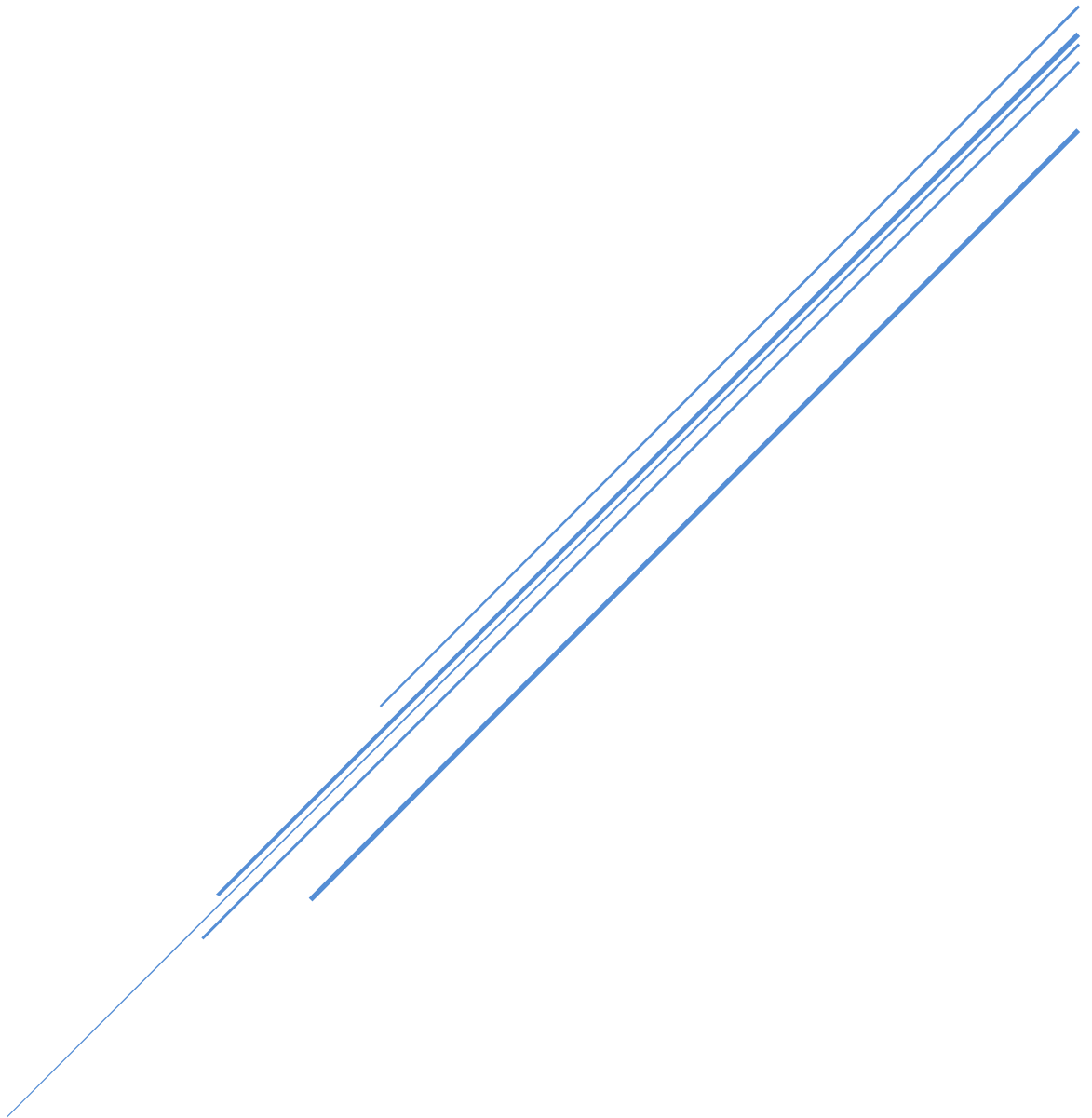


# THE PHILADELPHIA CONVENTION

## 1787



Debate Highlights

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## Delegates to the Philadelphia Convention, 1787:

Abraham Baldwin

Richard Bassett

Gunning Bedford, Jr

John Blair

William Blount

David Brearly

Jacob Broom

Pierce Butler

Daniel Carroll

George Clymer

William Richardson Davie (left without signing)

Jonathan Dayton

John Dickinson

Oliver Ellsworth (left without signing)

William Few

Thomas Fitzsimons

Benjamin Franklin

Elbridge Gerry (refused to sign)

Nicholas Gilman

Nathaniel Gorham

Alexander Hamilton

William Houston (left without signing)

Jared Ingersoll

William Jackson (Secretary)

Daniel of St Thomas Jenifer

William Samuel Johnson

Rufus King

John Langdon

John Lansing, Jr (left without signing)

William Livingston

James Madison

Alexander Martin (left without signing)

Luther Martin (left without signing)

George Mason (refused to sign)

James McClurg (left without signing)

James McHenry

John Francis Mercer (left without signing)

Thomas Mifflin

Gouverneur Morris

Robert Morris

William Paterson

William Pierce (left without signing)

Charles Pinckney

General Charles Cotesworth Pinckney

Edmund Randolph (refused to sign)

George Read

John Rutledge

Roger Sherman

Richard Dobbs Spaight

Caleb Strong (left without signing)

George Washington (president of the Convention)

Hugh Williamson

James Wilson

George Wythe (left without signing)

Robert Yates (left without signing)

## Introduction

Recently I climbed into my time machine and sat in on the Constitutional Convention at Philadelphia in 1787. I saw a few familiar faces, and lots of unfamiliar ones. They were all very busy, looking very serious, reading, talking, debating, and sweating. I wanted to shake hands with many of them, like George Washington, Benjamin Franklin, and James Madison, but of course it doesn't work that way with time machines.

Here are some of the highlights of what I saw and heard.

(By *time machine*, I mean Madison's meticulous notes on the debates during the Convention. By *climbed in* I mean I opened a book and read Madison's notes. By *highlights* I mean selected excerpts, paraphrased using today's lingo.)

If you are a historian or Constitutional scholar, this might cause wailing and gnashing of teeth. But for non-purists, the idea is to capture the essence of the Convention in an entertaining and informative way. It's always better to study original sources (like Madison's notes) for yourself, but not everyone has the time for that. Or the patience, since Madison is not exactly an easy read – partly because of the language of that time, and partly because he is such a braniac. So, I've tried to make the process much easier and faster for you, and I hope you'll think it was worth the time. There is some very interesting stuff here, and I guarantee you will find a few surprises, or your money cheerfully refunded.

Parts of it were a bit difficult to interpret. But I think this is a fairly accurate portrayal of what was said and the tone of the discussions.

## Convention Overview

The states (most of them) sent delegates to the Convention to fix the *Articles of Confederation*. It was clear to (almost) all by then that the *Articles* just weren't good enough to effectively manage the affairs of the young America. There wasn't much agreement about what exactly should be done, but obviously something had to be done, quickly. The delegates were sent to Philadelphia to come up with ideas, sort out the details, put it all in writing, and present the states with a new and improved set of *Articles*.

But even before the Convention started, some of the delegates (James Madison, in particular) realized that the only way to get the job done was to scrap the *Articles* completely and start over. That didn't go over too well with some of the other delegates, who reminded their colleagues that they had no authority to do that under the terms of the *Articles*, and that's certainly not what the states had in mind by sending them to the Convention.

But by June 13, 1787, they had reached agreement on a number of issues, largely endorsing what we know as the *Virginia Plan*. As a result, the national government was much stronger than it had been under the *Articles*. There wasn't much argument with that, since a weak national government was the key problem with the *Articles*.

But there had also been a big change in how the states figured into the new scheme of things, and the smaller states were not happy. Under the *Articles*, each state had one vote in Congress, but under the new system decisions would be made by representatives elected by the people. Some delegates were afraid that big states like Virginia would always get their way, no matter how unfair it might be to little states like Delaware.

So on June 15 the Convention began to consider an alternative, known as the *New Jersey Plan*. It preserved equality of the states in Congress, and it was generally an attempt to spruce up the *Articles* instead of dumping them.

The debate was intense until Benjamin Franklin and William Samuel Johnson suggested a compromise on July 5. On July 16 the Great Compromise was approved, providing for two



houses of Congress: the House, based on popular vote, and the Senate, with equal power among the states.

On July 26 the Convention appointed a *committee of detail* to sort out what had been settled so far, and to make recommendations on what to do about the still unresolved issues. Their report, presented on August 6, started to look like what we know as the Constitution. But there was still a lot of work to do.

For over a month the delegates debated the draft, bit by bit, settling their differences on most issues. They still couldn't come to an agreement, though, on several points: executive powers (such as veto), the executive department's relationship with the Senate (such as appointments and treaties), and how the executive would be elected.

On September 10 the Convention's work was turned over to the *committee on arrangement and style*. Gouverneur Morris is credited with the final draft of the Constitution. After changing a few details, his work was unanimously approved by the states present, and it was submitted to the Confederation Congress and to the people of the states.

That doesn't mean, however, that there was unanimous agreement among the delegates. In particular, Edmond Randolph and George Mason of Virginia, and Elbridge Gerry of Massachusetts, did not approve of the new Constitution. Their objections (primarily the scope of powers given the new federal government) largely reflected the anti-federalist arguments during the ratification debates.

## May 29: The Virginia Plan

**Randolph:** Gentlemen, it looks like it's up to me to get things started, even though most of you are more experienced and wiser. Obviously, we have a very difficult job ahead of us if we are to disappoint those who have been predicting America's failure.

As I see it, we have four main questions to answer: (1) What characteristics should our national government possess? (2) What's wrong with the present government system? (3) What dangers do we face in our current situation? (4) What should we do about them?

First, we need a national government that (1) protects us against foreign invasion; (2) provides a way of dealing with disagreements among the states; (3) deals effectively with matters that the states by themselves aren't equipped to handle; (4) is strong enough to avoid being dominated by state governments; (5) has higher authority than the states.

Second, let me start by saying that I mean no disrespect at all toward the men who wrote the *Articles of Confederation*. They did all that could reasonably be expected of them at that time. It's important to keep in mind that the country was in its infancy then, and they weren't faced with the problems we face today, like commercial squabbles among the states, purchasing the materials and supplies needed for the country, rebellions, like the one in Massachusetts, urgent foreign debts, all the problems associated with printing paper money, treaty violations, etc.

With that in mind, here are what I consider to be the defects in the *Articles of Confederation*: (1) It doesn't provide for security against foreign invasion, and there are many examples of this; (2) The national government has insufficient authority to deal effectively with quarrels among the states or rebellion within them; (3) There are a lot of benefits that a stronger national government could provide, including better trading terms with foreign countries; (4) The national government cannot defend itself against state encroachments; (5) The current federal constitution is superseded by state constitutions.

Third, we are on the brink of anarchy. Nuff said.

Fourth, here are my proposed solutions to the problems I have just described:

The *Articles of Confederation* will be expanded and revised so that they provide adequately for our national defense and security and general welfare.

Voting rights for members of the national legislature will be based on population, either landholders only or all free people, whichever each state prefers.

The national legislature will consist of two branches.

The first branch [House of Representatives] will be elected by the people in each state, and elections will be held at specified intervals, with members serving a term of a specified number of years; members will be at least a specified age; they will receive compensation for their services; members will be prohibited from serving in any state office or other federal position, during their term, or for a specified number of years after their term ends; members will not be eligible for reelection for a specified number of years; and they will be subject to recall.

The second branch [Senate] will consist of members nominated by their respective state legislatures, and then elected by members of the first branch; members will be subject to specified age requirements; they will serve for a specified number of years, which should be sufficient to assure their independence; they will be compensated for their services; they will be prohibited from holding any state or other federal office during their term, or for a specified period afterward.

The national legislature will retain all legislative rights and powers now provided by the *Articles of Confederation*. In addition, it will have the power to pass whatever laws (which may originate in either branch) are necessary to ensure harmony among the states, and to address issues which the individual states are not equipped to handle effectively. It will have veto power over state laws which conflict with national laws (in the opinion of the national legislature). And it will have authority to use force if necessary to assure state compliance with national laws.

A national executive will be elected by the national legislature, serving for a specified number of years. He will be compensated for his services, a fixed amount, which cannot be increased or decreased during his term. He will be eligible for reelection. He will assume all executive rights now vested in Congress under the *Articles of Confederation*, and he will have the general

authority to execute national laws. [Under the *Articles of Confederation* there was no separate executive department, no President.]

A Council of Revision will be established, consisting of the executive and an appropriate number of members of the national judiciary. The Council will have authority to examine every law passed by the national legislature before said law goes into effect. Any law rejected by the Council will be null and void unless it is passed again by the legislature. In that case, the Council will have authority to again examine it, and perhaps veto it.

A national judiciary will be established, consisting of one or more supreme courts and of inferior courts. Judges will be chosen by the national legislature, with life terms, and they will receive fixed compensation for their services. Any increase or decrease in said compensation will not affect any member in office at the time such decision is made. Jurisdiction will be . . .

A provision will be made, subject to legislative approval, for the admission of new states into the union.

A republican form of government will be guaranteed by the national government to each state in the Union.

Provisions will be made for continuing to operate under the *Articles of Confederation* until such time as these reforms are adopted.

Provisions will be made for amending the new Constitution, and the consent of the national legislature will not be required.

Each state's legislative, executive, and judicial powers must be modified as necessary to conform to the new national Constitution, and each state will be bound by oath to support it.

Each state will form a state convention, consisting of delegates recommended by the state legislature and elected by the people, to consider the proposals adopted here, after they are submitted to the current Congress, and referred by it to the states.

Thank you for your consideration, gentlemen. I need not remind you that we cannot afford to waste this opportunity to improve our system of government, and to establish a new era of peace, harmony, happiness, and liberty in America.

## May 31: Popular election of the House of Representatives

**Sherman:** Representatives should be elected by state legislature, not by the people. The people don't have enough information to make sound choices, so they will be easily misled, and they should, therefore, have little involvement with government.

**Gerry:** Too much democracy is what got us into this mess. It's not that the people lack virtue; it's just that they are so easily manipulated by people who claim to be patriots. Just look at what's going on in Massachusetts. One of the biggest problems is that government workers don't get paid enough to live on, and still people complain that government salaries are too high, even though they're in line with our state constitution.

**Mason:** I agree that we have been too democratic, but let's not overreact. Popular elections are particularly important for the House of Representatives, because it is specifically designed to be closest to the people. All people, even down to the community and district level. Local needs, interests, views, customs, habits, and products are very different in different parts of the state, especially in Virginia. The House must adequately represent those disparate interests, and it must take great care to provide for the rights and happiness of the lowest as well as the highest order of citizens.

**Wilson:** I agree. The success of our government, especially since we are a republic, depends on the people's confidence in it. And I submit that it would be a huge mistake to place elections in the hands of the state legislatures, because they, not the people, are currently responsible for most of the opposition to national measures.

**Madison:** We must have popular election of at least one branch of the legislature, because it's an essential element of any free government.

**Gerry:** I still don't like the whole idea of popular elections. But I might be persuaded to go along with something like this. How about having the people nominate a certain number of candidates, then the state legislature would choose from those?

## June 1: The executive

**Pinckney:** We definitely need a strong executive, but I'm afraid we might be creating a monarch, even if an elected one.

**Wilson:** The executive should be a single person.

**Pinckney:** I second that motion.

**Franklin:** This is very important, so let's discuss it before voting.

**Rutledge:** I would encourage us all to not be reluctant to speak our minds, on this and other subjects. Speaking frankly doesn't prevent you from changing your mind later, you know. I'm in favor of a single executive, but I don't want to give him the power of war and peace.

**Sherman:** As far as I'm concerned, the executive's only legitimate function is to carry out the will of the legislature, and it makes sense, therefore, to have the executive appointed by and accountable to the legislature. They are in the best position to judge what needs to be done, and therefore how many executives would be most appropriate for doing it.

**Wilson:** A single executive would be most practical. As I see it, executive powers consist of executing laws and appointing officers (other than those that come under legislative jurisdiction).

**Randolph:** A single executive will result in a monarchy. We shouldn't look to Britain as a model on this, because America is unique. (Not that their system is bad; it's great for them.) I don't see how a single executive would be any better than three, and three would, I think, help preserve the independence of the executive branch.

**Wilson:** A single executive would not lead to a monarchy at all, and in fact it would be our best safeguard against it. (By the way, as I said before, I'm not influenced by the British model, which, I agree, simply won't work in this country.)

## June 2: Executive salaries

**Franklin:** Although I like this plan in general, and I wish it well, I can't go along with the idea of paying the executive(s) a salary. You might think this is silly, but please hear me out. I don't see any advantages to paying a salary, but I see some big advantages if we don't. Here's why.

Men are driven by two things: ambition and greed; the love of power and the love of money. Either one by itself is powerful enough, but when you have both in full force at the same time, men will stop at nothing to get it. The executive position already provides power, and if we add to it the element of greed in the form of a salary, well, Britain is a good example of the results.

And what kind of man would such an executive position attract? It won't be wise, moderate, trustworthy men who love peace and tranquility, that's for sure. It will be ambitious, violent men who will crush anyone who stands in their way, and they will take over the government. And by then, it will be too late, because we won't be able to get rid of them.

Now, you may be thinking that all we need to do, then, is set the salary so low that it wouldn't provide any real incentive to such men. Wrong. They are smart enough to know that, once in office, it wouldn't be difficult to keep increasing their salary indefinitely. But why would voters allow that to happen? They could just vote them out of office. Wrong again. Because they would keep promising the voters more and more in exchange, and the voters would fall for it. This is how things have worked throughout the history of the world.

But, you may be wondering, how can we expect to attract good and decent men to office if we don't pay them enough to live on? There are several examples in both England and France where public office is held by very honorable men who aren't paid for their services, and in fact, lose money by serving. Yet they seek those positions simply for the privilege of serving their country and their fellow citizens. In general, history shows that the less the compensation, the greater honor with which people serve.

If you still have doubts about what I'm saying, consider this. We have in this very room the General of our armies, who has served selflessly, courageously, with great honor and distinction, with tremendous personal sacrifice. He never received even a small salary for his eight years of service! [Referring, obviously, to George Washington.]

So, gentlemen, setting a small salary for the executive would not be a big deal now, but I'm warning you, it will only lead to trouble down the road, and that's why I move to remove this provision from the Constitution. Whether you agree or not, I needed to get that off my chest. Thank you.

**Hamilton:** I second the motion. Dr Franklin makes some very good points, and I think we should have the committee take a closer look at this issue. [Mr Madison pointed out in his notes that Colonel Hamilton's action was a sign of the delegates' tremendous respect for Dr Franklin, not of their agreement with what he said.]

## June 4: Opposition to a single executive

**Mason:** Gentlemen, I have passed out copies of a speech which I would like to summarize, because it makes some important and valid points.

One of the main advantages of a single executive is that, especially in time of war, a single person has more flexibility to react quickly and decisively, and there is a much better chance of maintaining strict confidentiality. Maybe so, but there is also a much better chance we'll end up with a monarchy. Of course we need a strong executive branch, but it would be much better to have three executives, with the northern, central, and southern states each choosing one. This would provide better representation of the interests of the different sections of the country, and the people wouldn't be so afraid of the executive assuming too much power.



## June 6: Legislative elections

**Gerry:** In England the problem is that not enough people have the right to vote. In America, the problem is with too many people having suffrage. We need to have popular elections for one branch of the national government to maintain the public confidence in it. But, in the House we should have the people select candidates from their various districts, and the state legislature would appoint the best of them.

**Wilson:** The reason we elect representatives is that it would be impractical for every citizen to participate directly in the daily function of government. But, in the process, the legislature should continue to be an accurate reflection of the whole society. The people don't really care how we do it, they just want good government, and they are going to look more to the national than to their state government to provide that. And they will make good choices as long as the districts are large enough to avoid a few unscrupulous people from gaining too much power.

**Sherman:** If we didn't have any state governments at all, then we would definitely need popular elections for the national government. But we do have state governments, and that's where there is the most accurate reflection of the spirit, character, and disparate interests of the whole society. That's why we don't have to have popular elections for the national government in order to preserve our strong democratic principles.

Besides, there are very few legitimate functions of the national government: defense, domestic tranquility, treaties, and foreign commerce. Everything else, with maybe a few minor exceptions, is best left to the states, where popular elections give the people a great deal of influence.

**Mason:** Under the *Articles of Confederation*, the national Congress represents the states, not the people. But that all changes under the new Constitution. Now, the national government will represent the people, not the states, so it is the people who should directly choose their representatives. There is no perfect form of government; they all have real and potential problems. But, all things considered, popular elections offer our best chance of success.

**Madison:** I must disagree with Mr Sherman. Those are certainly important functions of the national government, but there are a couple more that we need to think about: private rights and equal justice. The greatest threat to those goals is mob rule, which is a distinct possibility with popular elections of the national government. What's to stop the majority from oppressing the minority? We like to say that "honesty is the best policy", but we know that in practice that's just not how things work, not for individuals, and especially not for large groups. Furthermore, a man doesn't have to worry so much about his own reputation if there are plenty of others around him to share the blame. Conscience proves to be not much of a deterrent to bad behavior in large groups. Even religion, with all its inherent morality, can become a powerful force for evil in the wrong hands.

Therefore, we must frame our republican government in a way that guards against the potential evils of majority rule. So, popular elections, which seem on the surface to be such a vital element of a democratic society, are not always the best method of achieving or maintaining it.

**Dickinson:** Members of the House of Representatives should be chosen by popular election. Members of the Senate should be chosen by the state legislatures. Senators should serve terms of maybe three, or five, or even seven years.

**Read:** Our current system, under the *Articles of Confederation*, was a temporary solution, and trying to fix it at this point would be like putting new cloth on an old garment. It's time to move on, and that means less reliance on state governments. Before long the national government will swallow the state governments, leaving them with the single task of electing national Senators. Some of us seem to think the people don't want a strong national government, but that's not true. It's just a few special-interest groups that are opposed. Look, gentlemen, we have to get this right! Otherwise, our country will lie in ruins, or at best we'll soon be right back here trying again to get it right.

**Pierce:** Representatives in the House should be chosen by the people, and Senators should be chosen by the states. That way all citizens will be represented both individually and collectively.

## June 7: Electing Senators

**Sherman:** I second Mr Dickinson's motion providing election of Senators by state legislatures. State legislatures and the national Congress should have separate and distinct jurisdictions, but they should also have mutual interests and provide mutual support. This provision will accomplish that, giving the states a stake in the national government, and allowing them to work together in harmony and a spirit of cooperation.

**Pinckney:** Are even the smallest states going to have a Senator? If so, we're going to have too many. Eighty at least.

**Dickinson:** This provision allows us to capture the will of the people, but in a way that also captures the wisdom and discretion of the most distinguished gentlemen the states have to offer. Frankly, I have no problem with eighty Senators, or with twice that many. The more the merrier! We're a big country, so we need a lot of representatives.

**Williamson:** We shouldn't get carried away with this. But I do think every state, no matter how small, should have at least one Senator. I think 25 would be about right.

**Butler:** Before I weigh in on this, I need to know what the ratio is going to be.

**Wilson:** Hold on just a minute. I think we may be getting ahead of ourselves. The national government must flow from the people, so legislators should be chosen by popular election in the Senate as well as the House. Otherwise, the two branches of Congress are going to be at each other's throat all the time. We need to establish voting districts, and I move to postpone Mr Dickinson's motion to give us time to work on that.

**G Morris:** I second that motion.

**Read:** Okay, I know a lot of you will be alarmed at what I'm about to propose, but I might as well get it out there right now. State legislatures should nominate their candidates for Senate, then the executive should choose from them. I think that's the only practical solution.

**Madison:** If we adopt Mr Dickinson's proposal we must either abandon the whole principle of proportional representation, or we must have a very large Senate. The first is obviously unjust, and the second is impractical. I disagree with Mr Dickinson about a large number of senators being a good thing. The whole idea of the Senate is to have a body that reflects on proposed laws with wisdom and good judgment, weighing more carefully all the pros and cons of each measure than the House. Too many Senators makes that impossible.

**Gerry:** Let me try to summarize what we have so far. We have four options for electing Senators. (1) By the House. This would make the Senate dependent on the House. Not a good idea. (2) By the executive. That's a sure path to monarchy. (3) By the people. Since most people are landowners, the people with commercial interests would not be adequately represented. (4) By state legislatures. This provides a measure of security to commercial interests, preventing their oppression by landowners, and thus offering our best hope of long-term success.

**Dickinson:** Doing away with the states entirely would be impractical, disastrous, and probably impossible. They play a vital role in the checks-and-balances process.

I would ask Mr Madison, if a small Senate is so important, why not limit it to ten or less?

**Wilson:** This is a tricky issue, no doubt, and we can forget about the British system. That's absolutely irrelevant to our needs. In fact, there is no appropriate model for us to pattern our government after. We're in uncharted territory. We're on our own. And we're expected to get it right the first time. We can do it!

I'm not worried about the national government gobbling up the states. I'm more concerned about the states nibbling away at the national government.

I don't see how election of Senators by state legislatures would offer any more protection to commercial interests than election directly by the people. The best solution is election by the people, as long as we make sure the districts are kept large enough to assure election of honest, intelligent men.

**Madison:** The bottom line is this: what is the best way of electing the best men to the Senate? So far, no one has convinced me that election of Senators by state legislatures is the best way. Look at it this way. One of the main reasons we are here today is that state legislatures are inadequate, and often incompetent and corrupt. Yet you want these guys to choose Senators! Are you kidding me?

**Sherman:** Well, I still think the state legislatures will provide better Senators than popular elections.

**Gerry:** I have three big problems with popular elections. (1) It's impractical to try to assemble large numbers of people from a wide geographical area together in one place at one time to vote. And even if we manage to pull that off, there will be fraud at every turn. (2) Drawing up the boundaries of separate voting districts would be manipulated to such an extent that an honest, worthy candidate from any particular district could easily be excluded from consideration in the election. (3) There would be friction between different areas within the same district as well as between districts.

**Pinckney:** Senators should serve life terms. Appointments by state legislatures would help assure the independence of the Senate, and it would also avoid the many problems associated with popular elections. States should be divided into three classes, based on size. The first class (largest states) would have three Senators, the second class two, and the third class one.

## June 15: The New Jersey Plan

**Paterson:** I offer the following plan as an alternative to the Virginia Plan.

The *Articles of Confederation* will be revised, corrected, and enlarged in order to accommodate the needs of the national government and preserve the Union. Specifically, Congress' powers will be enhanced to provide greater control over taxes, commerce between the states and with foreign nations, criminal law, and requisitions.

However, these powers will be subject to approval by a specified number of members of Congress, who will serve terms of a specified number of years, and will be compensated by

federal funds, which amount will not be increased or decreased during their current term. Members of Congress will be barred from holding any other office or accepting any other appointment during their term, or for a specified number of years afterward. They will not be eligible for reelection, and they will be subject to removal if decided by a majority of state governors.

National executives will have general authority to execute federal laws, appoint federal officers, and direct military operations.

A federal judiciary will be established, consisting of a supreme court, with justices appointed by the executive for life terms. They will be paid, and their compensation will not be increased or decreased during their term. The supreme court will have jurisdiction over impeachments of federal officers . . .

Members of the judiciary will be barred from holding other offices or appointments during their term and for a specified period thereafter.

All federal laws and ratified treaties will be the supreme law, and the federal executive will have authority to enforce them at the state level.

Provisions will be made for admitting new states into the Union.

The rules for naturalization will be uniform throughout the states.

A citizen who commits a crime will be judged by the laws of the state where the crime was committed, even if he/she is from a different state.

## June 16: Debate on the New Jersey Plan

**Paterson:** I've already expressed my opposition to the Virginia Plan, so I'll try not to repeat myself here. My plan is better because it is in compliance with the authority granted us by the *Articles of Confederation*, and it is more consistent with the wishes of the people who sent us here. If the current *Articles* are so bad that we can no longer work within them, then we should go back to our states and ask for more power, not just assume that power on our own. We were

sent here, not to express our own personal opinions, and not even to come up with the best government possible, but to form a government structure that the people want and will approve.

If we are no longer bound by the provisions of the current confederacy, then I guess we are free to do whatever we think best, because we are simply the representatives of several sovereign states. In that case, if we want proportional representation, let's vote on it, and it's a done deal for any state that agrees to it here at the convention. We aren't even required to get it ratified by the states, because that notion is gone out the window along with the *Articles of Confederation*.

On the other hand, if we are still bound by the confederacy, then we have a big problem. Because you may recall, gentlemen, that Article Five of that document gives each state an equal vote, and Article Thirteen says that any changes to that document require the consent of all thirteen states. That's how treaties work. They require unanimous consent before they go into effect, and they require unanimous consent to nullify them.

Mr Wilson pointed out that when the larger states agreed to the confederacy, they didn't really want an equal vote for every state, but they realized that it was necessary under their current circumstances. That doesn't mean they can just pretend they are not bound by that agreement now, just because circumstances have changed.

The Virginia Plan opens up a huge can of worms. I might add that, in addition to being illegal and unworkable, it would be enormously expensive.

**Wilson:** Okay, let's break this down, point by point, given my understanding of the New Jersey Plan so far.

The Virginia Plan: (1) Two (or maybe three) branches in the legislature; (2) representation of the people at large; (3) proportional representation; (4) single executive; (5) majority rule; (6) Congress makes laws for all situations where the state legislatures are inadequate; (7) Congress can veto state law; (8) executive may be impeached, and removed from office if convicted; (9) provision for revising laws; (10) provision for inferior courts; (11, 12) more jurisdiction for federal courts; (13) ratification of the new Constitution by the people themselves.

The New Jersey Plan: (1) Single branch of national legislature; (2) decisions made by states, not by the people at large; (3) equal representation for all states; (4) more than one executive; (5) a minority may prevail over the majority; (6) Congress has additional powers in only a few limited situations; (7) states can continue to thwart federal law; (8) national executives may be removed from office by a majority of state governors; (9) no provision for revising laws; (10) no provision for inferior courts; (11, 12) less jurisdiction for federal courts; (13) ratification of the revised *Articles of Confederation* by unanimous consent of the states.

There are many reasons why we need two branches in the legislature. Generally speaking, the best way to control the power of the legislature is to divide it. But, as strange as it may seem, the best way to control the power of the executive is to unite it. With one, people know who to blame. Besides, if you have three executives, one will end up completely dominating the other two.

As for our authority at this convention, I don't assume the authority to decide anything, but I'm free to propose anything. And regarding the will of the people, we don't really have any reliable way of knowing exactly what the people want. I think it would be unwise to assume they wouldn't welcome a strong national government. And keep in mind that, under the Virginia Plan, a new Constitution would be submitted to the people, not the state legislatures, for approval.

**Randolph:** As to our authority, let's face facts. The *Articles of Confederation* are so screwed up, they can't possibly be fixed. So, let's go back to the people of our states and say, *unfortunately, your government is broken beyond repair, and we know how to fix it, but we can't, because we're still bound by the rules of the broken system, and they make it impossible to do what we need to do. So sorry! Darn, if only we hadn't agreed to that pesky unanimous consent thing, we could have saved the country. But a deal is a deal. Oh well!*

We obviously can't be that irresponsible. The only way out of this mess is a strong national government. We only get one more shot at this, and we are running out of time.



## June 18: Alexander Hamilton's Plan

**Hamilton:** So far, I've kept my mouth shut, partly out of respect for my colleagues' superior wisdom and experience, and partly because my ideas are so different, even from other delegates from my home state. But, this is serious. So to heck with political correctness. I don't like the Virginia Plan, and I like the New Jersey Plan even less.

I agree with Mr Randolph regarding our authority and responsibilities. We were sent here to provide for a system of government that works. This is an emergency, and the people expect us to provide the best solution possible, and I don't think they are too concerned right now with technicalities.

A solid system of government has the support of the people, the power to govern effectively, a means of enforcing the laws, and participation by the governed. There are many reasons why neither Plan proposed so far fulfills the necessary requirements. My plan does. Here it is.

The national legislature consists of two bodies: the Assembly and the Senate, which together have the authority to pass any law, subject to the following.

Members of the Assembly are elected by the people, and serve three-year terms.

The states will be divided into voting districts, and the people in each district will choose an elector, and the electors will elect Senators, who will serve life terms. Any vacancy will be filled by someone from that Senator's home district.

Those same electors will also choose the executive, called the Governor, who will also serve a life term, and who will have the authority to execute laws; veto any law passed by the legislature before it goes into effect; direct war when authorized by the legislature, or when attacked; make treaties, with the advice and consent of the Senate; appoint department heads and officers of the departments of Finance, War, and Foreign Affairs; nominate other officers, including foreign ambassadors, subject to approval by the Senate; pardon any crime except treason, which would require Senate approval.

If the Governor dies, resigns, or is otherwise removed from office, the vacancy will be filled temporarily by the President of the Senate, until a permanent replacement is appointed.

The Senate has the sole authority to declare war, advise and approve all treaties, approve or reject all appointments of officers, except heads or chiefs of the departments of Finance, War, and Foreign Affairs.

Judicial authority is vested in a Supreme Court, with a specified number of Judges, who will serve life terms and receive adequate, permanent salaries. The Court will have jurisdiction . . .

The legislature will also establish courts in each state to determine all matters of general concern.

The Governor, Senators, and all officers of the United States are subject to impeachment, and upon conviction will be removed from office, and they will be disqualified for any position of trust or profit. Impeachments will be tried by a court, consisting of the chief justice or judge of each state's superior court. (Provided each such judge is in good standing and receives a permanent salary.)

Any state law in conflict with national law or the US Constitution is null and void. In order to help prevent such a law from being passed in the first place, each state governor will be appointed by the national government, and that governor will have veto power over any state law.

No state will be allowed to maintain its own land or naval forces. Each state's militia will be under the exclusive control of the federal government, who will also appoint and commission their officers.

[The delegates listened politely to Mr Hamilton's plan, then ignored it.]

## June 19: Opposition to the New Jersey Plan

**Madison:** We (some of us, at least) have been making such a big deal about a federal form of government and how this convention isn't authorized to consider any other form. A lot has already been said on the subject, but I'd just like to add a few observations of my own.

Exactly what is a "federal" plan of government, anyway? For one thing, its power and authority are exercised over, not the people individually and directly, but on the people collectively, on the states. But in some cases, under the current confederacy, and to some extent under the New Jersey Plan, the law applies directly to individuals. Piracy, for example.

Similarly, members of a "federal" government aren't elected directly by the people, but are chosen, one way or another, by their state government. But in Connecticut and Rhode Island, delegates to Congress were chosen by the people at large, not by their state legislatures. And nothing in the New Jersey Plan proposes any change in that regard.

So, let's not pretend everything is all that cut and dried. And here's another thing for you to chew on. The states have violated the terms of the confederacy many times. We're all familiar with the stories. My favorite is the one where New Jersey herself expressly refused to comply with Congress. So, when the delegates from that state suddenly develop such a strong devotion to the principles of "federal" government, it strikes me as a bit hypocritical. And from a legal perspective, since the sacred "treaty" of the confederacy has already been violated time after time, that renders the entire "treaty" null and void. So, let's stop wasting time getting all worked up over the unanimous consent thing. We have more important things to worry about.

Now, let's take a look at the New Jersey Plan's objectives: preserve the union, and correct our current problems with the states, both individually and as part of the national government. Does it get these jobs done? I see no evidence that it will do anything at all to help preserve the union, and I can think of at least eight good reasons for doubting that it will solve any problems with the states . . .

[Immediately after Mr Madison finished speaking, the convention voted to set aside the New Jersey Plan and resume its consideration of the Virginia Plan.]

## June 21: Federalism

**Johnson:** It's important to find the right balance of power between the national and state governments. I'm afraid we might be tending to give too much power to the federal government at the expense of the states. Good grief, Mr Hamilton's plan essentially does away with states completely!

**Wilson:** True, we need to find the right balance, but the evidence shows that the greater danger is from the states at the expense of the federal government.

**Madison:** If we take a look at other confederacies throughout the world and in history we find that they tend to end in anarchy rather than tyranny. It's the same with us. The danger is from encroachment by the states, not the national government. Look at Connecticut, for example, where they have incorporated townships and each one has a certain limited jurisdiction. Has the state government encroached on their authority? I don't think so.

And even if there were to be some encroachment by the national government, it would cause less harm than encroachment by the states.

## June 26: Length of term for Senators.

**Madison:** In order to answer the question of whether long or short terms would be better for Senators, we first have to ask what we expect of them while serving in the Senate. For one thing, they should help protect us from our government, even though they are a fundamental part of it. That means, among other things, that they are to avoid corruption. If they serve for too long, there is greater risk of betraying the people's trust, and of becoming part of the problems, rather than offering solutions. On the other hand, they need to serve long enough to fully understand the complexities involved in our national government. They need to have time to learn, and once they have learned, we don't want to waste that knowledge by turning them out too quickly. I think nine years would be about right.

**Sherman:** I'd say four or six years would strike the right balance.

**Hamilton:** I don't want to offer a specific number, but I'd just like to say that Mr Madison was right when he commented on the importance of getting it right. If we blow it, the republican form of government will be disgraced in the eyes of the world, and it may be lost forever.

## June 28 – July2: State equality in the Senate

[Madison, Wilson, King, Morris and others opposed giving each state an equal vote in the Senate, because the states varied widely in size, thus violating the principle of equal representation. Johnson, Ellsworth, Bedford and other delegates from small states supported it. Over this five-day period, the discussions were heated and intense. This is just a small sample of the debate.]

**Johnson:** We'll never be able to reach a decision if we can't even agree on what we disagree about. Some say a state is a single political society, others say a state has many political societies within in. Both are correct! A national government needs to be able to accommodate both the state as a single political unit and the individuals within it. How it does that depends on the situation.

**Hamilton:** But the people as individuals are more important, because states are simply artificial political entities made up of some of those individuals. It would be absurd to emphasize states so much that we lose sight of the individuals of which states are made. The smaller states claim that if they give up an equal vote in the Senate, they are in effect losing their liberty. But, the truth is that it's not about liberty, it's about power!

**Wilson:** Are we forming a government for men, or for some imaginary entity called a state?

**Bedford:** Some of you would like us to believe that we have nothing to fear from larger states, because, instead of teaming up against the smaller states, they will develop natural rivalries between them, and thus prevent each other from getting too powerful. Yeah, right! The large states will be rivals, all right, but not against each other. They'll be rivals of the smaller states!

## July 5, 13, 14: Majority rule as the basic principle of republican government

**Madison:** Okay, so whenever it is more appropriate for the national government to recognize states as a collection of individuals, as in the House, we have votes based on proportional representation. And whenever it is more appropriate for the national government to recognize states as single political entities, as in the Senate, each state has an equal vote. I get that. What a wonderful compromise!

Just one little problem. There is never a legitimate situation in which it is appropriate for the federal government to treat people as anything other than individuals. Anything to the contrary has been thoroughly debunked!

## July 17, 19: Presidential elections

**G Morris:** If the executive is chosen by popular election, the people will decide wisely. On the other hand, if left to Congress, their decision will be the result of political dirty tricks.

**Sherman:** The people aren't well enough informed to make wise decisions in matters like this. They will tend to vote for the candidate from their own state, so the largest state will usually prevail. We should let Congress choose the executive.

**Pinckney:** Do we really have to discuss this again? The biggest states will get together and support a candidate, so no others will even have a chance. Since Congress makes laws, and the President executes them, there will naturally be a cooperative relationship between them. It will be in Congress' best interest to make good choices, so we should give them the job.

**G Morris:** It's ridiculous to say that the people of the larger states will get together and force their will on the rest of the country. How in the world would so many people get together for anything? If anyone will get together, it's the members of Congress. It's also not true that the people would be easily manipulated by a few unscrupulous, ambitious men. Maybe in a small district somewhere, but not all over the country.

**Mason:** The people are no more competent to judge candidates than a blind man is to judge colors.

**G Morris:** One of the primary functions of the executive is to control the legislature. If he is chosen by that legislature, that will compromise his independence and his resolve to restrain their natural inclinations toward encroachment and corruption. The executive is the guardian of the people, and should, therefore, be chosen by them.

**Madison:** It is a fundamental principle of free government that the executive, legislative, and judicial branches must act both separately and independently. Executive election by the legislature violates that principle.

**Gerry:** I don't much care for either option, especially popular elections, because the people are uninformed and easily misled. I have a better idea. The people in each state will elect Representatives. Each state legislature will choose Senators. The state governors will appoint electors, who will choose the President. This would promote a close working relationship between the national and state governments.

## July 21: The judiciary and executive revisionary powers

**Wilson:** Every time I suggest this, it gets shot down. But, I'm not giving up! The judiciary can declare a law unconstitutional, and that's fine as far as it goes. But a law can stink on ice and still not violate the Constitution. So, we need to give the Court more discretion in weeding out bad laws.

**Madison:** I second the motion.

**Gorham:** A Justice is not supposed to get involved in policy. But I don't see any reason why a Justice couldn't express an opinion if the President asks for it.

**Ellsworth:** I think it's a swell idea. The President can't be expected to be a legal expert or Constitutional scholar, so why should he not take advantage of the Court's expertise, especially in the area of international law?

**Madison:** This is a win-win proposition. It would help the Court by guarding against Congressional encroachment. It would help the President, because he would have more confidence in his legal conclusions. It would help Congress make better laws. And it would help the people in general, because it would help prevent unwise and unjust laws.

I've always supported this idea. Without it, the President's revisionary powers are meaningless.

**Gerry:** I had hoped we wouldn't need to have this discussion again! It violates the principle of separation of powers. Judges are supposed to be guardians of the rights of the people, not statesmen. If we're worried about Congress passing bad laws, why don't we do what Pennsylvania did? Hire a legal expert to help them.

**Strong:** I agree with Mr Gerry. Making laws and judging their constitutionality are two different things. Everybody knows that.

**G Morris:** We do need some sort of checks-and-balances scheme for keeping Congress under control. But I don't think either the President or the Court is in a very good position to do the job. Probably the best we can hope for is that the press will help by exposing potentially bad laws to the public.

**L Martin:** This is a bad idea. There's no reason to assume that Judges have any more wisdom or legal expertise than anyone else, except in the narrow area of whether or not a particular law complies with the Constitution. If, in addition to that power, we give them revisionary rights, they will have a double negative. We expect people to have confidence in the Justices, but that will be lost if they advise against popular laws.

**Madison:** It's not good enough to just talk about separation of powers. We have to find ways of making sure things actually work that way in practice. This provision is one of those ways.



**Mason:** The primary reason for giving the President revisionary powers is to prevent encroachment by Congress. But another benefit is that it will discourage demagogues from trying to pass bad laws. And I don't have a problem with Justices getting involved in the process, because instead of just declaring laws unconstitutional, they can help make sure such laws don't get passed in the first place.

## July 21: Appointing Judges

**Madison:** I propose that Judges be appointed by the President, subject to approval by two-thirds of the Senate. The executive is in a much better position to make good choices in this case than Congress, and unless the President's choice is extremely bad, the Senate will go along with it most of the time.

**Pinckney:** Judges should be appointed by Congress. The people won't have confidence in the President's ability to make good decisions in this area.

**Randolph:** If left to Congress, they will select their friends or political allies, not the best-qualified people.

**Ellsworth:** No, it's the President who will be tempted to base his decisions on personal or political considerations, and the people know that. Besides, he'll be stuck in Washington, so he won't have any idea who the best people are for the job. Furthermore, Congress will never reject the President's choice, so their right to do so means nothing.

**G Morris:** For one thing, having the Senate appoint Judges would present a potential conflict of interest, because a Judge may very well end up presiding over a case in which a state is a party or has a vital interest. It would be almost like having a person act as his own judge. Another thing is that the President would not be any more inclined to appoint people based on personal or political reasons than members of Congress would. And he will not be stuck in Washington, because his job will take him to all areas of the country, so he will know people, and he will be in a good position to find and appoint well-qualified people. It's ridiculous to trust the President to be Commander-in-Chief of the military, but not trust him to appoint Judges. And one more thing, there is no reason to assume Congress will not use its rejection authority when appropriate.

**Gerry:** One of the goals of the Constitution is to balance the legitimate interests of both the people and the states. That's why the Senate, not the President, should appoint Judges.

**Madison:** Some of you don't like the two-thirds requirement for Senate rejection. I'm open to changing that to a simple majority.

**Mason:** That doesn't make much difference, because the Senate is not likely to deny the President his choice of Judges. And that gives the executive too much influence over the judicial branch.

Some have expressed concern over the issue of the different interests of northern and southern states, but I don't think we have to worry about that in the judiciary. That could be a problem when dealing with taxes, commerce, and navigation, but not so much regarding judicial appointments.

## July 23: Ratification

**Mason:** Should the new Constitution be ratified by the state legislatures, or directly by the people? We must be very careful to answer that question appropriately, because the success or failure of the new government may depend on it.

The most fundamental principle of free government is that the people retain all power which they have not freely turned over to the government. Have the people given their state governments the right to ratify the new Constitution? I don't believe any state constitution includes that power, and I know for sure that many of them do not.

Even if a state did have such a provision in its constitution, there would still be a couple of big problems with having the states ratify the Constitution. For one thing, if a state ratifies today, it may change its mind later. For another, some people don't consider their state constitution to be legitimate, because it was not derived from the clear and undisputed authority of the people. Virginia, for example. We can't afford to have the new national government built on such a shaky foundation.

**Ellsworth:** The idea that a state legislature might rescind a previous ratification is nonsense. Once they decide to ratify, it's a done deal.

But this whole idea that the state legislatures are not authorized to make a decision on ratification is a more serious matter. That way of thinking did not exist when the *Articles of Confederation* were ratified. No one thought it was necessary to have express powers granted to the state government, because we all considered the state legislatures to be legitimate representatives of the will of the people in their respective states, whether it specifically spelled out each power in their constitution or not. It was the states that ratified the *Articles of Confederation*, and I haven't heard any complaints about that. When the national government needed more authority, who did it turn to, the people? No, it looked to the state legislatures. And frankly, we have a better chance of getting the Constitution ratified if we stay with that. Because the eastern states are primarily concerned with getting rid of the public debt. They aren't going to be thrilled with a more powerful national government, because they will equate that with more public debt.

**Madison:** Even if some state constitutions do include the express power to decide in matters of changes to the *Articles of Confederation*, the simple fact that some do not is sufficient reason to place ratification in the hands of the people. But a more compelling reason is that the Constitution is going to require significant changes in the state constitutions, and that means the state legislatures have a major conflict of interest in the matter of ratification.

And I would like to point out that a constitution is a contract that can only be made with the people. The *Articles of Confederation*, therefore, is not so much a constitution as a treaty. There are some important implications of that distinction. For example, if a treaty is in conflict with a preexisting law, that former law is sometimes upheld in the courts. But if a law conflicts with a constitution, that law is always null and void. Period. Another implication is that violation of any part of a treaty by any party to it renders, under international law, the entire treaty unenforceable. Not so with a constitution.

## July 24, 25: Presidential Elections

**Gerry:** Election of the President will be considered an extremely serious matter. If we agree to this motion [election of the President by Congress], we'll have to limit the President to one term in order to preserve his independence from the legislative branch, and I don't like that idea at all.

**Strong:** I don't think it would be necessary to limit him to one term. By the time he is up for reelection, there will be new faces in Congress, so he will not be dependent for reelection on the same members who elected him the first time. Also, we need to be careful that we don't make the new government too complex. We need to keep it as simple as possible.

**Williamson:** Why not stick to what we talked about earlier -- a seven-year term, and no reelection? But I don't want a single executive, because that's too much power in the hands of one man. I prefer dividing the states into three sections, each choosing an executive. That way the different needs and interests of the northern and southern states will be protected. If we can nail down the ineligibility for reelection, I could go for a longer term, maybe ten or twelve years.

**L Martin:** I move to reinstate ineligibility for reelection.

**Gerry:** Second.

**Ellsworth:** I don't see that having the executive elected by the legislature necessarily requires him to be ineligible for reelection. If he's doing a good job, why not let him continue doing a good job? And he's more likely to do a good job if he knows he's not necessarily going to be turned out of office no matter how well he performs. Plus, the possibility of reelection will help attract the best candidates to the position.

**Wilson:** How long the executive serves is not that important, just as long as he's doing a good job. What's more important is how he gets elected, and I regret that we've decided on putting that in the hands of Congress. That's what makes this such a difficult issue, and I'd agree to just about any term if we could just get rid of that provision.

**Madison:** There are problems with every possible method of electing the executive. The choices boil down to these: he is elected by some existing authority under either the national Constitution or state constitutions, or by the people themselves, or by some special authority derived from the people. The only two possibilities under the national Constitution are the legislature or the judiciary. No one considers the judiciary a practical option. The legislative option is so problematic that I think we should forget about it. That brings us to having the people choose electors, who, representing the will of the people, choose the executive. That option avoids a lot of problems, and it's a heck of a lot better than the legislative option, but it's already been voted down so many times by such huge margins, that it's pretty clear it's not going to happen.

So we're left with electing the executive by the people directly, or as many as are qualified to vote. It's not perfect, but it's the best available option.

We've already talked about all the problems associated with it, and there's no need to repeat all that now. But let me just briefly mention a couple of things. One is the fear that people will prefer someone from their own state, which means the executive will most likely consistently be from a large state, and this will put the smaller states at a disadvantage. I certainly concede that point, but I would just say that, as big a problem as it may seem to be, this method is still better than the other options. And I think that if we put our heads together on this, we should be able to find some sort of fix for that.

The second point is that, since there are a lot more qualified voters in the northern states than in the southern states, that puts the south at a distinct disadvantage. But that will correct itself over time as population in the south increases, and as that region adopts laws more responsive to the needs of its people. Furthermore, we must be willing to put the needs of the country as a whole ahead of local interests. I am one southerner who is willing to do that.

**August 7, 10: Article IV, Section 1 of the first draft of the Constitution:**  
**“The qualifications of the electors shall be the same . . . as those of the electors in the several States, of the most numerous branch of their own legislatures.”**

**Wilson:** I don't see how we could possibly improve on this clause. It would be almost impossible to come up with a fair rule of qualifications that's the same in every state. And we don't want a situation where a person is allowed to vote for a state representative, but not a national representative.

**G Morris:** The situation you describe would not be unusual, and it wouldn't be a big deal. People in several states are used to different requirements for different types of elections. Furthermore, this clause makes the national legislature too dependent on the will of the states. That's not a good idea.

**Ellsworth:** The right to vote is a very touchy subject in most states. People aren't going to care much for a Constitution that threatens their voting rights. The states are in the best position to judge who should be able to vote and who shouldn't.

**Dickinson:** Our freedom is safest in the hands of property owners. We can't leave liberty in the hands of the multitudes without property or principle. It might be unpopular with them, but that's not important, because most people in this country are property holders, and they will love the idea of restricting voting rights to property owners. Eventually, all states will do it that way.

**Ellsworth:** Shouldn't every man who pays taxes have a voice in selecting the representatives who take his tax money and spend it? Shouldn't wealthy business men and manufacturers, who pay their full share of the taxes, be able to vote for the representatives who impose those taxes? Taxation and representation should stay together.

**G Morris:** One of the biggest problems I have with the Constitution as it is now written is that it threatens the country with an aristocracy. If we give the vote to a non property owner, he will simply sell it to a rich man. You may not see it now, but before long we will have a vast number

of hourly wage earners. Can we trust such people to guard our liberty and hold the aristocracy in check?

Don't be fooled by the words "taxation and representation". We don't let children vote, do we? Of course not, because they aren't mature enough to handle that kind of responsibility. Neither are many adults. Ninety percent of the population now are property owners, so don't worry about losing the support of the other ten percent. As for the wealthy, let them buy property if they want to vote. If they aren't willing to do that, they don't deserve the right to vote.

**Mason:** We're still a little too British. Just because land ownership was a requirement in England, we assume that's the right thing for us as well. It is not. Every responsible citizen participating in our society should be able to share in our rights and privileges. Why shouldn't merchants, the wealthy, and families with obvious strong roots in our society be able to participate in the political process?

**Madison:** The right to vote is certainly a fundamental element of republican government, and it should not be left up to the states. Gradually eroding this right is historically how aristocracies are built, and we must not allow that to happen here. It's probably true that our liberty would be more secure in the hands of property owners, but it's not that simple. We should keep in mind that at some point in the future, the majority of Americans won't own land, or any other property for that matter. Then what will happen? Those people may form political alliances, which could be dangerous. Or, more likely, they would simply become pawns of the wealthy and ambitious. So, it's a tough problem, and we can't ignore the political fallout of taking away voting rights for the people in some states who now have that right.

**Franklin:** Let's not underestimate the character of the common man. For example, look at their tremendous contributions in the Revolutionary war. Look at all the seamen captured by the British who bravely chose to serve time in prison rather than work for the British navy. In contrast, British sailors typically don't hesitate to turn against their own country. How do we explain such a marked difference in patriotism and character? It's because of the way the common man is treated in the two countries.

In any case, elected officials have no right to limit voting rights arbitrarily. That's what happens in England, and how is that working out for them? The clause, as it stands now, will cause

tremendous problems, especially in the larger states. How do you think the sons of a successful farmer will feel if they cannot vote simply because they themselves don't own any land? They will not be happy, and neither will a lot of other citizens.

**Mercer:** Of all the problems with the Constitution, my biggest objection is how elections are handled. Take, for example, Senate elections in my home state of Virginia. People in cities can pool their votes in favor of a particular candidate, and they will always prevail over the combined votes of people in the country, because the rural vote is spread out among several candidates. It isn't fair, and we often end up with the worst possible candidate.

**Rutledge:** Restricting voting rights to land owners is a very bad idea. It will cause people to turn against each other, and it will alienate the disenfranchised.

**Pinckney:** I'm a bit confused here. I expected the committee to figure out exactly what the appropriate definition of property ownership is. I'm disappointed that they failed to do their job in this regard. I'm against aristocracy just as much as the next guy, but it's essential for members of Congress, the President, and Judges to own sufficient land to assure their respectability and independence.

If I had been on the committee I probably would have said at least \$100,000 for the President, \$50,000 for each Judge, and some proportionate amount for each member of Congress. Something like that.

**Rutledge:** That sounds about right. The reason we didn't come up with specific numbers in the committee is that we couldn't agree on any appropriate amounts. If we set them too high, the people will be upset. If we set them too low, they will be meaningless.

**Ellsworth:** That's why it's impossible to have uniform, fixed qualifications. What works for the southern states won't be appropriate for the eastern states. What may work now will not be appropriate in the future. So, it's better to leave this matter up to the discretion of Congress than try to deal with it in the Constitution.



**Franklin:** I don't like anything that tends to debase the spirit of the common people. We tend to equate honesty with wealth, and temptation with poverty. But some of the richest guys I've known have also been the biggest crooks.

We should keep in mind that this Constitution is going to be read throughout Europe as well as here at home. If we show in it a bias in favor of wealth, that will discredit us in the eyes of the most enlightened men in Europe, and it will discourage common people from coming here.

## August 9: Citizenship requirements for Senators

**G Morris:** Gentlemen, I don't think 4 years is long enough before someone can be eligible for a Senate seat. We should change that to 14, because we don't want a bunch of strangers running our country.

**Ellsworth:** Nonsense! We want to encourage honorable men from other countries to come here.

**Pinckney:** Mr Morris is right. After all, the Senate has the power to manage our foreign affairs, including treaties. It would be dangerous to put that kind of power into the hands of men with foreign interests at heart.

**Mason:** I agree. In fact, I'm tempted to suggest restricting Senate eligibility to men born in America. The only reason I don't think that's a good idea is because a lot of the guys who fought bravely in our Revolution weren't born here.

**Madison:** I'm not opposed to some sort of restrictions, but I don't support Mr Morris' proposal. We're giving Congress the power to regulate naturalization, so let them take care of this sort of thing. It doesn't belong in the Constitution.

**Butler:** We definitely need a long citizenship requirement, because foreigners often have dangerous ideas about how government should operate. I myself wouldn't have been a good candidate for the Senate during my early years in this country. I still had a lot of crazy notions back then, and I needed time to get Americanized.

**Franklin:** I'm not opposed to a reasonable waiting period, but let's not get carried away. We have a lot of friends in Europe, even in England, including both houses of Parliament.

**Randolph:** I don't doubt that there are potential problems with immigrants, but 14 years is too long. I could go for 7, max.

**Wilson:** I can tell you from personal experience that being barred from public service is a terrible feeling. In my home state of Maryland, I was ineligible for certain jobs because of residence requirements. I didn't want any of those jobs, but knowing I wasn't eligible really got under my skin!

**G Morris:** Thank you, gentlemen, for your input on this matter. My point is that we need to use common sense here. We certainly want to be friendly with people who come here from other countries, but friendship has practical limits. I mean, I might invite someone to stay in my home for a while, feed him well, and do everything in my power to make him comfortable. But I sure as heck wouldn't let him sleep with my wife! Likewise, I don't want these so-called "citizens of the world" serving in our government. I don't trust them that much.

**August 21 and 22: The draft constitution, Article VII, Section 4: "No tax or duty shall be laid by the Legislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited."**

**L Martin:** I object to this provision. It is inconsistent with the principles we fought for in the revolution, and it brings dishonor to the country's character.

**Rutledge:** I don't think this provision will encourage the importation of slaves. Let's face it, the real question is whether we can get the southern states to join the Union.

**Ellsworth:** I say leave this provision as is, and leave the issue of slavery up to the states. The *Articles of Confederation* didn't get involved with slavery, and there's no reason for us to start now. The states are in a better position to decide what's best for them, and whatever is best for each state is also in the best interest of the Union.

**Pinckney:** Look, South Carolina will never accept the Constitution if it prohibits slavery. Just leave that state alone, and it will eventually come around on its own, just like other states have done.

**Sherman:** I don't like slavery, but our primary goal here is to come up with a Constitution that we can agree on. There's really no need to deal with this controversial issue right now. Slavery is already being abolished by the states, and they'll eventually finish the job on their own. Now, let's move on to the next topic.

**Mason:** This isn't just about the importing states. It affects all of us. Slavery brings out the worst in us, and no social good can come from it. We are asking the states to give up many of their rights, and there is no reason why the federal government shouldn't have the power to prevent an increase in slavery as well.

**Ellsworth:** I've never owned a slave, so I can't speak to the effects of slavery on one's character, but let me ask you this. If we are going to approach this subject as a matter of morality, then can we just prevent an **increase** in slavery? Don't we also have an obligation to stop the slavery that already exists? Better to not open up that whole can of worms, and just let slavery die of natural causes. Pretty soon we'll have so many poor workers that slavery will be useless, and it will go away on its own.

**Pinckney:** Whether slavery is good or bad, the fact is that it exists all over the world, and throughout history about half the population has been slaves. In any case, just leave the southern states alone, and they will no doubt stop importing slaves all on their own. Heck, as a citizen of South Carolina, I'd vote to do that now. But if we try to press the issue right now, we run the risk of serious opposition to the Constitution.

**C C Pinckney:** There's no doubt in my mind that even if every single one of us signs the Constitution and uses all his influence, we still will not be able to persuade South Carolina and

Georgia to sign on if we try to take away their right to slavery. Those states simply cannot survive without slaves. Virginia would actually be better off if they stopped importing slaves, because they already have too many, and their value would increase. But it would be unfair to force that on South Carolina and Georgia.

Besides, generally speaking, the more slaves the more produce, the more shipping business, the more products people buy, the more money for the federal treasury, and the better for the whole country. Personally, I don't have a problem with imposing a tax on imported slaves just like everything else, but it is guaranteed that if we take out this clause, we lose South Carolina and Georgia, no ifs ands or buts.

**Baldwin:** I thought we were here to discuss national issues, not state issues like slavery. Georgia has made up its mind on that topic. They have always been very skeptical of a stronger national government, because they see it as a power grab by the central states who want to cut it out of the loop. Taking out this clause plays right into their worst fears. Like others have said, leave Georgia alone and the slavery issue will work itself out soon enough.

**Wilson:** If South Carolina and Georgia really thought slavery would go away, they wouldn't have any reason to reject the Constitution even without this clause. Furthermore, as it stands now, slaves are the only imported articles not taxed. That makes no sense.

**Gerry:** I don't think we should be involved in the slavery issue at the national level. As long as we don't do anything to encourage it, leave it alone.

**Dickinson:** I beg to differ. It is very much the business of the national government, and we need to consider whether this clause is in the best interest of the whole country or not. Authorizing the importation of slaves goes against everything we stand for and believe in. And I can't believe that issue alone would stop the southern states from ratifying the Constitution. I mean, it's not like we're going to rush right down there and enforce abolition immediately.

**Williamson:** If we take out this clause, there's no way the southern states will become part of the Union. We can't shove our opinion down their throat, and there's really no reason to even try.

**Langdon:** I feel very strongly that we have to give the national government the right to prohibit importing slaves. We can't afford to leave it up to the states, because chances are they will just keep right on importing slaves as long as we let them get by with it.

**Rutledge:** Anyone who thinks North Carolina, South Carolina, and Georgia will accept the Constitution, unless it protects their right to import slaves, is out of their mind! The people of those states aren't that foolish.

## September 17: The work of the Convention was finished, except for a few last remarks and signing the document.

**Franklin:** There are parts of this Constitution I'm not exactly thrilled with. But as I have grown older I have come to see the wisdom of relying more on the judgment of others and believing less in my own infallibility. So I will sign this document with all its faults, if there are any, because this country needs it. If it is well administered, we will be fine, even if it isn't perfect. When you think about all the conflicting opinions, prejudices, passions, and local interests represented in this group, it's astonishing that we were able to come up with something this good. And no one will be more astonished than our enemies!

So, I'm proud to sign it, because it's the best we could do, and probably the best anyone else could have done. I hope we will all sign it, and unanimously recommend it to the people, for the sake of ourselves and our posterity. And (assuming it is ratified) let's focus on making sure we do a good job of putting it into practice. I know some still have objections, but I hope they will join me in not believing too strongly in one's own infallibility.

I suggest the following wording: "Done in Convention by the unanimous consent of the States present the seventeenth of September . . . In Witness whereof we have hereunto subscribed our names."

[That wording had actually been written by Gouverneur Morris, hoping it would encourage dissenting members to sign, but he felt it had a better chance of success if presented by Dr Franklin.]

**Gorham:** Sorry guys, I know we all want to get home, and I know we've already gone over and over this, but I really think we're making a big mistake if we don't change the part that says "the number of Representatives shall not exceed one for every forty thousand" to read "thirty thousand." It wouldn't be an absolute rule, but it would give Congress a little more flexibility, and it would probably help avoid objections to the Constitution.

**King:** I second that motion.

**Carrol:** Sounds good to me.

**Washington:** You know, I'm glad you brought that up, because that's been bugging me, too. So far, I've kept my mouth shut in these discussions, and maybe I should keep quiet now too, but this is really important, and I think we should make this change. Like Mr Gorham says, we want as few objections as possible, and this would remove a potential problem.

[There were no objections, and it was agreed to unanimously.]

**Randolph:** In response to Dr Franklin, I'm sorry to say I cannot in good conscience sign the document. But that doesn't mean I'll oppose it back home. I just want to keep all my options open.

**G Morris:** I have reservations about this document, too, but I will sign it, because I think it's the best we could do. The majority approves of it, and that's good enough for me. So, the question for the people is, will we have a national government or anarchy?

By the way, I think it's important to emphasize that the wording suggested by Dr Franklin says that it is agreed to unanimously by all the states present, not by all the delegates present.

**Williamson:** Might I suggest we sign the letter accompanying the Constitution to Congress, rather than the document itself. It would serve the same purpose, but it may be more satisfactory to certain delegates. Personally, I think it's the best that could be hoped for, and I have no problem putting my name on it.

**Hamilton:** I, too, hope we will all sign. If we don't, it might help fan the flames of discontent with the document, and we can't afford that. You are all very well aware that I have a lot of problems with it, but we have to realize that it's a choice between this Constitution and total anarchy. It's a no-brainer.

**Blount:** Well, I said I wouldn't sign it, but since signing only means I'm acknowledging that it is unanimously approved by the states present, I guess I will sign it after all. Doesn't mean I support it.

**Franklin:** I'm afraid Mr Randolph is under the impression I was referring to him in my earlier remarks. Please understand that when I was preparing those comments I didn't know if any one in particular would refuse to sign. I might add that we are all obliged to Mr Randolph for his many important contributions to the Convention, and I still hold out hope that he may find it in his heart to join with us in signing.

**Randolph:** It doesn't make any difference whether we sign the letter or the document itself, and Dr Franklin's wording doesn't change anything for me. I know this might turn out to be the worst decision of my life, but my mind is made up. Has it occurred to any of you that by taking a heavy-handed, take-it-or-leave-it approach, we may be helping to produce the very anarchy you are afraid will result if the document is not approved?

**Gerry:** Refusing to sign is not something I take lightly, and frankly it is very disturbing. But you need to understand that we have a very bad situation in Massachusetts. If we don't approach the ratification issue very delicately, we could very well end up with a civil war on our hands.

By the way, Dr Franklin, of course your remarks were directed at me and the others who refuse to sign. Who do you think you're kidding?

**Franklin:** [Talking to a few men standing nearby, while others were signing the Constitution] You know, I've been staring at that painting behind the President's chair throughout the Convention, trying to figure out if the artist intended a rising sun or setting sun. Finally, I know for sure. The sun is rising!