

## The Constitutional Convention

### I. The start of the Convention

#### A. Rules of Procedure

1. Concession to the small states continued the practice of the Articles of voting by states
2. But unlike the Articles only a majority vote would be required—they were only recommending changes
3. Rules also established to encourage open debate
  - a. No talking or reading during debates
  - b. No written record of votes so delegates would not be too attached to their opinions
  - c. Most controversial rule was a prohibition against discussions of the debates outside of Congress—Deliberations would be secret
    - i. Plan as a whole would be presented to the people
    - ii. Deliberation would be encouraged by withholding public scrutiny

#### B. Almost immediately the Virginia Plan is proposed suggesting what is in effect a new constitution

1. Some delegates complained that they had been sent to Philadelphia by their states only to consider amendments to the Articles
2. Defenders of the plan countered that they were sent to amend the Articles in order to give the national authority sufficient power to govern
  - a. Amending the Articles was the means to the end of providing sufficient power
  - b. If the Articles were inadequate to the end, then the means must be sacrificed to the end
  - c. Moreover, they were only making recommendations others would make the final decision as to whether such a radical change should be made

### II. The Virginia Plan thus provided the basis for debate

#### A. It included the following provisions

1. Suffrage would be based on the number of free inhabitants or their contributions to government
2. A bicameral legislature with the first house elected by the people and the second elected by the first
3. Powers would include all those granted to Congress in the Articles plus
  - a. a negative on laws passed by the states
  - b. the power to use the force of the union against the states
  - c. the power to act in all cases where the separate states are incompetent
4. Created an executive to be chosen by the legislature
  - a. With all the executive powers of Congress under the Articles
  - b. And, a general power of execution
5. Council of Revision
6. National Judiciary

- 7. Republican guarantee clause
- B. Ratification was to be by assemblies in the states
- C. Virginia Plan immediately gained the support of a majority of the delegations
  - 1. There was widespread agreement however, that it needed even broader support if it was to succeed
  - 2. But debate had begun on a new constitution
- III. Small states were thrown off guard by the Virginia Plan but they regrouped and introduced an alternative known as the New Jersey Plan
  - A. This plan had the same goals as the Virginia Plan—creating an effective central government
  - B. Did expand the powers of the central authority
    - 1. Power to tax
    - 2. Power to regulate trade and commerce
    - 3. Created an independent executive and judiciary
    - 4. Included a supremacy clause
  - C. But in one crucial respect it pulled back from the Virginia Plan
    - 1. Each state would have one vote in Congress
    - 2. It would be a government of the states not the people
  - D. Plan expressed the concern of the small states about giving up their sovereignty to a national government—but it never had broad support. No more than four states were ever in favor of it
- IV. Third plan is less well known. It was a plan proposed by Alexander Hamilton
  - A. Hamilton's plan was even more radical than the Virginia Plan. He said that he would even have proposed abolishing the state governments, but such a proposal would shock the public.
  - B. He did propose the following
    - 1. Senate elected for life
    - 2. President elected for life with an absolute veto
    - 3. President would appoint some cabinet officials himself and the remainder with the approval of the Senate
  - C. Why would Hamilton make such a proposal
    - 1. He thought it would be the best form of government
      - a. Complained that there was nothing in the Virginia Plan to check the excesses of democracy. Pork with a change of sauce, but still pork
      - b. Wanted to have some parts of government capable of resisting short term public opinion
    - 2. Others have suggested it was a political ploy on his part
      - a. By making a more extreme proposal he made the Virginia Plan appear more moderate
      - b. The Virginia Plan was now a mean between the New Jersey Plan and his plan
- V. What created broad support for the Virginia Plan?
  - A. Hamilton's Plan may have helped
  - B. Argument by Gunning Bedford also helped

1. He said that if the small states didn't get their way at the Convention they would turn to foreign governments for help
  2. This argument had the opposite effect than intended—many delegates now saw the need for unity to protect against foreign enemies
- C. Delegates were now ready for the Great Compromise
1. Small states were given equal representation in the Senate as a means of self defense
  2. Still a victory for the nationalists because there would be a government that in part represented the people and that could act directly on the people
- D. Ratification process was also a key to success
1. Ratification was taken out of the hands of state legislatures and given to assemblies of delegates chosen by the people in the states
  2. Only nine states would be necessary to ratify—not the unanimity required by the Articles
- VI. The great compromise did not end the work of the Convention. Many of the most important decisions about the structure of government remained. Much of the summer was taken up with these issues
- A. The legislative powers had to be defined and assigned
1. Needed to find ways to distinguish between the House and the Senate
    - a. Length of term
    - b. Method of election
    - c. Size of the bodies
    - d. Responsibilities of each House
  2. It was to be a government of enumerated powers, and Article I includes a long list of powers
    - a. Unlike the Articles the Constitution did not limit the legislative powers of Congress to those expressly granted
    - b. Inclusion of the necessary and proper clause was an important contribution of the debates
- B. See the complexity of the issues involved in the debates by looking at one question—the method of election of the President
1. Two popular views of the Founders' selection process
    - a. Nothing more than a bundle of compromises
    - b. the electoral college was a product of the Founders' distrust of democracy
  2. Four delegates are often cited for their criticisms of democratic selection of the President. They made comments such as “leaving the choice of the President to the people would be like leaving a trial of colors to a blind man.”
    - a. What is usually neglected is that none of the four delegates cited supported the electoral college
    - b. Moreover the delegates who spoke in favor of democratic selection –Gouverneur Morris and James Wilson among others were the foremost supporters of the electoral college.
  3. The debate at the convention was not between the electoral college and popular election but between the supporters of popular election who

supported the electoral college and supporters of legislative election who included some of the leading opponents of popular selection

- C. Why have electors rather than direct popular election?
    1. Needed to make some provision for the small states to have added weight in the election of the President just as they did in the selection of members of Congress
    2. Needed to address the problem slavery posed for a popular election. The use of electors allowed the application of the 3/5<sup>th</sup> compromise to presidential elections
  - D. Was the product of compromise, but not just compromise
    1. Principle of executive independence was at stake
    2. Principle of the executive as a national representative was at stake
- VII. Concluding remarks on difficulty of designing a selection system and the importance of institutional arrangements