

Constitutional Convention Overview

May 25, 1787, freshly spread dirt covered the cobblestone street in front of the Pennsylvania State House, protecting the men inside from the sound of passing carriages and carts. Guards stood at the entrances to ensure that the curious were kept at a distance. Robert Morris of Pennsylvania, the "financier" of the Revolution, opened the proceedings with a nomination--Gen. George Washington for the presidency of the Constitutional Convention. The vote was unanimous. With characteristic ceremonial modesty, the general expressed his embarrassment at his lack of qualifications to preside over such an august body and apologized for any errors into which he might fall in the course of its deliberations.

To many of those assembled, especially to the small, boyish-looking, 36-year-old delegate from Virginia, James Madison, the general's mere presence boded well for the convention, for the illustrious Washington gave to the gathering an air of importance and legitimacy. But his decision to attend the convention had been an agonizing one. The Father of the Country had almost remained at home.

Suffering from rheumatism, despondent over the loss of a brother, absorbed in the management of Mount Vernon, and doubting that the convention would accomplish very much or that many men of stature would attend, Washington delayed accepting the invitation to attend for several months. Torn between the hazards of lending his reputation to a gathering perhaps doomed to failure and the chance that the public would view his reluctance to attend with a critical eye, the general finally agreed to make the trip. James Madison was pleased.

The Articles of Confederation

The determined Madison had for several years insatiably studied history and political theory searching for a solution to the political and economic dilemmas he saw plaguing America. The Virginian's labors convinced him of the futility and weakness of confederacies of independent states. America's own government under the Articles of Confederation, Madison was convinced, had to be replaced. In force since 1781, established as a "league of friendship" and a constitution for the 13 sovereign and independent states after the Revolution, the articles seemed to Madison woefully inadequate. With the states retaining considerable power, the central government, he believed, had insufficient power to regulate commerce. It could not tax and was generally impotent in setting commercial policy. It could not effectively support a war effort. It had little power to settle quarrels between states. Saddled with this weak government, the states were on the brink of economic disaster. The evidence was overwhelming. Congress was attempting to function with a depleted treasury; paper money was flooding the country, creating extraordinary inflation--a pound of tea in some areas could be purchased for a tidy \$100; and the depressed condition of business was taking its toll on many small farmers. Some of them were being thrown in jail for debt, and numerous farms were being confiscated and sold for taxes.

In 1786 some of the farmers had fought back. Led by Daniel Shays, a former captain in the Continental army, a group of armed men, sporting evergreen twigs in their hats, prevented the circuit court from sitting at Northampton, MA, and threatened to seize muskets stored in the arsenal at Springfield. Although the insurrection was put down by state troops, the incident confirmed the fears of many wealthy men that anarchy was just around the corner. Embellished day after day in the press, the uprising made upper-class Americans shudder as they imagined hordes of vicious outlaws descending upon innocent citizens. From his idyllic Mount Vernon setting, Washington wrote to Madison: "Wisdom and good examples are necessary at this time to rescue the political machine from the impending storm."

Madison thought he had the answer. He wanted a strong central government to provide order and stability. "Let it be tried then," he wrote, "whether any middle ground can be taken which will at once support a due supremacy of the national authority," while maintaining state power only when "subordinately useful." The resolute Virginian looked to the Constitutional Convention to forge a new government in this mold.

The convention had its specific origins in a proposal offered by Madison and John Tyler in the Virginia assembly that the Continental Congress be given power to regulate commerce throughout the Confederation. Through their efforts in the assembly a plan was devised inviting the several states to attend a convention at Annapolis, MD, in September 1786 to discuss commercial problems. Madison and a young lawyer from New York named Alexander Hamilton issued a report on the meeting in Annapolis, calling upon Congress to summon delegates of all of the states to meet for the purpose of revising the Articles of Confederation. Although the report was widely viewed as a usurpation of congressional authority, the Congress did issue a formal call to the states for a convention. To Madison it represented the supreme chance to reverse the country's trend. And as the delegations gathered in Philadelphia, its importance was not lost to others. The squire of Gunston Hall, George Mason, wrote to his son, "The Eyes of the United States are turned upon this Assembly and their Expectations raised to a very anxious Degree. May God Grant that we may be able to gratify them, by establishing a wise and just Government."

The Delegates

Seventy-four delegates were appointed to the convention, of which 55 actually attended sessions. Rhode Island was the only state that refused to send delegates. Dominated by men wedded to paper currency, low taxes, and popular government, Rhode Island's leaders refused to participate in what they saw as a conspiracy to overthrow the established government. Other Americans also had their suspicions. Patrick Henry, of the flowing red Glasgow cloak and the magnetic oratory, refused to attend, declaring he "smelt a rat." He suspected, correctly, that Madison had in mind the creation of a powerful central government and the subversion of the authority of the state legislatures. Henry along with many other political leaders, believed that the state governments offered the chief protection for personal liberties. He was determined not to lend a hand to any proceeding that seemed to pose a threat to that protection.

With Henry absent, with such towering figures as Jefferson and Adams abroad on foreign missions, and with John Jay in New York at the Foreign Office, the convention was without some of the country's major political leaders. It was, nevertheless, an impressive assemblage. In addition to Madison and Washington, there were Benjamin Franklin of Pennsylvania--crippled by gout, the 81-year-old Franklin was a man of many dimensions printer, storekeeper, publisher, scientist, public official, philosopher, diplomat, and ladies' man; James Wilson of Pennsylvania--a distinguished lawyer with a penchant for ill-advised land-jobbing schemes, which would force him late in life to flee from state to state avoiding prosecution for debt, the Scotsman brought a profound mind steeped in constitutional theory and law; Alexander Hamilton of New York--a brilliant, ambitious former aide-de-camp and secretary to Washington during the Revolution who had, after his marriage into the Schuyler family of New York, become a powerful political figure; George Mason of Virginia--the author of the Virginia Bill of Rights whom Jefferson later called "the Cato of his country without the avarice of the Roman"; John Dickinson of Delaware--the quiet, reserved author of the "Farmers' Letters" and chairman of the congressional committee that framed the articles; and Gouverneur Morris of Pennsylvania-- well versed in French literature and language, with a flair and bravado to match his keen intellect, who had helped draft the New York State Constitution and had worked with Robert Morris in the Finance Office.

There were others who played major roles - Oliver Ellsworth of Connecticut; Edmund Randolph of Virginia; William Paterson of New Jersey; John Rutledge of South Carolina; Elbridge Gerry of Massachusetts; Roger Sherman of Connecticut; Luther Martin of Maryland; and the Pinckneys, Charles and Charles Cotesworth, of South Carolina. Franklin was the oldest member and Jonathan Dayton, the 27-year-old delegate from New Jersey was the youngest. The average age was 42. Most of the delegates had studied law, had served in colonial or state legislatures, or had been in the Congress. Well versed in philosophical theories of government advanced by such philosophers as James Harrington, John Locke, and Montesquieu, profiting from experience gained in state politics, the delegates composed an exceptional body, one that left a remarkably learned record of debate. Fortunately we have a relatively complete record of the proceedings, thanks to the indefatigable James Madison. Day after day, the Virginian sat in front of the presiding officer, compiling notes of the debates, not missing a single day or a single major speech. He later remarked that his self-confinement in the hall, which was often oppressively hot in the Philadelphia summer, almost killed him.

The sessions of the convention were held in secret--no reporters or visitors were permitted. Although many of the naturally loquacious members were prodded in the pubs and on the streets, most remained surprisingly discreet. To those suspicious of the convention, the curtain of secrecy only served to confirm their anxieties. Luther Martin of Maryland later charged that the conspiracy in Philadelphia needed a quiet breeding ground. Thomas Jefferson wrote John Adams from Paris, "I am sorry they began their deliberations by so abominable a precedent as that of tying up the tongues of their members."

The Virginia Plan

On Tuesday morning, May 29, Edmund Randolph, the tall, 34-year-old governor of Virginia, opened the debate with a long speech decrying the evils that had befallen the country under the Articles of Confederation and stressing the need for creating a strong national government. Randolph then outlined a broad plan that he and his Virginia compatriots had, through long sessions at the Indian Queen tavern, put together in the days preceding the convention. James Madison had such a plan on his mind for years. The proposed government had three branches--legislative, executive, and judicial--each branch structured to check the other. Highly centralized, the government would have veto power over laws enacted by state legislatures. The plan, Randolph confessed, "meant a strong *consolidated* union in which the idea of states should be nearly annihilated." This was, indeed, the rat so offensive to Patrick Henry.

The introduction of the so-called Virginia Plan at the beginning of the convention was a tactical coup. The Virginians had forced the debate into their own frame of reference and in their own terms.

For 10 days the members of the convention discussed the sweeping and, to many delegates, startling Virginia resolutions. The critical issue, described succinctly by Gouverneur Morris on May 30, was the distinction between a federation and a national government, the "former being a mere compact resting on the good faith of the

parties; the latter having a complete and *compulsive* operation." Morris favored the latter, a "supreme power" capable of exercising necessary authority not merely a shadow government, fragmented and hopelessly ineffective.

The New Jersey Plan

This nationalist position revolted many delegates who cringed at the vision of a central government swallowing state sovereignty. On June 13 delegates from smaller states rallied around proposals offered by New Jersey delegate William Paterson. Railing against efforts to throw the states into "hotchpot," Paterson proposed a "union of the States merely federal." The "New Jersey resolutions" called only for a revision of the articles to enable the Congress more easily to raise revenues and regulate commerce. It also provided that acts of Congress and ratified treaties be "the supreme law of the States."

For 3 days the convention debated Paterson's plan, finally voting for rejection. With the defeat of the New Jersey resolutions, the convention was moving toward creation of a new government, much to the dismay of many small-state delegates. The nationalists, led by Madison, appeared to have the proceedings in their grip. In addition, they were able to persuade the members that any new constitution should be ratified through conventions of the people and not by the Congress and the state legislatures- -another tactical coup. Madison and his allies believed that the constitution they had in mind would likely be scuttled in the legislatures, where many state political leaders stood to lose power. The nationalists wanted to bring the issue before "the people," where ratification was more likely.

Hamilton's Plan

On June 18 Alexander Hamilton presented his own ideal plan of government. Erudite and polished, the speech, nevertheless, failed to win a following. It went too far. Calling the British government "the best in the world," Hamilton proposed a model strikingly similar an executive to serve during good behavior or life with veto power over all laws; a senate with members serving during good behavior; the legislature to have power to pass "all laws whatsoever." Hamilton later wrote to Washington that the people were now willing to accept "something not very remote from that which they have lately quitted." What the people had "lately quitted," of course, was monarchy. Some members of the convention fully expected the country to turn in this direction. Hugh Williamson of North Carolina, a wealthy physician, declared that it was "pretty certain . . . that we should at some time or other have a king." Newspaper accounts appeared in the summer of 1787 alleging that a plot was under way to invite the second son of George III, Frederick, Duke of York, the secular bishop of Osnaburgh in Prussia, to become "king of the United States."

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Strongly militating against any serious attempt to establish monarchy was the enmity so prevalent in the revolutionary period toward royalty and the privileged classes. Some state constitutions had even prohibited titles of nobility. In the same year as the Philadelphia convention, Royall Tyler, a revolutionary war veteran, in his play *The Contract*, gave his own jaundiced view of the upper classes:

Exult each patriot heart! this night is shewn
A piece, which we may fairly call our own;
Where the proud titles of "My Lord!" "Your Grace!"
To humble Mr. and plain Sir give place.

Most delegates were well aware that there were too many Royall Tylers in the country, with too many memories of British rule and too many ties to a recent bloody war, to accept a king. As the debate moved into the specifics of the new government, Alexander Hamilton and others of his persuasion would have to accept something less.

By the end of June, debate between the large and small states over the issue of representation in the first chamber of the legislature was becoming increasingly acrimonious. Delegates from Virginia and other large states demanded that voting in Congress be according to population; representatives of smaller states insisted upon the equality they had enjoyed under the articles. With the oratory degenerating into threats and accusations, Benjamin Franklin appealed for daily prayers. Dressed in his customary gray homespun, the aged philosopher pleaded that "the Father of lights . . . illuminate our understandings." Franklin's appeal for prayers was never fulfilled; the convention, as Hugh Williamson noted, had no funds to pay a preacher.

On June 29 the delegates from the small states lost the first battle. The convention approved a resolution establishing population as the basis for representation in the House of Representatives, thus favoring the larger states. On a subsequent small-state proposal that the states have equal representation in the Senate, the vote

resulted in a tie. With large-state delegates unwilling to compromise on this issue, one member thought that the convention "was on the verge of dissolution, scarce held together by the strength of an hair."

By July 10 George Washington was so frustrated over the deadlock that he bemoaned "having had any agency" in the proceedings and called the opponents of a strong central government "narrow minded politicians . . . under the influence of local views." Luther Martin of Maryland, perhaps one whom Washington saw as "narrow minded," thought otherwise. A tiger in debate, not content merely to parry an opponent's argument but determined to bludgeon it into eternal rest, Martin had become perhaps the small states' most effective, if irascible, orator. The Marylander leaped eagerly into the battle on the representation issue declaring, "The States have a *right* to an equality of representation. This is *secured* to us by our present articles of confederation; *we* are in *possession* of this *privilege*."

The Great Compromise

Also crowding into this complicated and divisive discussion over representation was the North-South division over the method by which slaves were to be counted for purposes of taxation and representation. On July 12 Oliver Ellsworth proposed that representation for the lower house be based on the number of free persons and three-fifths of "all other persons," a euphemism for slaves. In the following week the members finally compromised, agreeing [that direct taxation be according to representation and that the representation of the lower house be based on the white inhabitants and three-fifths of the "other people."](#) With this compromise and with the growing realization that such compromise was necessary to avoid a complete breakdown of the convention, the members then approved Senate equality. Roger Sherman had remarked that it was the wish of the delegates "that some general government should be established." With the crisis over representation now settled, it began to look again as if this wish might be fulfilled.

For the next few days the air in the City of Brotherly Love, although insufferably muggy and swarming with blue-bottle flies, had the clean scent of conciliation. In this period of welcome calm, the members decided to appoint a Committee of Detail to draw up a draft constitution. The convention would now at last have something on paper. As Nathaniel Gorham of Massachusetts, John Rutledge, Edmund Randolph, James Wilson, and Oliver Ellsworth went to work, the other delegates voted themselves a much needed 10-day vacation.

During the adjournment, Gouverneur Morris and George Washington rode out along a creek that ran through land that had been part of the Valley Forge encampment 10 years earlier. While Morris cast for trout, Washington pensively looked over the now lush ground where his freezing troops had suffered, at a time when it had seemed as if the American Revolution had reached its end. The country had come a long way.

The First Draft

On Monday August 6, 1787, the convention accepted the first draft of the Constitution. Here was the article-by-article model from which the final document would result some 5 weeks later. As the members began to consider the various sections, the willingness to compromise of the previous days quickly evaporated. The most serious controversy erupted over the question of regulation of commerce. The southern states, exporters of raw materials, rice, indigo, and tobacco, were fearful that a New England-dominated Congress might, through export taxes, severely damage the South's economic life. C. C. Pinckney declared that if Congress had the power to regulate trade, the southern states would be "nothing more than overseers for the Northern States."

On August 21 the debate over the issue of commerce became very closely linked to another explosive issue--slavery. When Martin of Maryland proposed a tax on slave importation, the convention was thrust into a strident discussion of the institution of slavery and its moral and economic relationship to the new government. Rutledge of South Carolina, asserting that slavery had nothing at all to do with morality, declared, "Interest alone is the governing principle with nations." Sherman of Connecticut was for dropping the tender issue altogether before it jeopardized the convention. Mason of Virginia expressed concern over unlimited importation of slaves but later indicated that he also favored federal protection of slave property already held. This nagging issue of possible federal intervention in slave traffic, which Sherman and others feared could irrevocably split northern and southern delegates, was settled by, in Mason's words, "a bargain." Mason later wrote that delegates from South Carolina and Georgia, who most feared federal meddling in the slave trade, made a deal with delegates from the New England states. In exchange for the New Englanders' support for continuing slave importation for 20 years, the Southerners accepted a clause that required only a simple majority vote on navigation laws, a crippling blow to southern economic interests.

The bargain was also a crippling blow to those working to abolish slavery. Congregationalist minister and abolitionist Samuel Hopkins of Connecticut charged that the convention had sold out: "How does it appear . . . that *these States*, who have been fighting for liberty and consider themselves as the highest and most noble example of zeal for it, cannot agree in any political Constitution, unless it indulge and authorize them to enslave their fellow men . . . Ah! these unclean spirits, like frogs, they, like the Furies of the poets are spreading discord, and exciting men to contention and war." Hopkins considered the Constitution a document fit for the flames.

On August 31 a weary George Mason, who had 3 months earlier written so expectantly to his son about the "great Business now before us," bitterly exclaimed that he "would sooner chop off his right hand than put it to the Constitution as it now stands." Mason despaired that the convention was rushing to saddle the country with an ill-advised, potentially ruinous central authority. He was concerned that a "bill of rights," ensuring individual liberties, had not been made part of the Constitution. Mason called for a new convention to reconsider the whole question of the formation of a new government. Although Mason's motion was overwhelmingly voted down, opponents of the Constitution did not abandon the idea of a new convention. It was futilely suggested again and again for over 2 years.

One of the last major unresolved problems was the method of electing the executive. A number of proposals, including direct election by the people, by state legislatures, by state governors, and by the national legislature, were considered. The result was the electoral college, a master stroke of compromise, quaint and curious but politically expedient. The large states got proportional strength in the number of delegates, the state legislatures got the right of selecting delegates, and the House the right to choose the president in the event no candidate received a majority of electoral votes. Mason later predicted that the House would probably choose the president 19 times out of 20.

In the early days of September, with the exhausted delegates anxious to return home, compromise came easily. On September 8 the convention was ready to turn the Constitution over to a Committee of Style and Arrangement. Gouverneur Morris was the chief architect. Years later he wrote to Timothy Pickering: "That Instrument was written by the Fingers which wrote this letter." The Constitution was presented to the convention on September 12, and the delegates methodically began to consider each section. Although close votes followed on several articles, it was clear that the grueling work of the convention in the historic summer of 1787 was reaching its end.

Before the final vote on the Constitution on September 15, Edmund Randolph proposed that amendments be made by the state conventions and then turned over to another general convention for consideration. He was joined by George Mason and Elbridge Gerry. The three lonely allies were soundly rebuffed. Late in the afternoon the roll of the states was called on the Constitution, and from every delegation the word was "Aye."

On September 17 the members met for the last time, and the venerable Franklin had written a speech that was delivered by his colleague James Wilson. Appealing for unity behind the Constitution, Franklin declared, "I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats." With Mason, Gerry, and Randolph withstanding appeals to attach their signatures, the other delegates in the hall formally signed the Constitution, and the convention adjourned at 4 o'clock in the afternoon.

Weary from weeks of intense pressure but generally satisfied with their work, the delegates shared a farewell dinner at City Tavern. Two blocks away on Market Street, printers John Dunlap and David Claypoole worked into the night on the final imprint of the six-page Constitution, copies of which would leave Philadelphia on the morning stage. The debate over the nation's form of government was now set for the larger arena.

<http://www.jmu.edu/madison/gpos225-madison2/adopt.htm>