

PHILADELPHIA STORY

by Jack N. Rakove

“There never was an assembly of men, charged with a great and arduous trust, who were more pure in their motives, or more exclusively or anxiously devoted to the object committed to them.”

It probably was shortly before his death, in 1836, that Virginia's James Madison, the sole surviving Framers of the Constitution, dictated those closing words of the preface to his notes of the debates at the Constitutional Convention. This was how Madison wanted his countrymen to imagine the Convention. In many ways we have followed his wishes—and will be asked to do so again during the bicentennial celebrations.

Yet, for most of this century, this popular image of the Founding has coexisted with another, less heroic portrait etched by scholars since Charles A. Beard published *An Economic Interpretation of the Constitution* (1913).

Rather than treat the Constitution as the product of a highly principled debate conducted by an extraordinary group of men who resolved *all* of the great questions before them, these historians have emphasized everything that was practical and tough-minded about the task of creating a national government: the threats and bargains that dominated the politics of the Convention, and the determination of the delegates to protect the interests of their states and, for that matter, of their own propertied class.

To strike an accurate balance between these two contrasting images is the great challenge that confronts anyone who studies the making of the Constitution.

That task is more important now than it has been at any point in our recent history. Today's controversy over constitutional jurisprudence, sparked by U.S. attorney general Edwin Meese III, requires that Americans ask again how much weight the “original intent” of the Framers should carry in interpreting the Constitution.

One thing is clear: The 55 delegates to the Philadelphia Convention were not all cut from the same cloth. Six had signed the Declaration of Independence, 14 were land speculators, 21 were military veterans of the Revolution, at least 15 owned slaves, and 24 served in Congress. Thirty-four were lawyers.

Present were many of the most outstanding men that the new Republic could muster. Among them were Benjamin Franklin, the president of Pennsylvania's Supreme Executive Council and the leading American scientist of the century, so disabled by gout and other

ailments at the age of 81 that he was carried from his lodgings to the Convention in a sedan chair borne by four convicts; Virginia's George Washington, then 55, who came to Philadelphia very reluctantly after three years of retirement from public life at Mount Vernon; New York's Alexander Hamilton, 30, Washington's wartime aide; George Mason, a 60-year-old Virginia plantation owner and (said Thomas Jefferson) "the wisest man of his generation."

Also in attendance were men of somewhat less distinction. One of the more interesting examples was Luther Martin, "the rollicking, witty, audacious Attorney General of Maryland," as Henry Adams later described him, "drunken, generous, slovenly, grand . . . the notorious reprobate genius."

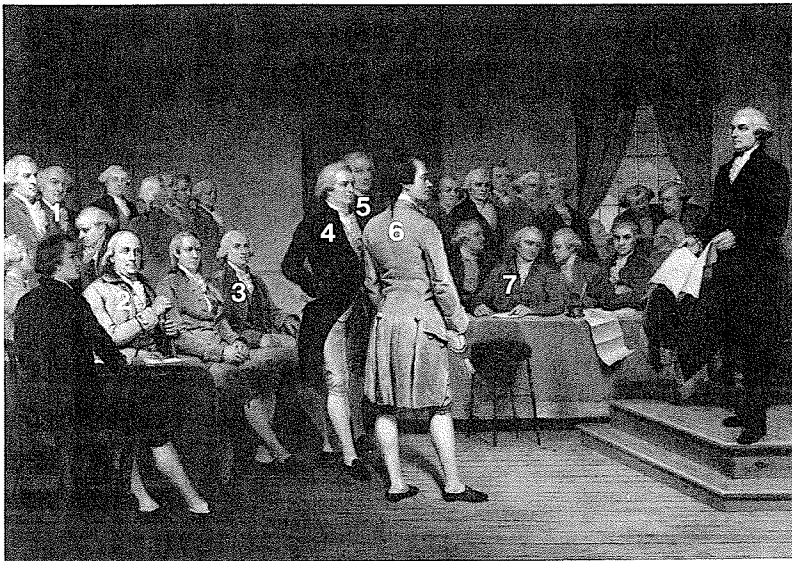
Missing from the Convention were Thomas Jefferson, 44, author of the Declaration of Independence 11 years earlier, who was overseas serving as the American minister to France, and former congressman John Adams, 51, likewise engaged in England. The great firebrands of the Revolution—Samuel Adams, Thomas Paine, Patrick Henry—were also absent.

A Humid Summer

No delegates came from Rhode Island. "Rogue Island," as a Boston newspaper called it, was in the hands of politicians bent on inflating the currency to relieve farm debtors; they would have nothing to do with a strong national government and the monetary discipline it would impose. For lack of funds, New Hampshire's delegates arrived more than two months late, bringing the number of states represented to 12. Indeed, during the Convention's debates, the cost and difficulties of travel would occasionally be cited as looming obstacles to effective national government. Nearly a year, Madison predicted, would be "consumed in preparing for and travelling to and from the seat of national business."

The delegates were supposed to gather in Philadelphia on May 14, 1787, but it was the rare public assembly in 18th-century America that met on time. Only on Friday the 25th did delegates from seven states—a quorum—assemble in the spacious east room of the Pennsylvania State House, the same chamber where the Declaration of Independence had been signed. The delegates sat two or three to a desk. George Washington was immediately elected president of the Convention. Serious discussion began on the 29th. Thereafter, the

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George Washington addresses the Constitutional Convention in the Pennsylvania State House. Among the delegates are (1) Gouverneur Morris, (2) Benjamin Franklin, (3) James Madison, (4) Edmund Randolph, (5) Elbridge Gerry, (6) Alexander Hamilton, and (7) John Dickinson.

delegates met six days a week until they finally adjourned on September 17, taking only one recess. It was, by contemporary standards, an arduous schedule. The delegates met for four, six, sometimes even eight hours a day.

In the afternoons, when the Convention adjourned, the delegates often repaired to local taverns—the Indian Queen, the George, the Black Horse—or turned to other amusements. These included visiting Mrs. Peale’s Museum, with its fossils, stuffed animals, and portraits of the Revolution’s heroes (by her husband, Charles), browsing through libraries and book and stationery shops, reading the city’s eight newspapers, and watching the occasional horse race through the city streets, paved with bricks and cobblestones. Down by the busy docks and brick warehouses along the Delaware River, spectators could watch as inventor John Fitch demonstrated a novel contraption: a steam-powered boat.

Although there was a large and growing German population, the Quakers, in their broadbrim hats, still set the tone in Philadelphia, and the tone was sober but cosmopolitan. George Mason, from rural Virginia, complained after his arrival that he was growing “heartily tired of the etiquette and nonsense so fashionable in this city.”

It was hot and humid that summer. "A veritable torture," moaned one French visitor. But the delegates had to keep their windows closed as they slept: Obnoxious stinging flies filled the air. The dyspeptic Elbridge Gerry of Massachusetts sent his family to the healthier clime of New York City, where the U.S. Congress was sitting. A few of his colleagues, such as Charles Pinckney, the young delegate from South Carolina, rented houses and brought their families to Philadelphia; others lived alone in rented rooms above the taverns or boarded in Mrs. Mary House's place at the corner of Fifth and Market streets near the State House. Most brought servants. George Washington was the guest of Pennsylvania delegate Robert Morris, Philadelphia's great merchant prince, who owned a large mansion a block from the State House.

A typical session of the Convention would find perhaps 35 or 40 delegates from 10 or 11 states in attendance. Some delegates came and went, others sat silently the entire time—and a few would have been better advised to say less. Washington did not so much as venture an opinion until the last day of debate. But his stern presence in the chair did much to preserve the decorum of the meeting.

Madison's Fears

The debates were held in secrecy. Otherwise, candor would have been impossible, since the delegates knew that their opinions and votes, if made public, would become live ammunition in the hands of political foes back home. Moreover, the threat of deadlock would have quickly arisen had the dissidents within the Convention been allowed to stir up a hue and cry among their constituents. "Their deliberations are kept inviolably secret, so that they set without censure or remark," observed Francis Hopkinson, a Philadelphia musician and signer of the Declaration, "but no sooner will the chicken be hatch'd but every one will be for plucking a feather."

Nevertheless, we know a great deal about what was said at the Convention, thanks chiefly to the copious daily note-taking of Virginia's James Madison, then just turned 36, who is now generally regarded as the "father of the Constitution."

Were he alive today, the slight, soft-spoken Madison would probably be happily teaching history or political theory at his alma mater, Princeton University (or the College of New Jersey, as it was then known). He took a distinctively intellectual approach to politics, reinforced by a decade of experience in the Virginia legislature and the U.S. Congress. He had read deeply in the history of ancient and modern confederacies and pondered the shortcomings of the Articles of Confederation and the state constitutions. (It was Madison's frustration with the scanty archives left by earlier confederacies that prompted him to take meticulous notes at the Convention.) He ar-

rived in Philadelphia 11 days early to begin drafting, with his fellow Virginians, the Virginia Plan. After the state's 34-year-old governor, Edmund Randolph, presented the plan on May 29, it became, in effect, the agenda of the Convention.

The starting point for all of Madison's proposals was his belief, based on the nation's unhappy experiences under the Articles and under the state constitutions, that the state legislatures could not be counted on to respect the national interest, the concerns of other states, or even the "private rights" of individuals and minorities.

Like most other Federalists, Madison thought that the legislatures were dominated by demagogues who sought office for reasons of "ambition" and "personal interest" rather than "public good." Such men—e.g., Patrick Henry, his great rival in Virginia—could always "dupe" more "honest but unenlightened representative[s]" by "veiling [their] selfish views under the professions of public good, and varnishing [their] sophistical arguments with the glowing colors of popular eloquence."

From this condemnation of state politics, Madison drew a number of conclusions that appeared in the Virginia Plan. First, unlike the existing Congress, which relied upon the good will of the states to see its resolutions carried out, the new government would have to be empowered to impose laws and levy taxes directly upon the population, and to enforce its acts through its own executive and judiciary. Second, he hoped that membership in the new Congress would result from "such a process of elections as will most certainly extract from the mass of the society the purest and noblest characters it contains."

One State, One Vote?

Yet, because Madison also doubted whether popularly chosen representatives could ever be entirely trusted, he hoped to make an indirectly elected Senate (with members nominated by the legislatures but elected by the people) the true linchpin of government. Not only would this Senate thwart the passage of ill-conceived laws by the lower house, it would manage the nation's foreign relations and appoint all major federal officials. But since even the Senate could not always be counted upon to legislate wisely, Madison sought an additional check in the form of a joint executive-judicial Council of Revision that would possess a limited veto over all acts of Congress.

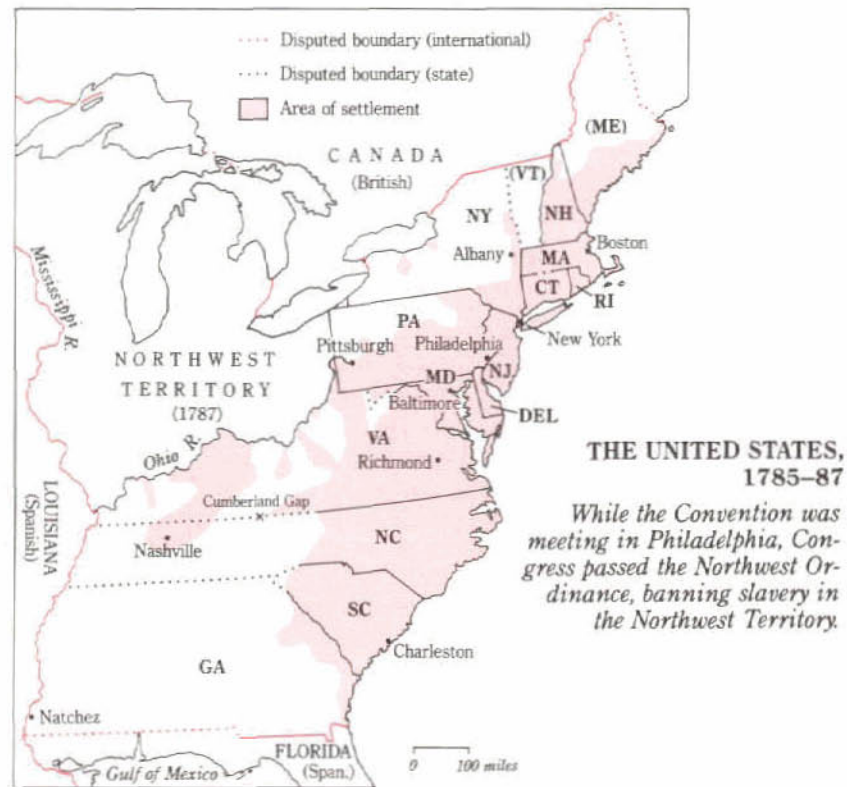
Most important of all, Madison wanted to arm the national government with a "negative in all cases whatsoever" over the acts of the states. This radical veto power would be shared jointly by Congress (or the Senate) and the Council of Revision.

In Madison's mind, the whole edifice of the Virginia Plan rested on the adoption of some form of proportional representation in Congress. If the Confederation's "one state, one vote" scheme were

retained, for example, each citizen of tiny Delaware (population in 1790: 59,000) would, in effect, carry the same weight in the powerful new government as 12 Virginians. Delegates from Massachusetts and Pennsylvania, the Confederation's other two largest states, reached the same conclusion.

The Pennsylvanians, in fact, wanted to deny the small states an equal vote even within the Convention. But in a private caucus held before the Convention, the Virginians persuaded Pennsylvania's leading delegates—James Wilson (the Convention's finest legal mind), Gouverneur Morris (its wiliest advocate and its most talkative delegate, with 173 speeches), and Robert Morris (the former superintendent of finance for the Confederation)—that they could prevail over the small states by force of reason. And sooner rather than later. For the large states' delegates also agreed that the problem of representation had to be solved first.

Two of the small states' leaders tried to avoid the clash: Roger Sherman, a 66-year-old Connecticut farmer and storekeeper turned politician, and John Dickinson of Delaware, who had gained fame as



the “penman of the Revolution” during the late 1760s for his antitax *Letters from a Farmer in Pennsylvania*. Sherman was among the signers of the Declaration of Independence; Dickinson had refused to put his name to it, still hoping for reconciliation with Great Britain. Both men had taken leading roles in drafting the Articles of Confederation a decade before the Convention. Now, during the early days of debate in Philadelphia, they tried to head off full discussion of the dangerous issue of representation.

Let the Convention first determine what it wanted the national government to do, they suggested. Perhaps it might vest Congress with only a few additional powers; then there would be no need to propose any changes in the system of representation.

Toward the Great Compromise

Their opponents would not waver. “Whatever reason might have existed for the equality of suffrage when the union was a federal one among sovereign states,” Madison flatly declared, “must cease when a national government should be put into the place.”

Although interrupted by discussion of other issues, such as fixing the qualifications for legislative office, the struggle over representation would go on for seven grueling weeks. It lasted until July 16, when the Great Compromise, as scholars now call it, allowed the Convention to move forward.

The fight went through three phases. During the first (May 29–June 13), the large states exploited the initiative they had seized with the Virginia Plan to gain an early endorsement of the principle of proportional representation in both houses. The small-state men rallied after June 14, when William Paterson, 42, a diminutive country lawyer and New Jersey attorney general—“of great modesty,” noted Georgia’s William Pierce, “whose powers break in upon you and create wonder and astonishment”—presented the New Jersey Plan.* This second round of debate came to a dramatic end on July 2, when the Convention deadlocked (five states to five, with Georgia divided, and thus losing its vote) over a motion by Oliver Ellsworth of Connecticut to give each state an equal vote in the Senate.

Round Three began immediately, with the appointment of a committee made up of one member from each delegation and explicitly charged with finding a compromise. The Convention received its report on July 5, debated it until the 14th, and finally approved it by a narrow margin two days later.

These seven weeks were the Convention’s true testing time.

*The New Jersey Plan would have amended the Articles of Confederation, leaving the unicameral Congress intact, but empowering it to elect a plural executive and granting the national government the power to impose taxes directly on the citizens of states that failed to meet the contributions quotas assigned them by Congress. The government would also have the power to compel the states to abide by its laws by force of arms. This was a crucial concession, for it acknowledged the fundamental weakness of confederation.

THE 'NEFARIOUS INSTITUTION'

James Madison was somewhat surprised by the intensity of the debates between the large and small states at Philadelphia. After all, he told the delegates on June 30, the states were really not divided so much by size as by "the effects of their having, or not having, slaves."

Yet slavery did not become a major issue at the Constitutional Convention. In August, Gouverneur Morris passionately denounced it as "a nefarious institution." But, as John Rutledge of South Carolina quickly reminded the delegates, "the true question at present is whether the Southern states shall or shall not be parties to the union."

As they would time and again during the Convention, the delegates turned away from divisive social issues to focus on what historian James MacGregor Burns has called the "mundane carpentry" of making a constitution.

Abolitionist sentiment was widespread but not deep in 1787. Traffic in imported African slaves was outlawed everywhere except in Georgia and the Carolinas, yet only Massachusetts had banned slave ownership. Many delegates, Northerners and Southerners alike, disliked slavery; some also believed, as Connecticut's Oliver Ellsworth said, that the arrival of cheap labor from Europe would ultimately "render slaves useless."

Such hopes, combined with the delegates' sense of the political realities, led them to reduce the slavery issue to a series of complicated tradeoffs.

Early in June, the large states accepted the famous "three-fifths" compromise: Slaves (carefully referred to as "all other Persons") would each count as three-fifths of a free white "person" in any scheme of representation by population. In return, the Georgians and Carolinians tacitly agreed to support the large states' ideas for a strong national government.

But on August 6, a report by the Committee of Detail upset the agreement. The Committee recommended several measures that would weaken the new national government, including a ban on national taxes on exports. More important, it proposed a ban on any federal regulation of the slave trade.

The debate was heated. Rufus King of Massachusetts reminded the Southerners of the earlier bargain and added that he could not agree to let slaves be "imported without limitation and then be represented in the National Legislature." A slave influx could give undue legislative power to the South.

Another committee—the Committee of Eleven—was named to mediate the dispute. After more haggling, the ban on export taxes was retained. The government would be empowered to halt the slave trade in 1808. But the new Constitution also mandated the return to their owners of escaped slaves.

Congress did abolish the slave trade in 1808, but the "peculiar institution" did not die. Inevitably, the North-South division that Madison saw in 1787 widened, while the heated conflict between the large and small states faded almost as soon as the delegates left Philadelphia. The Framers' artful compromises, later denounced by abolitionists as "A Covenant with Death and an Agreement with Hell," could not contain the nation's passions over slavery.

The tension is apparent to anyone who reads Madison's daily notes. The character of debate covered a wide spectrum, from highly principled appeals to heavy-handed threats and pokerfaced bluffs.

In the speeches of the large states' leading advocates—Madison, Wilson, and Rufus King, the 32-year-old lawyer from Massachusetts—one finds powerful and profound briefs for the theory of majority rule. Indeed, the spokesmen for the other side rarely met the arguments on their own terms. Delaware's hot-tempered Gunning Bedford, Jr., claimed, for example, that the large states would "crush the small ones whenever they stand in the way of their ambitious or interested views." But when Madison and his allies demanded to know what common interests could ever unite societies as diverse as those of Massachusetts, Pennsylvania, and Virginia, the small-state men could not come up with an answer.

What was finally at issue was a question not so much of reason as of will. John Dickinson had made sure that Madison got the point immediately after the New Jersey Plan was introduced on June 15. "You see the consequences of pushing things too far," he warned, as the delegates filed out of the chamber at the end of the day. "Some of the members from the small states wish for two branches in the general legislature, and are friends to a good national government; but we would sooner submit to a foreign power, than submit to be deprived of an equality of suffrage in both branches of the legislature, and thereby be thrown under the domination of the large states."

Skepticism Abroad

When the large states hinted that perhaps they might confederate separately, or that the Union might dissolve if their demands were not met, Bedford retorted that the small states would "find some foreign ally of more honor and good faith, who will take them by the hand and do them justice."

In the end, it was the bluff of the large states that was called. Once the deadlock of July 2 demonstrated that the small states would not buckle, the necessity for compromise became obvious. And the committee, called the Grand Committee, that the Convention elected to that end was stacked in favor of the small states. The three members chosen for the most populous states—Elbridge Gerry of Massachusetts, Benjamin Franklin of Pennsylvania, and George Mason of Virginia—were less militant than others in their delegations.

While the Grand Committee labored, the other delegates observed the 11th anniversary of American Independence. Philadelphia marked the occasion in fine fashion. A fife-and-drum corps paraded about the city; the militia fired three cannonades. In the local taverns, revelers toasted the day.

The delegates kept their worries to themselves. "We were on

the verge of dissolution," wrote Luther Martin, "scarce held together by the strength of an hair, though the public papers were announcing our extreme unanimity." Indeed, up and down the Atlantic seaboard, editors were speculating about the proceedings in Philadelphia. "With zeal and confidence, we expect from the Federal Convention a system of government adequate to the security and preservation of those rights which were promulgated by the ever memorable Declaration of Independency," proclaimed the *Pennsylvania Herald*. "The world at large expect something from us," said Gerry. "If we do nothing, it appears to me we must have war and confusion."

In Britain, France, and Spain, royal advisers awaited news from America with detached curiosity. The Spaniards were particularly interested in the proceedings at Philadelphia, for if an effective government were not formed, American settlers in the lands west of the Appalachians might fall into their orbit. Even after the adoption of the Constitution, wrote historians Samuel Eliot Morison and Henry Steele Commager, "most European observers believed that the history of the American Union would be short and stormy."

On July 5, the committee presented its report to a glum Convention. The compromise it proposed was one in name only. In return for accepting an equal state representation in the Senate, the large states would gain the privilege of having all tax and appropriations bills originate in the House of Representatives, whose members were apportioned on the basis of population, with no changes by the upper chamber allowed. (Later, the Convention decided to allow the Senate to alter tax and spending laws.) Madison and his allies dismissed the proposed tradeoff as worthless, neither desirable in theory nor useful in practice; the Senate, they said, could simply reject a bill it disliked.

Averting a Collapse

But, by this time, argument no longer mattered.

The key vote of July 16 found five states for the compromise, four against, and Massachusetts divided by Gerry and Caleb Strong, who insisted that "an accommodation must take place." The compromise won, but not by much.

Emotions were still running high. New York's two remaining delegates, Robert Yates and John Lansing, Jr., had departed on July 10, declaring that the Convention was exceeding its authority. This point was raised several times during the proceedings, and brushed aside. As James Wilson had put it, the Convention was "authorized to *conclude nothing*, but . . . at liberty to *propose anything*."

Next on the Convention's agenda for the afternoon of July 16th was the difficult task of beginning to define the extent of the legislative authority of Congress.

But the large states' delegates were unprepared to go on. The

broad powers the Virginia Plan had proposed for Congress had rested on the expectation that both houses would be selected by proportional voting. "The vote of this morning had embarrassed the business extremely," Edmund Randolph declared during the afternoon of the 16th. He suggested that the Convention adjourn to give both sides a chance to rethink their positions. Mistakenly believing that Randolph was calling for an adjournment *sine die* (indefinitely), William Paterson of New Jersey immediately jumped to his feet and enthusiastically agreed that "it was high time for the Convention to adjourn, that the rule of secrecy ought to be rescinded, and that our constituents should be consulted."

But that, Randolph apologized, was not what he had meant. All he sought was an overnight adjournment. Tempers cooled, a few members hastened to remind their colleagues that even if "we could not do what was best, in itself, we ought to do something," and the Convention broke up for the day.

A Single Executive?

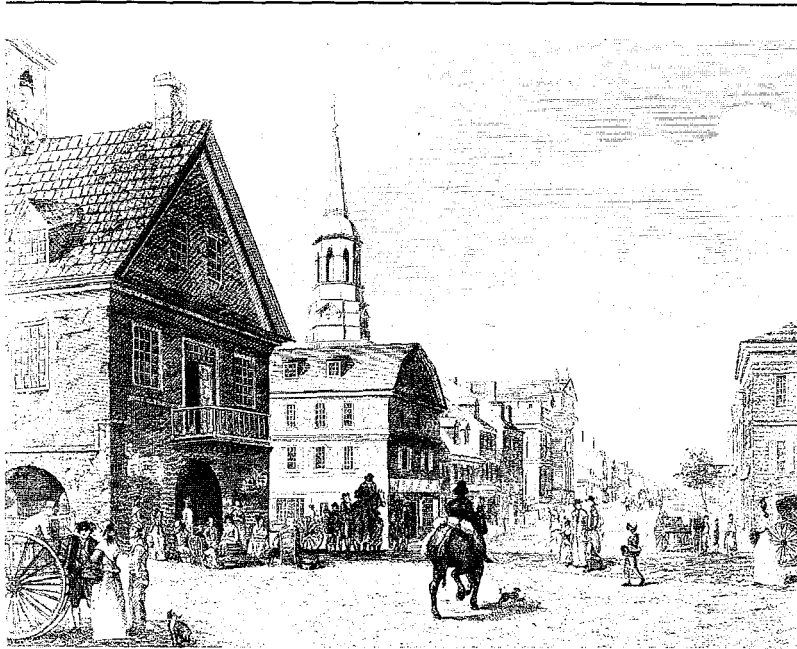
The next morning, the large states' delegates caucused to decide whether to pull out and confederate separately. "The time was wasted in vague conversation on the subject," Madison noted, "without any specific proposition or agreement." The Convention, despite the large states' unhappiness, would continue.

The critical vote of July 16, then, was not a compromise as we ordinarily use the term. One side had won its point, the other had lost. But the outcome of this struggle did cause a series of other changes and "accommodations" that profoundly affected both the structure of the future U.S. government and its powers.

In its preoccupation with representation in Congress, the Convention had barely discussed the other two branches of government. Most of the delegates agreed with Madison that the central problem was to find a way to enable the executive and the judiciary to withstand the "encroachments" of the legislature. But how was that to be accomplished?

At an early point, the Convention had rejected Madison's scheme for a joint executive-judicial Council of Revision. The judiciary could simply overturn unconstitutional laws by itself, the members felt, and it would be most effective if "free from the bias of having participated" in writing the laws.

It is remarkable how little time the Framers spent discussing the role of the judiciary. Harvard's Raoul Berger noted some years ago that "the very casualness with which the [Convention's] leadership assumed that judicial review was available . . . suggests that the leaders considered they were dealing with a widely accepted doctrine." In their focus on the powers of the other branches of govern-



The view down Second Street from the corner of Market Street in Philadelphia. Besides its many churches, Philadelphia boasted 117 taverns.

ment, however, the Framers never sought to prescribe either the scope of the courts' power to declare laws unconstitutional or the basis on which this power could be exercised.

Far more of the Convention's time was devoted to the subject of executive power. But here, too, it is difficult to fathom exactly what the Framers intended.

Something of the uncertainty the Convention had to overcome was illustrated when the subject of the executive was first raised on June 1. After James Wilson moved that "the executive consist of a single person," the delegates sat speechless in their chairs, reluctant to begin discussing so great an issue. "A considerable pause ensuing," noted Madison, "and the chairman asking if he should put the question, Dr. Franklin observed that it was a point of great importance and wished that the gentlemen would deliver their sentiments on it before the question was put." A lively debate began, and it immediately revealed two things.

The delegates agreed that a republican executive could not be modeled on the British monarchy. Second, most members thought that considerations of efficiency and responsibility alike required an executive headed by a single person—though a few dissenting members joined Randolph in fearing that such an office would prove "the

foetus of monarchy." The dissenters variously favored either a plural executive, a kind of government by committee, or some form of ministerial government, akin to the British cabinet.

The great puzzle was how the executive was to be elected.

Today, Americans regard the strange device that the Framers finally invented, the electoral college, as evidence of how far they were prepared to go to prevent a popular majority from choosing a potential tyrant. What the Framers actually feared, however, was that a scattered population could never "be sufficiently informed of characters," as Roger Sherman put it, to choose wisely among what the Framers assumed would be a large field of candidates.*

Believing that popular election was impractical, then, many delegates saw no alternative to having Congress choose the executive. But this only raised other objections. An election by Congress would be "the work of intrigue, cabal, and of faction," Gouverneur Morris asserted. "Real merit" would be passed over.

Moreover, the executive could not be expected to discharge his duties conscientiously, free from improper legislative influence, unless he were made ineligible for reelection. But that, Morris noted, would "destroy the great motive to good behavior, the hope of being rewarded by a reappointment." Such an executive, he continued, would be tempted to "make hay while the sun shines."

The desire for reelection would be an incentive to good behavior. But would that not leave open the possibility that a leader's fondness for the powers and perquisites of office—or a public that had grown too used to a leader—might lead to the creation of a monarchy in everything but name?

Fishing for Trout

Just before it recessed on July 26, the Convention agreed (six states to three, with Virginia divided) to have Congress appoint a single executive, to serve for a single seven-year term. It then turned the task of recasting all the resolutions approved thus far over to a Committee of Detail composed of Randolph, Wilson, Ellsworth, John Rutledge of South Carolina, and Nathaniel Gorham of Massachusetts.

The muggy weather continued. "At each inhaling of air," wrote one visitor to Philadelphia, "one worries about the next one. The slightest movement is painful." Many of the delegates from nearby states took the opportunity to return home. Others fled to the countryside. General Washington, in his usual terse style, recorded in his

*Article II, Section 1 of the Constitution grants each state "a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress." The small states thus enjoyed more influence than they would have under a strictly proportional system. It was hoped that the electors would be the wisest and ablest men of their states. The Constitution does not require electors to bind themselves to particular candidates: In 1968, a North Carolina elector designated as a Republican cast his vote for George Wallace.

journal: "In company with Mr. Govr. Morris and in his Phaeton with my horses, went up to one Jane Moore's (in whose house we lodged) in the vicinity of Valley Forge to get Trout."

When they reconvened on August 6, the delegates were eager to move the business toward a conclusion. During the remaining six weeks, the debates became more rushed—and more focused. They centered on specific clauses and provisions; decisions that would figure prominently in later controversies over the Constitution were reached with surprisingly little discussion, revealing far less about the Framers' intentions than modern commentators would like to know.

Far and away the most momentous changes that took place were those involving the powers of the executive.

In the report of the Committee of Detail, the major duties of the president (as the committee now named the executive) were confined to seeing that the laws were "duly and faithfully executed" and to serving as commander-in-chief of the armed forces. He would also enjoy a limited veto over acts of Congress. Two of the powers that provide the foundation for much of the political authority of the modern presidency remained in the Senate: the power to make treaties and the power to appoint ambassadors and justices of the Supreme Court (and perhaps even the heads of major executive departments, though this was left unclear).

In Britain, these powers were critical elements of the royal prerogative, and the Framers were reluctant to grant them to the president. Yet, with the report of the Committee of Detail in their hands, many began to reconsider. Madison, Wilson, Gouverneur Morris, and other delegates from the large states now opposed giving sole power over foreign affairs to the Senate, a body in which the small states would enjoy disproportionate influence, and whose members would be elected by the presumably reckless state legislatures.

Shaping the Presidency

From this unhappiness with the Great Compromise over representation in Congress, a new concept of the presidency began to emerge. Though many of the Framers worried about the potential abuse of executive power, some now described the president, in Gouverneur Morris's words, as "the general guardian of the national interests." He would not only carry out the national will as it was expressed by the legislature, but also act independently to define a national interest larger than the sum of the legislators' concerns.

The best evidence for this enlarged conception of executive power is circumstantial, resting less on anything the delegates said than on the final changes that led to the adoption of the electoral college. Unfortunately, the key discussions took place within the Committee on Postponed Parts, appointed on August 31 to consider

a potpourri of unresolved issues. Very little is known about what was said during its debates.

In the Committee's major report, read September 4, the president suddenly enjoyed significant responsibility for foreign affairs and the power to appoint ambassadors, judges, and other officials, with the "advice and consent" of the Senate. At the same time, his election by an electoral college promised to make the president politically independent of Congress. The report also specified a four-year term and eligibility for reelection.

The Committee had clearly sought to preserve the Great Compromise. The large states, it was assumed, would enjoy the advantage in promoting candidates for the presidency. (None of the Framers anticipated the formation of powerful political parties.) But if an election failed to produce a majority—as many delegates thought it usually would—the election would fall to the Senate. There, the small states would have greater influence.

Saving the Day

James Wilson rose to object. If the Senate controlled the ultimate power of election, he warned, "the President will not be the man of the people as he ought to be, but the Minion of the Senate." Many members agreed, but nobody could find a solution that would not erode the Great Compromise.

It was only after the report had been adopted that Roger Sherman and North Carolina's Hugh Williamson had the idea of sending deadlocked elections into the House of Representatives, with the members voting by states. This had the ingenious effect of preserving both the president's independence from the Senate and the Great Compromise. The amendment was adopted almost without debate.*

On September 12, George Mason broached the subject of a Bill of Rights. "It would give great quiet to the people," he argued, if trial by jury and other rights were guaranteed in the new Constitution. Roger Sherman replied that a Bill of Rights was unnecessary. The states, he said, could protect these rights: Eight of them had already incorporated such provisions into their constitutions. The discussion was brief. The Convention voted against including a Bill of Rights, 10 states to none. Only later, after several state ratifying conventions demanded it, were the guarantees that Americans now associate with the Constitution introduced in Congress and ratified by the states as the first 10 amendments.

Despite this progress, Madison was gloomy. As he informed

*The House of Representatives has been called upon to decide an election only twice: In 1800, it selected Thomas Jefferson over Aaron Burr; in 1824, John Quincy Adams over Andrew Jackson, Henry Clay, and William H. Crawford. The possibility that a candidate might prevail in the electoral college without winning a majority of the popular vote—which has occurred only once, when Benjamin Harrison defeated Grover Cleveland in 1888—has sparked many proposals for reform over the years.

Jefferson seven weeks later, he was discouraged because the Convention had rejected the Virginia Plan's scheme for an unlimited national veto of all state laws, instead vesting the courts with narrower powers of review. Madison was convinced that an independent judiciary, as framed by the Convention, would lack the political strength to override the improper acts of the legislatures, which could always claim to express the will of the people.

Madison had entered the Convention with higher hopes and more ambitious goals than any of the other delegates. What they saw as compromises and accommodations he regarded as defeats. He privately thought that the worst "vices of the political system" would go unchecked even if the new national government worked as planned. He did not cheer the end result.

So it fell to Benjamin Franklin to claim the privileges of age and reputation to urge the 41 delegates still present as the Convention drew to a close to make their final approval of the Constitution unanimous. That would speed its ratification by Congress and the states.

A Hopeful Experiment

"When you assemble a number of men to have the advantage of their joint wisdom," Franklin reminded them, "you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly," he asked, "can a perfect production be expected? 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, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel. . . . Thus I consent, Sir, to this Constitution, because I expect no better, and because I am not sure that it is not the best."

On September 15, 1787, the delegates, voting by states, did endorse the Constitution. But Franklin's appeal failed to sway three of the delegates. Mason, Randolph, and Gerry refused, for various reasons, to sign the Constitution. Mason worried, among other things, about the extent of the president's powers and the absence of a Bill of Rights.

For what Franklin invoked was not simply the cumulative wisdom of what the Framers had wrought, but also the character of the deliberations themselves. No one could better gauge the range of intentions, honorable and otherwise, that had entered into the making of the Constitution than Franklin, who was perhaps the most worldly and calculating of all the Framers. No one could better grasp both the limits as well as the possibilities of human reason than the leading American experimental scientist of his century.

Franklin was bold enough to observe how "near to perfection"

the completed Constitution came, yet he was just as prepared to concede that the objections against it might have merit. (Franklin himself favored a unicameral national legislature and a plural executive.) With his usual cleverness, he asked only that "every member of the Convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility."

It took Madison a while to appreciate Franklin's wisdom. But when he dictated the final paragraphs of his preface to the Philadelphia debates, he took the same philosophical view. "Of the ability and intelligence of those who composed the Convention," he wrote, "the debates and proceedings may be a test." But, he went on, "the character of the work which was the offspring of their deliberations must be tested by the experience of the future, added to that of the nearly half century which has passed."

To see the Constitution as Franklin asked its very first critics to see it, or as Madison later learned to view it, does not require later generations to invest the Framers with perfect knowledge, to conclude that they had closely considered and conclusively resolved every issue and problem that they faced.

The Framers were patriotic men of varied capacities who rose above their passions and self-interest to forge a grand document. But they left Philadelphia viewing the Constitution as a hopeful experiment whose results and meanings would be made known only through time.

Nothing would have struck the Framers as more unrealistic than the notion that their original intentions must be the sole guide by which the meaning of the Constitution would ever after be determined. They did not bar future generations from trying to improve upon their work, or from using the lessons of experience to judge the "fallibility" of their reason. They asked only that we try to understand the difficulties that they had encountered and the broad array of concerns, variously noble and self-serving, that they had labored to accommodate during nearly four months of debate in the City of Brotherly Love.

