive and sweeping account of the importance of the nation between the Revolution and Civil War, see SAMUEL H. BEER, *TO MAKE A NATION: THE REDISCOVERY OF AMERICAN FEDERALISM* (1993).

To make complete sense of the original 1787 Constitution means reckoning with Morris's understanding of the nation. Morris came to Philadelphia, as he memorably put it, a "representative of America."¹⁰ Unpacking the full meaning of this statement helps pull together the disparate strands of his constitutionalism into a coherent whole, one that was unified by a sentimental nationalism—a belief that nations were principally held together by shared sympathy and affective connection. Morris was one of a kind; so too was his thought. In making sense of his peculiar ideas, we begin to see how a unique brand of nationalism could provide the essential premise for a cluster of constitutional commitments, bringing together otherwise disparate positions on representation, federalism, the separation of powers, slavery, and western expansion. Constitutionalism was, to Morris's mind, an instrument of nation-building. We see the original Constitution differently when we see it through Morris's eyes.

I. MORRIS THE FORGOTTEN

Histories of the Founding era typically neglect Morris. That is, in part, because his political career proved so sporadic. After dominating the proceedings in Philadelphia, he played virtually no role during ratification, despite prodding from his constitutional allies.¹¹ Then, after spending most of the 1790s abroad, he served but one expiring term in the United States Senate before permanently retreating from the national political scene. The neglect is also a function of available sources. Compared to contemporaneous statesmen, far fewer of Morris's writings have survived, and those that have often only obliquely address core questions of law and constitutionalism. The detailed constitutional correspondence and memoranda found so readily among the Madison, Hamilton, or Jefferson papers do not exist for Morris, either because originals have been lost or Morris never shared their interest in articulating his ideas in such venues. Accordingly, it is tricky to ascribe to him a coherent constitutional ideology or to speak of Morrisonian constitutionalism, equal in depth and substance to its Madisonian, Hamiltonian, or Marshallian counterparts.

These difficulties aside, the neglect is unjustified. If only through his actions in Philadelphia, Morris left an indelible mark on the Constitution. Nobody gave more speeches at the Constitutional Convention¹² and arguably nobody more decisively shaped the document's drafting. As William Michael Treanor has persuasively demonstrated, Morris's work as chief final drafter on the Committee of

10. Statement of Gouverneur Morris (July 5, 1787), in 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 529 (Max Farrand ed., 1911) [hereinafter 1 FARRAND'S].

11. Morris confessed later in life that he "was warmly pressed by Hamilton to assist in writing the Federalist," but declined the invitation. See Letter from Gouverneur Morris to William Hill Wells (Feb. 24, 1815), in 3 JARED SPARKS, THE LIFE OF GOUVERNEUR MORRIS 339 (1832) [hereinafter 3 SPARKS].

12. See CLINTON ROSSITER, 1787: THE GRAND CONVENTION 252 (1966). For a slightly different tabulation, placing Morris one speech behind James Wilson, see *Delegates' Speeches, Motions, and Committee Assignments in the Constitutional Convention*, CTR. FOR THE STUDY OF THE AM. CONST., <https://csac.history.wisc.edu/document-collections/the-constitutional-convention/delegates-speeches-motions-and-committee-assignments-in-the-constitutional-convention/> [https://perma.cc/5N7N-8WSS] (last visited Oct. 25, 2021).

Style made a decisive difference.¹³ More than carrying out the tasks of a dutiful scrivener, Morris (likely with the assistance of his leading allies) reorganized and rewrote the final draft of the Constitution in ways that potentially modified its meaning and underlying premises. At the very least, he made it easier for subsequent interpreters to advance certain kinds of arguments more in line with Morris's own constitutional predilections.¹⁴ Thanks to recent scholarship, moreover, we now have at our fingertips a greater volume of his surviving writings, from which a fuller picture of his constitutional thinking can be sketched.¹⁵ By stitching together his early and later reflections in light of the priorities he staked out at the Convention, while paying special attention to continuities across these contexts, we can begin to flesh out his distinctive constitutional vision and more readily compare it to those of his peers.

When we do so, we see the period in a different light. Bringing the nationalist dimensions of Morris's constitutionalism into relief not only draws attention to neglected features of Founding-era thought but challenges the dominant, one-note portrayal so common of early Federalism. Too often, early nationalists—those who spearheaded the constitutional reform effort in the 1780s and then became leaders of the Federalist party in the 1790s—are treated as a monolith.¹⁶ Whenever attention is trained on them, all eyes invariably turn to Alexander Hamilton and the far-reaching financial program he engineered while serving as the nation's first treasury secretary in the Washington administration. Hamiltonianism is typically treated as synonymous with Federalism—as a tidy stand-in for the political and constitutional ideology of the entire Federalist movement.¹⁷ Hamilton was certainly a dominant figure, and most Federalists shared the broad outlines of his vision. But nationalism came in distinct forms, and it pays to make sense of each on their own terms. That is certainly the case with Morris. While he assuredly shared many of Hamilton's guiding priorities, not least because the two were allies and confidantes,¹⁸ in revealing ways, Morris's nationalist thinking was distinct. In recapturing it, we are encouraged to appreciate the varieties of nationalism that once prevailed, at a time when such sentiments, later to flower, were only beginning to germinate. We are also

13. See William M. Treanor, *The Case of the Dishonest Scrivener: Gouverneur Morris and the Creation of the Federalist Constitution*, 120 MICH. L. REV. 1 (2021).

14. *Id.*

15. See TO SECURE THE BLESSINGS OF LIBERTY: SELECTED WRITINGS OF GOUVERNEUR MORRIS (J. Jackson Barlow ed., 2012) [hereinafter SECURE THE BLESSINGS OF LIBERTY]; 1 THE DIARIES OF GOUVERNEUR MORRIS: EUROPEAN TRAVELS, 1794–1798 (Melanie R. Miller ed., 2011); 2 THE DIARIES OF GOUVERNEUR MORRIS: NEW YORK, 1799–1816 (Melanie R. Miller ed., 2018).

16. See STANLEY ELKINS & ERIC MCKITTRICK, *THE AGE OF FEDERALISM* (1993); GORDON S. WOOD, *EMPIRE OF LIBERTY: A HISTORY OF THE EARLY REPUBLIC, 1789–1815* (2009).

17. See MAX M. EDLING, *A REVOLUTION IN FAVOR OF GOVERNMENT: ORIGINS OF THE U.S. CONSTITUTION AND THE MAKING OF THE AMERICAN STATE* (2003) (emphasizing Hamiltonian obsession with fiscal-military powers as the center of Federalism beginning during ratification); EDLING, *supra* note 7 (charting the development of that Hamiltonian vision from the 1790s in the nineteenth century).

18. See Treanor, *supra* note 13; RICHARD BROOKHISER, *GENTLEMAN REVOLUTIONARY: GOUVERNEUR MORRIS, THE RAKE WHO WROTE THE CONSTITUTION* 157–58, 172–73, 182–83 (2003).

encouraged to appreciate how different Federalism might have been had it not taken on a Hamiltonian, and later Marshallian, cast beginning in the 1790s and carrying over into the nineteenth century when John Marshall guided the Supreme Court as its chief justice.¹⁹

The original Constitution bears the imprint of each form of nationalism in varying ways, but arguably none more than Morris's. Appreciating the overlooked ways in which he shaped the Constitution requires understanding the distinctive flavor of his constitutional vision.

II. "A MERE ROPE OF SAND": FEELING LIKE STATES

Morris came of age in Revolutionary politics. His childhood ended as the imperial crisis with Britain ignited. After attending college at the ripe age of twelve, he read law during the years leading up to independence. By the time he reached his mid-twenties, he was an active participant in New York's revolutionary governance. On top of his burgeoning legal acumen, he had acquired expertise in public finance and become a fixture in the state's political and commercial life. Through the duration of the war, Morris remained active in state and national politics. With the help of his fellow law clerks, Robert Livingston and John Jay, he helped write the state's constitution in 1777. The following year, he was elected to represent New York in the Continental Congress, where he served until 1779. After failing to secure reelection, he stayed in Philadelphia, where he would remain for the next decade. There he forged a business partnership with Robert Morris, before eventually following him back to Congress, where he worked as his assistant once the latter was named superintendent of finance in 1781.²⁰

Through these experiences, Morris had occasion to reflect on the nature of the political union he and his fellow Revolutionaries were constructing. From an early stage, Morris emphasized the primacy of the nation. While passionately endorsing independence in New York's provincial congress, he spoke freely of the "nation" beyond the borders of his home colony. He did not speak, as others did at the time, of "independent states," but rather of "America" as "an Independent State."²¹ His primary focus was "the Bond of continental Union."²² "Independence," he explained, "can mean nothing more than the Powers which separate Societies exercise among themselves," and, in this case, "the Society" he had in mind was America, making the separate states merely its "component [p]

19. Early nationalists parted ways on the relationship between national and presidential power. The diversity of nationalisms at the Founding should be recognized and charted on their own independent terms. For discussion of these ideas, see Jonathan Gienapp, *National Power and the Presidency: Rival Forms of Federalist Constitutionalism at the Founding*, in *POLITICAL THOUGHT AND THE ORIGINS OF THE AMERICAN PRESIDENCY* 127–64 (Ben Lowe ed., 2021).

20. *SECURE THE BLESSINGS OF LIBERTY*, *supra* note 15, at ix–xi. For more on Morris's legal education, see MAX M. MINTZ, *GOUVERNEUR MORRIS AND THE AMERICAN REVOLUTION* 25–31 (1970).

21. *GOUVERNEUR MORRIS, Oration on the Necessity for Declaring Independence from Britain* (1776), in *SECURE THE BLESSINGS OF LIBERTY*, *supra* note 15, at 16.

22. *Id.* at 15.

arts.”²³ The “Liberty of this Country” was most easily defended, he continued, “[i]f America is divided into small Districts, and the Elections of Members into Congress annual,” for “as long as those Fountains are pure, the streams of [j]ustice will flow clear and wholesome.”²⁴ When he referenced “this country,” he immediately thought of the United States and its government, not of New York or the government from which he was delivering the speech. And he believed that properly constituting that national government was the surest way to maintain justice and stability both continentally and locally. He would “continue in public life,” he later put it, “till the establishment of the liberties of America” had been realized.²⁵

Once the war had begun, as he reflected on the decision to declare independence, Morris left no ambiguity as to who, or what, he believed had taken this fateful step. As he put it, “the people of America, through their Congress,” and not the states independently, had “declared themselves free and independent.”²⁶ A national people, acting through their national representative organ, had broken from Britain as a single, collective unit. The states did not precede the union in his mind. The people of America were not the separate peoples of Virginia, Massachusetts, Pennsylvania, New York, and elsewhere. The “people of America” were an indivisible entity, and they alone, he emphasized, were the architects of independence.²⁷ Consequently, “as to the [question of] sovereignty,” he announced, “America is an independent power.”²⁸

In holding these views, however, Morris often found that he was in the minority. While serving in New York politics and helping to prosecute the war, he was confronted time and again with a stubborn reality: many of his peers instinctively viewed their states as their home nations.²⁹ They thought, felt, and made sense of their political identities and loyalties in terms of their states. Upon arriving at the Continental Congress, John Adams referred to Massachusetts as “our country” and its congressional delegation as “our embassy.”³⁰ Edmund Randolph of Virginia noted similarly that “[C]ongress was an assemblage of different diplomatic corps, rather than a national senate.”³¹ The differences among the states did not escape notice. In a 1778 oration, the South Carolinian David Ramsay

23. *Id.* at 16.

24. *Id.* at 21.

25. Letter from Gouverneur Morris to Peter Van Schaack (Sept. 8, 1778), in 10 LETTERS OF DELEGATES TO CONGRESS, 1774–1789, at 605, 606 (Paul H. Smith ed., 1983).

26. Letter from Gouverneur Morris to the Earl of Carlisle (Sept. 19, 1778), in SECURE THE BLESSINGS OF LIBERTY, *supra* note 15, at 41.

27. For more on how this argument was made and defended at the Founding, see Gienapp, *In Search of Nationhood at the Founding*, *supra* note 8, at 1791–1809.

28. Letter from Gouverneur Morris to Sir Henry Clinton (Oct. 20, 1778), in 11 LETTERS OF DELEGATES TO CONGRESS, 1774–1789, at 85, 90 (Paul H. Smith ed., 1985).

29. Though they overstate the point, see JENSEN, *supra* note 2; HENDRICKSON, *supra* note 2, at 24–29.

30. Letter from John Adams to Abigail Adams (Sept. 18, 1774), in 1 THE ADAMS PAPERS: ADAMS FAMILY CORRESPONDENCE 157, 158 (Lyman H. Butterfield ed., 1963).

31. Edmund Randolph, *Essay on the Revolutionary History of Virginia, 1774–1782*, 45 VA. MAG. OF HIST. & BIOGRAPHY 46, 46 (1937).

emphasized that the states “clash[ed] in interests, differing in policy, manners, customs, forms of government, and religion,” and were “under the influence of a variety of local prejudices, jealousies, and aversions.”³² It was not terribly surprising, therefore, that so many Americans seemed to be instinctively attached to their states.

Surprise or not, for Morris this penchant proved a deep source of frustration. As political leaders and their constituents remained devoted to their native states, he preached the importance of the nation. Having himself relocated during the war, perhaps his personal experience representing two different states cultivated a cosmopolitan outlook that others without this experience lacked. But the provenance of his attitude ultimately owed more to his deep-seated impression of the costs of provincialism. To his mind, the Revolution was supposed to create a nation—a tightly connected union—and, in turn, the Revolution could not be won unless Americans began thinking and acting like a nation.

That included, above all, prioritizing that nation’s needs—practical, immediate, and otherwise. One pressing national problem after another “calls aloud for the united Efforts and wisdom of every State of every Individual,” Morris wrote to a correspondent in 1778.³³ A few years later, he developed the point even more deeply. “That Congress has not proper powers I see, I feel, and I lament.”³⁴ “They must persuade,” therefore, “where others command.”³⁵ He hoped “that Congress may be possessed of more, much more authority, than has hitherto been delegated to them.”³⁶ But, as experience had shown, “the strong phalanx of private interest, with the impetuous sallies of private politics and party, encounters them at every step.”³⁷ Local political interest conspired against the union. He hoped that the failures of wartime governance would underscore “[t]he advantages of union” as well as “the disadvantages, which flow from the want of them, the waste, the expense, and inefficacy of disjointed efforts over the face of an immense region” to “at last induce the people of America . . . to entrust proper powers to the American sovereign.”³⁸

In light of his frustrations, Morris surely would have endorsed statements made before he arrived in Congress by his Pennsylvania friends, peers, and allies, James Wilson and Benjamin Rush. During the earliest debates over the confederacy, Rush boldly stated: “When I entered that door, I considered myself a Citizen of America.”³⁹ To this Wilson added, “we are not so many states; we are one

32. DAVID RAMSAY, AN ORATION ON THE ADVANTAGES OF AMERICAN INDEPENDENCE 18 (1778).

33. Letter from Gouverneur Morris to George Clinton (Sept. 2, 1778), in 10 LETTERS OF DELEGATES TO CONGRESS, 1774–1789, at 551 (Paul H. Smith ed., 1983).

34. Letter from Gouverneur Morris to Nathanael Greene (Dec. 24, 1781), in 1 JARED SPARKS, THE LIFE OF GOUVERNEUR MORRIS 239 (1832) [hereinafter 1 SPARKS].

35. *Id.*

36. *Id.* at 240.

37. *Id.* at 239.

38. *Id.* at 239–40.

39. John Adams’s Notes of Debates (Aug. 1, 1776), in 1 LETTERS OF DELEGATES TO CONGRESS, 1774–1789, at 592–93 (Paul H. Smith ed., 1976–2000) (statement of Benjamin Rush).

large state.”⁴⁰ And no doubt Morris would have shared their mounting frustrations with the tenor and trajectory of congressional deliberations that followed. As time passed from the signing of the Declaration of Independence, the spirit of national unity that had breathed life into that united act gradually waned. Wilson poignantly reflected upon this marked transition a decade later when he and Morris represented Pennsylvania in the Constitutional Convention, noting how the drafting history of the Articles of Confederation (begun even before independence was declared in 1776, but only completed toward the end of 1777) nicely reflected the broader retreat from national feeling. “Among the first sentiments expressed in the first Congress,” Wilson noted, “one was that Virga. is no more. That Massts. is no [more], that Pa. is no more &c. We are now one nation of brethren. We must bury all local interests & distinctions.” While “[t]his language continued for some time,” he went on, eventually “[t]he tables at length began to turn. No sooner were the State Govts. formed than their jealousy & ambition began to display themselves,” he lamented. “Each endeavoured to cut a slice from the common loaf, to add to its own morsel, till at length the confederation became frittered down to the impotent condition in which it now stands. Review the progress of the articles of Confederation thro’ Congress & compare the first & last draught of it.”⁴¹ For Morris, no less than Wilson, this transformation told the grim story.

Given his own experience and attitudes, Morris shared both Wilson’s understanding of what had happened and his frustration with it. As he wrote in 1780, “[t]he articles of confederation were formed in a moment when the attachment to Congress was great and warm.” The “framers of it therefore seem to have been only solicitous how to provide against the power of that body, which by means of their provident foresight and care, now exists by meer courtesy and sufferance.”⁴² While serving in New York’s provincial congress, he had supported a resolution affirming that “implicit obedience ought to be rendered to the Continental Congress, in all matters pertaining to the general regulation of the associated colonies,” but due to a “wavering spirit,” the motion was deferred.⁴³ Years later, in his oration on the occasion of George Washington’s death, Morris recalled the early years of the nation, when “the political state of America was not duly considered.”⁴⁴ It was a time when “[h]er band of federal union had been woven by the hand of distrust.”⁴⁵ One when “[t]he different states had been held together”

40. Thomas Jefferson’s Notes of Proceedings in the Continental Congress (Aug. 1, 1776), in 1 THE PAPERS OF THOMAS JEFFERSON 299, 327 (Julian P. Boyd et al. eds., 1950) (statement of James Wilson).

41. 1 FARRAND’S, *supra* note 10, at 166.

42. GOUVERNEUR MORRIS, *To the Inhabitants of America* (Apr. 11, 1780), in SECURE THE BLESSINGS OF LIBERTY, *supra* note 15, at 148.

43. 1 SPARKS, *supra* note 34, at 36–37.

44. GOUVERNEUR MORRIS, *Oration on the Death of George Washington* (1799), in SECURE THE BLESSINGS OF LIBERTY, *supra* note 15, at 299.

45. *Id.*

by little more than “the external pressure of war.”⁴⁶ The feeling of national attachment had been utterly absent at the time when it was most sorely needed.

For his part, Morris spent the war years bolstering the idea of America by denouncing the failures of the states, and the American people, to tend to the common needs of union. He thundered against “the incompetency of determining what is best for the whole through thirteen different communities.”⁴⁷ Morris did so principally through a collection of newspaper essays he penned on the union’s dismal public finances. In them, in often technical and obtruse fashion, he made the case for redeeming the swelling American debt. The “preservation of our Foederal Union”—the ultimate aim, to Morris’s mind—“will greatly depend,” he wrote, “on the management of our revenue.”⁴⁸ Evocatively, he wrote these essays under the penname, “An American,” his favored pseudonym that he had earlier deployed in his 1778 public letters to the Carlisle Commissioners (the British peace negotiators who had been dispatched to America), and a name that communicated his deeper point far more clearly than did the detailed examinations that followed. Amidst the specifics and calculations over which the essays roamed, Morris occasionally pulled out to announce the larger stakes of his focused efforts. If the states did not look beyond their narrow interests and enhance the powers of the national government, then “our Union will become, what our enemies long since declared it was, a meer rope of sand.”⁴⁹ This arresting image conveyed Morris’s unsurpassed talent with words as much as his strident political views. Especially troubling was the possibility that the state governments, and their narrow-minded constituents, would move still farther in the wrong direction. “Congress then, like the travellers coat in the fable, after having been hugged close through the stormy hour of danger,” he worried, “will be cast aside as an useless burthen in the calm.” “Surely the consequences of such a measure,” he reckoned, “the struggles, the convulsions, the miseries need not be pictured to a sensible and discerning people.”⁵⁰ But this closing assurance begged the question: as long as they remained so wedded to their states, were Americans sufficiently discerning and sensible to perceive this looming danger? “Thirteen different communities” could not easily perceive the common good of one.

It was meaningful that Morris’s essays were each published in the *Pennsylvania Packet*, one of Philadelphia’s leading Revolutionary-era newspapers. Since he was personally based in Philadelphia at this time—as was the peripatetic Congress for at least a portion of the series’ run—it no doubt made sense to place them in such a widely read local venue. Beyond these practical conveniences, however, was the local context. Pennsylvania had been on the leading

46. *Id.*

47. Letter from Gouverneur Morris to Nathaniel Greene (Dec. 24, 1781), in 1 SPARKS, *supra* note 34, at 239.

48. GOUVERNEUR MORRIS, *To the Inhabitants of America* (Apr. 11, 1780), in SECURE THE BLESSINGS OF LIBERTY *supra* note 15, at 148.

49. *Id.*

50. *Id.*

edge of revolutionary radicalism, erecting the most democratic of the state constitutions.⁵¹ Most conspicuously, that constitution established a powerful unicameral legislature—abolishing its upper house entirely while replacing the governor with an executive council—while expanding the suffrage to most white males.⁵² The leading defenses of both the constitution and the republican ideology it sought to instantiate appeared in the very *Pennsylvania Packet* that Morris was now hoping to exploit.⁵³

During and after the war, Morris and his allies bristled as states like Pennsylvania jealously guarded their local prerogatives, refusing to expand the powers of the national government or address the pressing financial obligations borne of a costly war. What many national leaders, and certainly Morris, regarded as selfish state behavior was seemingly everywhere they turned in the 1780s.⁵⁴ The states failed to approve amendments to the Articles that would have vested the Confederation Congress with the vital power to tax imports.⁵⁵ They refused to adequately provision the army and pay the soldiers and officers (the latter of which provoked the Newburgh Conspiracy, in which Morris possibly had a leading hand).⁵⁶ They were unwilling to comply with the terms of the peace treaty with Britain.⁵⁷ And, most generally and cripplingly, they too often failed to meet the requisitions that Congress set to meet the nation's financial obligations.⁵⁸ Morris was particularly frustrated by how local democracy, of the kind so prominent in his adopted home state of Pennsylvania, reinforced provincialism, at once empowering local institutions with the essential powers of governance while reinforcing belief that one's state was one's nation.

For Morris, this conflict between state-level democracy and the needs of the union came to a head in the contest over abolishing the Bank of North America, a prominent post-war legal dispute in which he found himself at the very center. The bank had been a crucial component of the program Robert Morris had devised as superintendent of finance during the war to stabilize the nation's collapsing finances by restoring public and private credit and providing the

51. See WOOD, *supra* note 1, at 226–27; SEAN WILENTZ, *THE RISE OF AMERICAN DEMOCRACY: JEFFERSON TO LINCOLN* 13–15, 22–25 (2005); TERRY BOUTON, *TAMING DEMOCRACY: “THE PEOPLE,” THE FOUNDERS, AND THE TROUBLED ENDING OF THE AMERICAN REVOLUTION* 51–57 (2007).

52. See WOOD, *supra* note 1, at 226–27.

53. See *id.* at 226–37.

54. See JACK N. RAKOVE, *THE BEGINNINGS OF NATIONAL POLITICS: AN INTERPRETIVE HISTORY OF THE CONTINENTAL CONGRESS* 275–96 (1979); GEORGE WILLIAM VAN CLEVE, *WE HAVE NOT A GOVERNMENT: THE ARTICLES OF CONFEDERATION AND THE ROAD TO THE CONSTITUTION* (2017).

55. See RAKOVE, *supra* note 54, at 313–16; MICHAEL J. KLARMAN, *THE FRAMERS' COUP: THE MAKING OF THE UNITED STATES CONSTITUTION* 24–41 (2016); VAN CLEVE, *supra* note 54, at 84–99.

56. See Letter from Gouverneur Morris to Nathanael Greene (Feb. 15, 1783), in 1 SPARKS, *supra* note 34, at 250–51; E. JAMES FERGUSON, *THE POWER OF THE PURSE: A HISTORY OF AMERICAN PUBLIC FINANCE, 1776–1790*, at 155–71 (1961).

57. See VAN CLEVE, *supra* note 54, at 69–72; see Golove & Hulsebosch, *supra* note 9, at 947–48, 955–56, 959–70.

58. See VAN CLEVE, *supra* note 54, at 52–69; CALVIN H. JOHNSON, *RIGHTEOUS ANGER AT THE WICKED STATES: THE MEANING OF THE FOUNDERS' CONSTITUTION* 15–39 (2005).

government the financial flexibility it sorely needed.⁵⁹ Gouverneur, his trusted assistant, claimed to have drawn up the plan for the bank himself,⁶⁰ which Congress chartered in 1781. Because there were concerns that it might have lacked the power to do so, several states issued their own charters, and the bank was ultimately organized under the one issued by Pennsylvania.⁶¹ By 1785, the bank had become a detested symbol of the monied interests among Pennsylvania's political radicals and they pushed to abolish its charter.⁶² For Morris, the conflict perfectly encapsulated the broader dilemma he had so often denounced. The forces of radical localism, so powerfully unleashed by the Revolution, were sapping what little support there was for the union. Morris defended the bank before the Pennsylvania legislature. In his speech, he primarily surveyed the institution's financial advantages. But he also cautioned legislators not to fall victim to myopia, indulging the burning passions of a select few at the expense of the broader good. As he evocatively put it, "[k]ill the goose that lays golden eggs, and you may wear her feathers," but in the long run, it will invite suffering.⁶³ By violating the property rights of stockholders in the name of justice, egalitarian-minded Pennsylvanians would defeat their stated aims. "Dissolve the National Bank," Morris warned, and "a private bank will rise on its ruins."⁶⁴ Their short-sightedness stemmed from their provincialism, and by extension, their incapacity to see beyond their narrow interests to the wider cause of which they were inescapably a part.

III. "THE LOVE OF OUR COUNTRY IS A PRIMAL SENSE"

For Morris, this problem was ultimately one of emotional attachment. The structure and distribution of power in the union, as well as the sense of liberty that informed it, largely derived from a particular feeling of patriotism. Politics, he felt, fundamentally depended on patriotic affection and attachment. Their institutions and promises meant little, and had little chance of enduring, unless they inspired an emotional connection that enabled those living under them to feel a sense of belonging, connection, and affinity. Morris drew freely from a host of concepts new to the eighteenth century that had come to pervade intellectual life, among them: sensibility, sentimentality, faculty psychology, and the moral sense. In varying ways, these ideas underscored the importance of emotions,

59. See RAKOVE, *supra* note 54, at 307–24.

60. 1 SPARKS, *supra* note 34, at 235.

61. See GOUVERNEUR MORRIS, *Address to the Assembly of Pennsylvania on the Abolition of the Bank of North America* (1785), in SECURE THE BLESSINGS OF LIBERTY, *supra* note 15, at 183.

62. See BRAY HAMMOND, *BANKS AND POLITICS IN AMERICA FROM THE REVOLUTION TO THE CIVIL WAR* 48–64 (1957); TOM CUTTERHAM, *GENTLEMAN REVOLUTIONARIES: POWER AND JUSTICE IN THE NEW AMERICAN REPUBLIC* 104–22 (2017).

63. GOUVERNEUR MORRIS, *Address to the Assembly of Pennsylvania on the Abolition of the Bank of North America* (1785), in SECURE THE BLESSINGS OF LIBERTY, *supra* note 15, at 197.

64. *Id.* at 203; see also *id.* at 204–05.

moral connection, gentle feeling, and human being's inherent sociability.⁶⁵ They emphasized, as Morris himself would write, "[m]an as a social being," and the forms that social connection might take.⁶⁶ The American Revolution had heightened these connections, linking the idea of political identity and connection to underlying assumptions about affective social belonging and Morris ran with them. "Man, therefore, being a social Creature," he would declare, "can have no rights inconsistent with the social state."⁶⁷

Morris wrote most vividly about these phenomena later in life in his "Oration on Patriotism." "If we examine the various Countries and Climates of the Earth," he began his speech, "we shall perceive the patriot Passion to be coextensive with the human Race."⁶⁸ This "strong Passion swells the ingenuous Heart from early Youth till we bend over the Grave."⁶⁹ Human beings, as so many assumed at the time, were drawn to society, yearning to be connected. "Yes!" Morris continued with fervor, "The Love of our Country is a primal Sense—the fair Impression of that Hand which form'd the human Heart."⁷⁰ More than that:

[I]t is intimately blended with and strengthened by every other virtuous and honorable Sentiment. It is interwoven with the Bonds of connubial Tenderness, hallowed by the pious Sense of filial Duty, endear'd by the Charities of parental affection, nourished by the social Habits of Life, animated by the Fellowships of Youth, confirmed by the Amities of Age, and consecrated by the Mysteries of Religion.⁷¹

65. See SARAH KNOTT, *SENSIBILITY AND THE AMERICAN REVOLUTION* (2009); ANDREW BURSTEIN, *SENTIMENTAL DEMOCRACY: THE EVOLUTION OF AMERICA'S ROMANTIC SELF-IMAGE* (1999); GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION* 213–25 (1991); Daniel Walker Howe, *The Political Psychology of The Federalist*, 44 WM. & MARY Q. 485 (1987); EMMA ROTHSCILD, *ECONOMIC SENTIMENTS: ADAM SMITH, CONDORCET, AND THE ENLIGHTENMENT* (2001); SOPHIA ROSENFELD, *COMMON SENSE: A POLITICAL HISTORY* (2011). These ideas were at the forefront of the Scottish Enlightenment, which profoundly shaped Revolutionary America, partly because some of its influential figures were Scottish emigrants and disciples of those teachings, including the statesmen and jurist James Wilson, and the minister and educator John Witherspoon. As president of the College of New Jersey, Witherspoon taught many leading American statesmen, including James Madison, the core ideas of Scottish moral philosophy. See KNOTT, *supra* note 65, at 8–10; ROSENFELD, *supra* note 65, at 56–89; RICHARD B. SHER, *CHURCH AND UNIVERSITY IN THE SCOTTISH ENLIGHTENMENT: THE MODERATE LITERATI OF EDINBURGH* (1985); Daniel Walker Howe, *Why the Scottish Enlightenment Was Useful to the Framers of the American Constitution*, 31 COMPAR. STUD. SOC'Y & HIST. 572 (1989); See Robert Green McCloskey, *Introduction*, in 1 *THE WORKS OF JAMES WILSON* 15–17 (McCloskey ed., 1967) [hereinafter 1 WILSON]; GIDEON MAILER, *JOHN WITHERSPOON'S AMERICAN REVOLUTION* (2017).

66. GOUVERNEUR MORRIS, *Oration on Patriotism* (1805), in *SECURE THE BLESSINGS OF LIBERTY*, *supra* note 15, at 362. On this pervasive Founding-era attitude, see NOVAK, *supra* note 4, at 26–35; Jud Campbell, *Republicanism and Natural Rights at the Founding*, 32 CONST. COMMENT. 85 (2017).

67. GOUVERNEUR MORRIS, *Remarks upon the Principles and Views of the London Corresponding Society* (1795), in *SECURE THE BLESSINGS OF LIBERTY*, *supra* note 15, at 287.

68. GOUVERNEUR MORRIS, *Oration on Patriotism* (1805), in *SECURE THE BLESSINGS OF LIBERTY*, *supra* note 15, at 363.

69. *Id.*

70. *Id.*

71. *Id.*

A longtime student of poetry, Morris had a refined literary sense.⁷² The sometimes flowery excess of his prose betrayed his romantic sensibility and spirit while accentuating the affective core of his nationalism.⁷³ So much went into “the complex Idea of our Country,” he stressed: the “Usages we respect, the manners we approve, the Language we speak, the Laws we love, and the Religion we venerate.”⁷⁴ The “Scope and Extent of the patriot Passion” was vast. “[I]t mingles in all our Projects and Concerns.”⁷⁵ For “[w]ho,” Morris asked, “can be indifferent to the Fate of his Country?”⁷⁶ As he had proclaimed years earlier on the floor of the Constitutional Convention, “We sh[oul]d cherish the love of our country— This is a wholesome prejudice.”⁷⁷ Those moved by the passions of patriotism sacrificed so others could “enjoy (in common with them) common Rights protected by the common Law.”⁷⁸

Because patriotism was, as this concluding point so vividly established, such an essential ingredient of political and constitutional life, the nature of American patriotism could not have been more important. Which was why it was so troubling to Morris that most Americans seemed to feel patriotic attachment to their individual states, and little attachment to the nation. Despite his affinity for the concept of sensibility, Morris was neither a utopian nor even much of an optimist. At bottom, he was a realist about human nature, appetites, passions, and proclivities. But that was precisely why he thought patriotism was so paramount. Invariably people would exhibit this “prejudice,” as he described it, toward whichever community they felt connected to. There was no changing that. But even if there was no eliminating this prejudice, it might be molded into different, superior, and more “wholesome” form. Here, Morris’s deep pessimism about human nature and great optimism in the possibilities of future progress harmonized. With the right changes, Americans might learn to feel differently. Transforming their patriotic habits and prejudices, partly through constitutional design, thus became one of Morris’s leading preoccupations. He hoped that in every “Breast there shall exist an American Heart.”⁷⁹

72. JAMES J. KIRSCHKE, *GOVERNEUR MORRIS: AUTHOR, STATESMAN, AND MAN OF THE WORLD* 8–10 (2005); WILLIAM HOWARD ADAMS, *GOVERNEUR MORRIS: AN INDEPENDENT LIFE* 17–18 (2003).

73. In this regard, the sentimental qualities of Morris’s nationalism bore a certain resemblance to distinctive features of Thomas Jefferson’s thought. This resemblance persists even though they were political foes whose ideological commitments were in so many ways sharply opposed, Morris was far more of a realist about the limitations of human nature, and Jefferson was far less committed to a strong national government. On Jefferson’s sentimental democracy, see BURSTEIN, *supra* note 65.

74. GOVERNEUR MORRIS, *Oration on Patriotism* (1805), in *SECURE THE BLESSINGS OF LIBERTY*, *supra* note 15, at 363.

75. *Id.*

76. *Id.*

77. 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 243 (Max Farrand ed., 1911) [hereinafter 2 FARRAND’S] (King’s Notes, August 9, 1787) (statement of Gouverneur Morris).

78. GOVERNEUR MORRIS, *Oration on Patriotism* (1805), in *SECURE THE BLESSINGS OF LIBERTY*, *supra* note 15, at 364.

79. *Id.*

An exchange with Morris's close friend and fellow nationalist, John Jay, shortly after the war underscored the importance of national feeling to their shared constitutional vision and the work to be done to make it a reality. "[N]o time is to be lost in raising & maintaining a national Spirit in America," Jay wrote to Morris. "In a word, every thing conducive to Union, & constitutional Energy of Governm[ent] sh[oul]d [be] cultivated[,] cherished, & protected."⁸⁰ Of Jay's "Attachment to America," coming "from one in whose Feelings we feel an Interest," Morris quoted Horace: "*decies repetita placebit*"—"though ten times repeated, it will continue to please."⁸¹ Morris held out hope that "[a] national Spirit is the natural Result of national Existence."⁸² As was his wont, he held out faith in the future, hopeful that the wheels of progress might eventually remedy the deficiencies of the present.⁸³ "[A]ltho some of the present Generation may feel colonial Oppositions of Opinion"—a striking way of underscoring what he took to be the ubiquitous provincialism pervading America—"that Generation will die away, and give Place to a Race of Americans."⁸⁴ While, at present, "the general Government wants Energy," once a "Race of Americans" was on the scene, Morris predicted, "this Want will eventually be supplied."⁸⁵

Morris's optimism withstanding, at other times he harbored grave doubts. Not long before he responded to Jay, he had expressed concern that unless there was "a continuance of the War," there would be nothing left to "convince People of the necessity of Obedience to common Counsels for general Purposes."⁸⁶ As time passed, Americans' attachments to their state governments only seemed to increase. Congress, always relatively ignored and now without a war to prosecute, became ever more invisible and neglected.⁸⁷ Morris was unwilling to sit still, no matter how hopeful he was in what the distant future might bring. He was eager to accelerate the process he had imagined and bolster Americans' attachment to their national government in the near term—to create, rather than wait on, a "Race of Americans" to spread across the continent. Realizing this aim was a principal reason he so eagerly supported federal constitutional reform in the 1780s.

Morris's views on reforming the union differed subtly, yet meaningfully, from other soon-to-be Federalists who also trained their ire on the states. Comparing

80. Letter from John Jay to Gouverneur Morris (Sept. 24, 1783), in 3 THE SELECTED PAPERS OF JOHN JAY 482, 484 (2013) [hereinafter 3 JAY].

81. Letter from Gouverneur Morris to John Jay (Jan. 10, 1784), in 3 JAY, *supra* note 80, at 541.

82. *Id.* at 542.

83. See SECURE THE BLESSINGS OF LIBERTY, *supra* note 15, at ix ("[Morris] was optimistic about the American future because he thought the spirit of the people would triumph over all difficulties, even the self-imposed ones: their own political follies and ignorance of the past.")

84. Letter from Gouverneur Morris to John Jay (Jan. 10, 1784), in 3 JAY, *supra* note 80, at 542.

85. *Id.* at 542.

86. Letter from Gouverneur Morris to Matthew Ridley (Aug. 6, 1782), quoted in RAKOVE, THE BEGINNINGS OF NATIONAL POLITICS, *supra* note 54, at 310.

87. See JACK N. RAKOVE, ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION 28–31, 165–66 (1996).

Morris's ideas to those of his like-minded peers reveals the diversity of reformist thought—the distinct, if broadly complementary, ways in which different nationalists diagnosed the crisis of the young United States and what was needed to remedy it. Unlike James Madison, who famously worried about the problem of faction in small political communities where partisan passions could so readily constitute a political majority,⁸⁸ or Alexander Hamilton, who simply believed that the nation needed the requisite powers of nationhood,⁸⁹ Morris thought that the foundational problem was patriotism. He too worried about unchecked majoritarian passions and certainly lamented the federal government's impotence but believed the root of the problem lay elsewhere. Teach Americans to think and feel differently by altering the nature of their political attachments, and the other problems would begin to take care of themselves.

As the interlocking crises of the 1780s worsened, and calls for significant constitutional reform mounted, Morris would get his chance.⁹⁰ He joined the formidable Pennsylvania delegation and gathered alongside delegates from eleven other states at the Constitutional Convention in the spring of 1787 to discuss the dire state of the union and contemplate dramatic changes to the existing federal constitutional system. From these famous debates emerged the United States Constitution. Constructing a new constitutional order provided Morris the opportunity to suppress Americans' attachment to their states and deepen their connection to their nation. The principal positions he staked out at the Convention—to increase the powers of the national government at the expense of the states, to deny the states representation in the new government, to create an independent and powerful chief magistrate, to destroy the institution of slavery, to guard against the potential power of newly added states, and to empower a national judiciary—are best seen as interconnected attempts to address the root problem that he believed had plagued the union since independence, by fortifying the nation as a common source of feeling, connection, and identity.

He was not alone. As we have seen, John Jay was focused on “raising & maintaining a national Spirit in America.” His friend and ally, James Wilson, who joined him on the Pennsylvania delegation in Philadelphia, had been as

88. See James Madison, Vices of the Political System of the United States (Apr. 1787), in 9 THE PAPERS OF JAMES MADISON 345, 348–57 (Robert A. Rutland et al. eds., 1975); Letter from Madison to Jefferson (Mar. 19, 1787), in 9 MADISON, *supra id.*, at 317–22; Letter from Madison to Edmund Randolph (Apr. 8, 1787), in 9 MADISON, *supra id.*, at 368–71; Letter from Madison to George Washington (Apr. 16, 1787), in 9 MADISON, *supra id.*, at 382–87. For more, see JACK N. RAKOVE, A POLITICIAN THINKING: THE CREATIVE MIND OF JAMES MADISON 45–53, 69–77, 115–18 (2017).

89. See Letter from Alexander Hamilton to James Duane (Sept. 3, 1780), in 2 THE PAPERS OF ALEXANDER HAMILTON 400–01 (Harold C. Syrett & Jacob E. Cooke eds., 1962); Alexander Hamilton, *The Continentalist No. 1*, N.Y. PACKET & AM. ADVERTISER, July 12, 1781, reprinted in 2 HAMILTON, *supra id.* at 649. For more, see Gienapp, *In Search of Nationhood at the Founding*, *supra* note 8, at 1793–95.

90. On the interlocking economic and political crises of the decades, see VAN CLEVE, *supra* note 54; RAKOVE, THE BEGINNINGS OF NATIONAL POLITICS, *supra* note 54, at 241–359; KLARMAN, *supra* note 55, at 11–125.

committed to the idea of the American nation as anybody.⁹¹ Meanwhile, Fisher Ames, the acerbic Massachusetts congressman who would become such a capable political leader of the very nationalist movement Morris was attempting to engineer, would remark in 1792: “What we want is not a change in forms. We have paper enough blotted with theories of government. The habits of thinking are to be reformed. Instead of feeling as a nation, a State is our country.”⁹² It would be hard to find a statement that better captured Morris’s own sentiments than this one.

While Morris no doubt spoke for a broader constituency of nationalist leaders, in Philadelphia it would fall largely to him to advocate on behalf of the “American Heart.” Surrounded by nationalist reformers whose focus lay elsewhere and skeptics of national union who jealously guarded their states’ power, Morris recognized that he would need to give voice to the importance of national attachment.

IV. “A REPRESENTATIVE OF AMERICA”

Early and often at the Constitutional Convention, Morris did just that. He frequently reminded his fellow delegates of their broader political identity. He did so most pointedly in stressing who he imagined he was representing at the Convention: not Pennsylvania, nor New York, but the nation. “[I] came here as a Representative of America,” he declared dramatically.⁹³ This pithy remark neatly encapsulated the core of his thinking. It also established the basis by which he would judge the proposals being bandied about the Pennsylvania State House that summer and alerted his peers to what would matter to him. He hoped others might adopt the same cosmopolitan vision that he deemed so essential to the project of national constitutional reform. He had no interest in repeating the sad history that had defined the drafting of the Articles of Confederation, where state interests had overwhelmed an initial commitment to the union. He had come to the Convention, he avowed, “to form a compact for the good of America,” and nothing less.⁹⁴

Morris hoped that his fellow delegates, and eventually his fellow citizens, would overcome the parochial attachments that for years had held the nation back. He “wished gentlemen to extend their views beyond the present moment of time; beyond the narrow limits of place from which they derive their political origin,” and to see and feel the broader needs of the union.⁹⁵ “He wished,”

91. On Wilson’s nationalism, see Gienapp, *In Search of Nationhood at the Founding*, *supra* note 8, at 1795–97. An immigrant from Scotland who was drawn to the teachings of its leading moral philosophers, Wilson was similarly captivated by the bonds of sociability and political belonging. See McCloskey, *Introduction*, in 1 WILSON, *supra* note 65, at 4–5, 7–9; CHARLES PAGE SMITH, JAMES WILSON: FOUNDING FATHER, 1742–1798, at 3–4, 21–61 (1956).

92. FISHER AMES, LETTER TO GEORGE RICHARD MINOT (Feb. 16, 1792), *reprinted in* 1 WORKS OF FISHER AMES 113 (W. B. Allen ed., 1983).

93. 1 FARRAND’S, *supra* note 10, at 529 (Madison’s Notes, July 5, 1787) (statement of Gouverneur Morris).

94. *Id.* at 593 (Madison’s Notes, July 12, 1787) (statement of Gouverneur Morris).

95. *Id.* at 529 (Madison’s Notes, July 5, 1787) (statement of Gouverneur Morris).

ultimately, “our ideas to be enlarged to the true interest of man, instead of being circumscribed within the narrow compass of a particular Spot.”⁹⁶ It was past time to shed their provincialism and to cultivate the sort of political attachment that had been so thoroughly lacking since independence. The states did not enjoy the solemn legitimacy of the nation. Among the fundamental tasks facing the delegates was to restructure the constitutional system such that it would help rebalance American political affinities. As Morris colorfully put it: “State attachments, and State importance—have been the bane of this Country. We cannot annihilate; but we may perhaps take out the teeth of the serpents.”⁹⁷ For Morris, herein lay the principal objective of constitutional reform. So that more Americans might *feel* like Americans: defang the states; bolster the nation.

V. “RIGHTEOUSNESS ESTABLISHETH A NATION”

The first step toward accomplishing these twin goals was to remake the federal union itself: to replace the loose confederacy of states with a true nation. To Morris, this required both establishing a genuine national government equipped with sufficient powers and supremacy while also altering the very basis of the union. Though entwined, these aims were distinct. And though each was vital, the latter was truly foundational. Seeing how Morris fit these pieces together in his mind—at least as the Convention records and supporting evidence permit us to infer—brings back into focus his interlocking theory of nationalist constitutionalism. At the center of his vision was a commitment to vast national power, but that aim only partially told the story. For it did not matter how much power the national government nominally claimed unless it could exercise that power efficiently. Doing so would depend on a deeper source of support, on laying a new constitutional foundation. That national government’s power had to come from the sovereign people of the United States, not the standing state governments. Otherwise, not only would the federal government remain beholden to the states, it would be impossible to claim what Morris deemed so vital: that the federal government had been erected *by* a nation to *serve* a nation. The national government needed a makeover, but so too did the federal system it governed. Conquering each objective in turn outlined the essential agenda.

From the Convention’s opening salvo, nationalist reformers seized the initiative by framing the debate on their chosen terms. Rather than permit a tentative discussion of discrete amendments to the Articles of Confederation, the Virginia and Pennsylvania delegations preemptively prepared a proposal for an entirely new system of government: what would be called the Virginia Plan (as it was formally introduced by the Virginia delegation).⁹⁸ It marked a sharp break from the Articles by establishing a complete national government equipped with broad

96. *Id.* at 530–31.

97. *Id.* at 530.

98. On how the nationalists seized the initiative and set the Convention’s agenda, see RAKOVE, ORIGINAL MEANINGS, *supra* note 87, at 58–60.

and supreme power. Under the Articles, Congress effectively represented the individual states, each of which had an equal vote in the body. It enjoyed little authority to act directly on the people of the separate states. By contrast, the Virginia Plan proposed a government that would represent the people, not the states, and could legislate directly on those people.⁹⁹ The Virginia Plan has often been considered the handiwork of James Madison—the embodiment of the reform project he sketched in his pre-Convention writings.¹⁰⁰ More likely, though, the plan was jointly authored by the leading members of the Virginia and Pennsylvania delegations while they waited for the Convention to commence. James Wilson certainly seems to have played a crucial role in shaping the proposal.¹⁰¹ Given Morris's longstanding enthusiasm for nationalist reform, his close working relationship with Wilson, and his own constitutional acumen, it is all but assured that he too shaped the final result. Whatever the case, as soon as the Virginia Plan was presented to the Convention, Morris would prove one of its most outspoken and able defenders.

The Virginia Plan would not become the Constitution. Nor would Morris secure every constitutional objective he pursued. But in defending the plan and its core proposals, Morris displayed the major outlines of his nationalist constitutionalism.

A. Empowering the National Government

Like other nationalists, Morris emphasized three things: the Virginia Plan would establish a genuine national government, vested with broad and vital powers, that would be supreme in its operation. The plan would not only establish national executive and judicial branches to accompany the existing legislative branch, now to be split into two bodies, but also proposed replacing, as Morris put it, a “*federal*” government with a “*national, supreme*” one.¹⁰² As he “explained the distinction . . . the former [was] a mere compact resting on the good faith of the parties,” while “the latter,” by contrast, enjoyed “a compleat and *compulsive* operation.”¹⁰³ The first kind, being nothing more than a “mere treaty,” was “no Govt. at all.”¹⁰⁴ The latter kind, meanwhile, was “a *supreme* government capable of [seeing to] ‘the common defence, security of liberty and the general welfare.’”¹⁰⁵

99. *Id.* at 169. As governor of Virginia at the time, Edmund Randolph was chosen to present the plan.

100. See RAKOVE, ORIGINAL MEANINGS, *supra* note 87, at 46–79; RICHARD BEEMAN, PLAIN, HONEST MEN: THE MAKING OF THE AMERICAN CONSTITUTION 52–56 (2009).

101. For a persuasive defense of this argument, see John Mikhail, *The Necessary and Proper Clauses*, 102 GEO. L. J. 1046, 1071–86 (2014).

102. 1 FARRAND'S, *supra* note 10, at 34 (Madison's Notes, May 30, 1787) (statement of Gouverneur Morris).

103. *Id.*

104. *Id.* at 514 (July 2, 1787) (statement of Gouverneur Morris).

105. *Id.* at 43 (McHenry's Notes, May 30, 1787) (statement of Gouverneur Morris).

In order to live up to this description, this new government would enjoy its own sweeping powers. “Unless we can form a vigorous general Govt.,” Morris explained, “we must expect vigorous State Govts: & a weak general Govt.”¹⁰⁶ The Virginia Plan’s sixth resolution promised to answer this need. Resolution VI specified that the national legislature would enjoy the legislative powers vested under the Articles as well as the authority “to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted.”¹⁰⁷ This broad provision would vest the national government with all powers of a general nature as well as the power, previously denied, to act directly on individuals within the states. In other words, it would afford the national government, as Morris put it, a “complete operation.” If Morris did not have a hand in drafting Resolution VI, then he certainly became one of its leading advocates. Later in the proceedings, when Gunning Bedford of Delaware moved to amend the provision to empower the national government “to legislate in all cases for the general interests of the Union, and also in those to which the States are separately incompetent,”¹⁰⁸ Morris immediately seconded it.¹⁰⁹

Morris was quick to parry the objections raised by those delegates wary of such a broad grant of power. One such delegate was Roger Sherman of Connecticut, who at one stage proposed prohibiting the national government from interfering in “matters of internal police.”¹¹⁰ Morris immediately registered his opposition to this proposal, rejoining that “[t]he internal police, as it would be called & understood by the States ought to be infringed in many cases, as in the case of paper money & other tricks by which Citizens of other States may be affected.”¹¹¹ The national government ought to have the power to interfere in state affairs, felt Morris, not least to prevent the states from again passing the kinds of laws that, in his estimation, had harmed the union. A complete national government armed with complete authority would help quell provincial state loyalties and encourage broad-minded national ones—just the kind of change Morris was hoping to effect. Morris, in fact, was so eager to interfere in the states’ internal police, that toward the end of the Convention, among a series of proposals he submitted to the Committee of Detail for consideration, he called for the creation of a “Secretary of Domestic Affairs” to “attend to matters of general police.”¹¹² The proposal was ignored, clearly too radical for most of his fellow delegates. But in proposing it, Morris revealed the depth of his nationalist commitments.

The Virginia Plan also empowered the national government to “negative” state laws.¹¹³ Madison famously regarded this proposal as the keystone of the entire

106. *Id.* at 554 (Paterson’s Notes, July 7, 1787) (statement of Gouverneur Morris).

107. *Id.* at 21 (May 29, 1787) (Virginia Plan).

108. 2 FARRAND’S, *supra* note 77, at 26 (July 17, 1787) (statement of Gunning Bedford).

109. *Id.* at 26 (July 17, 1787).

110. *Id.* at 25 (July 17, 1787) (statement of Roger Sherman).

111. *Id.* at 26 (July 17, 1787) (statement of Gouverneur Morris).

112. *Id.* at 342 (Aug. 20, 1787) (statement of Gouverneur Morris).

113. 1 FARRAND’S, *supra* note 10, at 21 (May 29, 1787) (Virginia Plan).

plan for reform.¹¹⁴ Morris, however, was unpersuaded of its need. It was “not necessary,” he felt, “if sufficient Legislative authority should be given to the Genl. Government.”¹¹⁵ Rather than nullifying state laws, he felt the national government should be passing its own. Among other potential advantages, in writing its own laws, the national government was more likely to encourage attachment to its citizens.

In addition to broad powers, the national government needed to be able to enforce its mandates. Under the confederation, it had been “altogether dependent—on the States,” Morris complained.¹¹⁶ The various “quotas & requisitions” under which Congress had been forced to labor “[were] subversive of the idea of Govt.”¹¹⁷ The Virginia Plan, accordingly, vested the national government with a set of coercive powers that would ensure state compliance, affording it the “compulsive operation” Morris deemed so important. A genuine “federal government,” not the mere shadow of one currently presiding over the union, “ha[d] a right to compel every part to do its duty.”¹¹⁸ The present government “has no such compelling capacities,” and that had proved its undoing.¹¹⁹

Finally, building directly from this point, the national government needed to be supreme. As Morris made clear when delineating the differences between a “national” and “federal” government, supremacy was the essential condition of the former.¹²⁰ “[I]n all communities,” he explained, “there must be one supreme power, and one only.”¹²¹ This statement was a corollary of the ubiquitous eighteenth-century axiom, *imperium in imperio*, which stipulated that there could not be a state within a state for in each political community there needed to be a final, indivisible source of sovereign authority.¹²² Just as there could not be two sovereign powers in a single polity, Morris could not “conceive of a government in which there can exist two *supremes*.”¹²³ A “federal agreement which each party may violate at pleasure,” he reasoned, was no government at all.¹²⁴ The national government thus required a “compleat and compulsive operation” over the federal system. The Supremacy Clause, which was later added and unambiguously

114. See RAKOVE, ORIGINAL MEANINGS, *supra* note 87, at 51–53, 60–62, 81–82, 197–98.

115. 2 FARRAND'S, *supra* note 77, at 27 (July 17, 1787) (statement of Gouverneur Morris).

116. 1 FARRAND'S, *supra* note 10, at 514 (July 2, 1787) (statement of Gouverneur Morris).

117. 2 FARRAND'S, *supra* note 77, at 26 (July 17, 1787) (statement of Gouverneur Morris).

118. 1 FARRAND'S, *supra* note 10, at 43 (McHenry's Notes, May 30, 1787) (statement of Gouverneur Morris).

119. *Id.*

120. *Id.* at 34 (May 30, 1787) (statement of Gouverneur Morris).

121. *Id.*

122. BERNARD BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 223–29 (1992); DON HERZOG, SOVEREIGNTY RIP 105–06 (2020); ALISON L. LACROIX, THE IDEOLOGICAL ORIGINS OF AMERICAN FEDERALISM 14–15, 172–73 (2010).

123. 1 FARRAND'S, *supra* note 10, at 43 (McHenry's Notes, May 30, 1787) (statement of Gouverneur Morris).

124. *Id.*

declared that the Constitution was the “supreme law of the land,” thoroughly captured Morris’s priority.¹²⁵

B. Remaking the Union

As vital as it was to empower the national government with extensive authority, it was even more important to reconstitute the basis of the union. Assigning the government vital powers helped achieve this objective. By establishing independent executive and legislative branches, remaking federal representation, empowering the national government to act on individuals directly, and vesting it with coercive power, nationalist reforms restructured both the character of the federal government and its relationship to the states. These reforms went much of the way to jettisoning the defining features of the Articles of Confederation. But Morris had still more in mind. Establishing that it was a union of people, not states, required reconstituting sovereignty in the United States. Here Morris would play a decisive role and, at least to his satisfaction, help engineer a constitutional revolution.

While serving on the Committee of Style and Arrangement—the committee assembled at the end of the Convention to produce a final draft of the Constitution¹²⁶—Morris overhauled the Constitution’s Preamble. The preamble that was handed to committee read:

We the people of the States of New Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare, and establish the following Constitution for the Government of Ourselves and our Posterity.¹²⁷

Morris revised it into its final form:

We, the People of the United States, in order to form a more perfect union, to establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.¹²⁸

In so doing, Morris enumerated a set of broad national purposes for which the new Constitution would be established. Even more importantly, he removed all doubt as to who would be authorizing the Constitution, and thus upon whose authority the new government would ultimately be based. The Constitution now

125. U.S. CONST. art. VI.

126. On Morris’s command performance on the Committee of Style, see generally Treanor, *supra* note 13.

127. 2 FARRAND’S, *supra* note 77, at 177 (Committee of Detail Draft).

128. *Id.* at 590 (Committee of Style Draft).

unambiguously spoke for the “People of the United States,” rather than the peoples of the distinct and separate states.

This change mattered. Given the prevailing logic of social contract theory, which informed Founding-era constitutionalism at every turn, it is easy to see why Morris and his allies would have attached such significance to this revision.¹²⁹ Social contract theory (or, more accurately, social compact theory) proposed a hypothetical two-step process by which human beings left the state of nature to form a government. Step one consisted of forming a social compact, or body politic, while step two entailed that political society (formed through step one) establishing a constitution of government. Governments did not stand alone, in other words; they rested on social compacts. And those compacts shaped what governments could or could not do.¹³⁰

In the context of the United States and its intricate federal union, it especially mattered what sort of political community supposedly preceded formation of its federal constitution. Morris's revised Preamble potentially answered this question. Earlier in the Convention, as a member of the Committee of Detail that had been created to compile an initial draft of the Constitution, Edmund Randolph had insisted that “[a] preamble designating the ends of government and human politics . . . is unfit here.” Such a “display of theory,” perhaps “proper in the first formation of state governments,” was not appropriate in the context in which the delegates found themselves, since, he reckoned, “we are not working on the natural rights of men not yet gathered into society, but upon those rights modified by society, and . . . *interwoven with* what we call . . . the rights of states.”¹³¹ Given, he reasoned, that Americans already found themselves in existing political societies—the individual states—a preamble to the new Constitution was unnecessary and, indeed, out of place. To the likes of Morris, the decision to ultimately to include a preamble soundly repudiated Randolph's premise. The new federal Constitution would indeed be remaking the political society of the United States. Whatever body politic might have undergirded the Articles of Confederation (a thorny question that yielded a variety of answers),¹³² Morris's revised Preamble seemed to announce, free of ambiguity, that when it came to this new Constitution, individuals across the entire nation—encompassing the people of the United States—had formed a distinctively national social compact. The United States did not consist of separate state compacts, distinct political

129. On how social contract theory informed the original Preamble, see Jonathan Gienapp, *The Myth of the Constitutional Given: Enumeration and National Power at the Founding*, 69 AM. U. L. REV. 183, 194–209 (2020).

130. See Gienapp, *In Search of Nationhood at the Founding*, *supra* note 8, at 1791–92; Campbell, *Republicanism and Natural Rights at the Founding*, *supra* note 66, at 8790.

131. 2 FARRAND'S, *supra* note 77, at 137 (Committee of Detail Draft, Edmund Randolph's Draft).

132. On how some nationalists claimed that American nationhood could be traced back to the Declaration of Independence, see Gienapp, *In Search of Nationhood at the Founding*, *supra* note 8, at 1795–97. On how others insisted that the nation, to the extent it was one, only came into being with ratification of the Constitution, see Jonathan Gienapp, *Written Constitutionalism, Past and Present*, 39 L. & HIST. REV. 321, 353–55 (2021).

communities that only thereafter had confederated into a union. The Preamble underscored, at least plausibly, that the Constitution established a national government that spoke for a nation and the national people who had constituted it.

Not all of Morris's contemporaries would accept this reading.¹³³ That was in part because Morris failed to obtain his favored procedure for ratifying the Constitution. Like most champions of constitutional reform, he thought it essential to circumvent the legal authority of the existing state governments. Were the Constitution submitted to those bodies, not only would it undoubtedly meet a skeptical audience,¹³⁴ but even more concerning, it might be argued that the amendment rules found under the Articles of Confederation still applied. But through "an appeal to the people of the U. S., the supreme authority," Morris stressed, "the federal compact may be altered" without worrying about existing rules.¹³⁵ How exactly would the Convention appeal to the people of the United States? Morris boldly proposed "that the reference of the plan be made to one general Convention, chosen & authorized by the people to consider, amend, & establish the same"—a truly striking proposition that neatly captured how eager Morris was to alter the American people's imagined relationship to their distant government.¹³⁶ The proposal was not even seconded, however.¹³⁷ Few, it seems, were willing to embrace such a radical scheme. Rather than submitting the Constitution to a single, national ratifying convention, as Morris had proposed, the Constitution would instead be sent to the states individually, each of which would call their own separate ratifying convention.¹³⁸

This setback notwithstanding, Morris no doubt still believed that the Preamble confirmed that the United States was genuinely a nation. As he put it a few years later, the work of the Convention was a "constitutional compact which the People of America have made with each other."¹³⁹ Through his drafting, he had done his part to remake the union. And he was not the only one who thought so. A number

133. See JONATHAN GIENAPP, *THE SECOND CREATION: FIXING THE AMERICAN CONSTITUTION IN THE FOUNDING ERA* 228, 239 (2018); Gienapp, *In Search of Nationhood at the Founding*, *supra* note 8, at 1809–13.

134. See 2 FARRAND'S, *supra* note 77, at 478 (Aug. 31, 1787) (statement of Gouverneur Morris) ("By degrees the State officers, & those interested in the State Govts will intrigue & turn the popular current against [the proposed Constitution].").

135. *Id.* at 92 (July 23, 1787) (statement of Gouverneur Morris).

136. *Id.* at 93 (July 23, 1787) (statement of Gouverneur Morris).

137. *Id.*

138. For how Morris helped nonetheless shape the eventual scheme of ratification adopted by the Convention, see *id.* at 478–79 (Aug. 31, 1787) (motion of Gouverneur Morris and Charles Pinkney); on how some people claimed this form of ratification shaped the nature of the social compact, see Gienapp, *Written Constitutionalism, Past and Present*, *supra* note 132, at 354–55.

139. Letter from G. Morris to the Duke of Leeds (Apr. 30, 1790), in 1 *GOVERNEUR MORRIS, A DIARY OF THE FRENCH REVOLUTION* 496 (Beatrix Cary Davenport ed., 1939).

of allies would follow his lead and exploit the Preamble to advance precisely the point about nationhood that Morris had otherwise endorsed.¹⁴⁰

That was not all. There were additional rhetorical dimensions to the Preamble that mattered in their own right. Once Morris was finished revising it, the Preamble not only recast the nature of the union, but in announcing the purposes of the new Constitution—who it represented and who it served—it also had a powerful oratorical effect. In imbibing the Constitution's opening words, before even learning about the details of the new government, readers might begin to think and feel like the national people the Preamble otherwise announced them to be. As a student of poetry, Morris surely was mindful of these enticing possibilities.

VI. REPRESENTING THE "TRUE INTERESTS"

Fortifying the national government and establishing the primacy of the nation would help effect the kind of change that Morris craved. But more was needed to fully defang the states. If the federal government continued to represent state interests, he feared state loyalty would persist. Under the Articles, Congress had primarily represented the states and their narrow interests.¹⁴¹ It was all but assured when the Convention assembled that some delegates would insist upon continuing the longstanding practice of allowing each state an equal vote in national governance irrespective of their relative population size. Under the confederation government, this practice had encouraged delegates to think of themselves as state diplomats whose principal job was to advance the narrow interests peculiar to their home states. The Founding generation was fond of thinking of representation in terms of affinities. It was common to hear that representative assemblies "should think, feel, reason, and act like" the people.¹⁴² To Morris's mind, the national legislature would never "think and feel" like the people at-large if its representatives remained slavishly wedded to their states. To counter this tenacious tendency, Morris targeted the states at their very foundation. State interests were illegitimate, Morris argued, because they were artificial. They were not among the "true interests" of the nation.¹⁴³

140. See Gienapp, *The Myth of the Constitutional Given*, *supra* note 129, at 194–209. On how the Preamble was used following ratification, see Gienapp, *In Search of Nationhood at the Founding*, *supra* note 8, at 1804–09; Treanor, *The Case of the Dishonest Scrivener*, *supra* note 13, at 48–59; PETER CHARLES HOFFER, *FOR OURSELVES AND OUR POSTERITY: THE PREAMBLE TO THE FEDERAL CONSTITUTION IN AMERICAN HISTORY* 83–109 (2013).

141. See JENSEN, *supra* note 2.

142. JOHN ADAMS, *THOUGHTS ON GOVERNMENT* 9 (1776).

143. This expression was common at the time, especially once the party wars began raging in the 1790s and both sides assumed that the other was fundamentally misleading the people at-large. But Morris was especially fond of invoking it, often drawing an invidious distinction between those interests that were "true" and those that led people astray. For example, see Morris, *The British Treaty* (1807–1808), in *SECURE THE BLESSINGS OF LIBERTY*, *supra* note 15, at 425 (dedicating his pamphlet to those who Congress who recognized the "true interest" of the nation).

According to Morris, state interests had no solid basis in political or social reality. This fact set them apart from those legitimate political and social interests that any new constitution would have to account for. State interests were merely the byproduct of a contrived social arrangement, one that, over time, had compelled people to fetishize arbitrary jurisdictional boundaries by convincing them that those meaningless markers defined the larger political community of which they were a part. “[A]fter all,” Morris asked, “Who can say whether he himself, much less whether his children, will the next year be an inhabitant of this or that State.”¹⁴⁴ Morris left the Convention to attend to business during the second week of June and did not return until early July, leaving him absent from many of the Convention’s most important debates over the structure of legislative representation, which pitted advocates of the Virginia Plan’s proposal to establish proportional representation in both houses of the legislature against delegates from the smaller states who insisted on maintaining the equal representation practiced under the Articles. Before Morris departed, he was treated to David Brearly’s tongue-in-cheek suggestion to “[l]ay the map of the confederation on the table, and extinguish the present boundary lines of the respective state jurisdictions, and make a new division so that each state is equal.”¹⁴⁵ Brearly, representing the small state of New Jersey, was being clever and meant to underscore the injustice of depriving states an equal voice in the national legislature based on their unequal size. Morris would have felt tempted to seize on the suggestion, however, not only because he was preternaturally playful and never missed an opportunity to trigger his opponents, but because, taken earnestly, Brearly’s proposal captured Morris’s belief that the states were little more than arbitrary lines on a map. Once Morris returned to the Convention the following month, he stressed this very point. Were the smaller states, jealous of their power, to decide against joining the new compact, he predicted that “the ties of interest, of kindred & of common habits which connect them with the other States will be too strong to be easily broken.”¹⁴⁶ Beneath the artifice of state attachment lay the genuine sources of connection in the union. What united the people living within the states was real; what potentially separated them was not.

The goal, then, was to create a scheme of national representation that reflected the true interests of America. For Morris, that meant representing only those interests that were based in social reality. These did not include the interests of the individual states. The problem was not simply that people’s attachment to their states had bred provincialism and a factious brand of politics. The critique ran deeper still. The separate states had no true interests to speak of in the first place. The idea itself was illusory and baseless.

144. 1 FARRAND’S, *supra* note 10, at 531 (July 5, 1787) (statement of Gouverneur Morris).

145. *Id.* at 182 (Yates’s Notes, June 9, 1787) (statement of David Brearly); *see also id.* at 177 (which shows how Madison recorded the speech).

146. *Id.* at 530 (July 5, 1787) (statement of Gouverneur Morris).

To prevent the cementing of state interests, Morris endorsed proportional representation in both houses of the national legislature. Nothing was more vital than eliminating equal state suffrage. George Reed of Delaware objected to how the Virginia Plan proposed to radically remake federal representation, alerting his fellow delegates that, pursuant to the instructions of his state, he could not alter “the rule of suffrage,” and were it to be changed, he might need “to retire from the Convention.”¹⁴⁷ Morris responded immediately. While it would be lamentable to lose Delaware’s participation, “the change proposed was however so fundamental an article in a national Govt. that it could not be dispensed with.”¹⁴⁸ As far as Morris was concerned, the small states’ attachment to this prerogative was a quintessential example of just how artificial state interests truly were. “How did it happen originally that the Votes were equal?” he asked. In the throes of revolution, he explained, “when G. Britain pressed us, the small states said go on in your opposition without us, or give us an equal Vote.” Thanks to this ultimatum, “they obtained it.” Having secured this right through extortion a mere decade prior, during a fragile, uncertain time, the small states “now say there is a sacred Compact.”¹⁴⁹ They were treating a concession, unjustly extracted under duress, as a vital and unchangeable feature of the union, pretending that something entrenched only recently through a flawed and hasty process somehow established its indisputable legitimacy.

Morris was willing to push even farther. During the second week of the Convention, he immediately seconded James Wilson’s proposal to allow the people to select representatives to both houses of the legislature. “If we are to establish a national Government, that Government ought to flow from the people at large,” Wilson maintained. “If one branch of it should be chosen by the Legislatures, and the other by the people”—as the Virginia Plan proposed—“the two branches will rest on different foundations, and dissensions will naturally arise between them.” As a result, “[h]e wished the Senate to be elected by the people as well as the other branch.”¹⁵⁰ As Morris succinctly put it, “Every Citizen should enjoy a rateable Proportion of Sovereignty.”¹⁵¹ It was to be a government of individuals, not states.

Morris leveled similar arguments against slavery, an institution he detested. Perfectly content to upset his southern colleagues, he declared slavery “a nefarious institution,” that “was the curse of heaven on the States where it prevailed.”¹⁵² He lamented finding “himself reduced to the dilemma of doing injustice to the Southern States or to human nature.”¹⁵³ Slavery was a vile interest that had spread “misery & poverty” across “the barren wastes” of the large slaveholding states. It

147. *Id.* at 36–37 (May 30, 1787) (statement of George Read).

148. *Id.* at 37 (May 30, 1787) (statement of Gouverneur Morris).

149. *Id.* at 554–55 (July 7, 1787) (statement of Gouverneur Morris).

150. *Id.* at 151 (June 7, 1787) (statement of Wilson); *see id.* for Morris seconding him.

151. *Id.* at 187 (Paterson’s Notes, June 9, 1787) (statement of Gouverneur Morris).

152. 2 FARRAND’S, *supra* note 77, at 221 (Aug. 8, 1787) (statement of Gouverneur Morris).

153. 1 FARRAND’S, *supra* note 10, at 588 (July 11, 1787) (statement of Gouverneur Morris).

was also an artificial one. He thought the “distinction” that “had been set up & urged, between the Northern & Southern States” was “heretical” and “groundless.” Ultimately, he reasoned, “either this distinction is fictitious or real.” If it is “fictitious let it be dismissed & let us proceed with due confidence.” And “[i]f it be real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other.” Because, as he explained, “[t]here can be no end of demands for security if every particular interest is to be entitled to it.”¹⁵⁴ In making this argument, Morris was challenging those who had been emphasizing the divide between free and slave states to reverse their thinking: they did not think this way because slavery was an essential interest but because they uncritically treated it as one. In this regard, slavery was similar in kind to state interests—both were the products of provincialism more than the source of it.

Just because Morris was dismissive of state interests, and to a lesser extent the interests of slavery, did not mean, however, that other interests were unworthy of attention and respect. His plan for entrenching the “true interests” of America did not ultimately come down to the elimination of equal representation. When pressed, he emphasized something else: property. At bottom, he claimed, “property was the main object of Society.”¹⁵⁵ Accordingly, the “second branch ought to be composed of men of great and established property—an aristocracy.”¹⁵⁶ At this time, few Americans openly defended aristocracy. But Morris was not bashful. He overtly proposed calculating representation in the Senate based on property and wealth. His aims were not merely conservative and elitist (though there is no denying the extent to which they were). He saw merit in this form of representation because he was convinced it would entrench real interests while eradicating artificial ones. Unlike the interests of states, which had no basis in reality, the interests of property were woven into the very fabric of society. As most eighteenth-century students of political science assumed, the constitution of government needed to reflect the constitution of society.¹⁵⁷ No government that failed to reflect the interests of its society could endure for very long. If the national legislature accurately represented the true divisions in society, moreover, it would enable citizens to apprehend their own interests more clearly. They would see themselves in terms of their place in the social order rather than their state of residence—a dramatic improvement in Morris’s eyes.

Lastly, Morris claimed that separating people according to economic class would have the effect of insulating wealth from the people’s chamber and staving off corruption. No matter what, Morris argued, the “Rich will strive to establish their dominion.”¹⁵⁸ The key question to ask, then, was how “shall we ward off

154. *Id.* at 604 (July 13, 1787) (statement of Gouverneur Morris).

155. *Id.* at 533 (July 5, 1787) (statement of Gouverneur Morris).

156. *Id.* at 517 (Yates’s Notes, July 2, 1787) (statement of Gouverneur Morris).

157. On the pervasiveness of this assumption in eighteenth-century political thinking, see ERIC NELSON, *THE GREEK TRADITION IN REPUBLIC THOUGHT* 195–233 (2004).

158. 1 FARRAND’S, *supra* note 10, at 512 (July 2, 1787) (statement of Gouverneur Morris).

this evil?"¹⁵⁹ The "proper security agst them," he believed, "is to form them into a separate interest." By "combining & setting apart, the aristocratic interest, the popular interest will be combined agst. it. There will be a mutual check and mutual security." But "[l]et the rich mix with the poor," as most delegates endorsed, and the results would be far worse: "they will establish an Oligarchy."¹⁶⁰ By giving the wealthy one house of the legislature, "you secure their weight for the *public good*. They become responsible for their conduct."¹⁶¹ The proposal would in fact limit, rather than enhance, the influence of property. Here, Morris effectively repurposed an argument that fellow Pennsylvanian Benjamin Rush had made a decade earlier in a well-known pamphlet criticizing the Pennsylvania Constitution and that John Adams had made shortly before the Convention gathered in his weighty study, *A Defence of the Constitutions of Government of the United States of America*.¹⁶² These prior authors had claimed that a unicameral legislature would facilitate, rather than impede, rule by wealthy elites, by enabling the wealthy to exploit and corrupt the ordinary people beside whom they would serve.

As far as Morris was concerned, representing property in government was the best available option. It might have been appealing to imagine a society organized around different interests. "Reason tells us we are but men," though, and "we are not to expect any particular interference of Heaven in our favor."¹⁶³ While Morris could be an optimist on many fronts, he was often a cold and calculating realist, nowhere more clearly than in his assessment of political interest. There was no ignoring or eliminating propertied interests. Unlike state interests, they were an essential feature of human society. However accurate his prediction of its benefits, Morris's proposal to erect a Senate based on propertied wealth reinforced his broader condemnation of state interests: thinking like a member of the nation meant imagining how one fit into the complex, interconnected, commercial society of late eighteenth-century America. It meant thinking broadly about one's relative position in a broader social and economic structure. In this regard, a government based on true interests was one that encouraged its people to think beyond their state borders.

159. *Id.* at 517 (Yates's Notes, July 2, 1787) (statement of Gouverneur Morris).

160. *Id.* at 512–13 (July 2, 1787) (statement of Gouverneur Morris); *see also* 2 FARRAND'S, *supra* note 77, at 202 (Aug. 7, 1787) (statement of Gouverneur Morris) ("He had long learned not to be the dupe of words. The sound of Aristocracy therefore, had no effect on him. It was the thing, not the name, to which he was opposed, and one of his principal objections to the Constitution as it is now before us, is that it threatens this Country with an Aristocracy. The aristocracy will grow out of the House of Representatives. Give the votes to people who have no property, and they will sell them to the rich who will be able to buy them.").

161. 1 FARRAND'S, *supra* note 10, at 517 (Yates's Notes, July 2, 1787) (statement of Gouverneur Morris).

162. BENJAMIN RUSH, OBSERVATIONS UPON THE PRESENT STATE OF THE GOVERNMENT OF PENNSYLVANIA 9–10 (1777); JOHN ADAMS, A DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICA, at x (1787).

163. 1 FARRAND'S, *supra* note 10, at 512–13 (July 5, 1787) (statement of Gouverneur Morris).

In the end, though, in an ironic twist, Morris came to advocate the very Senate he had originally denounced. As much as he denigrated the viciousness of state attachment, he was ultimately willing to endorse a Senate based, not on property, but rather equal state representation. His reason for doing so was simple: slavery. Once he recognized that slavery constituted the most potent property interest of all, and that slaveholders would stop at nothing to embed it in the new system of federal government, Morris's views on aristocracy and the Senate changed. "The train of business & the late turn which it had taken, had led him . . . into deep meditation," he confessed, as he pondered how property interests were being woven into the fabric of the Constitution.¹⁶⁴ The "Southn. Gentleman will not be satisfied," he conceded, "unless they see the way open to their gaining a majority in the public Councils."¹⁶⁵ To help realize this aim, southerners had demanded and secured the Three-Fifths Clause, which bolstered their position in the House of Representatives. As a result, one conclusion was proving inescapable: "Domestic slavery is the most prominent feature in the aristocratic countenance of the proposed Constitution."¹⁶⁶ Morris had imagined an aristocracy based on just property rights. Instead, by elevating the worst of all property rights, the Constitution was poised to erect the most vicious aristocracy imaginable. On account of the Three-Fifths Clause, he surmised that this "aristocracy will grow out of the House of Representatives."¹⁶⁷ In a peculiar twist, that meant the Senate now stood as the last bulwark against this burgeoning slave power. Suddenly, the prospect of an upper chamber based on state equality seemed tolerable compared to the alternative: suffering under not one, but two legislative houses beholden to the interests of slaveholders.

Faced with these lamentable choices, Morris felt "obliged to vote for ye. vicious principle of equality in the 2d. brand in order to provide some defence for the N. States agst. [slavery]."¹⁶⁸ Eventually, he resigned himself to this bitter reality. Seeing "no prospect of amending the Constitution of the Senate," he announced he would "adhere to the section establishing the equality at all events."¹⁶⁹ In so doing, he helped fortify the precise form of state interest he so thoroughly detested. But only because the alternative invited an even worse and more corrupting form of provincialism: the oppressive rule of southern slaveholding oligarchs. In this regard, Morris was still animated by a consistent principle. If a Senate built on an otherwise vicious principle of representation might help hold a more threatening brand of provincial interest at bay, then it might have its uses after all.

164. *Id.* at 604 (July 13, 1787) (statement of Gouverneur Morris).

165. *Id.* at 604.

166. 2 FARRAND'S, *supra* note 77, at 222 (Aug. 8, 1787) (statement of Gouverneur Morris).

167. *Id.* at 202 (Aug. 7, 1787) (statement of Gouverneur Morris).

168. 1 FARRAND'S, *supra* note 10, at 604 (July 13, 1787) (statement of Gouverneur Morris).

169. 2 FARRAND'S, *supra* note 77, at 234 (Aug. 9, 1787) (statement of Gouverneur Morris).

VII. HOLDING THE NATION TOGETHER

In defending propertied interests, Morris alluded to one further national issue that constitutional design would need to address: the size of the country. "The schemes of the Rich will be favored by the extent of the Country," he noted. "The people in such distant parts can not communicate & act in concert."¹⁷⁰ It would prove difficult to hold such a vast continental republic together. The sheer scope and size of the nation encouraged localism. It was difficult to feel connected to the other states and regions or to the distant government that oversaw such a vast expanse. Nothing more easily explained the devolved system of federal governance that had prevailed since independence. Accordingly, Morris was mindful of how constitutional reform might be exploited to better connect the nation. "The Country must be united," he declared emphatically at one juncture.¹⁷¹ Feeling like a nation meant feeling connected.

Relative to other countries at the time, the United States was geographically large and diverse. Morris was not alone at the Convention in noting "how great an extent of country" they were seeking to govern.¹⁷² Later in life, Morris would write that "[t]he extent of the United States renders it impossible to speak of the climate but in reference to particulars," while "[o]f the American soil it is impossible to speak justly without being very minute."¹⁷³ This fact was hardly incidental since, in keeping with eighteenth-century political orthodoxy, Morris believed that the "position of a State, its climate, the extent of its territory and the habits and manners of its citizens, have an influence in determining the proper form of government."¹⁷⁴

Morris felt that a continental republic demanded a strong national and, at the Convention, he was one of the most outspoken defenders of vigorous presidential authority. He called for a unitary executive imbued with energy and vigor, armed with sweeping prerogatives, and fortified with independence.¹⁷⁵ He often defended these views, moreover, by pointing to the expansive size of the country. As he would write several years later, while serving in France and reflecting upon that nation's own efforts to draft a new constitution, "[t]he vigor of the executive power should be proportioned . . . to the extent of the empire."¹⁷⁶ The same held true for the United States. In Philadelphia in 1787, he noted that "[i]t has been a maxim in political Science that Republican Government is not adapted to a large extent of Country, because the energy of the Executive Magistracy can not reach

170. 1 FARRAND'S, *supra* note 10, at 514 (July 2, 1787) (statement of Gouverneur Morris).

171. 1 FARRAND'S, *supra* note 10, at 530 (July 5, 1787) (statement of Gouverneur Morris).

172. 2 FARRAND'S, *supra* note 77, at 54 (July 19, 1787) (statement of Gouverneur Morris).

173. GOUVERNEUR MORRIS, *Notes on the United States of America* (1806), in *SECURE THE BLESSINGS OF LIBERTY*, *supra* note 15, at 408, 410.

174. GOUVERNEUR MORRIS, *Notes on the Form of a Constitution for France*, in *SECURE THE BLESSINGS OF LIBERTY*, *supra* note 15, at 270.

175. See Gienapp, *National Power and the Presidency*, *supra* note 19, at 137–41.

176. GOUVERNEUR MORRIS, *Notes on the Form of a Constitution for France*, in *SECURE THE BLESSINGS OF LIBERTY*, *supra* note 15, at 270.

the extreme parts of it.” Because “[o]ur Country is an extensive one,” therefore, “[w]e must either then renounce the blessings of the Union, or provide an Executive with sufficient vigor to pervade every part of it.”¹⁷⁷ Only a powerful national executive could permeate the entire union, connecting its disparate parts.

To project adequate power, the President needed certain kinds of authority. That included the power “to appoint the officers & to command the forces of the Republic” because, in both instances, Morris claimed, the “people at large,” scattered across the continent, “will know, will see, will feel the effects of them.” They would know, that is, whether they had been “protected & served.”¹⁷⁸

This power would, in turn, make the national executive “the great protector of the Mass of the people.”¹⁷⁹ To seal the connection, “the Guardian of the people”¹⁸⁰ needed “to be elected by the people at large.”¹⁸¹ Popular election would link the President to the people, Morris thought, but it would also ensure that only continental figures would ascend to the office. “If the people should elect, they will never fail to prefer some man of distinguished character, or services,” he predicted, “some man . . . of continental reputation.”¹⁸² By transforming the President from a “mere creature of the Legislature”¹⁸³ into a pervading national figure, the Constitution could tighten the connections between center and periphery, enabling people to feel national governance while filling that government with officers who felt them.

Holding the nation together had a darker side as well. Concerned that as the nation expanded westward, the national government would fall under the control of narrow-minded westerners, Morris proposed locking in a rule of representation “to secure to the Atlantic States a prevalence in the National Councils.”¹⁸⁴ He was anxious that newly added western states would “not be able to furnish men equally enlightened, to share in the administration of our common interests.” As he saw it, “[t]he Busy haunts of men not the remote wilderness, was the proper School of political Talents.”¹⁸⁵ His characteristically caustic wit did little to obscure his snobbery.

Just as Morris was wary of western settlers joining the union, so too did he worry about foreigners emigrating to American shores. While serving in Congress during the Revolution, he had written a pamphlet that had sounded a much different note: “The portals of the Temple we have raised to Freedom, shall be thrown wide, as an Asylum to mankind,” it read. “America shall receive to her bosom and comfort and cheer the oppressed, the miserable and the poor of every

177. *Id.* at 52 (July 19, 1787) (statement of Gouverneur Morris).

178. *Id.* at 52–53 (July 19, 1787) (statement of Gouverneur Morris).

179. *Id.* at 52 (July 19, 1787) (statement of Gouverneur Morris).

180. *Id.*

181. *Id.* at 29 (July 17, 1787) (statement of Gouverneur Morris).

182. *Id.*

183. *Id.*

184. 1 FARRAND’S, *supra* note 10, at 533 (July 5, 1787) (statement of Gouverneur Morris).

185. *Id.* at 583 (July 11, 1787) (statement of Gouverneur Morris).

nation and of every clime."¹⁸⁶ Less than a decade later, however, even though Americans had "invited the oppressed of all Countries to come & find an Asylum in America . . . to come and worship in our Temple," nonetheless, he maintained, "we never invited them to become Priests at our Altar."¹⁸⁷ Morris proposed, as a result, that foreigners should have to wait a substantial period before acquiring the rights of citizens. Once again mindful of the problem of patriotic attachment, he worried that "[t]he men who can shake off their attachments to their own Country can never love any other."¹⁸⁸

One would not be faulted for concluding that these arguments betrayed Morris's own close-mindedness and provincialism, borne of his own narrow class and regional concerns. Without gainsaying this reading or overlooking the blinders that accounted for it, we can nonetheless appreciate how these seemingly illiberal commitments were consistent with Morris's overriding nationalist vision. On the matter of westerners, he worried that "new States will know less of the public interest" than those from the east.¹⁸⁹ As for foreigners, the whole point of delaying their admission as citizens was to establish a "period [that] will be requisite to eradicate the Affections of Education and native Attachments" that they carried.¹⁹⁰ In both cases, Morris remained focused on cultivating the kind of affections and attachments essential to his brand of nationalism. While in this context these concerns were anything but liberal, to Morris they were necessary to construct a durable national constitutional order.

CONCLUSION: DISILLUSIONMENT

Morris did not get the Constitution he coveted. Late in the Convention's proceedings, he lamented the state of the body's work, going so far as to support "a postponement" and calling "another Convention," one that, he hoped, "will have the firmness to provide a vigorous Government, which," it seemed all too clear to him, "we are afraid to do."¹⁹¹ In the end, he resigned himself to the final proposal, concluding it was "the best that was to be attained" and that he "should take it with all its faults."¹⁹² Even still, Morris found much to condemn in the final instrument. The states were given equal suffrage in the Senate; the national government was not expressly vested with general police powers; the peoples of the different states would separately choose whether to ratify the Constitution; the President would not be elected directly by the people but instead by intermediaries based in the separate states; and slavery was protected in several important ways. Ironically, as a result of changes Morris himself engineered, ones that

186. COMMITTEE OF CONGRESS, OBSERVATION ON THE AMERICAN REVOLUTION 122 (1779).

187. 2 FARRAND'S, *supra* note 77, at 238 (Aug. 9, 1787) (statement of Gouverneur Morris).

188. *Id.*

189. 1 FARRAND'S, *supra* note 10, at 533 (July 5, 1787) (statement of Gouverneur Morris).

190. 2 FARRAND'S, *supra* note 77, at 242 (King's Notes, July 5, 1787) (statement of Gouverneur Morris).

191. 2 FARRAND'S, *supra* note 77, at 479 (Aug. 31, 1787) (statement of Gouverneur Morris).

192. *Id.* at 645 (Sept. 17, 1787) (statement of Gouverneur Morris).

seemed to have been aimed at eliminating the requirement that new states would enter the union on equal footing to those states already existing, it would prove considerably easier for new western states to be added to the union, and, as it turned out, new slave states in particular.¹⁹³

Nonetheless, Morris had grounds to rejoice. Despite the various ways the Constitution fell short of his nationalist vision, the new government would be supreme in its operations, able to act directly on individuals, and equipped with coercive powers. It would possess an energetic executive branch, at the head of which would be a powerful president. More than that, to Morris if not others, the government would enjoy many of the general national powers that he had considered so important and that had been specified in Resolution VI of the Virginia Plan. While Morris and those who shared his thinking might have lamented that Resolution VI was eventually replaced by an enumeration of federal powers, nothing about this change on its own necessarily extinguished the principle that had been at the heart of the original resolution.¹⁹⁴ How successfully Morris and his allies would be able to defend that potentially controversial interpretation, however, remained to be seen. Aiding their efforts, though, would have been Morris's crowning drafting achievement: the Preamble, which established that the Constitution derived from the sovereign authority of the people of the United States, and not anybody or anything else.

Whatever is to be made of Morris's success at the Convention, his efforts to remake the union reveal his distinctive brand of nationalist constitutionalism. Devoted to the nation, he was convinced that its strength and endurance ultimately depended upon a certain emotional connection and affective loyalty. Constitutional design was not the end in itself—its purpose was to shape a new adhesive that would bind citizens to their national government and through which

193. The Committee of Detail draft required two-thirds congressional approval for the addition of new states, but when Morris helped replace this with a general statement of Congress's authority to add new states, it reverted to a majority vote. *See id.* at 454–55, 464, 466 (Aug. 29–30, 1787). For more, see Francois Furstenberg, *Is the Electoral College the Fundamental Problem? New State Admissions and the U.S. Constitution*, in *POLITICAL THOUGHT AND THE ORIGINS OF THE AMERICAN PRESIDENCY*, *supra* note 19, at 187–214. The history of antebellum conflict over slavery's expansion would have unfolded entirely differently had the Missouri Compromise, the Compromise of 1850, and much else required supermajority approval.

194. This issue is complex and contested. Often, it is assumed that the transition marked a major change, and indeed one that was anticipated from early on, *see* RAKOVE, *ORIGINAL MEANINGS*, *supra* note 87, at 177–80; BEEMAN, *supra* note 100, at 120–21, 227–28, 288; KLARMAN, *supra* note 55, at 147; Zuckert, *supra* note 3, at 177–80. What seems clear, however, is that the various delegates reached different conclusions about what the transition from Resolution VI to an enumeration of powers exactly amounted to. Surely some believed that it limited federal power to those enumerated objects. But it is impossible to believe that nationalists like Morris, Wilson, Hamilton, Rufus King, and others accepted this conclusion, in part because of the work Wilson had done on the Committee of Detail overseeing the change. This argument is developed at greater length in Jonathan Gienapp, *The People of the United States: The Lost Constitution of National Popular Sovereignty* (unpublished manuscript). For a shorter discussion, *see* Gienapp, *National Power and the Presidency*, *supra* note 19, at 145–46. On Wilson's work on the Committee of Detail, *see* Mikhail, *supra* note 101, at 1096–1106; William Ewald, *The Committee of Detail*, in 28 *CONST. COMMENT.* 197, 213–14, 242–46, 276–83 (2012).

provincial residents of the separate states might become a “Race of Americans,” each equipped with an “American Heart.”¹⁹⁵ The goal was not simply to quash local faction or to redeem the nation’s financial credit, nor was it simply to construct a powerful government. Shaped by the sentimental moral philosophy and psychology circulating around the Atlantic, confident that human beings were built for society, and convinced that emotions, however dangerous and problematic, formed the basis of political and social attachment, Morris sought to teach citizens of the United States how to think and feel like Americans.

In this, remarkably, he seems to have ultimately concluded that he failed. Despite his steady optimism in America’s future, Morris turned pessimistic in his final years. In the wake of the Jeffersonian Republican Party’s ascent to power, Morris grew convinced that the nation’s politics were once again infected by provincialism and distrust as he watched his political opponents, now confidently in the majority, assert the sovereign authority of the states and defend the spread of slavery. When Republicans took the United States to war with Britain in 1812, a decision Morris considered utterly avoidable and misguided, he grew so cynical about the nation’s prospects that, in a remarkable reversal of his longstanding commitments, he nearly embraced dissolving the union.¹⁹⁶ While he continued to believe that “the union, being the means of preserving freedom, should be prized as such,” nonetheless, he told a correspondent that “the ends should not be sacrificed to the means.”¹⁹⁷ If “peace could not immediately be made with England,” he declared, then it “must divide the union.”¹⁹⁸ In this mood, he began to reflect on earlier challenges and missteps. “In the framing of our national Constitution, we were not at all blind to its defects.” But “none of us,” he professed, “expected they would bear fruit so soon and so bitter.”¹⁹⁹ While the “form” of the national government “was good,” nonetheless he feared that it “has been so much perverted, that it can hardly be restored to what it was.”²⁰⁰ Perhaps, meanwhile, the nation had always been too vast and diverse. “I frankly acknowledge,” he confessed, “that, so early as the year 1776, I was alarmed at the extent of our domain, and the difference of our habits and social state.” Most lamentable of all, for Morris, was the diffidence of the people in which he once had such faith. “Is this the People that resisted a mere Claim of arbitrary Power? . . . If I venture to groan aloud I am told to be patient—to wait;—and what are we to wait for? Must we wait till the Claws of a human Tiger rake our stinking Bowels to look for a Heart?

195. See *supra* notes 84–85.

196. See DENNIS C. RASMUSSEN, FEARS OF A SETTING SUN: THE DISILLUSIONMENT OF AMERICA’S FOUNDERS 198–99 (2021); BROOKHISER, *supra* note 18, at 204.

197. Letter from Gouverneur Morris to Harrison Gray Otis (Apr. 29, 1813), in 3 SPARKS, *supra* note 11, at 290.

198. 2 THE DIARY AND LETTERS OF GOUVERNEUR MORRIS 543 (Anne Cary Morris ed., 1888).

199. Letter from Gouverneur Morris to Harrison Gray Otis (Apr. 29, 1813), in 3 SPARKS, *supra* note 11, at 290.

200. 2 THE DIARY AND LETTERS OF GOUVERNEUR MORRIS, *supra* note 198, at 566.

We once had Hearts—Hearts that beat high with the Love of Liberty—But tis over, Adieu.²⁰¹

Embedded in this tragic irony, though, was final testament to what was perhaps Morris's core belief: the nation could not survive unless its citizens remained emotionally attached to it. If the Constitution had failed to engender that affinity, little else about its elaborate institutional structure and allocation of powers ultimately mattered. In this regard, Morris's nationalist constitutionalism was really a form of constitutional nationalism, for, to his mind, the Constitution worked in service of the nation.

201. Letter from Gouverneur Morris to Rufus King (Mar. 23, 1814), in 5 THE LIFE AND CORRESPONDENCE OF RUFUS KING 389–90 (Charles R. King ed., 1898).