

The Annapolis Conference, Then the Constitutional Convention

The Constitutional Convention of 1787 produced the most enduring written Constitution ever created by human hands. Though the United States existed prior to the ratification of the Constitution, it was a nation held together by the tenuous threads of the Articles of Confederation, a sometimes contentious, and often ineffectual national government.

The men who were at Philadelphia that hot summer hammered out a document that was the result of dozens of compromises and shaped by the failures of the United States under the Articles as well as the failures of all well-known European governments of the time.

Madison and the Virginia Plan

Virginian James Madison has been called the Father of the Constitution. He arrived in Philadelphia for the Convention almost two weeks early so that he could start thinking about what he wanted the Convention to accomplish. From his point of view, there were a few main problems with the Confederation. The states were under no obligation to pay their fair share of the national budget; they violated international treaties with abandon; they ran roughshod over the authority of the Congress; and they violated each other's rights incessantly.

Worse, however, was Madison's view that the liberties of the minorities in the states were being violated, particularly in economic issues. He believed that the Confederation was giving too much emphasis to state sovereignty and not enough to a national focus on consistent and fair policy and the upholding of natural rights.

Madison's idea, certainly not an original one, but unique for the new United States, was to recreate the United States under an entirely different form of government - a republican model. In a republic, the people are the ultimate power, and the people transfer that power to representatives. As in the United States today, the people would elect their representatives to govern. This was in contrast to the Confederation model of the time, when the states appointed members of Congress. His vision included separate authorities with separate responsibilities, allowing no one to control too much of the government; and a dominant national government, curbing the power of the states.

From Madison's thoughts, notes, and work, the delegates from Virginia all met prior to the start of the Convention. They hammered out the details of what became known as the Virginia Plan. Its main features:

- A bicameral legislature (two houses)
- Both house's membership determined proportionately
- The lower house was elected by the people
- The upper house was elected by the lower house
- The legislature was very powerful
- An executive was planned, but would exist to ensure the will of the legislature was carried out, and so was chosen by the legislature
- Formation of a judiciary, with life-terms of service
- The executive and some of the national judiciary would have the power to veto legislation, subject to override
- National veto power over any state legislation

The Virginia Plan was reported to the Convention by Edmund Randolph, Virginia's governor, on May 29, 1787.

Sherman and the Connecticut (Great) Compromise

Most of the debate in the first few weeks concerned the revision of the Virginia Plan. The Plan "corrected" the inequality that the "one state, one vote" notion inflicted upon the large states (and those, like the Southern states, that hoped to be large soon).

Most of the details could certainly be worked out. Issues like fugitive slaves, export taxes, and import taxes were minor, when compared to the really big issue facing the Convention: representation.

Quite frankly, the small states would never agree to a purely representational form of government. They foresaw the annexation of small, ineffective states as the populations of the large states continued to grow and their influence waned. Some, like the Delaware delegation, were instructed to leave the Convention if equal suffrage in the legislature was compromised. Large states felt the equal suffrage system to be inherently unfair, and were going to do everything they could to abolish it. Today, a conflict between the big and small states seems odd. Conflicts between states are now generally regional and regardless of size. But at the Convention, size, or anticipated size, was one big dividing line.

The intensity of feelings of the two sides were surprises to the others - Madison and the Big State faction thought the inequality of equal suffrage to be so patently unfair that the small states would naturally accede. The small states, used to the status quo, were surprised at how forceful the big states were about proportionality, seeing that the Congress had operated so long under the equal suffrage rule.

The subject of suffrage in the houses of the legislature proposed in the prevailing Virginia Plan came to a debate on June 9, 1787. Threats to dissolve the Convention, and, indeed, the Union, flew from one side of the issue to the other. Fortunately, when the convention adjourned that day, it did so on a Saturday evening, allowing heads to cool and deals to be made that Sunday for presentation to the Convention on Monday. On June 11, Roger Sherman of Connecticut rose on the floor and proposed:

"That the proportion of suffrage in the 1st. branch should be according to the respective numbers of free inhabitants; and that in the second branch or Senate, each State should have one vote and no more."

Sherman was very well-liked and well-respected among the delegates, and spoke more in the Convention than anyone except Madison. In his time, he was a leader, respected by political friend and foe alike. His opinion carried weight. He had advanced an idea such as this as far back as 1776, when it was considered too radical to be taken seriously. This time, it not only was taken seriously, but Sherman's voicing of his compromise may have saved the Convention from doom.

At first, Sherman's plan failed and was rejected. For several weeks, and through the debate on the New Jersey Plan, his idea lay dormant until June 27 and June 28, 1787, when Marylander Luther Martin rose to speak in favor of the Compromise - his speech, long, rambling, and generally disagreeable, seemed to sound the death knell for the idea. Representation in the lower House of Congress was firmly cemented. The small states were firm in the desire for equal suffrage in the Senate. The debates continued and the big states eventually deferred to the small ones: on July 16 and July 23, the Senate we know today was finally agreed to.

Paterson and the New Jersey Plan

New Jersian William Paterson had a passion for order. He wanted nothing more than to put an end to the rebellions and disorder that had arisen from the current state of the national government. He feared that smaller states

like his own would be overtaken by the larger ones without specific protections.

It is no wonder, then, that Paterson and many of his small-state colleagues could not stomach the Virginia Plan. In the current Confederation, each state was perfectly equal - all had one vote on all matters in Congress. In the Virginia Plan, everything was proportionate to population. New Jersey, New Hampshire, Maryland, Delaware, Connecticut, and even New York felt they had to fear any attempt by the large states of Virginia, Pennsylvania, and Massachusetts to take away equal suffrage. They also feared the Southern states, because of the general belief (historically proven wrong) that they would soon grow to Pennsylvanian-sized populations.

After the Virginia plan was introduced, Paterson asked for an adjournment to contemplate the Plan. On June 14 and 15, 1787, a small-state caucus met to hammer out a response to the Virginia Plan. The New Jersey Plan was more or less a rebuttal of the Virginia Plan. Its main features:

- The current Congress was maintained, but granted new powers - for example, the Congress could set taxes and force their collection
- An executive, elected by Congress, was created - the Plan allowed for a multi-person executive
- The executives served a single term and were subject to recall based on the request of state governors
- A judiciary appointed by the executives, with life-terms of service
- Laws set by the Congress took precedence over state law

The New Jersey Plan was more along the lines of what the delegates had been sent to do - draft amendments to the Confederation to ensure that it functioned properly. It expanded national power without totally scrapping the old system. Moreover, it protected the small states from the large ones by ensuring one state, one vote.

Paterson reported the plan to the Convention on June 15, 1787. It was ultimately rejected, but gave the small states a rallying point from which to defend their firm beliefs.

Hamilton and the British Plan

For New Yorker Alexander Hamilton, neither the Virginia Plan nor the New Jersey Plan was enough. Hamilton was well-known and well-liked in upper society in the 1780's. He married into the aristocracy and was one of George

Washington's advisors during the Revolutionary War. In politics, he was of the general opinion that the masses could not be trusted to select the leaders of the United States.

Hamilton proposed a new government based on a model he and the other delegates knew well, perhaps all too well: that of the British monarchy and parliament.

Hamilton advocated virtually doing away with state sovereignty, noting that as long as there was power to be had in the states; people would aspire to acquire that power, to the detriment of the nation as a whole. His plan featured:

- A bicameral legislature
- The lower house, the Assembly, was elected by the people for three year terms
- The upper house, the Senate, elected by electors chosen by the people, and with a life-term of service
- An executive called the Governor, elected by electors and with a life-term of service
- The Governor had an absolute veto over bills
- A judiciary, with life-terms of service
- State governors appointed by the national legislature
- National veto power over any state legislation

Hamilton reported his plan to the Convention on June 18, 1787.

Hamilton's plan was well-received, it seems, with general agreement that it was well thought out and complete. However, no one supported it as a model for a new form of government. The system was too similar to that of Britain, under which the Americans had long-suffered. His plan went no further.

Soon after his speech, Hamilton left the Convention, only to return later. Outvoted by his fellow New Yorkers at every turn, he grew frustrated. But when he did return, he sat on the influential Committee of Style, which presented the Convention with the Constitution in nearly the form we know today. Aside from his work on this committee, for which Gouverneur Morris's work is more renowned, Hamilton had very little effect the outcome. However, in the struggle for ratification, Hamilton became a champion of the new Constitution, and was one of the main contributors to the Federalist Papers.

Pinckney - step-father of the Constitution?

If Madison is the Father of the Constitution, it could be argued that Charles Pinckney, of South Carolina, is its Step-Father. *Who is Pinckney?* you may ask. He certainly is not one of the revered names of the 18th century. History shows us that Pinckney is not an American historical icon for a few reasons; one cause was himself, the other, James Madison.

Pinckney's beliefs about the people of the United States contrasted sharply with those of Hamilton. Where many of Hamilton's beliefs seem foreign to us, many of Pinckney's are in line with our contemporary values. Almost in total contrast to his kin in the South Carolinian aristocracy, Pinckney grew to hold beliefs that the people could be trusted to make important decisions on a national scale.

There were a few problems with Pinckney, though. Though he would go on to be governor of South Carolina, and a member of both the U.S. Senate and the U.S. House (and was obviously well liked and trusted by the people of South Carolina), he was considered brash, arrogant, vain. He had all the characteristics that a person such as Madison would dislike. When Pinckney submitted his plan to the Convention, Madison's notes on his speech are uncharacteristically brief. Pinckney ensured that copies of his proposed plan were published decades after the Convention, but after Pinckney's death, Madison disparaged Pinckney's version of events, tainting his name. Pinckney himself made things worse, when it was discovered that his version of events, purported to have been written at the time of the Convention, were actually written just before publication. It seemed as though Pinckney was taking credit for work not his own.

Pinckney was saved, though, in the early 1900's, when the papers of fellow delegate James Wilson were examined and found to contain notes from Pinckney's Plan. Upon examination, it was clear that a great deal of what Pinckney proposed eventually appeared in some form or another in the final Constitution. Among his plan's features:

- A bicameral legislature
- The lower house, the House of Delegates, was elected by the people, with proportional representation
- The upper house, the Senate, elected by the House of Delegates, four from each of four districts, with four year terms
- An executive called the President, elected by the legislature
- A Council of Revision consisting of the President and some or all of his Cabinet, with a veto over bills
- National veto power over any state legislation

- A judiciary was established

Pinckney reported his plan to the Convention on May 29, 1787, the same day as the Virginia Plan was introduced.

Little in Pinckney's plan was truly original. Pinckney himself had submitted a smaller but similar plan to the Congress just a few months before the Annapolis Conference. But it is clear from the accounts of other members of the Convention that Pinckney's plan was sent on to the Committee of Detail that drafted the first copies of the Constitution, and many of his ideas and phrases are included in what we read today.

The question of power

So there were lots of ideas on how to fix the government that existed under the Articles of Confederation. One thing everyone agreed on was that the current Congress did not have enough power. But they were almost all wary of giving the federal government too much power. Madison's famous line is "if men were angels, no government would be necessary." But men are not angels; they desire power, and if there is power to be had, someone will aspire to it. So power is necessary to get things done; too much power is corrupting. Finding a way to balance the power would be needed.

One thing each of the Plans had in common was a division of the government into "departments." An executive branch, a legislative branch, and a judicial branch. For a more of a discussion on this Separation of Power, see the Separation of Power Topic Page. In addition to this separation on the national level, there was an additional level of separation the delegate had to work out - that between the states and the national government.

Some advocated giving the federal government almost total power; with the ability to overrule or approve all state legislation. But most agreed that the United States was too large to follow the European model of central control. The interests of the people of the states would be best served by allowing considerable control of the law to remain with the states.

But how to grant power to the federal government? Again, there were two schools of thought. One was to grant the federal government general powers, with interpretation left up to the congress of the time. The other was to grant specific powers to the federal government. The first choice was deemed too general, with the possibility of too much abuse; the second was

considered too strict, with a congress with more power than it had currently, but unable to adapt to changing conditions. The Virginia Plan opted for the former option, considering it the lesser of two evils. With a body consisting of the executive and judiciary, some control over the legislature was provided for; it also allowed the federal government to overrule the states in some cases.

But even the authors of the Plan were not satisfied with this aspect. Madison and Edmund Randolph both spoke out against this detail, but seeing nothing better, this detail remained unchanged. Not until July 16, when the issue of equal suffrage in the Senate was settled, did the subject reappear in the Convention. Now that smaller states had what they wanted, and were more confident that this new Constitution would work out, they were more willing to discuss expanding the powers of the new government. But what emerged from the debates was still the Virginia Plan's general grant.

Then, on July 23, the Convention established a Committee of Detail to take everything discussed thus far and put it into a rough draft. As delivered on August 6, the Committee, which included Randolph, disregarded the general grant and proposed a list of powers (or enumeration). Surprisingly, the surreptitious change came and went with no debate. The enumerated powers were taken up on August 16, and for the next several days the enumerated powers were discussed, including one seemingly small detail at the end of the list, which allowed Congress to make all laws deemed "necessary and proper for carrying into execution" the powers listed previously. There was no debate on the point; was this the result of another compromise? Were the delegates just tired and did not see the implications? The reasons this clause passed by so smoothly is unclear. But today, it is clear to us how much power the Necessary and Proper clause grants to the federal government.

With the question of the powers of the national government resolved, the next question was what to do with the states. The utter disregard of some of the states for the weak authority of the Congress was a great concern. It was a situation the delegates wanted to resolve once and for all. Again, the Virginia Plan proposed a national veto over onerous state laws, but the potential for abuse was easily recognized. The Southern states were especially wary of a national government's ability to upset slavery. Many worried that so powerful a national government would turn the populace against the Constitution. Despite these reservations, the provision remained, and several proposals were made to expand the Virginia Plan's provision.

But on July 17, the tide suddenly shifted. Swayed by arguments that the provision was simply not palatable, that state laws would be held in check by

the state and national courts, and the prospect of the national legislature being forced to review the legislation of 13 states (not to mention 50), a vote to remove the provision passed. That, plus the idea of Luther Martin to adopt language from the New Jersey Plan that made all national laws and treaties the "supreme law of the respective states," provided some control over the states while not going overboard.

Empowering a president

Some at the Convention felt an executive necessary to the carrying out of the laws passed by the legislature; others felt an executive not only unnecessary but dangerous. But all of the major plans included one in some form or another. In the Virginia Plan, a weak executive was a single person, who, along with the judiciary, would have some veto power over the legislature. In the New Jersey Plan, the executive was not one person, but a council of sorts, a sort of co-presidency. In both cases, the executive was chosen by the legislature. These presidents were nothing like the president we know today.

The reason is clear - the royal governors and the King, and their love of power, were fresh on the minds of the Framers. The need for a third branch, a branch whose task is the carrying out of the laws, was clear under the concept of the separation of powers. But the Framers wanted to be careful, to avoid creating a position from which a tyrant could rule over the states.

One of the driving forces behind the strong presidency we have today is a figure virtually unknown today, but who was very prominent in his day, and eventually would serve on the Supreme Court: James Wilson of Pennsylvania. Scottish by birth, Wilson was educated by some of the greatest minds in Scotland at the time, leading to a great trust in the common sense of the common man. He was an adamant supporter of the relatively new notion that the government served the people, that all power derived from the people, rejecting the social contract theory that the people allowed themselves to be ruled in exchange for certain guaranteed rights. His theory required the direct election of as many representatives as possible; to him, an appointed President was as dangerous, or at least as onerous, as a monarch. He is considered responsible for our peculiar Electoral College.

When the Convention took up the question of the President, they had a few decisions to make: single individual or committee? Appointed or elected? And what powers should the President, in whatever form, be able to carry

out? The debate started on June 1, when Wilson almost immediately moved that the Executive be a single person. Sherman was opposed - the lines were clear. States rightists wanted a weak executive; nationalists a strong one. Wilson noted that each of the states had single executives; the idea is well-known and seemed to work. When it came to a vote, the single executive prevailed.

The Virginia Plan also called for the President to have a council to advise him, but the idea was deemed unnecessary with the separation of powers being built into the Constitution, and it was eliminated.

Next, to decide on a term and how the President would be chosen - by the people or by the legislature? The idea of direct election sounds so simple to us today, but in 18th century America, there were no parties, no conventions, no mass media ... how would the people know who to vote for? Many supported the idea of direct election, but considered it impractical. Wilson came through again and on June 2, proposed something akin to our present Electoral College. But his plan was voted down, and the matter was debated and redebated over the course of the next six weeks.

At the same time, the term of the President was debated; the delegates toyed with many ideas, including a seven year, non-reelectable term, a three-year reelectable term, and a term which was essentially life, or on good behavior. But there was little consensus here either.

Neither matter was fully resolved, and they were referred to the Committee of Detail. Its executive was elected by the legislature for a seven-year, non-reelectable term, and he was impeachable. This portion of the Committee's draft was debated on August 24, and Wilson once again lobbied for a popularly elected President. Debate produced little result, and another committee was formed to iron out these and other details. This committee took Wilson's Electoral College idea and expanded upon it; electors would be chosen by the states in whatever manner they desired, which accommodated selection by the state legislature, governor, or the people. This was read to the Convention on September 4, and included details on the powers of the President, his checks by the legislature, and details on the procedures on impeachment.

The problem of slavery

There is no gentle way to put it. The enslavement of blacks in America was of great concern to the men at the convention. Some genuinely felt that the

black man was as much "man" as the white man. But this was a minority view. Southern delegates had one thing in mind when it came to slavery: to keep it going to prop up the Southern economy. Indeed, many of the largest slave holders in the United States were at the Convention. Most Northern delegates did not like slavery, but that does not mean they cared for blacks either. Many felt that the larger the black populations in the South grew, the larger the threat that that population would revolt against their masters and march north to exact revenge on the people who bought the goods they had been driven to tend.

For some, slavery itself was at least tolerable, but the slave trade, the importation of new people from Africa, was deplorable. Some felt it was deplorable because trafficking in human lives is simply deplorable. Others felt it deplorable because it diminished the value of their surplus slaves in the slave market.

First we will address the capitation (counting) of slaves in the Constitution. On June 11, Roger Sherman suggested that representation be based on a count of all free men. The South wanted their slaves counted as whole persons, but that would never happen. James Wilson wanted to get the issue out of the way quickly, and asked the Convention to adopt the same standard as that in the Articles: slaves would count as three-fifths persons. This issue would rise again on July 9, when some began to realize that the South could increase their representation in the Congress by simply importing new slaves. Recall, too, that everyone expected the extreme Southern states to grow in white population as well, over the next few decades. The notion was frightening to many from the North, and Northern states banded together on July 11 to completely remove slaves from the population counts.

In the end, both side got something they wanted. Through what some have theorized was a complicated bargain between Northern and Southern delegates to the Convention and Northern and Southern representatives to the Congress, taxation and representation were tied together (the Congress comes into the story, because on July 12, the day after the compromise was reached, the Northwest Ordinance was passed, detailing the carving up of the north western wilderness of North America, and granting the South fugitive slave rules). The deal allowed the South to keep the three-fifths count for representation that had been used under the Articles for calculation of state levies, as long as they also had a three-fifths count for calculation of taxes.

As for the slave trade, for quite some time in the Convention, it was debated hotly. The states of the deep south wanted it maintained; the North and the

middle south were opposed. But alliances between states kept some of the Northern states voting with the deep south, and any prohibition in new slave imports or import taxes were defeated. As the Convention progressed, though, it became clear to the South and her allies that some compromise would be needed. In exchange for a prohibition on export taxes, the South agreed to allow the slave trade to continue for just 20 more years, and for imported slaves to be taxable. As a side note, the very day that the slave trade could constitutionally be prohibited, it was: on January 1, 1808.

The fight for a bill of rights

Neither the Virginia Plan nor the New Jersey Plan contained an enumeration of the rights of the people. Today, the Bill of Rights is one of the most recognizable parts of the U.S. Constitution; but the Framers, for the most part, felt one was not necessary.

There were some who felt that listing the rights of the people was of paramount importance, such as George Mason (the principle author of the Virginia Declaration of Rights), Pinckney, and Elbridge Gerry. Part of Pinckney's outline that he presented to the Committee of Detail included a notation to include an enumeration of rights. But the general feeling was that since each state had its own constitution, each with its own bill of rights, a federal bill of rights was unnecessary. There were certain rights, however, that were so important to the delegates as a whole that they were included in the original Constitution: the prohibition against the suspension of habeas corpus, and the prohibition of bills of attainder and ex post facto laws.

But to Mason in particular, these provisions did not go nearly far enough. After the final draft by the Committee of Style was presented, without any enumeration of rights, Mason moved that the entire Constitution be prefaced with a bill of rights - the placement to signify the importance of the rights. He implied that the Virginia Declaration could be used as a model, and the details could be worked out in just a few hours. Gerry so moved and Mason seconded, but there was no more support for the proposal.

The delegates were at the end of the convention - they had worked on the Constitution for months on end, and were tired and ready to return home. In addition, few felt that Mason's idea that such a thing could be worked out in just a few hours, considering all the debate that had gone into even minor details, was possible. Above all, however, was the feeling that adding a bill of rights could open up discussions that could bring the convention to a

stand-still; perhaps even break it up. For example, how to add a provision that all men are born equal and free with the specter of slavery looming over the nation? Mason and Gerry were rejected. Both Mason and Gerry ultimately refused to sign the final version over the issue.

In the end, Mason and Gerry were in the right. As the completed Constitution went out among the states for debate and ratification, the issue of the lack of a bill of rights was a major point of contention raised over and over again by the opponents of the Constitution, the Anti-Federalists. So important an issue did the states feel it to be that many submitted proposed articles of amendment along with their ratification. So important was the addition of a Bill of Rights that one was proposed even before the last two states ratified the Constitution; in December, 1791, the Bill of Rights was added to the end of the Constitution, placing some of the strongest protections of individual rights since before or since into force on a national scale.

Adjournment

On September 17, 1787, the final draft of the Constitution was signed. Of the 55 people who attended the Convention, 39 actually signed. Some, such as Oliver Ellsworth, left as the Convention progressed; others refused to sign in protest, such as Mason and Gerry. The final day was one of relief for all who remained in Philadelphia. Finally, the work was done. The work of creating the Constitution. The work for ratification still lay ahead. As Ben Franklin noted on that day, the Constitution had its faults, but it is possible that no better document could have been created. With the signing of the Constitution by the Convention's President, the eminent George Washington, and the signatures of each of the attending states, the journey began. The Letter of Transmittal directed a startling course for the Congress, to set its own demise into motion. Hopes were indeed high for the new creation: as Washington said in his own letter, as President of the Convention, to the President of the Congress, "[we wish] that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness."