The Framing Of The United States Constitution

THE FRAMING OF THE UNITED STATES CONSTITUTION

By EDWIN Z. SMITH

The Articles of Confederation and Perpetual Union adopted by the Continental Congress on November 15, 1777, had, indeed, proved a sufficient bond to link together the rebellious colonies, and carry them triumphantly through their long and arduous struggle for liberty and independence. As long as the War of the Revolution lasted, the absolute necessity for mutual aid and concerted action supplemented the insufficiency of the powers delegated to Congress and counterbalanced the over-looseness of the league of colonies. Yet, at many crucial periods, the cause of the patriots was jeopardized to the point of defeat by the neglect or refusal of the states to answer the requisitions of Congress for men and money, and by the general inadequacy of the executive functions of the central government. After the successful termination of the war and the restoration of peace, the thirteen colonies (now sovereign and independent states leagued together in confederation) addressed themselves with all the vigor of youth and hope to the redressing of the injuries of the war, to the building up of their ruined commerce and trade, and to the development of the magnificent resources of their enormous unopened territories. Then it was that the complete inadequacy of the Articles of Confederation became apparent. The system of government (practically a provisional one) which had barely and by frequent and severe straining of its articles, answered the purposes of the country amid the disorders and stresses of wartimes, failed utterly in its operation upon the now peaceful communities, each immersed in commercial activity and selfishly devoted to its own interests. Not only did the states engage in the most bitter rivalries with each other in matters of commerce and trade, but they paid only the slightest heed to their duties under the confederation; and their legislatures failed to meet the most urgent requirements of Congress for the funds necessary to sup-
The Framing Of The United States Constitution

port the army, to pay the interest on the debt of the Confederacy, or even to meet the running expenses of the government. Nor was there any means to enforce these requisitions. Many other vital weaknesses in the Constitution developed as time went on. Of them the most serious were the following:

Congress alone had power to declare war; but none to raise, arm or support an army.

It alone could ascertain the revenue necessary to support the government; but could not levy taxes.

It alone could borrow money; but could not repay it. It was the arbiter of all territorial disputes between states; but possessed no power to enforce its decrees. It alone could make treaties; but it had no authority to prevent any state from breaking them. All important measures required the consenting vote of 9 out of the 13 states; and the absence of a state delegation was as effectual as a negative vote. As early as 1780 Alexander Hamilton, then about 23 years old, had detected these and other defects in the constitution and had, in a private letter to James Duane, of New York, pointed out the necessity for their reformation by a convention of all the states. And in May, 1781, Pelatiah Webster, who is described by Madison as “an able but not conspicuous citizen”, and who was so inconspicuous that nothing is known of him but this one fact, published a pamphlet embodying the first public proposal for the revision of the Articles of Confederation. The condition of the country during the years that followed the war brought all good citizens to the conviction that such action must be taken if the United States were to continue to exist as such. At home a period of the deepest financial distress supervened, while the discords and rivalries between the states grew even more sharp and bitter. Abroad, the new body politic (not worthy the name of nation) which had won the admiration of foreign powers by its devoted contest against tyranny, had fallen into scorn and contempt by its failure to assert its dignity or respect its obligations. At the close of the war the National debt was $42,000,000.00, of which $8,000,000.00 had been borrowed in France and Holland and the balance at home. The requisitions of Congress upon the states for
interest, from 1782 to 1786, had been $6,000,000.00; and of this only $1,000,000.00 had been paid. The value of the public debt had sunk to 1-10 of its face, and the repeated applications of Congress to the states for the right to levy an impost to meet the federal obligations were as repeatedly refused or ignored. "Every day", says Curtis, "the situation of the country was becoming more and more critical. No money came into the Federal treasury; no respect was paid to Federal authority; and all men saw and admitted that the Confederation was tottering to its fall." Of the condition of affairs at this juncture Hamilton wrote that "no indication of national disorder, poverty or insignificance seemed to be wanting." And Washington in a letter to James Warren, of Massachusetts, in October, 1785, said: "By such policy as this the wheels of government are clogged, and our brightest prospects, and that high expectation which was entertained of us by the wondering world are turned into astonishment; and from the high ground on which we stood we are descending into the vale of confusion and darkness."

It was in such a crisis as this, and to a people so desperate of the maintenance of the government under the existing form, that the welcome proposal came from the Annapolis Commercial Convention that all the states should elect delegates to a convention for the purpose of revising and amending the Articles of Confederation. The legislature of New York, in 1782, and the Massachusetts, in 1785, had indeed made similar propositions. But the time was not yet ripe and they did not prevail. Now, however, the urgency and necessity of the situation were clear to all, and no time was lost by the states in taking appropriate action. Congress, indeed, dilatory and perfunctory as usual, delayed its action, and not until its last hope of obtaining from the states the power to levy imposts had vanished, nor until five states, Virginia, New Jersey, Pennsylvania, North Carolina and Delaware, had already appointed delegates to the proposed convention, did it, on February 21, 1787, pass the resolution, in the following words, calling for such a gathering:—

"It is expedient that, on the 2d Monday in May next, a convention of delegates who shall have been appointed by
the several states, be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein, as shall, when agreed upon by Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of government and the preservation of the Union."

Under these circumstances it was that the Constitutional Convention of 1787 convened in the month of May, in the Old State House in Philadelphia.

And now let us glance for a moment at the personnel of this never-to-be-forgotten assemblage. All of the 13 states were represented except Rhode Island, which sent no delegates and took no part in the Convention. The whole number of delegates appointed was 63, of whom 10 failed to attend; but for 2 of these there were substitutes. The actual number of delegates present was, therefore, 55, including almost all the distinguished and influential men of the country, and representing very exactly its conservative intelligence. John Adams was absent as Minister to England, and Thomas Jefferson as Minister to France. Samuel Adams, of Massachusetts, the American Cato, and Patrick Henry, of Virginia, the American Demosthenes, were bitterly opposed to revision, and the latter had refused appointment as a delegate. Neither John Jay, of New York, nor John Marshall, of Virginia, was present at the Convention; but both did yeoman service in securing the ratification of its work by their respective states.

"The Convention", says Curtis, "was a body of great and disinterested men, competent, both morally and intellectually, to do the work assigned them. High qualities of character are requisite to the formation of a system of government for a wide country with different interests. Mere talent will not do it. Intellectual power and ingenuity alone cannot compass it. * * * These qualities were preeminently displayed by many of the framers of the Constitution. There were men in that assembly whom, for genius in statesmanship, and for profound speculation in all that relates to government, the world has not seen overmatched."

Of the members of the Federal Convention 39 had seen
active service in the Continental Congress, 31 were lawyers by profession (of whom 4 had studied in the Inner Temple, and 1 at Oxford, under Sir Wm. Blackstone), 10 had served as judges in their own states and 4, at the time, held judicial positions. One had been a Federal judge; 7 had been judges in special courts for the determination of territorial disputes; 8 had assisted in framing the constitution of their various states; 3 had aided in the revision of state laws; 8 had been governors of states; 5 had been delegates to the Annapolis Convention; and 3 who had held no offices were yet universally recognized as authorities on local government as well as public and international law. Only 3, Elbridge Gerry (Massachusetts), Roger Sherman (Connecticut) and Robert Morris (Pennsylvania) had assisted in framing both the Declaration of Independence and the Articles of Confederation; while 4 others, Benjamin Franklin, George Clymer, James Wilson and George Wythe, had signed the former document alone, and 2 others, John Dickinson and Daniel Carroll—the latter. Mr. Hampton L. Carson, in his interesting History of the 100th Anniversary of the Constitution, makes the following classification of the more prominent members:

Jurisconsults: Hamilton and Madison.
Practical Jurists: Oliver Ellsworth, George Wythe, David Brearly, John Blair, George Reed.
Orators: Joseph Wilson, Jared Ingersoll, Abraham Baldwin, and Luther Martin.
Experienced Merchants: Robert Morris, Elbridge Gerry and Thomas Fitzsimmons.
Lawyers of Ability: Richard Bassett, Gunning Bedford and Caleb Strong.
Brilliant Men of all round knowledge and attainments:
Gouverneus Morris, John Dickinson, Edmund Randolph, John Rutledge.
Statesmen of temperate wisdom and ripened sagacity:
George Washington and Benjamin Franklin.

To this list should certainly be added the names of the two Pinckneys' of South Carolina, Rufus King, of Massachusetts, Roger Sherman, of Connecticut, William Patterson, of New Jersey, and Dr. William Samuel Johnson, of Massachusetts.
Of those who exercised the greatest influence in the Convention, and are, therefore, to be regarded as having had the principal part in its results, perhaps these nine names could be selected:

Washington: The soldier and statesman, by common consent the first citizen of the Confederation.

Hamilton: brilliant, eloquent and energetic; notwithstanding his youth, the leading federalist.

Madison: able, talented, laborious, of large public experience; an unsullied and devoted patriot.

Franklin: Now 81 years of age, venerable and beloved; full of worldly wisdom and keen insight.

Rufus King: distinguished as a jurist, statesman, orator and diplomatist; safe in judgment and profound in exposition.

Joseph Wilson: Wise, eloquent and scholarly; an able jurist and experienced publicist.

C. Cotesworth Pinckney: Revolutionary soldier and civilian; brilliant and devoted to his native state (South Carolina) yet ready to compromise his convictions for the sake of the common country.

Edmund Randolph: Then governor of Virginia, an eloquent and able lawyer and a statesman of high rank. The champion of the Constitution in Virginia against the redoubtable Patrick Henry.

Gouverneur Morris: The talented and energetic statesman and financier; an orator of remarkable eloquence and a writer of extraordinary power and of elegant style.

The Convention was to have convened on the 14th day of May, but it was the 25th before a quorum was secured. Washington was at once and unanimously elected to the presidency upon the motion of Robert Morris, (of Pennsylvania) seconded by John Rutledge (of South Carolina), and served throughout the sessions of the Convention with serene dignity and marked ability. With the utmost difficulty had Washington been persuaded to accept an appointment to represent his native state in the Convention. After 9 years of storm and stress, of unremitting service and overwhelming responsibility, he had retired to his estate at Mt. Vernon,
to spend, as he hoped, the remainder of his days in peace and repose. Though fully sensible (as his correspondence shows) of the critical state of the country and of the defects of the Constitution, he had, apparently, not fully made up his mind as to what changes should be made in it. He had, moreover, already declined an invitation to attend a biennial meeting of the Order of Cincinnati, to be held at Philadelphia at the same time as the convention. But, as Bancroft remarks, "the doom of greatness was upon him" and he was finally persuaded by Madison and other friends, and coerced by his high sense of duty to his country, into assuming the head of the Virginia delegation, upon which Patrick Henry, Robert Hyde Lee and Thomas Nelson had declined to serve. In the latter part of April he left Mt. Vernon, and journeyed, attended everywhere by public honors, to Philadelphia. At Chester he was met by the Speaker of the Pennsylvania Assembly and other persons of distinction, and at Gray's Ferry a military escort, the City Light Horse, was waiting to accompany him to town, while all the church bells rang out a joyous welcome. His first act, after his arrival, was to wait upon the venerable Dr. Franklin, the President of Pennsylvania. It is said that upon assuming the chair, he turned to the Convention, and with "countenance more than usually solemn, his eye seeming to look into futurity" addressed his counsel of warning and exhortation to the delegates: "It is too probable", he said, "that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If, to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and the honest can repair; the event is in the hand of God!" These words, gloomy and portentous as they may seem, are nevertheless not far from expressing the spirit in which the majority of the delegates approached the great work before them. Absolutely essential as was a revision of the Constitution to the perpetuation of the Union, commercial rivalries and reprisals had become so bitter, territorial conflicts as strenuous, and the idea of state sovereignty so exaggerated, that it was almost beyond hope that the members of the confederation would agree upon a working plan
which would sufficiently curtail the powers of the separate states and strengthen the forces of the central government. Moreover, the smaller states were jealous, to the verge of fear, of the larger, and came into the convention resolved not to accept any measures which would deprive them of an equal representation with their wealthier, stronger and more populous neighbors. Only by the exercise of the greatest wisdom, forbearance and patriotism was it possible that agreement could be reached among such conflicting interests and opinions. But these qualities were magnificently evident through all the sessions of the convention. And although more than once matters came to a deadlock from which there seemed no escape but dissolution, better counsels always prevailed and compromises were effected. Indeed, the story of the convention is a history of mutual concessions, which finally produced an instrument so admirably balanced and yet so powerful, that Winthrop, speaking of its system of counter-checks and its general strength, likens it to "one of those rocking stones reared by the Druids, which the finger of a child may vibrate to its center, yet which the might of an army cannot move from its place."

The debates of the convention were wisely made secret, so that the delegates were free from public pressure from without; and it was not known until after their labors were concluded how difficult it had been to harmonize the discordant elements. The last act of the Convention was a resolution that all its papers be left with Washington, subject to the order of the new Congress, should it ever be organized, under the new Constitution. In 1796 he deposited the record of the proceedings—in 3 manuscript volumes—with the State Department; and the whole was published in 1819. Private notes of the debates were taken by several members, notably by James Madison, who every evening, no matter what the labor or strain of the day, wrote out a minute and detailed account of its discussions, which has proved invaluable to all students of Constitutional history.

"The problem before the delegates," says Hare, "was not to establish the best government, but one which would be best suited to the circumstances, and which the American people would accept." "And this", he continues, "was one of
the momentous problems which Providence sometimes pro-
pounds to nations, and hangs their fate on the response; and from its very magnitude and the anxiety it aroused, divided the Convention into nearly equal camps."

Of these two factions one was the nationalizing party, which advocated the effacing, as far as possible, of state lines, and the construction of a strong Federal power; and its leaders in debate were Hamilton, Madison, King, Wilson and Gouverneur Morris. The other was the decentralizing or states-rights party, which was led by Lansing, Yates, Patterson, Martin and Bedford. Gerry, Mason and Randolph began with the former party, but went over to the opposition when they thought it was going too far. Franklin, Johnson, Sherman, Ellsworth and the two Pinckneys were to be found voting on one side or the other, as their anxiety for conciliation and compromise overcame their natural bent.

No single point divided the Convention so long or so dangerously as the question of equal representation in the Senate. This was the occasion of the desertion of Yates and Lansing, delegates from New York, who left the convention saying that they would never have been sent there had their constituents known what things were to be attempted. By their defection only Hamilton remained to represent New York, and he, left without a vote, could only aid by his counsel.

The debate on this subject was most acrimonious, and again and again it seemed as though the Convention was about to go to pieces over it. Probably it was in the course of this discussion that the white-haired Franklin arose and proposed that henceforth the sessions should be opened with prayer, for now there was no hope except from Heaven—the wit of man was exhausted.

The scope of this paper permits of no detailed account of the proceedings of the Convention; but a brief resume of the more important controversies may prove instructive. Hardly had the Convention been organized when Governor Randolph, of Virginia, brought forward on behalf of the nationalists what was known as the Virginia plan, designed to establish a more energetic government and reduce the idea of states to a minimum. It was mainly favored by the
large states and consisted of 15 resolutions whose main features were: That congress should consist of two branches, in both cases based on population; that the representatives should be chosen by the people, the senate by the representatives, and the president by the two houses together; that a federal judiciary be formed; that the executive, with part of the judiciary, have a limited veto power over acts of congress; that congress, besides possessing the powers now vested in it by the Confederation, should legislate whatever state legislation might interrupt the harmony of the United States (as, for example, in regard to taxation, commerce and the like); and it should have a veto power over state laws and the authority to coerce delinquent states. Charles Pinckney of South Carolina the same day submitted a draft of a constitution in 16 articles, not radically different from that embodied in the Virginia plan. On May 30th, the Convention, in Committee of the Whole, took up the Virginia plan, and on June 13th reported it favorably to the convention with some alterations produced by the debate; mainly as follows: That there ought to be a national government; that representatives hold office 3 years and senators 7 years; that the power of coercing the states be not granted; that the executive consist of one person elected for 7 years and thereafter ineligible; and that the executive alone exercise the veto power. The next day a request was made for an adjournment, as a federal, or league, plan of government was in preparation and would be prepared. And on June 15th, the Jersey plan was offered by Mr. Patterson of New Jersey, representing the decentralizing, or small-states, party. It contained 11 resolutions, tending principally to retain and amend the Articles of Confederation; to continue the congress of one chamber and the equal vote of each state therein; to cede to congress the powers of raising a revenue, of controlling commerce, of coercing any state which should refuse to pay its quota or obey the laws, and of electing an executive. This plan also went to the Committee of the Whole. While these plans were under debate, Hamilton, objecting radically to the Jersey plan as a mere perpetuating of the state sovereignty of the Confederation, and owning to little more preference for the Virginia plan as only (so he
76 The Framing Of The United States Constitution

said) "pork still, with a little change of sauce", suggested a plan of his own, whose main provisions were as follows: The house of representatives to be chosen by the people for 3 years, the senate for life by electors chosen by the people, governors of states to be appointed by the Federal government and to have an absolute veto on the acts of their state legislatures. This plan, which was surely centralization with a vengeance, was, so a historian writes "praised by everybody, and supported by none." It seems not to have been seriously considered.

On June 19th the Committee of the Whole reported adversely to the Jersey plan, and favorably to the Virginia plan. Thus two schemes of government had been proposed, whose terms were in almost every salient particular absolutely incompatible; and the war between the factions was on.

Before the Jersey plan had been rejected, Dickinson (of Delaware) had proposed a consolidation of the two plans, if possible; and on June 21st, Dr. Wm. Samuel Johnson, (of Connecticut) had struck the keynote of the situation by proposing to give an equal representation in the senate and a proportionate representation in the house. This proposition for compromise he again put forward more strongly on June 29th, and Oliver Ellsworth, (of Connecticut) moved formally that such a provision be made. July 2nd the motion was put and lost. The five large states, Pennsylvania, Virginia, South Carolina, North Carolina and Massachusetts, (New York having no vote) voting against, and the five small ones: Connecticut, Delaware, New Jersey, Maryland and New Hampshire, for it; with one, Georgia, equally divided. The convention had now "got to a point where it could not move one way or the other." The dispute had lasted for three days and was exceptionally bitter and violent. Gouverneur Morris, speaking of the demand of the small states for equal representation, exclaimed prophetically: "This country must be united. If persuasion does not unite it, the sword will!" And Gerry seemed to despair of any solution of the controverted question when he said: "A secession would take place * * * for some gentlemen seem decided on it!" The whole matter was now referred to a compromise committee of one member from each
state, and it, on July 5th, reported Ellsworth’s compromise, with two additional provisions; first: that the house of representatives, elected on a basis of 40,000 population, (which the larger states were expected to control) should originate all financial legislation; second: that 3-5 of the slaves were to be included in the estimate of population for representation. The former amendment was intended to placate the large states; the latter to catch the vote of North Carolina, South Carolina and Georgia. Like all compromises, it was at first extremely unpopular and hardly found a favoring voice in the convention. But the more it was debated the better it was liked; until finally, it was, with the addition of a power given the senate to propose amendments to money bills, put to a vote and carried. The two propositions (as to senate and house) were voted on separately, the vote on the senate provision being 7 states against 6 and on the house proposition, 5 states favoring, 3 opposed and 3 divided. “The senate, therefore,” says Alex. Johnson, “whose conception has received warmer admiration than that of any other feature in the constitution, owes its existence, in its present form, entirely to an unwilling compromise of the conflicting demands of the large and small states.” No doubt this is one of the incidents of the convention that furnish Von Holst, one of the most vigorous and unsparing critics of the constitution, his warrant for asserting as a “historical fact that the Constitution had been extorted from the grinding necessity of a reluctant people.”

After a similar long and hard fought battle over the granting to congress the right to regulate and control commerce, this absolute and essential power was granted; but not until, by another compromise, the provision was added that no duty or tax should be laid on articles exported from any state. By this, the second compromise, congress was granted complete control over national and interstate commerce, with the exception of the restriction on its power to tax exports.

A third compromise was found necessary when the question of the slave trade was under consideration. Georgia, South Carolina and North Carolina, which had previously given notice through Cotesworthy Pinckney that
they would never accept a constitution which did not afford proper protection to the interests of the slaveholders, now emphatically refused to enter the Union unless its congress should be forbidden to stop this traffic, or to tax it excessively. Once more the convention was brought to a standstill, and a compromise committee was again selected, which presently reported the 3rd important compromise of the Convention. Congress was to be forbidden to prohibit the importation of slaves, when permitted by state laws, until 1808; but a tax of $10.00 per capita might be imposed on such imports. Thus the slave made trade was brought at once under the revenue control of congress, and 20 years later, under its complete commercial control. No parts of the Constitution have received more severe criticism and condemnation than those which were the results of the “two compromises of a moral question.” But it must be remembered that to but a few members of the convention was slavery a moral question. Only in Massachusetts and New Hampshire had public opinion on the subject so far advanced as to abolish slavery. And had no compromise been attained, the result would have been the erection of two or more separate nations on this continent, with their concomitant armies and inevitable wars; surely an evil to be avoided at almost any cost.

These instances will furnish an imperfect suggestion of the difficulties and crises in the work of the convention in the course of its sustained, but finally successful labors. After a continuous session of 4 months the constitution, in its essentials, was agreed upon and on September 12, 1787, it was referred for revision to a Committee on Style and Arrangement, consisting of Wm. S. Johnson, Hamilton, Madison, King and Gouverneur Morris, to the last named of whom the work of re-drafting was mainly intrusted. “To his pen belongs the merit of that clear and finished style—that *lucidus ordo*—that admirable perspicuity—which has so much diminished the labors and hazards of interpretation for all future ages.”

On September 13th, the constitution was reported to the convention in form almost as it is now. Some few changes were made, propositions for new articles were voted down as too late, and a rule was adopted, which seemed
likely to seriously endanger the ratification of the constitution by the states.

This was the negating of a proposition for a new convention to consider any amendments which might be proposed by the states. It was a direct challenge to the destructive and dissatisfied element in the convention, and imposed on the states the alternatives of unconditional adoption or rejection of the constitution as it stood. Many delegates who had hoped to secure amendments through action of their states, now refused to sign; so that of 55 members who had been in attendance, 16 refused or neglected to attach their signatures. This number included Randolph, Gerry and Mason; Luther, Martin, Lansing and Yates having previously left the convention.

On September 15, 1787, the constitution was agreed to by all the states present, but there were in some of them dissentient minorities; and Hamilton, though he signed, could not cast his state's vote in its favor. On the last day of the session, September 17th, the broad sheet of parchment, on which was engrossed that document, pregnant with the destiny of a great nation, was brought in and placed on a table for signature. Unanimity was regarded as of much importance and Gouverneur Morris suggested its ingenious form of attestation, said to have been devised by the astute Franklin, as one that might be signed without implying approval:—"Done in Convention by the unanimous consent of the States present."

Concerning the formality of its signing, in that twice hallowed chamber in the Old State House in which the immortal Congress of 1776 had assembled, two interesting traditions, among others, are extant.

Dr. Franklin disapproved of many provisions in the constitution, but finally agreed to it, like the philosopher that he was, because he had expected nothing better and was not sure it was not the best that could be secured. "Whilst the last members were signing," writes Madison, Dr. Franklin looking towards the president's chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that painters often found it difficult in their art to distinguish an ascending from a de-
clining sun. 'I have,'—said he—'often and often, in the course of the session and the vicissitude of my fears as to its issue, looked at that 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 sun.'" The second anecdote is of Gen. Washington, who, when about to sign this instrument, arose, and holding the pen in his hand, after a solemn pause, uttered these words: "Should the states reject this excellent Constitution, the probability is that an opportunity will never again offer to cancel another in peace—the next will be drawn in blood."

So, and by such men, was framed the Constitution of the United States of America. "The God of Wisdom," says Carson, "illuminated the deliberations of that hour. The labors of that day preserved for all time the precious fruits of freedom and self-government. Unique in origin, without a prototype in design, of enduring strength and of phenomenal success, in the history of political philosophy the Constitution will always stand alone!"