

## PART FIVE



National Archives

# Birth of the Republic

## 9 Miracle at Philadelphia

H. W. BRANDS

Once the revolution began, Americans set about creating the political machinery necessary to sustain an independent nation. The Second Continental Congress, convened in 1775, continued as an emergency, all-purpose central government until 1781, when the Articles of Confederation were finally ratified and a new one-house Congress was elected to function as the national government. Wary of central authority because of the British experience, Americans now had precisely the kind of government most of them wanted: an impotent Congress that lacked the authority to tax, regulate commerce, or enforce its own ordinances and resolutions. Subordinate to the states, which supplied it with funds as they chose, Congress was powerless to run the country. Indeed, its delegates wandered from Princeton to Annapolis to Trenton to New York, endlessly discussing where they should settle.

Patriots such as James Madison of Virginia, Alexander Hamilton of New York, and the venerable George Washington fretted in their correspondence about the near paralysis of the central government and the unstable conditions that plagued the land. "An opinion begins to prevail, that a General Convention for revising the Articles of Confederation would be expedient," John Jay wrote Washington in March 1787. Washington agreed that the "fabrick" was "tottering." When Massachusetts farmers rose in rebellion under Daniel Shays, Washington was horror stricken. "Are your people getting mad? . . . What is the cause of all this? When and how is it to end? . . . What, gracious God, is man! . . . We are fast verging to anarchy and confusion!"

Many of his colleagues agreed. There followed a series of maneuvers and meetings that culminated in the great convention of 1787, a gathering of fifty-five notables sent to Philadelphia to overhaul the feeble Articles of Confederation. Without authority, they proceeded to draft an entirely new constitution that scrapped the Articles, created a new government, and undoubtedly saved the country and

America's experiment in popular government. As James MacGregor Burns has noted, it was a convention of "the well-bred, the well-fed, the well-read, and the well-wed." Most delegates were wealthy, formally educated, and youngish (their average age was the early forties), and more than a third of them were slaveowners. The poor, the uneducated, the backcountry farmers, and women, blacks, and Indians were not represented. Throughout their deliberations, moreover, the drafters compromised on the volatile slavery issue. "For these white men," wrote one scholar, "the black man was always a brooding and unsettling presence (the black woman, even more than the white woman, was beyond the pale, beyond calculation)." For most of the framers of the Constitution, order and national strength were more important than the unalienable rights of blacks or women. Like their countrymen, most could simultaneously love liberty and recognize the injustice of slavery, yet tolerate bondage as a necessary evil.

During this, our third century under the Constitution, we need more than ever to remember that the framers were not saints but human beings—paradoxical, complex, unpredictable, and motivated by selfishness as well as high idealism. Yet, as H. W. Brands shows in the following selection, the founders were able to rise above petty self-interest to fashion what remains the oldest written national constitution, which in turn created one of the oldest and most successful federal systems in history.

Brands tells the story of the Constitutional Convention from the viewpoint of Benjamin Franklin, the oldest and perhaps the wisest of the delegates assembled there. As Franklin perused the list of delegates when the convention began, he declared himself extremely pleased. "We have here at present," Franklin said, "what the French call *une assemblée des notables*, a convention composed of some of the principal people from the states of our Confederation." Reading over the same roster, Thomas Jefferson called the convention "an assembly of demi-gods."

It was remarkable indeed that a new country of only about four million people produced an assembly of some of the most gifted statesmen in history. Yet only Franklin and George Washington, who presided over the convention, had national reputations. Both men sought to create a strong central government that would rise above the petty differences of the thirteen states. Other delegates feared such a government, especially one with a large standing army. Massachusetts delegate Elbridge Gerry spoke for many of his colleagues when he said that such an army might be misused, thus endangering their infant nation. Gerry compared a large standing army with a large standing penis. "An excellent assurance of domestic tranquility," he said, "but a dangerous temptation to foreign adventure." Franklin no doubt enjoyed a hearty laugh over the analogy. He would have reminded Gerry and the other delegates that "the wisdom of the common folks" would restrain both an overzealous chief executive and a strong standing army.

The most divisive dispute concerned the nature of representation. Franklin compared the dispute to that of a snake with two heads when confronting a bush. One head wanted to go on one side of the stem, Franklin said, but the other head insisted on the opposite side. "Neither of the heads would consent to come back or give way to the other," implying that the snake would starve to death if the heads could not reach an accommodation. The convention faced a similar problem: the delegates had to resort by necessity to accommodation and compromise, or their work would die of indecision. Fortunately for them and all succeeding generations of Americans, the delegates were able to fashion a new

government through a series of painstaking compromises. By doing so, they ensured the survival of their new Constitution and the government it created. A later historian called their achievement "the miracle at Philadelphia."

## GLOSSARY

**ARTICLES OF CONFEDERATION (1781-1789)** The first American government after independence consisted of a weak central government that was subordinate to the states. There was a one-house congress that exercised all judicial, executive, and legislative functions but that lacked the power to levy taxes or to regulate currency.

**BEDFORD, GUNNING** This delegate from Delaware believed that the large states had adopted "a dictatorial air" toward the small ones. He threatened secession if the individual states lost the sovereignty they had under the Articles of Confederation.

**CUTLER, MANASSEH** This Massachusetts clergyman and botanist came to Philadelphia as a lobbyist for a group that was interested in receiving land grants in the Northwest Territory.

**HAMILTON, ALEXANDER** The brilliant New York delegate to the Constitutional Convention, Hamilton had earlier served as Washington's military aide during the American Revolution. Despite a humble background, Hamilton was an elitist who preferred monarchical government and distrusted the opinions of ordinary people.

**JONES, JOHN PAUL** During the American Revolution, Jones was an American naval officer who commanded the warship *Bonhomme Richard*. He raided British shipping and captured an English warship, which made him famous in America. During a desperate battle with another British warship, Jones's ship was severely damaged. When asked to surrender, he defiantly shouted: "I have not yet begun to fight."

**MADISON, JAMES** A Virginia delegate to the Constitutional Convention, this planter, slaveholder, and brilliant statesman was responsible for much of the substance of the new Constitution drafted in Philadelphia.

**MORRIS, GOUVERNEUR** A Pennsylvania delegate to the Constitutional Convention, Morris assumed the main responsibility for drafting the new Constitution. The preamble, which began, "We the people," was his inspiration and represented one of the single most important acts of the Constitutional Convention.

**MORRIS, ROBERT** Another Pennsylvania delegate to the Constitutional Convention, Morris was one of the richest men in America. He had earned a considerable reputation for his work in financing the American Revolution. While at the Constitutional Convention, Washington stayed at Morris's impressive mansion.

**RANDOLPH, EDMUND** A popular governor and a delegate from Virginia at the Constitutional Convention, Randolph championed the interests of the large states there, speaking in his trademark high-pitched voice. Randolph wanted a legislature based on proportional representation (see the Virginia Plan in this glossary).

**SHAYS'S REBELLION (1786)** Poor farmers in western Massachusetts closed a county courthouse and threatened to seize a federal arsenal. Daniel Shays, who had fought at Bunker Hill, led a group of rural debtors who felt that the state government was insensitive to their needs. Shays's uprising was symptomatic of the weaknesses of the Articles of Confederation and the need for a stronger central government.

**SOCIETY FOR POLITICAL INQUIRIES** Formed by Benjamin Franklin, the society included George Washington, Thomas Paine, and many prominent Philadelphia residents. It met periodically to engage in lively discussions on, in Franklin's words, "the arduous and complicated science of government."

**VIRGINIA PLAN** Proposed by Edmund Randolph, the Virginia Plan called for a national executive with veto power, a national judiciary, and a two-house legislature. The lower house would be "elected by the people, and the upper house chosen by the lower." Delegates from the small states felt threatened by this proportional representation plan.

**WILSON, JAMES** A Pennsylvania delegate at the Constitutional Convention, Wilson advocated a strong national government and a legislature based on proportional representation. Wilson proposed that the southern states should count three-fifths of their slave populations when determining the number of representatives each slave state would have in the national House of Representatives.



[Benjamin] Franklin had lived much longer than [James] Madison—much longer, in fact, than all but a handful of the other delegates to the Constitutional Convention. And he adopted a much less alarmist view of the future. He referred to [Daniel] Shays's rebellion as merely the work of "some disorderly people," and declared—this to a French friend, to whom he spoke candidly—"The rest of the states go on pretty well, except some dissensions in Rhode Island and Maryland respecting paper money."

Yet if he did not think doom at the door, Franklin heard its rumblings in the distance. Briefing [Thomas] Jefferson, still in France,\* he wrote that from what he knew of the delegates, they seemed to be men of prudence and ability. "I hope good from their meeting." But the risks were great. "If it does not do good it must do harm, as it will show that we have not wisdom enough among us to govern ourselves, and will strengthen the opinion of some political writers that popular governments cannot long support themselves."

Anticipating the convention, Franklin organized a group called the Society for Political Inquiries, which met weekly in the library of his new home. Philadelphians made up the active membership, but the group enrolled various outside luminaries as honorary members. Among these was [George] Washington, who was thought to be favorably disposed to constitutional revision yet was also known to be reluctant to take a leading role. The former general cherished his exalted reputation and was correspondingly hesitant to involve himself in any divisive venture. At the same time, however, he hardly desired the undoing of the cause to which he had devoted eight years of his life. Nor did he wish to appear derelict in his duty. Franklin was among those telling Washington that duty called him to Philadelphia. "Your presence will

be of the greatest importance to the success of the measure," Franklin wrote. Washington allowed himself to be persuaded.

Washington's arrival in Philadelphia prompted a civic celebration the likes of which had not been seen since the end of the war. A cadre of his old officers rode out to greet him; the party crossed the Schuylkill on a floating bridge built by the British but abandoned intact at the evacuation of the city and since maintained by the locals. Church bells and since maintained by the locals. Church bells pealed as the hero passed; the leading citizens vied for his favor. Robert and Mrs. Morris won the prize of housing him, in their mansion on Market Street just east of Sixth. If the Morris house was any evidence, the financier's interests were thriving; besides a hothouse (for winter enjoyment), the compound boasted an icehouse (especially appreciated during the sweltering weeks of the convention) and a stable for twelve horses. (Yet, not content with a standard of living unsurpassed "by any commercial voluptuary of London," in the words of a French visitor, Morris subsequently speculated in western lands and lost all. He spent three years in a debtors' prison within wailing distance of his former mansion.)

On arrival, Washington paid his respects to Franklin; the next day the general returned for dinner. The other delegates followed suit. Franklin's new dining room seated twenty-four; he now probably wished it bigger, for everyone insisted on seeing the man who was at once America's resident sage and, as Pennsylvania president, the convention's *ex officio* host. On Friday, May 18, [Franklin] wrote a London brewer who had sent him a cask of porter [beer]. "We have here at present what the French call *une assemblée des notables*, a convention composed of some of the principal people from the several states of our confederation. They did me the honour of dining with me last Wednesday, when the cask was broached, and its contents met with the most cordial reception and universal approbation."

On this festive note the convention commenced its sober business. Only two men were even contemplated for president of the convention: Franklin and Washington. Franklin deferred to Washington, perhaps

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\*At the time of the Constitutional Convention, Jefferson was serving as America's first minister to France.—Ed.

partly from concern that his health would not stand the wear of daily sessions, but at least equally from knowledge that the project would have the greatest chance of success under the aegis of the eminent general. (Washington's distance above mere mortals was already legendary. Several delegates were discussing this phenomenon when Franklin's Pennsylvania colleague, Gouverneur Morris, a hearty good fellow, suggested it was all in their minds. Alexander Hamilton challenged Morris: "If you will, at the next reception evenings, gently slap him on the shoulder and say, 'My dear General, how happy I am to see you look so well!' a supper and wine shall be provided for you and a dozen of your friends." Morris

accepted the challenge and did what Hamilton demanded. Washington immediately removed Morris's hand from his shoulder, stepped away, and fixed Morris with an angry frown until the trespasser retreated in confusion. Hamilton paid up, yet at the dinner Morris declared, "I have won the bet, but paid dearly for it, and nothing could induce me to repeat it.")

Franklin was right to worry about his ability to attend all the sessions. His mode of travel these days—to the limited extent he did travel—was via sedan chair, a seat mounted between two poles, which he had brought from France. Four prisoners from the Walnut Street jail hoisted the chair on their shoulders, and, if



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Thomas Jefferson, although he was not present, called the men who gathered at Philadelphia to write the Constitution "an assembly of demi-gods." Most recognize in this Howard C. Christy painting the tall upright figure of the presiding officer, George Washington, and the slouched gout-stricken body of eighty-one-year-old Benjamin Franklin. They were men of substance, of property—men who were about to draft what would become the longest-running constitution in the history of the world.

they walked slowly, Franklin's [kidney] stone did not pain him too much. Although the seat was covered, with glass windows, it was not really suited to foul weather, and when heavy rain doused the opening day of the convention, Franklin was forced to stay home. He had been planning to nominate Washington for convention president himself; instead the nomination was put forward by the Pennsylvania delegation. The gesture was appreciated all the same. "The nomination came with particular grace from Pennsylvania," recorded James Madison, "as Doctor Franklin alone could have been thought of as a competitor."

Before the convention most of the delegates knew Franklin only by reputation. His long absence from America rendered him something of a mystery; most wondered whether he would live up to all the good things said of him—or down to the few bad things. William Pierce of Georgia was one of the handful of delegates who recorded his impression:

Dr. Franklin is well known to be the greatest philosopher of the present age; all the operations of nature he seems to understand, the very heavens obey him, and the clouds yield up their lightning to be imprisoned in his rod.

But what claim he has to be a politician, posterity must determine. It is certain that he does not shine much in public council. He is no speaker, nor does he seem to let politics engage his attention.

He is, however, a most extraordinary man, and tells a story in a style more engaging than anything I ever heard. Let his biographer finish his character. He is 82 [actually 81] years old, and possesses an activity of mind equal to a youth of 25 years of age.

Franklin would have been the first to agree he was no orator, and in a gathering of fifty-five politicians, most of whom prided themselves on their forensic skills, he was content to let others carry the oratorical burden.

In fact he allowed others to carry even the burden of his statements. Very early the intentions of the organizers of the convention became evident: not merely to revise the Articles of Confederation but to

draft an entirely new charter. The Virginians—especially Madison and Edmund Randolph—had been busy, and on the third day Randolph revealed a comprehensive plan for a national government. The centerpiece of the Virginia plan was a powerful legislature of two houses, one house elected by the people, the other chosen by the popular house from nominations forwarded by the states. The legislature would name the executive and the judiciary, and it would possess a veto over state laws infringing its prerogatives.

Franklin had preferred a unicameral legislature for Pennsylvania, and he preferred it for America. He preferred an executive council, again on the Pennsylvania model, over a single president. But his first speech addressed another issue: how the executive was to be paid. Apologizing for the fact that his memory was not what it had been, he explained that he had written out his remarks. Franklin's Pennsylvania colleague James Wilson offered to read them, and Franklin accepted.

Franklin proposed that the executive, whether singular or plural, receive no compensation beyond expenses. "There are two passions which have a powerful influence on the affairs of men," he asserted. "These are ambition and avarice: the love of power, and the love of money: Separately, each of these has great force in prompting men to action; but when united in view of the same object, they have in many minds the most violent effects. Place before the eyes of such men a post of honour that shall at the same time be a place of profit, and they will move heaven and earth to obtain it." . . .

Some would call his proposal utopian, Franklin conceded; men must be paid for their labors. Yet he begged to differ, and he cited evidence. In English counties the office of high sheriff yielded no profit to its holder; on the contrary, the office cost its holder money. "Yet it is executed, and well executed, and usually by some of the principal gentlemen of the county." In France the office of counselor likewise exacted a cost of its holders, yet respectable and capable individuals vied for the distinction it conferred.



Nor did the members of the convention have to look across the ocean for examples of patriotic service untied to profit. They merely had to look across the room. "Have we not seen the great and most important of our offices, that of general of our armies, executed for eight years together without the smallest salary, by a patriot whom I will not now offend by any other praise?" If such was true amid the fatigues and distresses of war, would not the country be able to find men willing to give service during peace? "I have a better opinion of our country. I think we shall never be without a sufficient number of wise and good men to undertake and execute well and faithfully the office in question."

Perhaps Franklin misread from his own past into the future of his audience. Their very presence, combined with their youth, indicated they were not like him, who had delayed entering politics until he had made his fortune. Nor were any but a few as well off as Washington, who could afford to serve his country for eight years without compensation. These men might not place profit above honor, but few of them could ignore profit entirely.

Madison recorded the reaction to Franklin's speech: "The motion was seconded by Colonel [Alexander] Hamilton with the view, he said, of merely bringing so respectable a proposition before the committee, and which was besides enforced by arguments that had a certain degree of weight. No debate ensued, and the proposition was postponed for the consideration of the members. It was treated with great respect, but rather for the author of it than from any apparent conviction of its expediency or practicality."

Another Franklin proposal received equally short shrift. A month into the convention the body had made frustratingly little progress. Franklin noted that the delegates had searched history for guidance and looked to the governments of other countries. "How has it happened, sir, that we have not hitherto once thought of humbly applying to the Father of Lights to illuminate our understandings?" At the onset of the troubles with Britain, the Continental Congress, meeting in this very room, had daily requested divine

help in finding its way. "Our prayers were heard, sir, and they were graciously answered. All of us who were engaged in the struggle must have observed the frequent instances of a superintending Providence in our favour." Without Heaven's help the delegates would not be where they were, attempting what they were attempting. "Have we now forgotten that powerful Friend? Or do we imagine we no longer need its assistance?" Franklin remarked that he had lived a long time. "And the longer I live the more convincing proofs I see of this truth, that God governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid?" . . .

This statement was as open as Franklin ever got in public about his religious beliefs. (And it was only partially public, the delegates having pledged themselves to confidentiality.) The delegates probably did not appreciate the unusual candor in Franklin's remarks; in any case they ignored them. His motion received a second, but Hamilton and others worried that, however laudable the practice of prayer might be, to commence it at this late date would convey a sense of desperation. Franklin responded that the past omission of a duty did not justify continued omission and that the public was just as likely to respond positively as negatively to word that their delegates were seeking God's blessing on their labors.

His argument failed. After Hugh Williamson of North Carolina pointed out that the convention lacked funds to pay a chaplain, Edmund Randolph offered an amendment to Franklin's motion. Randolph suggested hiring a preacher to give a sermon on Independence Day, less than a week off, and thereafter to open the sessions with a prayer.

Franklin accepted the amendment, but the delegates put off discussion by recessing for the day, and the proposition died. Franklin remarked with some wonder, at the bottom of the written copy of his speech, "The convention, except three or four persons, thought prayers unnecessary!"

Most delegates had more earthly matters in mind. The nature of the executive vexed the convention for

weeks. At one extreme stood Alexander Hamilton, the former protégé of Washington—ambitious, arrogant, intolerant of those less gifted than he. A certain mystery surrounded his West Indian birth; John Adams, ever uncharitable, called him the “bastard brat of a Scotch pedlar.” He was small and lithe, with delicate features that made him look even younger than his thirty-two years. Yet the fire that burned inside him made him seem, to Jefferson at least (after Hamilton aimed his flames Jefferson’s way), “an host within himself.” Even on best behavior, as at the convention, he put people off. William Pierce, while granting that Hamilton was “deservedly celebrated for his talents,” added, “His manners are tinctured with stiffness, and sometimes with a degree of vanity that is highly disagreeable.”

Patriotic and courageous during the war, Hamilton nonetheless retained a decided partiality toward the British system of government. “I believe the British government form the best model the world ever produced,” Hamilton told the convention. The secret of the British government was its strength, which allowed it to provide individual security. The British recognized a fundamental facet of human nature. “All communities divide themselves into the few and the many. The first are the rich and well born, the other the mass of the people. The voice of the people has been said to be the voice of God; and however generally this maxim has been quoted and believed, it is not true in fact.” The people were turbulent and fickle; they rarely knew where their interests lay. “Give therefore to the first class a distinct, permanent share in the government. They will check the unsteadiness in the second, and as they cannot receive any advantage by a change, they therefore will ever maintain good government.”

Hamilton’s confidence in benign rule by society’s betters led him to conclude that executive power ought to be vested in a single man, elected for life. “It may be said that this constitutes an elective monarchy.” Let the fainthearted call it what they wished. “Pray, what is a monarchy? May not the governors of the respective states be considered in that light?”

Hamilton allowed for impeachment of the executive in cases of egregious malfeasance; in this respect, he said, the executive-for-life fell short of being a monarch. But he endorsed the basic principle of monarchy, that the holder of the office ought to be irresponsible to the people. Only then would he be free of the people’s unruly passions. Earlier speakers had suggested a long term for the executive, perhaps seven years. Hamilton deemed this insufficient. “An executive is less dangerous to the liberties of the people when in office during life, than for seven years.”

Franklin held just the opposite view. Not only did he rest far less faith in the British system—having, unlike Hamilton, observed its operations closely at first hand—but he had less confidence in what Hamilton (and many others) deemed the better elements in society. To place entire executive authority in one man was to court trouble. Even assuming the best of goodwill on the part of the executive, what would happen when he got sick? Physical frailty might not worry Hamilton and others in the prime of life, but, as Franklin could assure them, life lasted beyond one’s prime. Eventually, of course, the executive would die; though Hamilton proposed a scheme for electing a successor, after many years under one man the government could not escape disruption.

Moreover, judgments varied from man to man, and each executive would seek to make his own mark. “A single person’s measures may be good. The successor often differs in opinion of those measures, and adopts others; often is ambitious of distinguishing himself by opposing them, and offering new projects. One is peaceably disposed, another may be fond of war, &c. Hence foreign states can never have that confidence in the treaties or friendship of such a government, as in that which is conducted by a number.”

The only conclusion Franklin could draw was that executive power was too potent to be entrusted to a single person. “The steady course of public measures is most probably to be expected from a number.”

Ultimately the convention split the difference between Hamilton and Franklin, opting for a single



executive of limited term. On another issue—the one on which the entire constitutional project threatened to founder—compromise finally came as well, but with greater difficulty.

Under the Virginia plan, election to the lower house of the legislature would be according to population, with larger states—such as Virginia—having greater representation than smaller states. Because the upper house would be chosen by the lower house, this advantage to the larger states would inform the actions of the legislature as a whole. The delegates from the larger states thought this only just, not least since they were expected to pay the largest portion of the expenses of the central government.

Predictably, delegates from the smaller states objected. Under the Articles of Confederation, each state possessed equal weight within the legislature, and the small-state delegates intended to preserve this principle. Indeed, the instructions of the delegates from Delaware forbade them from countenancing any tampering with equal representation by states. Accordingly, when the delegation from New Jersey proposed an alternative to the Virginia plan—an alternative enshrining the one-state, one-vote principle—the smaller states rallied to it.

Upon the question of representation hinged the essence of the new government. If representation remained by states, then the new government would remain, to a large degree, a government of the states, along the lines of the Confederation. By contrast, if representation shifted to population, then the new government would be a government of the people. The states might retain their existence, but they would have hardly more meaning than counties in England.

This was exactly what James Madison believed they should have. "Some contend that states are sovereign," Madison declared, "when in fact they are only political societies." The states had never possessed sovereignty, which from the start of the Revolution had been vested in Congress. "The states, at present, are only great corporations, having the power of making by-laws, and these are effectual only if they

are not contradictory to the general confederation. The states ought to be placed under the control of the general government—at least as much as they formerly were under the king and British Parliament."

These were fighting words, or promised to be. Gunning Bedford of Delaware demanded, "Are not the large states evidently seeking to aggrandize themselves at the expense of the small? They think no doubt that they have right on their side, but interest has blinded their eyes." Bedford accused the large states of adopting "a dictatorial air" toward the smaller, of suggesting they could make a government of their own without the small states. "If they do," Bedford warned, "the small ones will find some foreign ally of more honour and good faith, who will take them by the hand and do them justice."

Bedford's threat elicited an even sharper response from Gouverneur Morris. The larger states would not brook such secessionist talk, Morris asserted. "This country must be united. If persuasion does not unite it, the sword will." Amplifying his point, he added, "The scenes of horror attending civil commotion can not be described, and the conclusion of them will be worse than the terms of their continuance. The stronger party will then make traitors of the weaker, and the gallows and halter will finish the work of the sword."

It was just this kind of acrimony that had elicited Franklin's call for the help of the Deity; that call having failed of the convention's approval, he now interposed himself. "The diversity of opinion turns on two points," he told the delegates. "If a proportional representation takes place, the small states contend that their liberties will be in danger. If an equality of votes is to be put in its place, the large states say their money will be in danger." The time had come to compromise. "When a broad table is to be made, and the edges of the planks do not fit, the artist takes a little from both, and makes a good joint. In like manner here, both sides must part with some of their demands in order that they may join in some accommodating purpose."

He thereupon laid before the members a motion:

That the legislatures of the several states shall choose and send an equal number of delegates, namely \_\_\_\_\_, who are to compose the second branch of the general legislature.

Franklin's motion became the basis for the grand compromise that saved the convention and made the Constitution possible. The large states would have their way with the lower house, to be called the House of Representatives, which would be selected according to population. The interests of the smaller states would be safeguarded in the upper house, called the Senate, which would be chosen by the legislatures of the states, with each state getting two—the number that filled in Franklin's blank—senators. (More than a century later, of course, the Constitution would be amended to provide for direct election of senators by voters of the states, but the principle of equal representation remained.)

On the eve of the final vote on the grand compromise, Franklin entertained a visitor to the city. Dr. Manasseh Cutler was a clergyman from Massachusetts, also a botanist (and later a member of Congress). "There was no curiosity in Philadelphia which I felt so anxious to see as this great man, who has been the wonder of Europe as well as the glory of America," Cutler wrote. "But a man who stood first in the literary world, and had spent so many years in the Courts of Kings, particularly in the refined Court of France, I conceived would not be of very easy access, and must certainly have much of the air of grandeur and majesty about him. Common folks must expect only to gaze at him at a distance, and answer such questions as he might please to ask." When delegate Elbridge Gerry of Massachusetts, who was on his way to Franklin's house, asked Cutler if he wished to come, Cutler said he certainly did—but, as he told a friend later, "I hesitated; my knees smote together."

What Cutler found in the Franklin garden was not in the least what he expected.

How were my ideas changed, when I saw a short, fat, trunched old man, in a plain Quaker dress, bald pate, and short white locks, sitting without his hat under the tree, and, as Mr. Gerry introduced me, rose from his chair, took me by the hand, expressed his joy to see me, welcomed me to the city, and begged me to seat myself close to him. His voice was low, but his countenance open, frank, and pleasing. . . . I delivered him my letters. After he had read them, he took me again by the hand, and, with the usual compliments, introduced me to the other gentlemen, who were most of them members of the Convention.

Here we entered into a free conversation, and spent our time most agreeably until it was dark. The tea-table was spread under the tree, and Mrs. Bache, a very gross and rather homely lady, who is the only daughter of the Doctor, and lives with him, served it out to the company. She had three of her children about her, over whom she seemed to have no kind of command, but who appeared to be excessively fond of their Grandpapa.

The Doctor showed me a curiosity he had just received, and with which he was much pleased. It was a snake with two heads, preserved in a large vial. It was taken near the confluence of the Schuylkill with the Delaware, about four miles from this city. It was about ten inches long, well proportioned, the heads perfect, and united to the body about one-fourth of an inch below the extremities of the jaws. . . .

The Doctor mentioned the situation of this snake, if it was traveling among the bushes, and one head should choose to go on one side of the stem of a bush and the other head should prefer the other side, and that neither of the heads would consent to come back or give way to the other. He was then going to mention a humorous matter that had that day occurred in Convention, in consequence of his comparing the snake to America, for he seemed to forget that every thing in Convention was to be kept a profound secret; but the secrecy of Convention matters was suggested to him, which stopped him, and deprived me of the story he was going to tell.

Doubtless the story involved the dispute over representation, which was on the verge of resolution—without the snake's starving or either of the heads'

being cut off. Yet the vote was not certain, and the other delegates present definitely did not want the loquacious host to make the compromise settlement any more difficult.

(Their concern also reflected their fear of the convention's president. During one early session, copies of the Virginia propositions were circulated, with the injunction that these were for the delegates' eyes only and must be guarded with strictest care. Some while later a copy was discovered on the floor of the State House and turned over to Washington. The general placed the copy in his pocket and said nothing until the end of that day's debates. Thereupon he rose from his seat and addressed the delegates in the sternest tones. "Gentlemen," he said, "I am sorry to find that some member of this body has been so neglectful of the secrets of the Convention as to drop in the State House a copy of their proceedings, which by accident was picked up and delivered to me this morning. I must entreat gentlemen to be more careful, lest our transactions get into the newspapers and disturb the public repose by premature speculations. I know not whose paper it is, but there it is." Throwing the paper down on the table, he concluded, "Let him who owns it, take it." Then he bowed, picked up his hat, and left the room—"with a dignity so severe that every person seemed alarmed," said William Pierce. Significantly, no one claimed the paper, although Pierce's heart leaped into his throat when, reaching in his pocket, he could not find his own copy. To his immense relief, it turned up later in the pocket of his other coat.) . . .

Cutler was entranced by his octogenarian host. "I was highly delighted with the extensive knowledge he appeared to have of every subject, the brightness of his memory, and clearness and vivacity of all his mental faculties, notwithstanding his age (eighty-four) [eighty-three and a half, actually]. His manners are perfectly easy, and every thing about him seems to diffuse an unrestrained freedom and happiness. He has an incessant vein of humour, accompanied with an uncommon vivacity, which seems as natural and involuntary as his breathing."

Breathing came easier that summer for Franklin, who was used to Philadelphia's climate, than for some of the delegates from out of town. The southerners arrived dressed for the heat, but the northerners, in their woolen suits, suffered badly. The State House was comparatively cool when the sessions began at ten in the morning, but by midday the green baize on the tables where the delegates sat began to show dark spots from their sweat. The windows had to be kept closed, partly against the prying eyes and ears of outsiders but mostly against the flies that batted on the horse dung in the streets and the offal in the gutters. "A veritable torture during Philadelphia's hot season" was how a French visitor described "the innumerable flies which constantly light on the face and hands, stinging everywhere and turning everything black because of the filth they leave wherever they light." There was no escape, even at night. "Rooms must be kept closed unless one wishes to be tormented in his bed at the break of day, and this need of keeping everything shut makes the heat of the night even more unbearable and sleep more difficult. And so the heat of the day makes one long for bedtime because of weariness, and a single fly which has gained entrance to your room in spite of all precautions, drives you from bed."

Franklin survived the heat better than many delegates far younger than he, and better than he had feared. To be sure, a three-day illness in mid-July left him "so weak as to be scarce able to finish this letter," he explained to John Paul Jones in Paris. (In this same letter Franklin asked Jones to convey regards to Jefferson "and acquaint him that the Convention goes on well and that there is hope of great good to result.") But on the whole his health held up, and he attended the sessions of the convention faithfully.

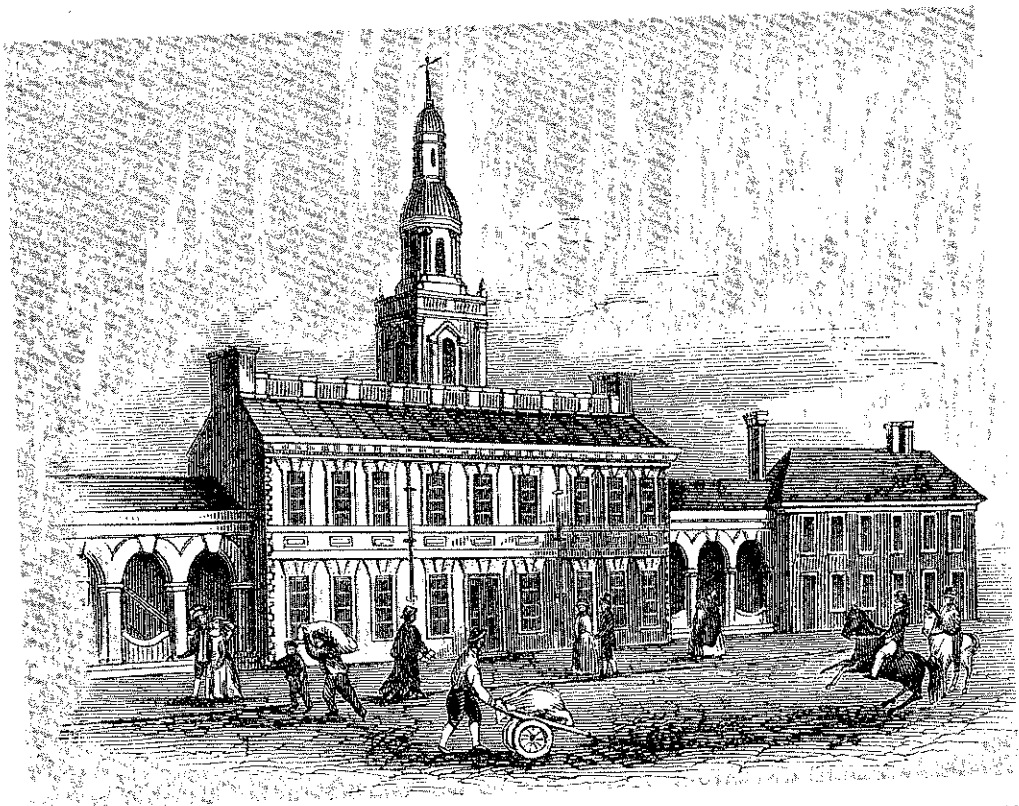
Though the compromise on representation assured the success of the convention, the members still had work to do. They had to define the powers of the executive and the extent of legislative checks upon him. Should the legislature be able to impeach and remove him during his term? Franklin thought so. He considered the power of removal a guarantee both for the people and for the executive. "What was

the practice before this in cases where the chief magistrate rendered himself obnoxious? Why, recourse was had to assassination, in which he was not only deprived of his life but of the opportunity of vindicating his character. It would be the best way, therefore, to provide in the constitution for the regular punishment of the executive when his misconduct should deserve it, and for his honourable acquittal when he should be unjustly accused."

Should the executive be eligible for reelection? Some members thought he must be, else he necessarily suffer the degradation of being returned to the body of the people. Franklin differed strenuously. Such an assertion was "contrary to republican principles,"

he said. "In free governments the rulers are the servants, and the people their superiors and sovereigns. For the former therefore to return among the latter was not to degrade but to promote them." Doubtless with that sly smile of his, he added, "It would be imposing an unreasonable burden on them to keep them always in a state of servitude and not allow them to become again one of the masters."

Who should be able to vote? Many delegates thought responsibility attached to property, and irresponsibility to its lack, and said suffrage should be restricted to freeholders. Franklin granted that the person least prone to political pressure was the one who tilled his own farm, but he would not endorse the proposed



*A view of the Pennsylvania State House (Independence Hall), where the delegates to the Constitutional Convention assembled in May 1787. During these meetings the United States government, as we know it, took shape. In the tower of the State House hung the Liberty Bell, which tolled the news of the signing of the Declaration of Independence and of American victories in the Revolution. An impassioned motto girdled the bell: "Proclaim liberty throughout the land, and to all the inhabitants thereof." But given all the inhabitants excluded from the blessings of liberty, the motto seems more than a little ironic.*



restriction. "It is of great consequence that we should not depress the virtue and public spirit of our common people, of which they displayed a great deal during the war, and which contributed principally to the favourable issue of it." Such a restriction would rightly provoke popular upset. "The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description."

What should be the requirements for candidates to the national legislature? Many delegates again wanted to see proof of owning property. Again Franklin embraced the more democratic position. Once more he voiced his dislike of everything that tended "to debase the spirit of the common people." Besides, as his own long experience of politics and politicians had taught him, the proposed restriction was no guarantee of good government. "If honesty was often the companion of wealth, and if poverty was exposed to peculiar temptation, it was not less true that the possession of property increased the desire of more property. Some of the greatest rogues I ever was acquainted with were the richest rogues." Moreover, other countries were watching America. "This constitution will be much read and attended to in Europe, and if it should betray a great partiality to the rich, it will not only hurt us in the esteem of the most liberal and enlightened men there, but discourage the common people from removing to this country."

The opinion of Europe—to which, it was fair to say, Franklin was more sensitive than anyone else at the convention—informed his opinion on a related topic. How long should immigrants be required to live in America before becoming eligible for office? Some said as much as fourteen years. Franklin thought this excessive. He was "not against a reasonable time, but should be very sorry to see any thing like illiberality inserted in the constitution." The members were writing not simply for an American audience. "The people in Europe are friendly to this country. Even in the country with which we have been lately at war, we have now and had during the war a great many friends not only among the people at large but in both Houses of Parliament. In every

other country in Europe all the people are our friends." How the proposed constitution treated foreign immigrants would have much to do with whether America retained those European friends. In any case, justice dictated fair treatment of the foreign-born, for many had served valiantly during the war. The mere fact of immigrants' relocation to America should count for something. "When foreigners, after looking about for some other country in which they can obtain more happiness, give a preference to ours, it is a proof of attachment which ought to excite our confidence and affection."

As cooler weather approached, so did the end of the convention's work. Franklin had his way on some of the remaining issues, yielded on others. He advocated requiring not one but two witnesses to the same overt act of treason, on grounds that prosecutions for this highest crime were "generally virulent" and perjury was too easily employed against the innocent. The convention agreed. (This requirement of two witnesses would prove critical in the treason trial of Aaron Burr twenty years later.) Franklin seconded a motion calling for an executive council to assist the president. Still advocating a wider distribution of power, he said, "We seem too much to fear cabals in appointments by a number, and to have too much confidence in those of single persons." Colonial experience with bad governors should have shown the need to restrain a single executive, while his own experience as chief executive of Pennsylvania revealed the positive benefits a council could provide. "A council would not only be a check on a bad president but be a relief to a good one." The convention disagreed.

The thorniest of the final issues involved slavery. How should slaves be counted toward representation in the lower house? Naturally the delegates from the states with few slaves wanted to minimize the slave count; they pointed out that since slave owners considered slaves to be property, those same slaves should not be counted as persons. The delegates from states with many slaves objected, less on philosophical grounds than on the pragmatic one that without some allowance for slaves, their states simply would not

accept the new constitution. James Wilson of Pennsylvania proposed that the new constitution adopt the expedient devised by the Confederation Congress in 1783, when the legislature allowed the states to count three-fifths of the total number of their slaves. This compromise made no one happy but none so upset as to bolt the convention, and it was accepted.

A similar makeshift disposed of the question of the slave trade. The new constitution would give Congress power to regulate commerce, but the heavily slaved states resisted infringement on the commerce in slaves. Franklin had been sharply critical of the slave trade when it was practiced by the British, and—as he would soon reveal—had come to detest the entire institution of slavery, but when the southern states made clear that the issue of the slave trade was another potential convention-breaker, he acquiesced in another compromise. For twenty years Congress could not bar the traffic in slaves; from 1808 it might do what it chose on the subject.

On September 17 the completed copy of the Constitution was ready for the members' signatures. Franklin addressed the convention for the last time. Again he spoke through James Wilson, who read his colleague's prepared remarks. "I confess that there are several parts of this constitution which I do not at present approve," Franklin said. "But I am not sure I shall never approve them, for having lived long, I have experienced many instances of being obliged by better information or fuller consideration to change opinions even on important subjects which I once thought right but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more attention to the judgment of others."

Some people felt themselves possessed of all truth; so did most sects in religion. Franklin explained how the Anglican Richard Steele (upon whose writing, many years before, he had modeled his own) once penned a dedication to the Pope, in which he explained, in Franklin's paraphrase, that "the only difference between our churches in their opinions of the certainty of their doctrines is, the Church of Rome is infallible and the Church of England is never in the wrong." Franklin also quoted a Frenchwoman of

his acquaintance who, in an argument with her sister, declared, "I don't know how it is, Sister, but I meet with nobody but myself that's always in the right."

As the chuckles subsided, Franklin made his point. "In these sentiments, Sir, I agree to this constitution with all its faults, if they are such; because I think a general government necessary for us, and there is no form of government but what may be a blessing to the people if well administered." He reminded once more that the strength of any government rested on the virtue of the people. . . .

Franklin doubted whether any convention could have done better. "When you assemble a number of men to have the advantage of their joint wisdom, 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 can a perfect production be expected?" The wonder was how well the present assembly had done. "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, and that our states are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, sir, to this constitution, because I expect no better, and because I am not sure that it is not the best."

Franklin closed by suggesting that the confidentiality that had surrounded the proceedings ought to continue upon the members' parting. "The opinions I have had of its errors, I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die." If each delegate, returning to his constituents, complained at this point or that of the new government, the total of the complaints would probably scuttle the project. On the other hand, unanimity would encourage ratification. "I hope therefore that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously."

Achieving this unanimity required a final bit of finesse. Franklin knew full well that unanimity of delegates was not possible. Edmund Randolph was holding out, as were Elbridge Gerry and George

Mason. But unanimity of the states might be attained by polling the members within each delegation and heeding the majorities therein. Gouverneur Morris framed a formula for the signing: "Done in Convention, by the unanimous consent of the States present the 17th of September." Franklin moved that the convention adopt this formula, and the motion carried.

George Washington signed first, followed by thirty-seven others, state by state. James Madison related the convention's close:

Whilst the last members were signing it, Doctor Franklin, looking towards the president's chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that painters had often found it difficult to distinguish in their art a rising from a setting sun. I have, said he, often and often in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the president, without being able to tell whether it was rising or setting. But now at length I have the happiness to know that it is a rising and not a setting sun.

*The delegates to Philadelphia had been authorized only to modify the Articles of Confederation, but they had recognized that the Confederation was utterly unworkable. Deliberately exceeding their authority, they had scrapped the Articles and proceeded to create an entirely new Constitution and a new government. As a result, there was a great deal of opposition to the document. Indeed, the ratification of the Constitution was a slow, agonizing process with the vote extremely close in many states. In Virginia, Patrick Henry declared that he "smelled a rat" in Philadelphia, and George Mason, concerned about the absence of a bill of rights, announced that he "would sooner chop off his right hand than put it to the Constitution." Still, Virginia narrowly approved the document by a vote of 89 to 79. There was high drama in many other states, too, but brilliantly defended by Alexander Hamilton, James Madison, and John Jay in the Federalist Papers, the Constitution was finally ratified by the nine necessary states, and it took effect in 1789.*

*After the convention, when a woman asked Franklin what kind of government the delegates had devised, he replied: "A republic, madam, if you can keep it." The old*

*gentleman would be proud to know that Americans have now kept it for more than two centuries.*

## QUESTIONS TO CONSIDER

- 1 Describe George Washington's doubts about attending the Constitutional Convention. As you read selection 10, reflect on some of the reasons why the general was often a reluctant participant in the political discussions that followed independence. Why was Franklin eager to have Washington present at the Constitutional Convention?
- 2 Describe Franklin's health at the time of the Constitutional Convention. Why does this selection give you the impression that age had not dulled Franklin's keen senses?
- 3 Explain Franklin's reasons for proposing that the members of the executive branch of the new government should serve without pay. Given the background of most of the delegates to the Constitutional Convention, why was Franklin's recommendation impractical? Why did Franklin's suggestion for daily prayers also meet with resistance? Compare Franklin's desire for prayers at the Constitutional Convention with Walter Isaacson's description of Franklin's views on religion in selection 6.
- 4 How did Hamilton and Franklin differ in their views of the power and length of service of the chief executive in the new government? Analyze Hamilton's and Franklin's contrasting opinions about the "common man." Why did the two men differ on this subject?
- 5 What role did Franklin play in brokering a compromise between the large and small states on representation in the legislative branch of the new government? Explain Franklin's fascination with the snake with two heads. Explain, too, how it symbolized the problems faced by his fellow delegates.
- 6 Contrast the views of northern and southern delegates on the representation of the slave population in the lower house of the new legislature. How was the thorny issue of the continuation of the international slave trade resolved?