**Constitutional Convention**

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Constitutional Convention

During the spring and summer of 1787, fifty-five delegates representing twelve American states deliberated in a forty-by-forty foot room in the Philadelphia State House with windows closed to maintain secrecy in a meeting that became known as the Constitutional Convention. The delegates engaged in a wide-ranging, frank, civil, yet passionate and often eloquent debate on the future of American government, one that continued for nearly four months despite sometimes flaring tempers and legitimate fears that they would not reach agreement and that disunion or even civil war might follow. They concluded their work by recommending almost unanimously a proposed United States Constitution (today's Constitution without its amendments), a bold new framework for continental republican government designed to replace the Articles of Confederation. This outcome occurred even though the convention had nominally been summoned to consider amendments to the Articles, not to replace it. Even more remarkably, the convention proposed that the new Constitution become effective upon ratification by nine state conventions chosen by the people, ratification principles wholly inconsistent with the Articles.

The convention achieved a quorum and began official business on 25 May 1787. In theory, it met pursuant to a 21 February 1787 resolution of the Continental Congress authorizing a meeting for the "sole and exclusive purpose of revising the Articles of Confederation." Under that resolution, the proposed revisions were first to be agreed to by Congress and then confirmed by all thirteen states before becoming effective. In reality, before the resolution passed Congress, seven states had already chosen delegates, responding to a summons written by Alexander Hamilton and issued from an earlier convention held in Annapolis, Maryland, in September 1786. Other states were reluctant to attend a convention that might consider fundamental changes to the Articles of Confederation and insisted on congressional authorization for the convention and use of the Articles amendment rules before appointing their delegates. Only Rhode Island refused to send delegates.

The political skirmishing over the convention reflected the fact that by 1786, the United States faced social and economic troubles at home and political and financial embarrassment abroad that had led many people to conclude that the Articles of Confederation were fundamentally flawed. By 1787 sharply differing and often radical proposals for major changes in American government had gained currency. Some Americans believed that the persistent inability of the Continental Congress to agree on important issues showed that the United States should be dissolved and split up into three or four separate confederacies. Some believed that no government powerful enough to govern a continent could avoid becoming tyrannical. A few Americans were so disturbed by events that they favored a return to monarchy.

Prominent men like George Washington, who supported a strong national republican government for the United States, were disheartened by the weakness of Articles government, which they thought made the government a "jest." Washington prepared carefully for the convention, instructing supporters to find and propose a "radical cure" for government ills whether or not they thought the cure would be agreed to by the convention. Still other well-known men, like Samuel Adams, opposed any significant change in the loose alliance of states created by the Articles of Confederation.

The convention was attended by a distinguished, socially prominent group of lawyers, planters, and merchants, men Thomas Jefferson later aptly called an assembly of "demigods." The delegates included forty-two men who had sat in the Continental Congress; at least thirty Revolutionary War veterans; sixteen past, present, or future state governors; two future presidents; one future vice president; and two future U.S. Supreme Court chief justices. Collectively, they possessed substantial political experience and great political talent.

The convention has been called a "rally of nationalists," but delegates had very different political philosophies and represented states and regions with often sharply conflicting interests. Ten men are generally thought to be primarily responsible for the form of the Constitution: James Madison and Edmund Randolph of Virginia; Benjamin Franklin, Gouverneur Morris, and James Wilson of Pennsylvania; Rufus King of Massachusetts; John Rutledge and Charles Pinckney of South Carolina; and Oliver Ellsworth and Roger Sherman of Connecticut.

The convention opened by electing George Washington as its president. Washington's participation was essential to the convention's political success. He had agreed to attend very reluctantly, after first declining. At age fifty-five, he suffered from severe rheumatism and had tried to withdraw from public life, but he was determined to try to create a stronger government to prevent the collapse of the union and, against the advice of supporters, was willing to risk his reputation on the success of the convention, which many thought might fail to reach any agreement.

The convention agreed to meet secretly, and it barred delegates from reporting its proceedings. Madison later claimed that the Constitution could not have been adopted without this secrecy that, among other things, allowed delegates to take positions which would be unpopular back home and to change their minds without political repercussions.

**INTRODUCTION OF THE VIRGINIA PLAN**

The convention debate began with Edmund Randolph's presentation of the Virginia Plan for the new Constitution. Based on proposals by Madison, the plan called for a bicameral national legislature with power to nullify state laws, a powerful executive, and exceptionally broad federal judicial powers. The new Constitution was to be ratified by assemblies chosen by the people in order to increase the Constitution's legitimacy and to prevent legislatures from blocking it. The plan was a complete nationalist overhaul of the Articles. The plan's national government proved too powerful for most delegates, but the plan provided the basic structure for the Constitution's separation of powers and dominated convention debate. (Charles Pinckney also submitted a plan, but it was not separately debated, though it may have been considered by the Committee of Detail.)

**THE STRUGGLE OVER REPRESENTATION**

During the first several weeks of debate on the Virginia Plan, it became clear that the most contentious issue was congressional representation. The plan called for proportional representation in both houses of the legislature (today's Congress) based either on "quotas of contributions" or the "number of free inhabitants," that is, wealth or population. Virginia and other large states led by Madison and Wilson vigorously supported the principle of proportional representation in Congress, while small states like Delaware and New Jersey supported the Articles' principle that each state should have an equal vote. This debate grew so heated that both sides threatened to leave the convention if their position was not adopted. Gunning Bedford Jr. of Delaware even threatened alliance with a foreign government if his state's position was rejected. On 11 June the convention approved proportional representation in the upper house (today's Senate) by a narrow vote and appeared ready to approve a modified Virginia Plan with proportional representation in both legislative houses. This action precipitated a small state revolt.

On 15 June the small states introduced the New Jersey Plan, named after its sponsor, William Paterson of New Jersey. This plan, supported by delegates from several states, including Connecticut, New York, and Maryland, was a modification of the Articles of Confederation that expanded congressional powers to include limited taxation and commerce. It proposed a unicameral legislature with equal state votes, an extremely weak executive removable on application of a majority of state governors, and a supreme court with narrow powers. The Paterson Plan was voted down by a vote of of 7 to 3, a de facto rejection of the existing Confederation.

Yet it was now apparent that the convention would not succeed unless it could come to an acceptable agreement on representation. Madison sought to persuade small states that it was unjust and unnecessary for them to have equal votes. He argued that the real division of interest between the states was one between the northern and southern states resulting from the economics of slavery, not one between large and small states. Madison's argument convinced important delegates that there was a division over slavery but failed to persuade others that small states did not need "security" through representation. On 16 July 1787 a special committee chaired by Roger Sherman of Connecticut reported a proposal, commonly called the Great (or Connecticut) Compromise, that called for population representation in the lower house using a formula that counted slaves as three-fifths of a person, and equal state votes in the upper house. Adopted by 5 to 4, this compromise between popular representation and representation of state governments created the political basis for federalism. A similar compromise was employed in creating the electoral college.

**THE COMMERCE POWER AND SLAVERY**

Despite general agreement that the national government should have the power to control interstate and foreign commerce, delegates sharply disagreed over political control of that power. The "eastern" states (particularly New England) and the southern states had disagreed sharply over commercial issues, and many southern representatives wanted a regional veto over any national commerce power by means of a requirement that the power be exercised only upon a two-thirds vote of Congress.

Several northern states had abolished (or begun the abolition of) slavery and slave imports by 1787. Northern states also urgently wanted national taxation powers, with direct taxes to be based on wealth.

The convention recessed in late July to permit a Committee of Detail to produce a draft of the Constitution. Members of the five-man committee included James Wilson of Pennsylvania, Oliver Ellsworth of Connecticut, and John Rutledge of South Carolina. The committee's 6 August report included a detailed specification of the powers of Congress, including a two-thirds voting requirement for exercising a key commerce power, the power to control navigation (for example, requiring American southern goods to be exported in American northern ships). The committee also proposed to exempt exports from taxation and to permit unlimited imports of slaves.

These committee recommendations caused a debate over slavery to erupt. Some northern delegates, like Gouverneur Morris, attacked the morality of slavery. Rufus King vigorously attacked the idea that slave imports would be permitted to continue without any tax revenues from exports produced using slave labor (which could be used to offset costs of slavery such as slave rebellions) while the South was also given expanded representation in the Congress using the "three-fifths" formula. Southern delegates generally defended slavery and slave imports, with the notable exception of George Mason, who made an impassioned, prophetic speech against both. Several northern delegates accepted slavery and continued imports of slaves as contributory to national wealth or as a necessary evil essential to reaching agreement on a new constitution.

A committee appointed to look for a compromise then proposed that Congress be enabled to prohibit the importation of slaves after 1800. Remarkably, southern delegates then successfully sought an extension of that provision to 1808, supported by delegates from northern states that had already abolished slavery and slave imports. When southern delegates later sought to require that the commerce power be exercised only through a two-thirds vote of Congress, they were defeated by a coalition of northern and other southern delegates.

Through this negotiation, each region got what it wanted most—the North got substantial control over the commerce power, since it would control Congress initially, while the South got the right to import slaves for twenty years. This was the second major compromise of the convention. The convention also agreed to protect slavery by requiring states to permit forcible return of fugitive slaves to their owners in other states (the fugitive slave clause).

**THE POWERS OF CONGRESS**

In addition to broad powers over taxation, commerce, and appropriations (the "power of the purse"), the Constitution gave Congress the power to declare war and to raise national military forces. Separate authority was provided to use and control state militias to enforce federal laws, suppress insurrections, and repel invasions. Unlike the Articles of Confederation, major national economic and military powers did not have to be exercised through the states, and such laws could be enforced directly against individuals rather than states. The elimination of the Articles' requirements for supermajority state consent to major national actions and for state implementation of federal laws are among the most fundamental departures from the Articles found in the Constitution. Congress also received power to "make all Laws which shall be necessary and proper for carrying into Execution" its other powers, a grant of implied authority that was to become the basis for important assertions of national power in later years.

**LIMITS ON STATE AUTHORITY**

At the urging of James Madison and others, the delegates agreed to place significant limits on state powers. The Constitution limited state economic power by providing that states could not emit bills of credit, make anything other than "gold or silver coin" legal tender for payment of debts, or pass laws impairing the obligation of contracts. States were prohibited from imposing taxes on imports or exports (except to cover administrative costs) and from entering into agreements or compacts with each other, or with foreign governments, without congressional consent.

**THE EXECUTIVE BRANCH**

Delegates had highly conflicting ideas about the executive branch. Some favored a weak presidency or a plural executive of several individuals; others favored a powerful president with a lengthy term and absolute veto over legislation. The Constitution's comparatively "energetic" (powerful) presidency was a compromise between these views.

To avoid choosing between popular election of the president and election of the president by Congress or legislatures, the convention agreed that the president would be chosen by an electoral college whose membership formula would be weighted toward small states and whose members would be chosen by states using state election rules. The president was given a four-year term, with no limit on the number of terms, but was made impeachable for "treason, bribery, or other high crimes and misdemeanors," a standard that, combined with a requirement for a two-thirds vote to impeach, was intended to make impeachment a rarely used remedy.

The president's powers included a strong veto that could be overridden only by a two-thirds vote of both houses of Congress, a compromise between those who wanted to give the president an absolute veto and those who wanted the veto exercisable only together with the judiciary. The president was given "the power of the sword" as commander in chief. The president shared the treaty power and the power to appoint officers of the United States with the Senate.

**THE JUDICIARY AND FUNDAMENTAL RIGHTS**

The Constitution contained only an outline of the judicial branch structure, including a description of the jurisdiction of the federal courts. It provided for lifetime tenure for judges, widely recognized as necessary to preserve judicial independence. The Constitution also provided that the Constitution and federal laws were supreme over state laws and constitutions, a provision that bound both state and federal judges. The absence of express constitutional provisions regarding judicial review of the constitutionality of legislation—other than the federal jurisdiction and supremacy clauses, which many people regarded as sufficient authorization for such review—led to later disputes regarding the nature and limits of such review.

The Constitution contained no bill of rights, but it did protect certain fundamental rights such as habeas corpus and criminal jury trial. Most delegates thought that a bill of rights was either futile or unnecessary in a government of limited powers.

On 17 September 1787, the proposed Constitution was signed by thirty-nine men, all but three of the delegates (Mason, Randolph, and Gerry) present. The historic convention then ended.