

## Introduction to the Plans at the Philadelphia Convention

On 21 February 1787 the Confederation Congress called the Constitutional Convention to meet in Philadelphia on Monday, 14 May, but a quorum of seven states was not present until 25 May when George Washington of Virginia was elected president and William Jackson of Pennsylvania, a non-delegate, secretary. Thereafter, the Convention met five or six hours a day, six days a week, until 17 September. The only exception was when the Convention adjourned between 26 July and 6 August to give the Committee of Detail time to prepare the first draft of the Constitution.

Seventy-four delegates were elected to the Convention but only fifty-five attended, and only forty-one of the fifty-five were present when the Convention adjourned *sine die* on 17 September. Rhode Island did not elect delegates, and those from New Hampshire did not arrive until 23 July. Robert Yates and John Lansing, Jr. left the Convention on 10 July, and thereafter New York did not have a vote because it was represented by only one delegate, Alexander Hamilton. As a result, no more than eleven states ever voted on any issue in the Convention.

Planning for the Convention began during the winter of 1786–1787. Men such as George Washington, Henry Knox, Stephen Higginson, James Madison, Edmund Randolph, and John Jay wrote to one another about the changes that should be made in the central government. They agreed that the single-house Congress of the Articles of Confederation should be replaced by a government with three branches consisting of a congress with two houses, an executive, and a judiciary; that the central government should be given power over the states and their citizens; and that the equal representation of the states in Congress should be replaced by representation according to population in both houses of Congress.

The Virginia delegates arrived in Philadelphia early, talked with other delegates as they arrived, met regularly with one another, and drafted resolutions setting forth the broad principles upon which a new constitution should be based. Not all of the Virginia delegates agreed with the principles, as the debates in the Convention were to reveal, but the fifteen resolutions were presented to the Convention on 29 May by the Governor of Virginia, Edmund Randolph.

The rules adopted by the Convention were similar to those of the Confederation Congress. Each state had one vote which was determined by a majority of its delegates. If a state's delegates were equally divided, the state's vote was recorded as "divided." If a state was represented by only one delegate, its vote was not counted. The Convention also imposed a rule of secrecy upon its members, a rule not always observed. One of the most important rules adopted was that no vote was to be taken as final and that any question could be reopened for further debates and votes at any time. The rule meant endless repetition of arguments, but more importantly, the rule made it possible for men to change their minds and to compromise issues in the course of the debates.

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At the very outset the Convention faced the issue of whether or not to work within the existing constitutional framework of the United States. Should it abide by the resolution of the Confederation Congress calling the Convention for the “sole and exclusive” purpose of revising and amending the Articles of Confederation? If the Convention decided to do so, any amendments to the Articles would have to be approved by Congress and ratified unanimously by the legislatures of the thirteen states. The Convention decided instead to work outside the constitutional framework by (1) creating a new constitution rather than proposing amendments to the Articles of Confederation; (2) providing for ratification by state conventions rather than by state legislatures; and (3) by rejecting the congressional resolution of 21 February calling the Convention (and most of the state acts electing delegates) which provided that the work of the Convention should be “agreed to” by Congress before transmittal to the states.

Governor Edmund Randolph proposed this constitutional revolution on 29 May in his speech presenting the Virginia Resolutions. He told the Convention that “our chief danger arises from the democratic parts of our [state] constitutions. It is a maxim which I hold incontrovertible, that the powers of government exercised by the people swallows up the other branches. None of the constitutions have provided sufficient checks against the democracy.” At the end of his speech he “candidly confessed” that the Virginia Resolutions “were not intended for a federal government—he meant a strong *consolidated* union, in which the idea of states should be nearly annihilated.” Another reporter recorded that Randolph “pointed out the various defects of the federal system, the necessity of transforming it into a national efficient government....”

The next day Randolph moved the adoption of the first Virginia Resolution, which stated that the Articles of Confederation ought to be revised and enlarged. Gouverneur Morris of Pennsylvania pointed out that the remaining Virginia Resolutions contradicted the first one. Randolph then withdrew the first resolution and offered three new ones in its place: (1) that a federal government would not accomplish the objects of the Articles of Confederation; (2) that no treaty among sovereign states could accomplish or secure their common defense, liberty and welfare; and (3) that “a *national* government ought to be established consisting of a *supreme* legislative, executive and judiciary.”

General Charles Cotesworth Pinckney of South Carolina and Elbridge Gerry of Massachusetts responded by arguing that if the new resolutions were adopted, the Convention would have no legal foundation because it had been called to revise the Articles of Confederation, not to abandon them. As a result, the first two resolutions were dropped, and the Convention turned to the third calling for the creation of a national government with a “supreme” legislature, executive, and judiciary. When a delegate asked what the word “supreme” meant, Gouverneur Morris replied, according to one reporter, that there was “no such thing” as a federal government. According to another reporter, Morris declared that the distinction between a “federal” and a “national” government was that the former was a “mere compact” among states, and that the latter had “a complete and compulsive operation.” The Convention then adopted the third resolution and thus agreed to the abandonment of the existing federal government and the creation of a national government. This fundamental decision was not challenged directly until 13 June when the revised Virginia Resolutions

were submitted to the Convention for approval. At that point, William Paterson of New Jersey asked that consideration of the plan be delayed and that time be given “to digest one purely federal. . . .”

Opposition to the Virginia Resolutions had been mounting steadily. Delegates from the small states united with other delegates who were opposed to an all-powerful central government and who wanted to retain the federal structure of the Articles of Confederation. Although they had won the Convention’s approval for a motion that the Senate be elected by state legislatures, they were alarmed by the proposals of those who argued for the complete subordination of the states to the central government. Consequently, they drafted amendments to the Articles of Confederation which were presented by William Paterson on 15 June.

John Lansing of New York told the Convention that “the two systems are fairly contrasted. The one now offered is on the basis of amending the federal government, and the other to be reported as a national government, on propositions which exclude the propriety of amendment.” Lansing and others again denied that the Convention had the legal right to create a national government.

The Convention debated the New Jersey Amendments on the 15th, 16th, and 18th of June. On the 19th the Convention rejected the Amendments and voted to accept the revised Virginia Resolutions by a vote of seven states to three, with one state divided. However, the next day the Convention made a concession to the opponents of a national government. At the end of the debate on the first Amended Virginia Resolution, which read “that a national government ought to be established,” the Convention voted to drop the words “national government” wherever they appeared in the resolutions, and to substitute the words “the government of the United States....” However, in the debates that followed, delegates continued to use the words “national government.”

The second fundamental decision in abandoning the existing constitution concerned the method of ratification. The Articles of Confederation required that amendments be proposed by Congress and ratified by all the states before they could become a part of the constitution. The fifteenth Virginia Resolution of 29 May provided that after Congress approved the amendments to be offered by the Convention, that they be submitted to “an assembly or assemblies of Representatives” recommended by the state legislatures and “expressly chosen by the people, to consider & decide thereon.” Some delegates argued that the state legislatures must approve amendments as provided for in the Articles of Confederation, but they were overridden. Furthermore, the Convention voted that ratification by only nine state conventions would be sufficient to establish the Constitution as the instrument of government among the ratifying states.

The third basic decision in abandoning the old government concerned the approval of Congress. The fifteenth Virginia Resolution of 29 May required that approval, but this resolution was challenged on 31 August when Gouverneur Morris and Charles Pinckney moved that the requirement be struck out. The Convention agreed, eight states to three.

The decision of place the Articles of Confederation with a new constitution was fundamental, but once that decision was made, the Convention concentrated upon the character of the constitution to be created. The issues involved were many and resulted in protracted debates. The major issues concerned the distribution of power between the central government and the state governments, the distribution of power among the branches of the central government, the balance of power between the large and the small states, and the balance of power between the North and the South.

Most of the issues were debated again and again. The Convention debated the Virginia Resolutions of 29 May item by item until 19 June when the revised Resolutions were agreed to. Then the Convention debated and amended the revised Resolutions until 24 July when it turned over the results to the Committee of Detail, which presented a draft constitution to the Convention on 6 August. Once more the Convention started at the beginning and debated the issues it had previously debated until 10 September, when the results of its decisions were turned over to the Committee of Style to write the final draft of the Constitution. The Committee of Style reported on 12 September. The debates began again, as the Convention made some changes and rejected others, until it agreed to the Constitution on 17 September.

Some of the issues were rooted in the colonial past; others had been raised and debated repeatedly on the state and national levels in the years between 1774 and 1786. Sometimes the debates were so heated that delegates threatened to break up the Convention, but eventually they agreed to compromises, even though they often declared that they would never do so.

Most members of the Convention agreed that the central government needed coercive power over the states and their citizens, but they disagreed as to the extent of that power. A minority of extreme nationalists argued that the states had to be subordinated absolutely to the will of the central government, and a few even argued that the states should be abolished except as mere administrative districts.

The Virginia Resolutions proposed that Congress should have the power to veto state laws contrary to the Constitution, and, at first, the Convention added the power to veto all state legislation. James Madison of Virginia argued that such a veto was “absolutely necessary to a perfect system” and James Wilson of Pennsylvania described it as “the keystone wanted to complete the wide arch of government we are raising.” In August, the Convention finally abolished the congressional veto, the majority agreeing with John Rutledge that “if nothing else, this alone would damn and ought to damn the Constitution.”

Another means of controlling the states was by armed force. The Virginia Resolutions of 29 May proposed that Congress should have the power to “call forth the force of the Union” against a state not meeting its obligations. The Constitution gave Congress power to call forth militia “to execute the Laws of the Union,” and the guarantee of republican governments and protection against domestic violence, the delegates were told, meant power to suppress domestic rebellions.

The draft constitution of 6 August revived the issue by giving Congress specific power to subdue rebellions in the states. However, the draft limited the power by providing that Congress could act only when called upon to do so by a state legislature.

The nationalists sought to remove the restriction, but the opposition was overwhelming.

In its final form, the Constitution guarantees a republican form of government to each state and protection against invasion, and against “domestic violence” when called upon by a state legislature, or by the executive when the legislature is not in session. However, the Constitution is ambiguous as to what agency of the “United States” should respond to the call from a state: the Congress or the President.

The Constitution contains no ambiguity whatever in placing restraints upon the economic power of the states. The delegates were almost as one in agreeing that the states should be forbidden to issue paper money or to make anything but gold and silver legal tender in the payment of debts, and forbidden to pass bills of attainder, ex post facto laws, or laws impairing the obligation of contracts. The importance the Convention attached to those provisions is indicated by James Wilson’s statement to the Pennsylvania Convention that if the Constitution contained only those lines, “I think it would be worth our adoption.”

The ultimate supremacy of the central government over the states, potentially if not actually, was guaranteed by providing that the Constitution and the laws and treaties of the United States were the “supreme Law of the Land” and that the judges in every state were bound thereby “any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

At the same time that the Virginia Resolutions of 29 May proposed the creation of a congress with sweeping power over the states, they also proposed that Congress should be all-powerful within the central government. Congress would elect an executive who would be ineligible for a second term, and judges of the “national judiciary,” who would serve during good behavior. The executive and the judges, acting as a “council of revision,” would have the power to veto laws enacted by Congress, but Congress could override the vetoes.

Many members of the Convention, and especially those whose careers as legislators began before 1776, were devoted to the principle of legislative supremacy in government. Roger Sherman of Connecticut expressed their views when he told the Convention that the presidency was “nothing more than an institution for carrying the will of the legislature into effect,” for the legislature was “the depository of the supreme will of the society.” Therefore, the President should be elected by and be dependent upon Congress; and that if he were not dependent, it would be “the very essence of tyranny, if there was any such thing.”

Nationalists such as James Madison, Gouverneur Morris, James Wilson, and Charles Pinckney, whose political careers began with independence, had no more faith in Congress as a legislature than they had in state legislatures. They proposed drastic changes in the Virginia Resolutions. They argued that Congress should not elect the President, that he should appoint judges of the national judiciary, and that with the judges he should have an absolute veto over the acts of Congress. The Convention rejected all such proposals during the debate on the Virginia Resolutions between 28 May and 13 June.

The nationalists resumed the struggle in July when they reiterated their arguments about the danger of unchecked legislative power. Gouverneur Morris declared that

public liberty was in greater danger from “legislative usurpations” than from any other source. James Madison argued that the judges must share the veto power because the executive and judicial branches acting together would be too weak to withstand the assaults of Congress. Madison warned the Convention of the danger that had arisen from the unchecked state legislatures. He said that the “legislatures of the states had betrayed a strong propensity to a variety of pernicious measures. One object of the national legislature was to control this propensity. One object of the national executive, so far as it would have a negative on the laws, was to control the national legislature, so far as it might be infected with a similar propensity.”

The method of electing the President and the extent of the President’s power were debated throughout the Convention with as much intensity as any other issue. Supporters of presidential power were able to substitute election of the President by the Electoral College for election by Congress, and then removed the limitation on the number of terms a President might serve. But they were defeated in their attempts to give the President an absolute veto over acts of Congress.

The majority of the Convention believed that the President should have specific powers and duties, and these are stated in the Constitution. At the same time, however, the Constitution made possible a potentially more powerful office by making the President commander in chief of the army and navy and by providing an oath for the President to “execute the Office of President” and to “preserve, protect and defend the Constitution.”

The debates over the distribution of power between the central government and the states, and over the distribution of power among the three branches of the central government were long and intense. But they were no more intense than the debates between the large and the small states and the Northern and the Southern states over the power they should exercise within the central government.

The controversy between the large and the small states began at the First Continental Congress in 1774. The delegates from Virginia, which had twenty percent of the population of the colonies, demanded that voting in Congress be according to population. The smaller colonies insisted upon their integrity and equality and they won their point when Congress agreed that each colony should have one vote. The dispute revived in 1776 during the debates over the Articles of Confederation. The delegates from Virginia, Pennsylvania, and Massachusetts, the three largest states, argued that voting should be by population, but again they were defeated. They did not give up. The Virginia Resolutions of 29 May 1787 proposed that representation in both houses of Congress be by population with the House of Representatives elected by the people and the Senate elected by the House from nominations by the state legislatures. The nationalists from the large states, in order to free the central government from any state control, argued that the state governments should have no power over the election of delegates to either house.

The nationalists were opposed by the delegates from the smaller states and by “federalists” who believed that any new government must be partly federal in structure. Early in June, the Convention voted that the state legislatures should elect Senators, a decision that was never reversed despite continued opposition from the extreme

nationalists. The delegates from the small states and the federalists then proposed that each state have one vote in the Senate. "Otherwise," declared Roger Sherman, "a few large states will rule."

Sherman's compromise was rejected on 11 June and the debate continued. James Madison predicted that if the states were given equality in the Senate the result would be incessant war, dictatorship, and foreign intervention. The Convention finally agreed on 29 June that representation in the House of Representatives should be according to population. Oliver Ellsworth of Connecticut then moved, as Sherman had earlier, that the states should have equal votes in the Senate. Ellsworth declared that "We were partly national; partly federal" and that equality in the Senate was a reasonable compromise. Rufus King of Massachusetts responded that he was ready for any event rather than to submit to a government "founded on a vicious principle of representation" and on 2 July the Convention deadlocked five states to five.

The debate continued until 16 July, when the Convention voted five states to four, with Massachusetts divided, for equal representation in the Senate. Some of the delegates from the large states proposed to withdraw from the Convention and write a constitution of their own, but the majority was on the side of political realism. The Constitution thus provided for the retention of part of the federal structure of the Articles of Confederation and guaranteed the preservation of equal representation by including at the end of Article V the provision that no state could be deprived of its equality in the Senate without its consent.

Another divisive issue, deeply rooted in the colonial past, was the conflict between the Northern and the Southern states. By 1776 Northerners (particularly New Englanders) and Southerners were convinced that the social, political, and economic differences between them were real and substantial. Those differences emerged in the writing of the Articles of Confederation when Northerners insisted that slaves should be counted if the expenses of the central government were shared among the states according to population. Southerners won in 1776 when Congress voted that expenses would be shared according to the value of settled lands. The debate resumed in 1783 when Congress proposed to amend the Articles of Confederation by providing, as the first draft of the Articles had in 1776, for sharing expenses according to population. This time Southerners were ready to compromise. James Madison and John Rutledge proposed that three-fifths of the slaves should be counted. Congress agreed and sent the amendment to the states for ratification.

Four years later James Wilson used the wording of the amendment of 1783 but in a different context. In a bid for Southern support for representation by population in both houses of Congress, he proposed that each state be represented in the House of Representatives according to the number of white and other free citizens, indentured servants, and "three-fifths of all other persons ... except Indians not paying taxes...." The Convention agreed despite some opposition, but the dispute did not begin in earnest until 2 July when the Convention deadlocked on the issue of equality of the states in the Senate. Various compromises, including apportionment in the House of Representatives, were offered with Northerners and Southerners alike trying to increase the number of Representatives assigned to their states.

In the debate on 10 July on a report assigning Representatives, Rufus King declared that the four New England States had more people and fewer Representatives than the Southern States, and that “no principle would justify giving them [the Southern States] a majority.” Charles Cotesworth Pinckney replied that he did not expect the Southern States to have a majority “but wished them to have something like an equality,” for if Congress had the power to regulate trade, the Southern States “will be nothing more than overseers for the Northern States.” Pinckney thus reflected the fear of a fellow South Carolinian, Edward Rutledge, who had opposed the first draft of the Articles of Confederation in 1776 because he feared New England would dominate Congress, and that it might exploit Southern exporters of farm produce by granting a monopoly of the carrying trade to Northern shipowners.

The debate over the granting of commercial powers to Congress during the 1780s and the proposed Jay-Gardoqui treaty in 1786 had convinced Southerners that centralized power to regulate trade must be limited to protect their interests. Meanwhile, Northern merchants were equally convinced that Congress must have unlimited power to regulate trade.

Northerners and Southerners alike knew that control of the House of Representatives would be crucial in such matters as the regulation of trade. They knew too that the estimated population of the United States in 1787 would give control of the House to the Northern States. Delegates from all sections also knew that the area southwest of the Ohio River was growing dramatically and that Kentucky was asking for statehood. New western states, as men saw the future in 1787, would be “Southern” and “agrarian” states, and their interests would be opposed to the interests of the “commercial” states of the North.

Gouverneur Morris of Pennsylvania led Northern delegates in arguing that new western states should never be given enough Representatives to outvote the “Atlantic states.” Most Southerners insisted that new states should be represented according to population, and Edmund Randolph of Virginia counterattacked by proposing that the first Congress under the Constitution should be required to take a census within a year, and every ten years thereafter, and that the House of Representatives should be reapportioned every ten years. Southerners were convinced that unless such a provision were added to the Constitution, the Northern States would never voluntarily surrender their control of the House of Representatives.

Most Northern delegates opposed the required census, and in the course of the debates upon it, they attacked the representation allotted to the South for three-fifths of the slaves. James Wilson, who had proposed the “bargain” in June, denounced it and the slave trade in July. Gouverneur Morris predicted that the South and the new western states would join in an agrarian persecution of Northern commerce, and declared that he would vote for the “vicious principle” of equality in the Senate to protect the commercial North from such persecution. One Southerner replied that if the Convention tried to eliminate the representation earlier granted for three-fifths of the slaves, the Convention would come to an end.

Edmund Randolph of Virginia and John Rutledge of South Carolina were key members of the committee which wrote the first draft of the Constitution which was

presented to the Convention on 6 August. The draft protected Southern interests by (1) requiring a two-thirds majority of each house to enact laws regulating trade; (2) forbidding Congress to levy export duties; and (3) forbidding Congress to levy import duties on or prohibit the importation of “such persons” as the states might think proper.

Northern delegates objected violently. Nathaniel Gorham of Massachusetts declared that the “Eastern states had no motive to union but a commercial one.” Gouverneur Morris declared that if export taxes were forbidden, Northern freemen would be exploited to pay the expenses of government. He denounced the “slaves states” for their misery and poverty and moved that representation be based on free inhabitants only. George Mason of Virginia denounced the slave trade and so too did delegates from the Northern States. John Rutledge replied that the South would leave the Union if the slave trade were prohibited.

Yet the men who took unalterable stands indicated that they were willing to compromise. Gouverneur Morris, for example, suggested that the issues of trade regulation, export taxes, and the slave trade be sent to a committee so that “they may form a bargain between the Northern and Southern states.” Various delegates declared that they would never bargain, but the committee proposed a compromise which the Convention accepted: (1) a simple majority of both houses of Congress would be enough to enact laws regulating trade and (2) the migration or importation of slaves could not be prohibited until 1808. The three New England states, Maryland, and the three southernmost states voted for the bargain. Virginia, Pennsylvania, New Jersey, and Delaware opposed it. This compromise of the power struggle between the North and the South at the end of August made possible the completion of the work of the Convention.

The successive and changing decisions of the Convention upon the issues outlined above are embodied in the documents printed below. The formal evolution of the Constitution can be followed step by step in those documents, although that evolution cannot be fully understood without a careful analysis of the notes of debates taken by James Madison, Robert Yates, James McHenry, Rufus King, and others. And that evolution cannot be understood without recognizing the fact that those debates took place within the context of the debates among American leaders over the nature of government that had begun long before independence was declared in 1776.

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