

# The Constitutional Convention

The Constitutional Convention of 1787 was, as Connecticut governor Samuel Huntington told the delegates to his state's ratifying assembly, a new event in the history of mankind. Heretofore, most governments have been formed by tyrants and imposed on mankind by force. Never before did a people, in time of peace and tranquility, meet together by their representatives and, with calm deliberation, frame for themselves a system of government.<sup>1</sup>

In the midst of this “new event,” nothing was newer than the American presidency, an invention unlike any other national executive in history. In designing the office, the fifty-five convention delegates drew on their personal and professional experience, study of history and philosophy, understanding of political reality, and individual and collective wits.

The constitutional presidency that the convention created may be regarded as, in a sense, the office's genetic code. Because of the Constitution, the presidency is a one-person office, and the president, who is elected for a fixed four-year term by the entire country, shares virtually all the powers of the national government with an equally distinct and independent Congress.

The constitutional presidency contains, as does an individual's configuration of DNA molecules, some ingredients whose meaning has been clear and unchanging from the moment of conception, such as eye color of and the thirty-five-year minimum age requirement for the president. The Constitution also includes sentences and phrases that are the legal equivalent of genetically rooted baldness: their meaning, although determined at the very beginning, could only be discovered later. For example, “He shall take Care that the Laws be faithfully executed” first appeared as a passing constitutional reference—the fifth of six clauses in the single sentence that constitutes Article II, section 3. But in later

years this provision afforded the president a strong legal claim to powers as varied as acting against secession by the southern states and directing the activities of the extensive federal bureaucracy. Finally, there are those attributes whose meaning could be found only in the vagaries of individual choice and environmental circumstance. Just as the relation of physical strength to well-being varies from person to person and situation to situation, for example, so has the president's constitutional power to "recommend to [Congress's] consideration such Measures as he shall judge necessary and expedient" been of varying importance to different presidents at different times.<sup>2</sup>

## Antecedents

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As is true of any invention, the presidency had antecedents, all of which influenced the form the office took in the Constitution. The delegates to the Constitutional Convention had long experience with British executives—namely, the king in London and his appointed governors in the American colonies. And ever since independence was declared in 1776, delegates had the benefit of a decade's worth of experience with governments of their own design, both the state constitutions and the Articles of Confederation, which created and defined a kind of national government. These experiences, more than anything else, set the stage for the calling of the convention and the creation of the presidency in the late spring and summer of 1787.

### British and Colonial Executives

During their long years as colonists of Great Britain, Americans became well acquainted with the British form of government, which is best described as a constitutional monarchy. Great Britain was headed by a king (or, less frequently, a queen) who assumed the throne through inheritance and reigned for life. The monarch's power was limited by Parliament, the British legislature. Although the king could order the nation into war, his order prevailed only if Parliament was willing to appropriate the funds needed to finance the effort. Conversely, Parliament could pass laws, but the king could veto them. Parliament, a bicameral legislature, consisted of the House of Commons, an elected body, and the House of Lords, which was made up of hereditary peers with lifetime tenure.

The British form of government was more than just the most familiar one to the American colonists. Many of them also regarded it as the

best that human beings ever had devised. Basic liberties seemed better safeguarded by Great Britain's constitutional monarchy than by any other government in history. British wealth and power were first among the nations of the world. Indeed, Great Britain seemed to have solved what traditionally had been regarded as an insoluble problem of classical political philosophy—that is, the inherent limitations of each of the three basic forms of government identified by Aristotle: monarchy (rule by one person), aristocracy (rule by an elite group), and democracy (rule by the people).<sup>3</sup> As the problem usually was formulated, because those who were entrusted to govern on behalf of the whole society ended up using power for their own selfish ends, monarchy soon degenerated into despotism, aristocracy into oligarchy, and democracy into anarchy, then tyranny. The British remedy, developed over several centuries, was to ameliorate these tendencies by blending elements of all three forms of government into one—monarchy in the king, aristocracy in the House of Lords, and democracy in the House of Commons—and then allowing each element to check and balance the others.

The governments of most of Great Britain's American colonies resembled the British government—that is, they had a governor chosen by the king and a legislature composed of an upper house, which in most colonies was appointed by the governor, and a lower house, which was elected by the people—that is, the “people” as defined in Colonial America: the roughly two-thirds of white males who owned at least a small farm or shop.<sup>4</sup> Royal governors were armed with substantial powers, including the right to cast an absolute veto over colonial legislation, the right to create courts and appoint judges, and even the right to prorogue, or dissolve, the legislature. But politically astute governors exercised these powers cautiously because only the legislature was empowered to appropriate the funds required to finance a colony's government and pay the governor's salary.

For all their virtues, the British and colonial governments were prone to abuse by executives who were hungry for power. King George III, who reigned during the American Revolution, used government contracts, jobs, and other forms of patronage as bribes to ensure the support of members of Parliament. Some colonial governors employed similar practices to influence their legislatures.<sup>5</sup> The king and his governors also stubbornly resisted the colonists' pleas to respect their rights as Englishmen, dismissing Parliament member Edmund Burke's argument that force would be “a feeble instrument, for preserving a people so numerous, so active, so growing, so spirited” as the Americans.<sup>6</sup> In 1776 the colonists' anger about these abuses of power was expressed fervently in the Declaration of

Independence. The Declaration is best known for its ringing preamble (“all men are created equal,” “Life, Liberty and the pursuit of Happiness”), but it consists mainly of a long, detailed indictment of executive “injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States.”

The lesson many Americans learned from their experience with the British and colonial governments was that liberty is threatened by executive power and safeguarded by legislative power. As James Wilson, a Scottish-born Pennsylvanian who signed the Declaration, fought in the Revolutionary War, and later served as a delegate to the Constitutional Convention and a justice of the Supreme Court, observed:

Before [the Revolution], the executive and judicial powers of the government were placed neither in the people, nor in those who professed to receive them under the authority of the people. They were derived from a different and a foreign source: they were regulated by foreign maxims; they were directed to a foreign purpose. Need we be surprised, then, that they were objects of aversion and distrust? . . . On the other hand, our assemblies were chosen by ourselves: they were guardians of our rights, the objects of our confidence, and the anchor of our political hopes. Every power which could be placed in them, was thought to be safely placed: every extension of that power was considered as an extension of our own security.<sup>7</sup>

## State Constitutions

During the course of the Revolutionary War, seventeen constitutions were written by the thirteen newly independent states. (Some states began with one constitution, then replaced it with another.) Revulsion against their experience with the British executive—the king in London and his royal governors in the colonial capitals—led almost all the authors of state constitutions to provide for weak governors and strong legislatures. As Wilson wryly observed, under independence,

the executive and the judicial as well as the legislative authority was now the child of the people; but to the two former, the people behaved like stepmothers. The legislature was still discriminated by excessive partiality; and into its lap, every good and precious gift was profusely thrown.<sup>8</sup>

In the decade after independence was declared, state governors typically were elected by the legislature for a brief term (one year, in most cases) and were ineligible for reelection. They were forced to share their powers with a council whose members were appointed by the legislature or elected by the people. This arrangement made the governors, in the assessment of historian Gordon S. Wood, “little more than chairmen of their executive boards.”<sup>9</sup> Indeed, at the Constitutional Convention, Virginia governor Edmund Randolph opposed the proposal to make the presidency a unitary office by saying that as governor, he was merely “a member of the executive.”

The powers the governors did have were meager. Most state constitutions made vague grants of authority to their executives and, by specifically denying them the right to veto legislation and make appointments, rendered them incapable of defending even that modest influence from legislative encroachment. In his *Notes on the State of Virginia*, Thomas Jefferson described the result in his home state:

All the powers of government, legislative, executive and judiciary, result to the legislative body. The [state constitutional] convention, which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. But no barrier was provided between these several powers. The judiciary and executive members were left dependent on the legislative for their subsistence in office and some of them for their continuance in it.<sup>10</sup>

The constitution of the historically pro-British state of New York offered a striking exception to the general practice of weak governors and strong legislatures. New York's governor was elected by the people, not the legislature, for a term of three years, not one, and, rather than being confined to a single term, could be reelected as often as the voters wanted. George Clinton, the first governor to be chosen under the New York constitution, was elected seven times for a total of twenty-one years. The executive power in New York's government was unitary, exercised by the governor alone and not shared with a council. The governor was empowered to veto legislation, subject to override by the legislature, and to make appointments, subject to legislative confirmation. Finally, these and other powers of New York's governor (which were extensive) were defined by the state's constitution in detail.

## The Articles of Confederation

The decision by the Continental Congress to declare independence from Great Britain in the summer of 1776 was accompanied by another important decision. Congress adopted the Virginian Richard Henry Lee's motion that "a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation." Such a step was militarily necessary. Although the Declaration of Independence made each of the states, in effect, an independent nation, they could not fight a common war against the British without some sort of common government.

The states, jealous of their independence and reluctant to substitute even a homegrown central government for the British government they had just rejected, surrendered power grudgingly. They stipulated to their delegates in Congress that the confederation was to be no stronger than was absolutely necessary to wage the war for independence. Reacting against their experience with British rule, the states also made clear that the confederation's executive component must be minimal. Nothing remotely resembling a king would be tolerated.

On June 11, 1776, the Continental Congress formed the Committee of Thirteen (one delegate from each state) to draft a plan of confederation. The committee acted expeditiously, submitting its recommendation on July 12. More than a year later, on November 15, 1777, Congress adopted a revised version of the plan, calling it the Articles of Confederation and Perpetual Union. Ratification by the states came slowly, with the last state not voting its approval until March 1, 1781. But because the articles so much resembled the ad hoc arrangement the states were already using under the Continental Congress, the delay in ratification made little difference.

The Articles of Confederation more than embodied the states' dread of central government and executive power. Indeed, they created less a government than an alliance or, as the articles themselves put it, a "league of friendship." Each state, regardless of wealth or population, was represented equally in Congress: one state, one vote. The president, chosen by Congress, was merely its presiding officer, not an executive at all. Eventually, after the burden of making all financial, diplomatic, and military decisions and executing all legislative enactments became more than the legislators could handle, Congress created small executive departments headed by appointed officials. The activities of these departments, however, were closely monitored by Congress. In truth, Congress enacted few laws of consequence because passage required the support of nine of the thirteen states. Amendments to the articles had to be approved by all the states.

In addition to setting forth a weak institutional structure, the Articles of Confederation undermined the power of the national government in other ways. Technically, Congress was empowered to declare war, make treaties and enter alliances, raise an army and navy, regulate coinage, borrow money, supervise American Indian affairs, establish a post office, and adjudicate disputes between states. Funds and troops were supposed to be supplied by the states according to their wealth and population. But Congress had no power to tax the states or to enforce its decisions, generating “a massive collective-action problem.”<sup>11</sup> When, as often happened, one or two states balked at meeting an obligation, other states followed suit. “Each state sent what was convenient or appropriate,” historians Christopher Collier and James Lincoln Collier have observed, “which usually depended on how close to home the fighting was.”<sup>12</sup> After the Revolutionary War was won, states felt even less reason to honor Congress’s requests.

## National Problems

For all its weakness, the Articles of Confederation did not prevent the United States from winning independence. The war effectively ended on October 17, 1781, when Gen. George Washington’s American army and a French fleet, anchored off Yorktown, Virginia, forced the British forces led by Charles Lord Cornwallis to surrender.

The problems of a weak, purely legislative national government became more apparent in the half-decade after victory. No longer bound together by the threat of a common foe, the states turned their backs almost completely on Congress and each other.

Overlapping claims to western lands brought some states into conflict. Connecticut settlers and Pennsylvania troops clashed in one disputed area. The western territories, which extended as far as the Mississippi River, were the nation’s most valuable resource, but until the states’ rival claims were settled, it was difficult to develop the land and profit from it. On the Atlantic coast, some states with port cities placed taxes on goods imported from overseas by merchants in neighboring states. Caught between New York and Pennsylvania, Rep. James Madison of Virginia wrote, New Jersey was like “a cask tapped at both ends.” North Carolina, also lacking a deep-water port and trapped between Virginia and South Carolina, was “a patient bleeding at both arms.”<sup>13</sup> The new nation was burdened by a crippling debt. By 1789 foreign creditors held more than \$10 million in promissory notes and were owed \$1.8 million in unpaid interest. Unless paid, they were unwilling to engage in further trade with the United States. Yet Congress was unable to persuade the states to contribute to the Treasury.

By 1786 states were withholding 98 percent of congressionally requisitioned funds.<sup>14</sup> The total income of the national government in 1786 was less than one-third of the interest due that year on the national debt. Only a series of loans from Dutch bankers, negotiated by John Adams, kept the new nation solvent.

The United States also faced numerous problems on its borders. The nation's northern, southern, and western boundaries were under siege, with only an ill-equipped, poorly financed army of seven hundred to defend them. British soldiers continued to occupy two Great Lakes forts that their government had promised to vacate under the Treaty of Paris, which formally ended the Revolutionary War in 1783. Similarly, Spain closed the Mississippi River to American ships and made claim to land east of the river that according to the treaty belonged to the United States. Both Spain and Great Britain encouraged American Indian tribes to raid frontier settlements. (Spain, in particular, roused the Creeks in Florida to harass settlers in Georgia.) Returning from a trip to the interior, Washington lamented, "The Western settlers . . . turn on a pivot; the touch of a feather would turn them any way"—perhaps toward an alliance with Spain or Great Britain that would secure their safety.<sup>15</sup> Abroad, American ships were preyed on by Mediterranean pirates based in the Barbary states of Algiers, Morocco, Tripoli, and Tunis. Great Britain denied them access to its colonies in Canada and the West Indies, two lucrative markets for trade.<sup>16</sup>

In the midst of foreign and domestic difficulties, another problem developed that mixed elements of both. A currency crisis engulfed the United States, largely because Americans had gone on a buying spree, importing luxury items such as clocks, glassware, and furniture from Great Britain that they had been unable to get during the war. As specie—gold and silver, the only American currency acceptable to foreign creditors—flowed out of the country to pay for these goods, it became scarce at home. Meanwhile, many debtors, especially farmers who had left the land to fight for independence and still had not been paid by the financially destitute national government, faced bankruptcy or foreclosure. In response, these debtors pressured their state legislatures to print vast sums of paper money that they could use to pay their debts. Creditors, unwilling to be reimbursed in depreciated currency, fought back politically but with limited success. The state legislatures were highly democratic by the standards of the late seventeenth century and therefore often were more responsive to the greater number of debtors among their constituents than to the smaller number of creditors.

## Lessons of Experience

Fear of executive power remained strong among Americans during the decade after independence was declared. But the problems that beset the United States under the strong legislative governments of the states and the weak legislative government of the Articles of Confederation taught certain lessons, particularly to people of property.<sup>17</sup> As political scientist Charles C. Thach Jr. wrote, “Experience with the state governments during the period following the cessation of hostilities served . . . to confirm the tendencies toward increasing confidence in the executive and increasing distrust of the legislature.” Experience also taught several things about the proper design of an effective executive:

It taught that executive energy and responsibility are inversely proportional to executive size; that, consequently, the one-man executive is best. It taught the value of integration; the necessity of executive appointments, civil and military; the futility of legislative military control. It demonstrated the necessity of the veto as a protective measure . . . [for] preventing unwise legislation. . . . It demonstrated the value of a fixed executive salary which the legislature could not reduce. It discredited choice [of the executive] by the legislature, though without teaching clearly the lesson of popular choice. . . . And, above all, it assured the acceptance of, if it did not create, a new concept of national government—the fundamental principles of which were the ruling constitution, the limited legislature, and the three equal and coordinate departments.<sup>18</sup>

## The Constitutional Convention

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Of all the problems that plagued the new nation after independence, none seemed more amenable to solution than those involving commerce among the states. Few benefited, and many suffered from the protectionist walls that individual states built around their economies. The Virginia Assembly, at the urging of James Madison, one of its youngest members, called for a trade conference to be held at Annapolis, Maryland, in September 1786 and urged all the other states to send delegations.

The Annapolis Convention was a failure. Only Virginia, New Jersey, and Delaware sent full delegations, and seven states, suspicious of Virginia’s intentions, boycotted the meeting altogether. The convention proposed no

remedies to the nation's trade difficulties. But the delegates who did come to Annapolis, notably Madison and Alexander Hamilton of New York, rescued the enterprise by issuing a bold call to Congress to convene an even more wide-ranging meeting. They urged that the states be enjoined to choose delegates to

meet at Philadelphia on the second Monday in May next [1787], to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union.

Initially, Congress was cool to the summons of the Annapolis Convention. But within weeks an event occurred that lent urgency to the nationalist cause. A mob of farmers in western Massachusetts, saddled with taxes and debts and unable to persuade the state legislature to ease credit, closed down courts and stopped sheriffs' auctions to prevent foreclosure orders from being issued and executed against their lands. Although similar outbreaks had occurred in about half the other states, they had been suppressed easily.<sup>19</sup> This one, dubbed Shays's Rebellion after one of its leaders, Revolutionary War veteran Daniel Shays, threatened for a time to rage out of control.

The reaction around the country among people of property was shock and horror, not just at the class warfare that seemed to be erupting and the inability of the national government to help states maintain the peace but also at several states' subsequent decision to avert future rebellions by allowing debtors to pay off their creditors with newly printed, nearly worthless paper money. Thomas Jefferson's private comment to Madison that "a little rebellion now and then is a good thing" was very much the exception in this regard. "What, gracious God, is man!" declared the usually stoic George Washington after hearing of the Massachusetts riots. "That there should be such inconsistency and perfidiousness in his conduct. We are fast verging to anarchy and confusion."<sup>20</sup>

On February 21, 1787, Congress decided to act on the Annapolis Convention's request by passing a resolution:

RESOLVED, That in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held in Philadelphia for the sole and express purpose of revising the

Articles of Confederation and reporting to Congress and the state legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of government and the preservation of the Union.

The states were no more compelled to obey this congressional summons than to follow any other. But when a sufficient number—whether frightened by the prospect of further uprisings, concerned about the nation’s growing domestic and international weakness, or inspired by the example of the nationally revered Washington, who decided to attend as a delegate from his native Virginia, selected delegations, all the other states but Rhode Island fell into line for fear of having their interests ignored.

## The Delegates

The Constitutional Convention has been variously described as an “assembly of demigods” (Jefferson), a “miracle at Philadelphia” (author Catherine Drinker Bowen), a “nationalist reform caucus” (political scientist John P. Roche), and a “coup” (legal scholar Michael Klarman), to cite but four descriptions.<sup>21</sup> The convention may have been all of these things. But, mundanely, it also was a gathering of fifty-five individuals.

Who were the delegates? Self-selection had much to do with determining who was chosen by the states to represent them at the convention and who actually went. Political leaders who were committed to the idea that the national government must be dramatically improved embraced the opportunity to attend. Most of those who were basically satisfied with the status quo—including prominent Americans such as Patrick Henry and Richard Henry Lee of Virginia, Samuel Adams of Massachusetts, and George Clinton of New York—chose to stay away. Henry, a strong defender of the Confederation, reputedly said that he “smelt a Rat.”<sup>22</sup> If they had attended and fought stubbornly for their position, observed political scientist Clinton Rossiter, the convention “would have been much more perfectly representative of the active citizenry of 1787. It would also, one is bound to point out, have been crippled as a nation-building instrument.”<sup>23</sup>

The fifty-five delegates were generally united in their belief that a stronger national government was vital to the health of the new American nation. In part, this agreement stemmed from their similar experiences in the national arena. Forty-two were current or former members of Congress. Thirty had risked life and livelihood by fighting in the Revolutionary War.

Eight had signed the Declaration of Independence. All were republican, at least to the extent that they opposed a hereditary monarchy and supported some form of representative government.

Collectively, the convention was young. Many of the delegates were, in the words of historians Stanley Elkins and Eric McKittrick, “the young men of the Revolution,” who had come of age during the revolutionary decade of the 1770s, when the idea of building a nation was more inspiring than traditional state loyalties.<sup>24</sup> Madison, at thirty-six, was older than eleven other delegates, including Gouverneur Morris of Pennsylvania (thirty-five), Edmund Randolph of Virginia (thirty-three), and Charles Pinckney of South Carolina, who was twenty-nine but said he was twenty-four, so he could claim to be the youngest delegate. (That distinction belonged to Jonathan Dayton of New Jersey, who was twenty-six.) The average age of the delegates—even counting Benjamin Franklin of Pennsylvania, who, at age eighty-one, was sixteen years older than the next-oldest delegate—was forty-three.

Other shared characteristics contributed to the delegates’ common outlook on many fundamental issues. All were white; all were men. Almost all lived in the long-settled coastal regions of their states; the back-country frontier was hardly represented at the convention. Almost all were prosperous—about half were lawyers, and another quarter owned plantations or large farms. Only two delegates were small farmers, a group that accounted for 85 percent of the nation’s white population. The wealth of most of the delegates derived from personal property—government securities and investments in manufacturing, shipping, and land speculation. The prosperity of other delegates lay in real property, notably large farms and, in the South and elsewhere, fellow human beings. Twenty-five delegates—nearly half—were slave owners.<sup>25</sup>

## Rules and Procedures

Congress had summoned the convention to assemble on Monday, May 14, 1787. But not until Friday, May 25, were the seven state delegations needed for a quorum present in Philadelphia. Although most of the other delegations arrived within a few days, some came much later. Others left early. Never were all fifty-five delegates present at the same time.

The first order of business on May 25 was to elect a president, a word that in the usage of the day, suggested a “presiding officer” more than a “leader” or “chief executive.” Not surprisingly, George Washington was the delegates’ unanimous choice. Washington spoke on only one issue during

the convention. Fearing that the new Constitution would be attacked as antirepublican, he rose on the last day to support a proposal requiring that each member of the House of Representatives represent at least thirty thousand people rather than the previously agreed-to forty thousand.<sup>26</sup> The delegates approved unanimously. This intervention was not the only evidence that Washington played more than a ceremonial role. According to the *Colliers*, “during that long, hot summer, this gregarious man was constantly having dinner, tea, supper with people, and one must assume of course that he was actively promoting his position”—namely, a strong national government and a strong executive within that government.<sup>27</sup> Even Washington’s last-minute speech on representation was meaningful in symbolic terms. As Gordon Wood points out, “It was his way of saying to his colleagues that he favored the Constitution”—and that he and his fellow authors believed it must embody republican principles.<sup>28</sup>

After Washington was elected president of the convention, a secretary was chosen—Maj. William Jackson of Pennsylvania. Jackson kept the convention’s official journal, which was little more than a record of motions and votes. Fortunately, James Madison decided to keep a more extensive record of the delegates’ debates and deliberations. Madison had been frustrated in his studies of other governments by the near impossibility of determining what their founders intended when creating them. Although he was acting on his own initiative, the other delegates knew what he was doing because he sat up front next to Jackson, instead of with the Virginia delegation, so that he would not miss a word. In fairness to his colleagues, Madison decided to keep his notes secret until the last delegate died. That delegate turned out to be Madison, who died in 1836, at the age of eighty-five. Along with the rest of Madison’s papers, his notes on the Constitutional Convention were purchased by Congress in 1837 and published in 1840.

The only other business of the convention’s first day was to accept the credentials of the state delegations. In doing so, the delegates implicitly agreed to follow the then-customary procedure of having each state cast one vote. James Wilson was displeased by this arrangement (he felt the more populous states should have a greater voice), but he was persuaded by Madison and others that to alienate the small-state delegates at such an early stage could abort the entire proceeding.

On Monday, May 28, the delegates adopted additional rules and procedures. None was more important to the success of the convention than the rule of secrecy. The rule was simple: no delegate was allowed to communicate anything to anyone except a fellow delegate about the convention’s discussions and deliberations.

Thomas Jefferson, then the U.S. ambassador to France, wrote John Adams, the ambassador to Great Britain, that he was appalled by “so abominable a precedent. . . . Nothing can justify this but the innocence of their intentions and ignorance of the value of public discussions.” But in a letter to Jefferson, Madison explained the delegates’ decision: “It was thought expedient in order to secure unbiased discussion within doors, and to prevent misconceptions & misconstructions without, to establish some rules of caution which will for no short time restrain even a confidential communication of our proceedings.”<sup>29</sup> In other words, secrecy permitted the delegates to speak candidly about issues without fearing immediate public retribution as well as to change their minds without appearing weak or vacillating. It also kept opponents of a stronger national government from sensationalizing particular proposals or decisions as a means of discrediting the whole undertaking. Years later, Madison told historian Jared Sparks that “no Constitution would ever have been adopted by the Convention if the debates had been made public.”<sup>30</sup>

Another important rule the convention adopted was to permit any of its decisions to be reconsidered at the request of even a single delegate. Because issues could always be raised and decided again, those who were on the losing side of a crucial vote were encouraged to stay and try to persuade the other delegates to change their minds rather than to walk out and return home in protest.

## An Overview of the Convention

The Constitutional Convention was not a scripted or even an especially orderly proceeding. The delegates’ decision to allow issues to be reconsidered, reinforced by their twin desires to build consensus among themselves and to create a government whose parts would mesh with one another, meant that the convention “could not, and did not, proceed in a straight line, neatly disposing of one issue after the next until all were dealt with. It moved instead in swirls and loops, again and again backtracking to pick up issues previously debated.”<sup>31</sup> Historian Jack N. Rakove has compared the constitution-writing process to “the solution of a complex equation with a large number of dependent variables: change the value of one, and the values shift throughout.”<sup>32</sup>

Students of mathematics know that not all such equations are solved. Once the convention was called, the risk of failure was great. As Franklin wrote to Jefferson on April 19, 1787, “If it does not do good it will do harm, as it will show that we have not the wisdom among us to govern

ourselves.”<sup>33</sup> Nor did the delegates’ work proceed smoothly. Near the mid-way point, Washington wrote, “I almost despair of seeing a favourable issue to the proceedings of the Convention, and do therefore repent having had any agency in the business.”<sup>34</sup> Nevertheless, from May to September the delegates used drafts, debates, compromises, and committees to organize their deliberations and help them work through the many issues that faced them. These plans and committees structured the work of the convention into seven main stages:

- Introduction of the Virginia Plan (May 29)
- Decision by the convention to recast itself as the Committee of the Whole, originally for the purpose of considering the Virginia Plan in detail but later to evaluate the New Jersey Plan and Alexander Hamilton’s plan as well (May 30–June 19)
- Clause-by-clause debate by the delegates of their decisions when meeting as the Committee of the Whole (June 20–July 26)
- Work of the five-member Committee of Detail, which was appointed by the convention to produce a draft of the new constitution that reflected the delegates’ previous decisions on multiple issues (July 24–August 6)
- Consideration by the delegates of each provision in the report of the Committee of Detail (August 7–31)
- Recommendations of the eleven-member Committee on Postponed Matters, which was created to propose acceptable solutions to problems that continued to stalemate the delegates (August 31–September 8)
- Final adjustments, including the work of the Committee of Style, which was charged to write a polished draft of the Constitution, and last-minute tinkering by the delegates, culminating in their signing of the proposed plan of government (September 9–17)

*Virginia Plan (May 29).* The Virginia Plan, introduced on May 29 by Governor Randolph but written mainly by Madison, offered a radical departure from the Articles of Confederation. The plan proposed to create a three-branch national government and to elevate it to clear supremacy over the states, partly by grounding its authority squarely in the sovereignty of the people.<sup>35</sup>

According to the Virginia Plan, the heart of the national government would be a bicameral legislature. The lower house would be apportioned according to some combination of wealth and population and elected by the people. Members of the upper house would be elected for a longer term by the lower house from a list of candidates nominated by the states. The legislature's powers would include broad authority not just to pass laws but also to conduct foreign policy and to appoint most government officials, including judges.

A national judiciary, organized into "one or more supreme tribunals" and "inferior tribunals" and appointed by the legislature to serve "during good behavior"—that is, with life tenure—would form the second branch. One of its broad-ranging powers was "impeachments of any National officers."

The government also would have an executive branch, although it was vaguely defined in the Virginia Plan. The "national executive" (the plan left unresolved the question of whether this would be a person or group of people) was "to be chosen by the National Legislature for a term of \_\_\_\_\_ years." Its powers were obscure: "besides a general authority to execute the National laws, it ought to enjoy the Executive rights vested in Congress by the [Articles of] Confederation." No one knew exactly what the phrase "Executive rights" meant.

Another element of the proposed new government was a "Council of revision" consisting of "the executive and a convenient number of the National Judiciary." The council would be empowered to veto laws passed by the national legislature, subject to override if a vetoed law was passed again by an unspecified legislative majority.<sup>36</sup>

Finally, the new government would have the power to veto state laws that were in conflict with the Constitution or with national legislation. For Madison, argues Gordon Wood, the worst thing about the Articles of Confederation was not the weakness of the national government but "the vices within the several states" that had produced an abundance of unjust and inconsistent laws. When the convention later rejected this provision of the Virginia Plan, Madison was for a time "convinced that the Constitution was doomed to fail."<sup>37</sup>

The delegates' response to the Virginia Plan was remarkably placid, especially considering that it proposed to replace the weak national government of the Articles rather than amend the document. "So sharp a break was Virginia asking the other states to make with the American past that one wonders why at least one stunned delegate . . . did not rise up and cry havoc at the top of his lungs," Rossiter wrote. "Instead, the delegates ended

this [May 29] session by resolving to go into a ‘committee of the whole house’” on the next day to “consider the state of the American union.”<sup>38</sup>

*Committee of The Whole (May 30–June 19).* In becoming the Committee of the Whole, the convention was, in a sense, simply giving itself a different name. The same group of delegates made up the committee as made up the convention. But as the Committee of the Whole, they could operate more informally. To symbolize this change, Washington temporarily stepped down as president, and Nathaniel Gorham of Massachusetts was chosen to preside. In addition, any decision made by the delegates while meeting as the committee would be in the form of a recommendation that the convention would debate and vote on at least once more.

From May 30 to June 13 the Committee of the Whole spent most of its time going over the Virginia Plan, clause by clause. Much of the plan was accepted, but parts of it were altered, and some ambiguous provisions were clarified.<sup>39</sup> The executive was defined as a unitary, or one-person, office. This person would be elected by the legislature for a single, seven-year term and would be subject to impeachment and removal on grounds of “malpractice or neglect of duty.” The executive alone, not a council of revision, was empowered to veto laws passed by the legislature, subject to override by a two-thirds vote of both houses. The requirement for a supermajority here and elsewhere in the new plan of government was an American innovation unknown to the British Parliament but used widely in the states.<sup>40</sup>

In deference to the states, the Committee of the Whole decided that members of the upper house of the national legislature (who had to be at least thirty years old) would be chosen by the state legislatures. They would serve seven-year terms and be eligible for reelection. Members of the lower house, also eligible for reelection, would serve three-year terms. All members of the national legislature would be barred from holding any other government office, mainly to prevent the emergence of conflicts of interest. As for the courts, there would be one “supreme tribunal,” and the judges who served on it or on such “inferior tribunals” as the national legislature might decide to create would be appointed by its upper house for a lifetime term.

*The New Jersey Plan.* One plank of the Virginia Plan was especially controversial: the provision that both houses of the national legislature be apportioned according to population. Delegates from the states that thought of themselves as large (Virginia, Massachusetts, Pennsylvania, and the three states whose populations were growing most rapidly—Georgia,

North Carolina, and South Carolina) favored the idea. They fought sharply with the delegates from the other states who feared that their constituents would be hopelessly outnumbered in the legislature and wanted to preserve the existing arrangement of equal representation in Congress for each state. A compromise plan, proposed by Roger Sherman of Connecticut on June 11, would have apportioned the lower house of the legislature according to population and the upper house on the basis of one state, one vote. But few delegates were ready yet for compromise. Instead, small-state delegates responded to the Virginia Plan with a sweeping counterproposal. It was introduced on June 15 by William Paterson of New Jersey.

The New Jersey Plan came in the form of amendments to the Articles of Confederation rather than as a new constitution. It proposed to add two branches to the one-branch national government of the Articles: a plural, or committee-style, executive, to be elected by Congress for a single term and “removeable by Cong[ress] on application by a majority of the Executives [governors] of the several States,” and a supreme court consisting of judges appointed by the executive for lifetime terms. The plan also declared national laws and treaties to be “the supreme law of the respective States” and authorized the executive to use force if necessary to implement them. In addition, Congress would be empowered to regulate interstate and international commerce and impose taxes. But the main purpose of the New Jersey Plan was unstated: to preserve the structure of Congress under the Articles as a single-house legislature in which each state, regardless of size, cast one vote.<sup>41</sup>

*Hamilton's Plan.* On June 18 Alexander Hamilton delivered a four- to six-hour speech to the delegates in which he urged them to consider his plan for an avowedly British-style government.<sup>42</sup> “He had no scruple in declaring,” according to the notes kept by Madison, “supported as he was by the opinions of so many of the wise & good, that the British Government was the best in the world: and that he doubted much whether any thing short of it would do in America.”<sup>43</sup>

Specifically, Hamilton proposed that as in Great Britain, the national government would be supreme in every way to the states. State governors would be appointed by the national legislature and granted the right to veto laws passed by their own assemblies. Members of the upper house of the national legislature, like members of the British House of Lords, would serve for life. As for the executive, “the English model is the only good one on this subject,” Hamilton asserted.<sup>44</sup> Although he did not suggest that the United States create a hereditary monarchy, Hamilton did propose that the executive be chosen by electors and granted lifetime

tenure and vast powers, including “a negative on all laws about to be passed, . . . the direction of war when authorized or begun, the sole appointment of the heads of the departments, the power of pardoning all offences except Treason,” and, along with the Senate, the treaty-making power. In truth, argues biographer Ron Chernow, Hamilton’s proposal was for “a new hybrid form of government that would have the continuity of a monarchy combined with the civil liberties of a republic.”<sup>45</sup>

Hamilton’s speech was dismissed by most of the delegates as being far beyond the bounds of what the people or the states would accept. Some scholars have suggested that his real purpose was to offer a plan so extreme that the Virginia Plan would seem moderate by comparison.<sup>46</sup> Yet several of Hamilton’s specific proposals were adopted later in the convention, notably those concerning the president’s power to grant pardons and to negotiate treaties. As for the New Jersey Plan, it was defeated on June 19 by a vote of seven states to three. Later that day, the Virginia Plan, as already modified, was approved by the Committee of the Whole and referred to the convention for further consideration. But the conflict between the delegates from the large states and the small states over apportionment in the national legislature was far from resolved.

*Convention Debate (June 20–July 26).* On June 20, with Washington again in the chair as president of the convention, the delegates began their clause-by-clause evaluation of the plan of government they had tentatively laid out while meeting as the Committee of the Whole. Among the changes they voted in the plan were these:

- Members of the lower house of the legislature would be elected for a term of two years, not three, and would have to be at least twenty-five years old.
- Members of the upper house would serve a six-year rather than a seven-year term. Terms would be staggered so that one-third were elected every two years.
- The national legislature would not have the power to veto state laws, much to Madison’s dismay. But, borrowing a plank from the New Jersey Plan, national laws and treaties would be “the supreme law of the respective States.”
- A property-owning requirement for members of the executive, legislative, and judicial branches would be established. (This idea later was abandoned.)

- Delegates expressed enough displeasure with the provision for legislative election of the president to a single, seven-year term to guarantee that it would not remain in the final document, but they failed to agree on an alternative.

More than any other issue, deciding how the legislature would be apportioned consumed the convention's time, attention, and endurance during these five weeks of debate. Delegates from the small states pressed relentlessly for equal representation of the states. Large-state delegates just as adamantly insisted that representation in both houses reflect population, wealth, or some combination of the two.

A special committee, with members from every state, was appointed on July 2 to propose a compromise. On July 5, after a break to celebrate Independence Day, the committee recommended a plan of equal representation for each state in the upper house and apportionment according to population in the lower house. As a sop to delegates from the large states who feared that the small, state-dominated upper house would push for spending programs that would impoverish the large states, the committee vested exclusive power in the lower house to originate all legislation dealing with money.

For more than a week, the delegates engaged in a complex and sometimes bitter debate about the compromise over representation. New questions were raised about whether states yet to be admitted to the Union should receive as much representation as the original thirteen, how often a national census should be taken to measure population changes, and whether apportionment in the lower house should reflect a state's wealth as well as its population. On July 16 the convention voted narrowly to approve the main points of the special committee's proposal, sometimes called the Connecticut Compromise in honor of its author, Roger Sherman. One week later the delegates undermined the idea that the upper house would represent the states in the new government by deciding that every state would have two members, each of them free to vote independently of each other and of their state governments.

This happy mixture of principle and practicality was tarnished by a dreadful, if unavoidable, compromise with America's "peculiar institution." In one of the three constitutional clauses that protected forced servitude, each enslaved individual was counted as three-fifths of a person for purposes of representation in the lower house. These three clauses, which also included both a guarantee that slaves could continue to be imported for twenty years and a fugitive slave provision requiring states

to return escaped slaves to their owners, would cast a long, dark shadow over the republic.

As terrible as these concessions to slavery were, they could have been worse. Although allowing the continuation of slavery and even abetting it by promising to help catch fugitive slaves—a Faustian bargain that most Framers feared was necessary to prevent the dissolution of the Union—the delegates refrained from providing slavery with a moral stamp of approval. Indeed, the word *slavery* is never mentioned in the document; instead, they resorted to euphemisms such as “persons held to service,” a tacit acknowledgment of their embarrassment in acquiescing to it. By depriving the defenders of slavery of moral ground to stand on, the Constitution’s wording also allowed later opponents of slavery, such as the abolitionist Frederick Douglass and President Abraham Lincoln, to claim that the Framers regarded slavery as a necessary evil rather than a positive good.

*Committee of Detail (July 24–August 6).* As fraught as these compromises were, by July 24 the convention resolved to appoint a Committee of Detail to review all of its decisions and draft a constitution that incorporated them. The five-member committee included representatives of the three main regions of the country—Nathaniel Gorham of Massachusetts and Oliver Ellsworth of Connecticut (a protégé of Sherman) from New England, James Wilson of Pennsylvania from the middle states, and Edmund Randolph of Virginia and John Rutledge of South Carolina from the South. The committee worked, while the rest of the convention adjourned until August 6.

One indication of the committee’s influence is that it took convention-passed resolutions amounting to 1,200 words and transformed them into a draft constitution of 3,700 words.<sup>47</sup> The committee also drew from a wide range of other sources in compiling its report: the New Jersey Plan, the Articles of Confederation, the rules of Congress, some state constitutions (notably those of New York and Massachusetts), and a plan of government proposed by Charles Pinckney of South Carolina.<sup>48</sup>

Most of the memorable phrases in the Constitution were written by the Committee of Detail, including “state of the Union” and “We the People.” Institutions were named. The executive became the president; the national tribunal, the Supreme Court; and the legislature, Congress, with its upper house called the Senate and its lower chamber, the House of Representatives.

For the most part, the committee, in keeping with its name, simply fleshed out the details of earlier convention decisions. It established

procedures for the president's veto, defined the jurisdiction of the courts, and adjusted certain relations among the states. In some instances, however, the committee substituted its own judgment for the convention's. For example, it vested the power to impeach in the House and omitted the property requirement for officeholders.

Perhaps the most important decision by the Committee of Detail was to transform general grants of power for each branch into specific ones. What previously had been Congress's broadly stated authority "to legislate in all cases for the general interests of the Union" became instead a list of eighteen enumerated powers, including the power to lay and collect taxes, regulate interstate commerce, establish post offices, "make war," elect a national treasurer, and create inferior courts—all culminating in a sweeping grant "to make all Laws that shall be necessary and proper for carrying into Execution" these and "all other Powers vested" in the new government. The states were forbidden certain powers, notably to make treaties with other nations, to print money, and to tax imports.

The committee granted the president the authority to recommend legislation to Congress, make executive appointments, receive ambassadors from other nations, issue pardons, "take care" that the laws be executed, and command the armed forces. An oath to "faithfully execute the office" of president also was included, as was a provision that the Senate's own elected leader would exercise the powers and duties of the presidency if the president died, resigned, or became disabled. The judiciary—the Supreme Court and the other inferior courts to be created by law—was given jurisdiction in cases arising under the laws of the national government as well as in controversies between states or between citizens of different states.

Finally, responding to a threat to walk out by Gen. Charles Cotesworth Pinckney of South Carolina (an older cousin of Charles Pinckney), the committee not only forbade Congress to tax or ban the importing of slaves and the exporting of goods but also placated southern delegates' fears that Congress might enact navigation laws requiring that American exports be transported on American ships (a boon to northern shipbuilders but a burden to southern agricultural exporters). The committee recommended that Congress would have to pass such laws by a two-thirds vote in both houses.

*Convention Debate (August 7–31).* As they had with the Virginia Plan and the report of the Committee of the Whole, the delegates reviewed the draft constitution proposed by the Committee of Detail clause by clause. Much of the draft was approved. Some parts, however, were modified, and others became matters of serious controversy.

*Modifications.* The delegates tinkered with several provisions of the Committee of Detail's draft:

- They enacted minimum citizenship requirements for members of Congress (seven years for members of the House, nine years for senators), along with a requirement that legislators be inhabitants of the states they represent.
- They raised the majority needed in both houses of Congress to override a president's veto from two-thirds to three-fourths. (Near the end of the convention, the delegates restored the two-thirds requirement.)
- They judged Congress's power to make war too sweeping to protect the nation if it was attacked when Congress was out of session. The clause was revised to read "declare war."
- They forbade Congress to pass *ex post facto* laws (retroactive criminal laws) or bills of attainder (laws that declare a person guilty of a crime without a trial).
- They barred the government from granting "any title of nobility" to any person and forbade government officials to receive "any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state."
- They empowered Congress to activate the militia of any state "to execute the laws of the Union, suppress insurrections, and repel invasions."
- They dropped the two-thirds requirement for Congress to pass navigation acts.
- They created a convention-based procedure for amending the Constitution: "on the application of the legislatures of two-thirds of the states in the Union for an amendment of this Constitution, the legislature of the United States shall call a convention for that purpose."
- They prohibited any religious test as a requirement for holding office.
- They expanded the president's oath to include these words: "and will to the best of my judgment and power preserve, protect, and defend the Constitution of the United States." (Later, "to the best of my judgment and power" became "to the best of my ability.")

- The Committee of Detail had proposed that the new constitution take effect when ratified by state conventions, not state legislatures that might resent the plan's dilution of their powers. The delegates now voted to set the number of states needed for ratification at nine, or two-thirds—a number “familiar to the people” from the Articles of Confederation.

*Controversies.* The draft constitution's slavery provisions came under fierce assault from several northern delegates, especially the three-fifths rule for counting enslaved people as part of the population and the prohibition against laws banning the importation of slaves. The North's concern derived less from moral considerations than from fear of slave rebellions, which might attract foreign intervention and, in any event, probably would require northern arms and money to put down. Southern delegates not only defended the provisions to protect slavery but also confirmed that their states would not ratify any constitution that placed slavery in jeopardy.

Adopting the same approach used to settle the controversy between the large and small states, on August 22 the convention appointed a special committee to find a compromise solution. Two days later, the committee proposed that Congress be authorized, if it so decided, to end the importation of slaves after 1800. In the meantime, Congress could tax imported slaves at a rate no greater than ten dollars each. As noted, euphemisms—not “slave” but “other Persons”—were used in the Constitution. General Pinckney persuaded the convention to change 1800 to 1808. The committee's recommendation, as amended, was passed.

Controversies over two other matters caused the convention to bog down: the powers of the Senate, which delegates from the large states wanted to minimize and delegates from the small states wanted to maximize, and a cluster of issues concerning presidential selection. On August 31, nearing the end of its labors, the convention appointed a Committee on Postponed Matters, with a member from each state delegation, to propose solutions to these vexing problems.

*Committee on Postponed Matters (August 31–September 8).* Beginning on September 4, the Committee on Postponed Matters, chaired by David Brearley of New Jersey, made several recommendations about the presidency.<sup>49</sup> The committee, sometimes referred to as the Committee on Unfinished Parts or, because it had one member from each state delegation at the convention, the Committee of Eleven, proposed a presidential term of four years rather than seven, with no restriction on the president's

eligibility for reelection. The president was to be chosen not by Congress but by the Electoral College. To constitute the Electoral College, each state would select, by whatever means it chose, electors equal in number to its representatives and senators in Congress. The candidate who received the largest majority of electoral votes would become president. The candidate who finished second would become vice president. (This was the first mention of the vice presidency at the convention.) If no candidate received a majority, the Senate would select the president and vice president from among the five candidates who received the greatest number of electoral votes.

As a corollary to its proposal for the Electoral College, the committee recommended that certain responsibilities be assigned to the vice president: to preside over the Senate, with the right to cast tie-breaking votes, and to act as president if the office became vacant before the president's term expired. Finally, the committee recommended that qualifications for president be stated in the Constitution. The president would have to be at least thirty-five years old, a natural-born citizen of the United States or a citizen at the time of the Constitution's enactment, and a resident of the United States for at least fourteen years.

For several days the delegates carefully considered the committee's complex proposal for presidential selection. On September 7 they passed it after making just one substantial change: the House of Representatives, not the Senate, would choose the president in the event of an Electoral College deadlock, with each state delegation casting one vote. The Senate still would choose the vice president if the electoral vote for that position was tied.

Having approved the Electoral College, the convention quickly acted to reduce the powers of the Senate, mostly in response to demands by the large states. The president was granted the authority to make treaties and to appoint ambassadors, public ministers, consuls, Supreme Court justices, federal judges, and all other officers whose appointments were not otherwise provided for. Senate confirmation would be required for all of these appointments. A two-thirds vote by the Senate was stipulated for ratifying treaties.

On September 8 the convention approved the final proposals of the Committee on Postponed Matters. The president was to be impeached by the House on grounds of "treason or bribery or other high crimes and misdemeanors against the United States" and removed from office if convicted by the Senate. The delegates added the vice president and other civil officers to the roster of those who were subject to impeachment, but they raised the majority needed for Senate conviction from a simple majority to

two-thirds. In addition, the House was empowered to originate “all bills for raising revenue.”

Having completed (or so they believed) their work on the Constitution, the delegates ended their business later that day by voting to create a five-member Committee of Style to write a polished final draft of the document for them to sign. The committee’s leading members were Madison, Hamilton, and Gouverneur Morris, who seems to have done most of its work.

*Final Adjustments (September 9–17).* Even as the Committee of Style labored, the convention continued to modify some of its earlier decisions. On September 10 Madison urged that special constitutional conventions not be a part of the process of amending the Constitution. Instead, he argued, amendments should be initiated by a two-thirds vote of Congress or by two-thirds of the state legislatures, with approval by three-fourths of the states needed for ratification. Two days later, Hugh Williamson of North Carolina successfully moved that the requirement for overriding a presidential veto be reduced from a three-fourths vote of each house of Congress to a two-thirds vote. The Committee of Style incorporated these changes into its draft.

Meanwhile, some delegates were expressing more fundamental reservations about the Constitution. Randolph worried that the convention had gone far beyond its original charge from Congress to propose revisions in the Articles of Confederation. He urged that the proposed constitution be approved not just by state ratifying conventions but also by Congress and the state legislatures, even if this process necessitated a second constitutional convention. His fellow Virginian, George Mason, and Elbridge Gerry of Massachusetts objected to the absence of a bill of rights from the Constitution. So convinced were the other delegates that such an enumeration was unnecessary, observes historian Richard Beeman, that “not a single state delegation in the Convention supported the idea of a federal bill of rights.”<sup>50</sup>

The Committee of Style reported to the convention on September 12.<sup>51</sup> Its draft not only reduced the number of articles from twenty-three to seven but also included some significant innovations. The most memorable of these was the preamble:

We the People of the United States, in Order to form a more perfect Union, 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.<sup>52</sup>

The committee also added a provision that barred states from passing laws to impair the obligations of contracts. Finally, it wrote vesting clauses for Congress and the president that, intentionally or not, suggested that the president might have executive powers beyond those enumerated in the Constitution.

The committee's draft met with widespread approval from the delegates, but they continued to tinker. Congress was stripped of its power to choose the national treasurer in favor of the president. A provision was added that the Constitution could not be altered to deprive a state of equal representation in the Senate without the state's consent. And, at the initiative of Gouverneur Morris and Elbridge Gerry, a compromise procedure for amending the Constitution was created that incorporated both the Committee of Detail's recommendation and Madison's plan. As finally agreed, a constitutional amendment could be proposed by either a two-thirds vote of both houses of Congress or a convention that Congress was required to call if two-thirds of the state legislatures requested one. In either case, three-fourths of the states would have to ratify an amendment for it to become part of the Constitution.

Despite these alterations, Randolph, Gerry, and Mason remained unhappy, expressing doubts about the magnitude of the changes that the convention was recommending. But their motion for another constitutional convention to consider any objections and recommendations that might be offered by the states was defeated by a vote of eleven states to none. As Jack Rakove has noted, the delegates realized from experience that "a second federal convention would assemble encumbered by proposals for amendments of all kinds and bound by instructions that would make it impossible to replicate the process of persuasion, compromise, and bargaining from which the completed Constitution had so laboriously emerged."<sup>53</sup>

The convention's work finished, the delegates assembled on September 17 to sign an engrossed, or final, copy of the Constitution. Forty-two of the original fifty-five delegates were still present in Philadelphia, and all but Randolph, Mason, and Gerry signed the document. Even then, the delegates could not resist some fine-tuning, unanimously approving at this time the Washington-supported motion to alter the apportionment formula for the House of Representatives.

Speaking first before and then during the signing ceremony, Benjamin Franklin offered the convention's most memorable benediction. To the delegates, he presented a long speech that—as read by Wilson because of Franklin's frailty—said in essence:



***George Washington presiding at the signing of the Constitution in Philadelphia on September 17, 1787.***

*Source:* Library of Congress.

Mr. President, I confess that there are several parts of this constitution which I do not approve, but I am not sure that I shall never approve them. For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. . . . I doubt too whether any other convention we can obtain may be able to make a better constitution. . . . It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies. . . . Thus I consent, Sir, to this constitution because I expect no better, and because I am not sure it is not the best.<sup>54</sup>

Later, as the last few delegates waited to affix their signatures to the Constitution, Franklin gestured to Washington's chair and said to those standing nearby,

Painters have found it difficult to distinguish in their art a rising from a setting sun. I have often in the course of this session and the vicissitudes of my hopes and fears as to its issue, looked at that sun behind the President without being able to tell whether it was rising or setting. But now, at length, I have the happiness to know that it is a rising and not a setting sun.

## Notes

1. Max Farrand, ed., *The Records of the Federal Convention*, 3 vols. (New Haven: Yale University Press, 1911), 2: 641–643.
2. The idea is elaborated on in Erwin C. Hargrove and Michael Nelson, *Presidents, Politics, and Policy* (Baltimore: Johns Hopkins University Press, 1984), chap. 2.
3. Aristotle, *The Politics*, trans. Carnes Lord (Chicago: University of Chicago Press, 1984), bks. 3.14–18 and 4.
4. Alan Taylor, *American Revolutions: A Continental History, 1750–1804* (New York: W.W. Norton, 2016), 33.
5. Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607–1788* (Athens: University of Georgia Press, 1986), chap. 2.
6. Thomas P. Slaughter, *Independence: The Tangled Roots of the American Revolution* (New York: Hill and Wang 2014), 406.
7. Quoted in Charles C. Thach Jr., *The Creation of the Presidency, 1775–1789* (Baltimore: Johns Hopkins University Press, 1969), 27.
8. *Ibid.*
9. Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina Press, 1969), 138.
10. Thomas Jefferson, *Notes on the State of Virginia*, ed. William Peden (Chapel Hill: University of North Carolina Press, 1955).
11. Michael J. Klarman, *The Framers' Coup: The Making of the United States Constitution* (New York: Oxford University Press, 2016), 18.
12. Christopher Collier and James Lincoln Collier, *Decision in Philadelphia: The Constitutional Convention of 1787* (New York: Ballantine, 1986), 5.
13. Lynne Cheney, *James Madison: A Life Reconsidered* (New York: Viking, 2014), 116.
14. Klarman, *The Framers' Coup*, 20.
15. Edward J. Larson, *The Return of George Washington, 1783–1789* (New York: William Morrow, 2014), 48.
16. To a large degree, British hostility to the United States was caused, or at least rationalized, by the American failure to comply with two provisions of the Treaty of Paris. One provision compelled the United States to reimburse British loyalists for property that had been seized from them during the war; the other required that prewar debts to British merchants be paid. Individual states actively resisted both of these requirements, and the national government was powerless to enforce them.
17. Wood, *Creation of the American Republic*.
18. Thach, *Creation of the Presidency*, 49, 52–53.
19. Woody Holton, *Unruly Americans and the Origins of the Constitution* (New York: Hill & Wang, 2007), 145–146.
20. George Washington to David Humphries, December 26, 1786, <http://gwpapers.virginia.edu/documents/constitution/1784/index.html>; George Washington to James

Madison, November 5, 1786, <http://www.loc.gov/teachers/classroommaterials/connections/george-washington/file.html>.

21. Lester Cappon, ed., *The Adams-Jefferson Letters* (Chapel Hill: University of North Carolina Press, 1959), 1: 196; Catherine Drinker Bowen, *Miracle at Philadelphia* (Boston: Little, Brown, 1966); and John P. Roche, "The Founding Fathers: A Reform Caucus in Action," *American Political Science Review* 55 (December 1961): 799–816; Klarman, *The Framers' Coup*.

22. Quoted in Collier and Collier, *Decision in Philadelphia*, 74.

23. Clinton Rossiter, *1787: The Grand Convention* (London: MacGibbon and Kee, 1968), 141.

24. Stanley Elkins and Eric McKittrick, "The Founding Fathers: Young Men of the Revolution," *Political Science Quarterly* 76 (June 1961): 181–216.

25. Taylor, *American Revolutions*, 373–375. Historian Charles A. Beard believed that the enactment of the Constitution, more than anything else, was a triumph of the "personality"—that is, financial and commercial—interests over the "reality," or landed interests. See Beard, *An Economic Interpretation of the Constitution* (New York: Macmillan, 1913). A powerful critique of this once-influential theory was offered by Forrest McDonald in *We the People: Economic Origins of the Constitution* (Chicago: University of Chicago Press, 1958).

26. Washington was right: even with the adoption of the change he prescribed, Anti-Federalist opponents of the proposed Constitution attacked it severely during the ratification debates for requiring each House member to represent too many people.

27. Collier and Collier, *Decision in Philadelphia*, 108.

28. Gordon S. Wood, *Revolutionary Characters: What Made the Founders Different* (New York: Penguin Press, 2006), 46.

29. Cappon, *Adams-Jefferson Letters*, 1: 196; Farrand, *Records*, 3: 35. All of Madison's notes on the convention are included in Farrand. A one-volume edition is James Madison, *Notes of Debates in the Federal Convention of 1787* (Athens: Ohio University Press, 1966).

30. Roche has argued that the preservation of secrecy by the delegates testifies to their sense of shared enterprise: even when they disagreed strongly about particular issues, they were sufficiently committed to the effort to keep their objections within the convention's walls. See Roche, "Founding Fathers."

31. Collier and Collier, *Decision in Philadelphia*, 120.

32. Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Knopf, 1996), 14.

33. Walter Isaacson, *Benjamin Franklin: An American Life* (New York: Simon and Schuster, 2003), 445.

34. Quoted in Joseph J. Ellis, *His Excellency, George Washington* (New York: Knopf, 2004), 178.

35. The Virginia Plan can be found in Farrand, *Records*, 1: 20–22.

36. The Virginia Plan was one of two that were offered to the convention on May 29. Madison recorded in his notes for that day that Charles Pinckney of South Carolina also introduced a plan. But because Madison (who had long loathed Pinckney from their days together in Congress) neither described the Pinckney Plan nor included its text, scholars have had to reconstruct it as best they could from other documents—in particular, some notes found in the papers of James Wilson. The Pinckney Plan probably resembled the Virginia Plan in many ways. It, too, provided for a strong, three-branch national government. It seems to have been more specific regarding the executive, however. The executive was to consist of a single person (called "president") who would serve a seven-year term and be empowered, among other things, to recommend laws to the legislature, oversee the executive branch, and act as commander in chief of the military. Pinckney borrowed most of the elements of his plan from the Articles of Confederation, the Massachusetts Constitution,

and especially, the New York Constitution. Even though his plan was rejected, somewhere between twenty-one and forty-three specific contributions to the U.S. Constitution (depending on how one does the counting) seem to have been made by Pinckney. See S. Sidney Ulmer, "James Madison and the Pinckney Plan," *South Carolina Law Quarterly* 9 (Spring 1957): 415–444; Ulmer, "Charles Pinckney: Father of the Constitution?" *South Carolina Law Quarterly* 10 (Winter 1958): 225–247; and Collier and Collier, *Decision in Philadelphia*, 97.

37. Wood, *Revolutionary Characters*, 157, 160.

38. Rossiter, 1787, 171.

39. The resolution of the Committee of the Whole can be found in Farrand, *Records*, 1: 235–237.

40. Richard J. Ellis, ed., *Founding the American Presidency* (Lanham, Md.: Rowman and Littlefield, 1999).

41. The New Jersey Plan can be found in Farrand, *Records*, 1: 242–245.

42. Hamilton's Plan can be found in *ibid.*, 1: 291–293.

43. *Ibid.*, 1: 288.

44. *Ibid.*, 1: 289.

45. Ron Chernow, *Alexander Hamilton* (New York: Penguin Press, 2004), 232.

46. Clinton Rossiter dismisses this view in *Alexander Hamilton and the Constitution* (New York: Harcourt, Brace and World, 1964).

47. The Committee of Detail report can be found in Farrand, *Records*, 2: 177–189.

48. See note 29.

49. The recommendations of the Committee on Postponed Matters can be found in Farrand, *Records*, 2: 497–499, 508–509.

50. Richard Beeman, *Plain, Honest Men: The Making of the American Constitution* (New York: Random House, 2009), 342. James Wilson of Pennsylvania argued that any attempt to enumerate the rights of the people would necessarily be incomplete, posing the risk that "everything not expressly mentioned will be presumed to be purposely omitted" (343).

51. The Committee of Style draft can be found in Farrand, *Records*, 2: 590–603.

52. The preamble it replaced was blander and more state centered: "We the people of the states of New Hampshire, Massachusetts," and so on.

53. Rakove, *Original Meanings*, 107.

54. Farrand, *Records*, 2: 641–643.

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