

Drafting the Constitution: Philadelphia May 14- September 17, 1787

Seventy-four delegates were elected or appointed by twelve state legislatures to attend the Convention in Philadelphia, called to meet Monday, May 14, 1787, to amend the Articles of Confederation. Rhode Island ignored the proceedings. New Hampshire did not authorize a delegation until June 27; her delegates arrived at Philadelphia July 23. Only fifty-five of the seventy-four named delegates attended the sessions in the Pennsylvania State House (now a national shrine). Fourteen resigned or refused appointment, five never attended, thirteen left the Convention before September 5, and only forty-one were present when the Convention adjourned *sine die* the afternoon of September 17, 1787.

The Founding Fathers who drafted our Constitution were men of experience, capable of compromise, who played minor and major roles in social, military, political and economic affairs of the period. All except eight were born in America. Twenty-five were college trained, either in America or Great Britain. Thirty-four were lawyers. Eighteen had served as officers in the Continental Army. Forty-two had served in the Continental Congress. Eight had signed the Declaration of Independence. Six had signed the Articles of Confederation. Eight were merchants or financiers. Six were planters, three were physicians, two were former ministers of the gospel, and several were college professors. Ten were simultaneously members of the Confederation Congress, absent from its meetings in New York City.

The oldest delegate, Benjamin Franklin, was eighty-one; Jonathan Dayton of New Jersey, the youngest, was twenty-six. Five of the delegates were in their sixties, seven in their fifties, twenty in their forties, eighteen in their thirties, and three, in addition to Dayton, were in their twenties.

The two most respected, widely known, and influential delegates were Washington, who was elected President of the Convention, and Benjamin Franklin. Neither of them took much part in the debates. Washington spoke from the floor only once, on

September 17, favoring a change from forty to thirty thousand population for each representative in the House. Franklin participated infrequently by writing his comments and having them read by other delegates. James Wilson read his suggestion for the wording to promulgate the Constitution to the Confederation Congress and the people in the morning of September 17. Both men could have, and most likely did, wield enormous influence in private sessions with delegates.

The size of the state delegations varied. Pennsylvania had eight, New Hampshire two. Massachusetts was represented initially by four, but Caleb Strong left before adjournment. Connecticut sent three delegates but Oliver Ellsworth left before adjournment. New York was initially represented by three men, but John Lansing Jr. and Robert Yates left early, thus depriving the state's remaining delegate, Alexander Hamilton, of his vote under the rules which required a majority for validation. Delaware was represented by five delegates. Maryland sent five, but Luther Martin and John Francis Mercer left before adjournment. Virginia was represented by seven delegates, but George Wythe and James McClurg left early. North Carolina sent five delegates; two, Alexander Martin and William Davis, left before adjournment. South Carolina sent four delegates. Georgia also sent four, but William Pierce and William Houston left before adjournment.

A quorum of states was not present until May 25. On that day, the Convention began organizing. Washington was unanimously elected President. William Jackson, a non-delegate, was elected secretary, and a doorkeeper and a messenger were appointed. On May 29, the Convention adopted a rule cloaking its proceedings in secrecy from the public: "That nothing spoken in the House be printed, or otherwise published or communicated without leave." The Convention very early faced the issue of amendments to the Articles. It was decided "that a national government ought to be established . . ." and the drafting of the Constitution began.

From May 25 through September 17, the Convention met five or six hours each day, six days each week. It was adjourned July 3 and 4 for Independence Day, and between July 26 and August 6 to allow the Committee of Detail to prepare the first draft of the Constitution.

On September 17 the Constitution, engrossed on four sheets of parchment was read and signed by thirty-eight of the forty-one

delegates still at the Convention. George Reed of Delaware signed for the absent John Dickinson, bringing the signers to thirty-nine. Edmund Randolph and George Mason of Virginia refused to sign, as did Elbridge Gerry of Massachusetts.

The delegates had adequate precedence to guide them in their work of framing a new instrument of government. During the more than a century and a half under British rule, the colonies had broad experience in government. They had been nurtured under the English tradition of common law and concepts of liberty. The colonial charters from early in the seventeenth century taught Americans to think in terms of organic law. The institutions under the charters were in a great measure incorporated in the new state constitutions of the Revolutionary period and are reflected in the Constitution.

There were numerous conflicts among delegates to the Convention. They argued over the power to be vested in the national government. They wrangled over representation in the proposed Congress but reached a compromise by giving small states equality in the Senate. More time was spent on debating the executive branch than on any other aspect of the Constitution. Strong executive power was one of the, then, radical features of the Constitution. There were divergent views between agricultural and commercial interests, between slave and free states, and between theorists and men of practical outlook. The finished instrument divided power of government between the national government and the states, each with a fairly distinct sphere of authority. The federal government was given power to tax, regulate commerce and could act directly on citizens of the states. Never before in the West had a representative government been created which attempted to operate over a large nation. Monarchy was the prevalent model for a "safe" government. All Europe watched with intense interest and the most varied speculation on the fate of the American experiment.

The astounding aspect of the Convention was not the qualifications of the delegates for the task, they had vast collective political experience, but that they were able to resolve divergent views on the nature of republicanism, regional, and personal differences, and reach agreement on a Constitution for "We the People of the United States." The instrument reflects the work of democratic politicians who restructured the American system of government

in a climate of skepticism. They framed a document that would foster national interest and, at the same time, be acceptable to the citizens of the states who were asked to ratify their work.

1

Articles of Confederation and perpetual union between the states of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

Lancaster (Pennsylvania), printed: Boston, reprinted by John Gill, printer to the General Assembly. M, DCC, LXXVII. 16 p.

The Articles were the first constitution of the United States, creating a central government for the thirteen colonies who had declared their independence from Great Britain and organized as states. Ratification of the Articles of Confederation was completed when Maryland, the final state to accede, ratified March 1, 1781. The Articles were in effect until superseded by our present Constitution on March 4, 1789.

Most of the functions of government under the Articles were retained by the states. Congress was empowered to deal only with matters which seemed common to all the states: foreign affairs, trade relations with the Indians, coinage standards, weights and measures and authority to organize a postal service.

The right of taxation was reserved to the states. Congress could only request funds for operations from the states with no power, other than persuasion, to force the states to contribute. Each state's share of the Confederation budget was calculated in proportion to the value of its improved lands.

Many political leaders felt that the Confederation was weak. It lacked an effective executive, had no judicial branch, could not regulate intra-state commerce, and could not act directly on the citizens of the states. The Convention which met in Philadelphia in May, 1787, was, ostensibly, to correct the most glaring deficiencies of the Articles. Instead, the delegates ignored their instructions and drafted the Constitution which is the basis for our national political life today.

2

"Address of the Convention held at Annapolis, in September 1786." Signed at end: "John Dickinson, Chairman. Annapolis, Sept. 14, 1786." *The American Museum*, vol. I, no. IV, April 1782, pp. 291-294.

The preliminaries to the Constitutional Convention at Philadelphia occurred at Annapolis, Maryland, in September, 1786. On the initiative of Virginia, the thirteen states were invited to send delegates to discuss interstate commerce “. . . to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act relative to this great object, as, when unanimously ratified by them, will enable the United States in Congress effectually to provide for the same.”

Nine states elected delegates but only those from New York, New Jersey, Pennsylvania, Delaware and Virginia attended. They adjourned after agreeing to a report drafted by Alexander Hamilton calling for a convention to meet in Philadelphia “. . . the second Monday in May next, to take into consideration the situation of the united states, to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the union . . .”

The Confederation Congress, then meeting in New York, considered the Annapolis report, debated its legitimacy, and on February 21, 1787, passed its own call, stipulating the meeting “. . . for the sole and express purpose for revising the Articles of Confederation . . .”

The concepts of conventions to alter old or draft new instruments of government was not new. The constitutions of Pennsylvania, Maryland and Massachusetts were written by constitutional conventions. The idea of a convention that would, in some fashion, strengthen the central government had been seriously recommended from 1780 until the Philadelphia Convention met. Alexander Hamilton, in a long letter to James Duane of September 3, 1780, outlined the weakness of government under the Articles by stating; “The fundamental defect is a want of power in Congress.” The situation could be remedied “. . . by calling immediately a convention of the states with full authority to conclude finally upon a general confederation . . .” All attempts to amend the Articles of Confederation to give Congress power to tax and regulate trade had failed.

3

By the United States in Congress assembled. February 21st 1787. Whereas there is provision in the Articles of Confederation and perpetual Union for making alterations therein . . . Resolved That

in the opinion of Congress it is expedient that on the second 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 . . . Chas. Thomson secrey.

Autograph document, signed. 2p.

This is a manuscript copy of the act passed by the Confederation Congress on February 21, 1787, calling on the states to send delegates to the Convention in Philadelphia May 14, 1787. Charles Thomson, secretary to the Congress, sent copies of the act to all the states the day it was adopted. It was widely printed in the newspapers, appearing in at least thirty-nine, between February 24 and March 21, 1787.

The "Address" of the Annapolis convention, calling for the Philadelphia meeting was received by the Confederation Congress on September 20, 1786. The immediate response in Congress was one of apprehension but a committee was properly appointed to consider the report. No further action was taken during 1786. By February, 1787, the political climate had changed. On February 21, 1787, Congress passed a motion made by the Massachusetts delegation calling the Convention at Philadelphia. The motion sanctioned the delegates already selected by the states as a result of the call from Annapolis, and specifically limited the purpose to a revision of the Articles of Confederation.

4

[Adams, John Quincy, ed.]

Journal, acts and proceedings of the convention, assembled at Philadelphia, Monday, May 14, and dissolved Monday, September 17, 1787, which formed the Constitution of the United States.

Boston: printed and published by Thomas B. Wait. 1819. 510 p.

This is the first printing of the journal kept by William Jackson, secretary to the Convention. The *Journal* and a few other documents are the only official surviving papers from the Constitutional Convention. Upon adjournment, Jackson was instructed to deposit his papers as secretary with the President of the Convention, Washington. Jackson did as instructed, first writing Washington on September 17, 1787: "Major Jackson, after burning all the loose scraps

of papers which belong to the Convention, will this evening wait upon the General with the Journals and other papers which their vote directs to be delivered to His Excellency." In 1796, Washington deposited the papers with the Department of State. In 1818, a joint resolution of Congress ordered them published.

John Quincy Adams, then Secretary of State, was requested by President Monroe to take charge of the project. Adams had great difficulty with the *Journal* which was, he reported "no better than the daily minutes from which the regular journal ought to have been, but never was, made out." With help from Charles Pinckney, James Madison, and with documents from the papers of David Brearley, delegate from New Jersey, the task was completed.

This was the first publication to break the veil of secrecy under which the Constitutional Convention labored. Not much, however, was revealed, for the *Journal* contains only the formal record of the Convention, the writings of the Committee of the Whole House, and a table recording the votes on various questions. None of the debates are included.

5

Yates, Robert

Secret proceedings and debates of the Convention assembled at Philadelphia, in the year 1787, for the purpose of forming the Constitution of the United States of America. From the notes taken by the late Robert Yates, esq. chief Justice of New-York, and copied by John Lansing, Jun. esq. late Chancellor of that state, members of that convention. Including "the genuine information," laid before the legislature of Maryland by Luther Martin, esq. then Attorney General of that state, and a member of the same Convention. Also, other historical documents relative to the federal compact of the North American Union.

Albany: printed by Websters and Skinners, at their bookstore in the white house, corner of State and Pearl streets. 1821. 308 p.

Yates and Lansing were delegates to the Convention from the state of New York. They left Philadelphia on July 10 to attend sessions of the New York Supreme Court (Yates a judge, and Lansing a practicing attorney), and did not return. As they explained in a letter to Governor Clinton written on December 21, 1787, they

contended that the proceedings in the Convention were violating their instructions as delegates from the state.

Yates' notes taken at the Convention begin May 25 and continue through July 5. They were brief but informative about the attitude of individuals in the debates and shed further light on the proceedings in Philadelphia. The original manuscript notes are not known to exist.

Luther Martin's *The genuine information* was first printed in installments in the Baltimore *Maryland Gazette* beginning December 28, 1787 (See No. 28). It ends on page 94 of *Secret Proceedings*. Yates' notes begin on page [95] and end on page 207. The remainder of the book, Appendix, contains a variety of reprinted matter relating to the Constitution.

What was labeled as extracts from Yates' notes was published in a pamphlet presumably written by Edmond Charles Genet, discredited first minister of the French Republic to the United States, who stayed on in the country, became a citizen, and married a daughter of Governor George Clinton of New York. The pamphlet was an attack on James Madison, then a candidate for the presidency: *A letter to the electors of President and Vice-President of the United States. By a citizen of New-York. Accompanied with an extract of the secret debates of the Federal Convention, held in Philadelphia in the year 1787, taken by Chief Justice Yates*. New York: printed by Henry C. Southwick, 1808.

The Genet pamphlet was an inept and misleading piece of political propaganda for George Clinton who had presidential aspirations in 1808. The extracts from Yates' notes are for May 28, June 2, 8, 9, 16 and July 2, 3, 1787. They are garbled and only slightly resemble the published version of *Secret Proceedings*.

6

Madison, James

The papers of James Madison, purchased by order of Congress; being his correspondence and reports of debates during the Congress of the Confederation and his reports of debates in the Federal Convention; now published from the original manuscripts deposited in the Department of State, by direction of the joint library committee of Congress under the superintendence of Henry D. Gilpin.

Washington: Langtree & O'Sullivan. 1840. 3 vols.

James Madison, delegate from Virginia, with a deep sense of history, took voluminous notes on the proceedings in the Convention. His report constitutes the fullest and most indispensable source relating to the drafting of the Constitution. While not a verbatim transcription, it represents a fairly full account of the daily deliberations of the Convention. Before his death, he described his method of reporting the activities of this historic event:

In pursuance of the task I had assumed I chose a seat in front of the presiding member with the other members, on my right & left hand. In this favorable position for hearing all that passed, I noted in terms legible & in abbreviations & marks intelligible to myself what was read from the Chair or spoken by the members; and losing not a moment unnecessarily between the adjournment & reassembling of the Convention I was enabled to write out my daily notes during the session or within a few finishing days after its close in the extent and form preserved in my own hand on my files.

Madison made some changes in his manuscript subsequent to the Convention. He copied the original manuscript of the official Journal kept by Secretary Jackson (see No. 4), borrowed from Washington with whom it had been deposited. Using this he made a number of additions and corrections to his manuscript probably in 1791. He also used Yates, *Secret Proceedings* (see No. 5) to make a few insertions.

Madison refused to publish his manuscript during his lifetime, having decided on posthumous publication. He died in 1836. Congress purchased his manuscripts for \$30,000, and in 1840 the above three volumes were published. More than half of the content of the three volumes consists of his notes on the framing of the Constitution.

7

Hamilton, Alexander

Proposition of Col. Hamilton of New York in the Convention for establishing a Constitution of Government for the United States.
Manuscript document [1787?], 3 p.

This manuscript, presumed to be contemporary from an unknown hand, contains eleven suggestions delivered by Alexander

Hamilton in a speech to the Convention on June 18, 1787. A firm proponent of a strong central government, Hamilton advocated an extreme system whereby senators and the chief executive would serve during good behavior, governors of the states were to be appointed by the national government, and all state laws were to be subordinated to national laws.

Hamilton's speech was lengthy but he did not offer his plan as a formal proposal. It was not referred to a committee or debated. One delegate remarked: "Though he has been praised by everybody, he has been supported by none."

This draft differs in minor details from the copy in the Hamilton papers in the Library of Congress. See *The Papers of Alexander Hamilton*, edited by Harold C. Syrett, 4:207-211. Hamilton attended the Convention irregularly. He left for business affairs on June 29, returned between August 6-11, returned to New York soon after August 13, and returned to the Convention between September 1-6.

8

We, the people of the States of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare and establish the following Constitution for the government of ourselves and our posterity.

[Philadelphia: Dunlap and Claypoole, 1787] Caption title. 7 leaves, folio, printed on one side only, numbered [1]-7

This is the first printed draft of the Constitution, one of perhaps sixty copies distributed to Convention delegates on August 6, 1787. This copy belonged to Pierce Butler, the Irish-born delegate from South Carolina.

On July 24, the Convention elected a Committee of Detail, composed of John Rutledge, Edmund Randolph, James Wilson, Oliver Ellsworth and Nathaniel Gorman, "for the purpose of reporting a Constitution conformably to the Proceeding aforesaid." The Convention adjourned on July 26, to give the Committee of Detail time for its assigned task, and met again on August 6.

The results of decisions made in the Convention from June 19 were turned over to the Committee of Detail as the basis for their

draft. Edmund Randolph, John Rutledge and James Wilson wrote and annotated several drafts. They exceeded previous resolutions of the Convention by including provisions from the Articles of Confederation, material from some of the state constitutions and plans submitted but not accepted by the Convention. The Committee then had their final version set in type, corrected the proof sheets, and had some sixty copies printed for Convention membership.

This preliminary printed draft contains twenty-three articles with forty-one sections. The printer repeated the numbering on Article VI and did not correct the error.

The Constitution as it unfolded in this first printed draft was altered significantly by the Convention before agreement on its final form. The Preamble was restated from "We the People" of the thirteen states to read "We the People of the United States." The authority of the Senate to make treaties, appoint ambassadors and supreme court judges was vested with the President "by and with the Advice and Consent of the Senate." The election of the President "by the Legislature" for a seven year term and "not to be elected for a second time" was altered to a four year term (silent on the number of terms) with election by Electors representing the states. As finally agreed upon by the Convention the finished document was reduced to seven articles containing twenty-one sections.

The Historical Society of Pennsylvania has the proofsheets of this first printed draft, corrected in the handwriting of Edmund Randolph.

9

We the People of the United States, in order to form a more perfect Union ... do ordain and establish this Constitution for the United States of America . . .

[New York. J. M'Lean, 1787] Caption: title. 4 p.

Of the many September, 1787 printings of the Constitution this appears, historically, to be one of the most important. This text, with accompanying documents, was sent to the thirteen states by the Confederation Congress requesting that it "... be submitted to a convention of delegates chosen in each state by the people

thereof in conformity to the resolves of the Convention . . ." for ratification or rejection.

John M'Lean, one of the publishers of the New York *Independent Journal*, was executing the printing for the Confederation Congress, meeting then in New York, as a sub-contractor for John Dunlap. It is known that he printed at least four versions of the Constitution, beginning September 22. The above copy, his fourth version, was probably printed on September 29. In the order listed, it includes the Constitution, the resolution to submit the document to the Confederation Congress, the letter of transmittal to Congress, signed by Washington, and the Confederation Congress resolution to submit the Constitution to the states, dated September 28, 1787. Copies of this version were sent to the executives of the states with a circular letter signed by Charles Thomson, dated New York, 28 September.

10

Philadelphia. *The Pennsylvania Packet, and Daily Advertiser* Wednesday, September 19, 1787.

The first public release of the Constitution occurred when the text was read to the Pennsylvania Assembly and a large audience in the gallery on September 18, 1787. The next morning, September 19, the Constitution was published in five Philadelphia newspapers. The text of the Constitution appearing in *The Pennsylvania Packet* is, perhaps, the most accurate. The publishers were printers to the Convention and had previously printed the official edition of the document for submission to the Confederation Congress.

Within two months, the Constitution was published in at least seventy-five newspapers—north to Portland (Maine), south to Savannah (Georgia) and west to Lexington (Kentucky). The great mass of the people were informed through newspapers. They were comparatively cheap, and served multiple audiences as they were read and passed on to friends and neighbors.

The Constitution was available to the public in other sources, also, for it was extensively published in broadsides, magazines, pamphlets and books. Through the tens of thousands of copies which came from the printing presses, and in hundreds of public discussions, the people received the message from the Convention

at Philadelphia that "We, the People of the United States" could make a new start in self-government by ratifying the Constitution they had forged.

Students should be ever grateful to Leonard Rapport for his meticulous and painstaking: "Printing the Constitution: The Convention and Newspaper Imprints, August-November 1787." *Prologue, the Journal of the National Archives*, 2 (1970): 69-89. The notes for many items in this publication reflect reliance upon Rapport's scholarship.

11

Pinckney, Charles

Observations on the plan of government submitted to the Federal Convention, in Philadelphia, on the 28th of May, 1787. By Mr. Charles Pinckney, delegate from the state of South-Carolina. Delivered at different times in the course of their discussions.

New York: Printed by Francis Childs. [1787] 27p.

Charles Pinckney, delegate to the Convention from South Carolina, was an advocate of a strong central government. According to the official *Journal* he submitted his plan to the Convention on May 29. It was not discussed, but the plan was turned over to the Committee of Detail on July 24. His original plan is not known to exist, but from several sources, it appeared to contain thirty-one or thirty-two provisions and resembled in many details the Virginia plan submitted by Edmund Randolph.

It may never be known why Pinckney had this pamphlet printed. He declared it was for the information of his friends. Both Washington and Madison thought it was a self-serving gesture. Pinckney thought highly of his own talents and, perhaps, wanted his contemporaries and posterity to think he played a greater role in the framing of the Constitution than he actually did. Material differences exist in what he proposed in the Convention from what he wrote in *Observations*.

Observations was advertised for sale in the *New York Daily Advertiser* on October 16, 1787. The pamphlet was reprinted, in whole or in part, in at least seven newspapers shortly after the original publication.

[Webster, Noah]

An examination into the leading principles of the Federal Constitution proposed by the late Convention held at Philadelphia. With answers to the principal objections that have been raised against the system. By a citizen of America.

Philadelphia: printed and sold by Prichard & Hall, in Market Street. The second door above Laetitia Court. M.DCC.LXXXVII. 55p.

Webster, lexicographer, journalist and pamphleteer, defended the two-house legislature, discussed the powers of the proposed central government as it related to the powers of state governments, and attempted to answer nine objections of the Antifederalist to the Constitution.

The pamphlet was published on October 17, 1787, and was inscribed to Benjamin Franklin, dated Philadelphia October 10, 1787. It circulated outside Philadelphia soon after publication and long extracts were published in newspapers in Connecticut and Massachusetts.