'The Great Compromise' - Drafting the American Constitution, 1787

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Jack N. Rakove tells how 'the miracle at Philadelphia' was an amalgam of high principles and backroom wheeler-dealing, to provide safeguards for the smaller states.

George Washington presiding the Philadelphia Convention. Painted in 1940 by Howard Chandler Christy

In 1878, when the United States Constitution was less than a century old, an inspired William Gladstone described it as 'the most wonderful work ever struck off at a given time by the hand and purpose of man'. Grateful Americans who still relish the approval of their former mother-countrymen have been quoting him ever since. But the appeal of Gladstone's aphorism rests on a deeper foundation – on the conviction that 'the miracle at Philadelphia' was just that. This image of the Federal Convention of 1787 is as venerable as the Constitution itself. 'The real wonder', James Madison observed:

Is that so many difficulties should have been surmounted, and surmounted with a unanimity almost as unprecedented as it must have been unexpected. It is impossible for any man of candor to reflect on this circumstance without partaking of the astonishment. It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution.

Whether one locates this miracle in the character of the delegates who gathered at Philadelphia in late May 1787, or in the compromises they struck before the Convention adjourned on September 17th, or in the simple durability of the Constitution, ultimately matters little.

Historians, of course, have little use for miracles. Against the popular tendency to romanticise both the Founders and the Founding, several generations of scholars have struggled to explain the adoption of the Constitution in more hard-headed terms. Charles Beard (1874-1948) and his disciples portrayed the framers as the spokesmen for an elite intent on protecting the rights of property against the levelling jealousy of 'the lower orders'. Other writers have stressed the pragmatic character of the deliberations, casting the delegates as skilled politicians who knew how to cut deals and seal bargains with a network of compromises that gave every state and region of the new republic a stake in adopting the Constitution.

Certainly no account of the Convention can ignore the intensity of its politics, for concessions were made to almost every interest that had a voice at Philadelphia. Small states received their equal vote in the Senate; the three-fifths clause allowed the South to count its slaves for purposes of representation, and South Carolina and Georgia received a grace period of twenty
years to continue importing slaves; northern commercial interests were pleased that laws
regulating trade could be enacted by simple majorities; and future migrants to the west were
promised fair and equal representation in Congress.

Yet when all is said and done, the great challenge is to balance this image of the Convention with
equally persuasive evidence that a concern with principle and theory played a powerful role in
the debates of 1787. For what gives the Convention its deeper appeal is the delegates' self-
consciousness about their greater task and indeed, their place in history. As Madison once noted
when the Convention was poised near dead- lock, the decisions the delegates reached would
'decide for ever the fate of republican government'. The belief that this in fact is what the
Convention did decide remains a vital part of American political culture today – naive, romantic,
and celebratory as that conviction and culture so often seem. But the origins of this image are
virtually contemporaneous with the event it exalts.

One reason why the Convention so quickly acquired this character is that many contemporaries
– and indeed many of the delegates themselves – were rightly pessimistic about its prospects for
success. As late as April, Madison still wondered whether his chief political asset – George
Washington – should 'postpone his actual attendance, until some judgment can be formed of the
result of the meeting'. The great hero's immense prestige would be squandered, Madison feared,
if he were to 'participate in any abortive undertaking' like the Annapolis Convention which had
drawn only twelve commissioners from five states the previous September.

The Annapolis meeting had been called only after a series of efforts to amend the existing
Articles of Confederation had failed to secure the required approval of all thirteen states. Rather
than adjourn empty- handed, desperation had led the Annapolis commissioners (who included
Madison and Alexander Hamilton) to issue a call for a general convention to assemble in
Philadelphia the following May. By itself, desperation offered few grounds for optimism, but it had
its uses nonetheless. The failure of all earlier attempts to amend the Articles liberated the
Convention of 1787 to think about the problems of the American Republic afresh, with a
sophistication that ran far beyond the familiar spectrum of public discourse.

Much of the credit for this goes to James Madison, the shy and bookish but politically astute
Virginian who is now regarded as 'the father of the Constitution'. The eldest son of a wealthy
planter family in Orange County, Virginia, Madison (born 1751) had been educated at the College
of New Jersey (now Princeton University). When war broke out in 1779, Madison had yet to
discover his own ambitions. The Revolution quickly changed all that. In politics Madison found
the vocation that neither the management of a plantation nor the practice of law could have
offered, first as a member of the Virginia assembly and council of state, then in Congress (1780-
83), and finally as a reform-minded legislator back in the state legislature (1784-86).

Madison went to Philadelphia in 1787 in the grips of a great intellectual passion, convinced that
he had fashioned a plan of reform that would not only save the union from the states, but the
states from themselves. The central lesson he drew from his experiences was that state
legislators and the popular majorities they represented could never be trusted to respect the
general national interest, the permanent good of their own communities, or the rights of
individuals and minorities within the states. A Convention that set out to remedy only the manifest
failings of the Confederation would leave the deeper 'vices of the political system of the United
States' untreated.

From this analysis, Madison drew a number of specific conclusions that were largely
incorporated in the fifteen-point Virginia Plan that his colleague, Governor Edmund Randolph,
read on May 29th, the first day the Convention was prepared to turn to serious business.

First, to free the union from its 'imbecilic' dependence on the states, Madison concluded that the new government had to be empowered to make, execute, and adjudicate its own laws, and to exercise its power directly upon the American people, not the states (upon whose good will Congress relied to have its various resolutions and requisitions executed). This perception led to a second conclusion. Under the Articles, only the unicameral Congress had formal constitutional status. A union vested with full legal authority had to become a government in the full sense of the term, with three independent branches and a legislature divided into two houses.

In some general sense, of course, Madison and his colleagues drew their ideas about government from the great theorists of the seventeenth and eighteenth centuries – 'the celebrated Montesquieu' (as he was called, although often with tongue-in-cheek), John Locke, James Harrington, David Hume, and William Blackstone. But the lessons they applied to their task were rooted less in what they had read than in what they had done – less in the Second Treatise or L'Esprit des Lois than in their experience under the avowedly republican constitutions the individual states had written at the time of independence. The distinctive feature of these constitutions was their concentration of power in the legislative branches of government, and especially in the lower houses of assembly. How to prevent these sovereign legislatures from running roughshod over both the state constitutions and the two weaker branches of government – the executive and judiciary – had emerged as the central problem of American constitutionalism. 'Experience had proved a tendency in our governments to throw all power into the Legislative vortex', Madison reminded the delegates in mid-July. 'If no effectual check be devised for restraining the instability and encroachments' of popularly elected legislatures, he concluded, 'a revolution of some kind or another would be inevitable'.

This analysis of legislative misrule cut in two directions. At the national level, it required not only strengthening the authority of the executive and judiciary against that of Congress, but also devising modes of election that would enable the right sort of men to enter Congress. But Madison remained concerned with the residual danger of 'vicious' legislation within the states, which would continue to hold responsibility for day-to-day governance. So obsessed was Madison with this evil that he wanted the union to enjoy the same authority to veto state laws that the crown had exercised before the Revolution.

These were the central theoretical concerns that Madison carried to Philadelphia in early May. But his agenda rested on one other calculation. He was convinced that the large states would block any major increase in federal power unless principles of proportional representation were applied to both houses of the new Congress. A change in the principle of representation, he wrote to Washington shortly before the Convention, was the 'ground-work' upon which all else depended.

The debate over representation had a dual aspect. The great conflict lay between the large states of Virginia, Pennsylvania, and Massachusetts, and the small states of Delaware, New Jersey, Maryland, and Connecticut, which hoped to retain some vestige of the equal vote they currently enjoyed in Congress. But any scheme of proportional representation inescapably raised the question of slavery: would apportionment be based on total population or simply on the number of free inhabitants?

Madison's strategy on representation was seconded by other large state delegates, notably James Wilson of Pennsylvania, the Scottish immigrant who was the Convention's leading legal mind, Rufus King of Massachusetts, and Alexander Hamilton of New York. A few delegates – like
the temporising John Dickinson – sought to avert confrontation. But Madison’s ultimatum set the course the Convention followed during its first seven weeks, until the so-called ‘Great Compromise’ of July 16th allowed the states to retain an equal vote in the Senate.

Seizing the agenda of debate was one thing, controlling its outcome proved another matter entirely. The small states had able advocates of their own: Roger Sherman of Connecticut, a self-educated shoe-maker and storekeeper whose crabbed speech masked dogged parliamentary skill; his colleague, Oliver Ellsworth; the Irish-born William Paterson of New Jersey, a small-town lawyer who had gained political prominence with the Revolution; and Dickinson. These men understood that any scheme of proportional representation would sharply reduce the weight their states enjoyed in national politics, and they were quick to mount a holding action designed to give the states an equal vote in at least one house of Congress.

The debate over representation gave the Convention its great dramatic moments. Principled appeals and heartfelt pleas for accommodation mingled with heavy-handed threats and poker-faced bluffs. On balance, the stronger arguments belonged to Madison, Wilson, and their allies. Time and again, they battered their opponents in debate. Individuals and the interests they possessed were the true constituent elements of society, they insisted, not chunks of territory or the fictitious legal personality of statehood. Moreover, the small states really had no reason to fear domination by the large states. What interests, they asked, did such diverse societies as Virginia, Pennsylvania, and Massachusetts share in common?

These were powerful arguments, and in practice the small state spokesmen rarely confronted them on their merits. Instead they simply replied that their constituents could hardly be expected to place their interests entirely in the hands of their more populous neighbours, especially when the Virginia Plan proposed granting Congress not only broad legislative authority but a right to veto state laws. As opposed to the ‘justice’ that Madison and Wilson found in majority rule, Sherman, Ellsworth, and Paterson argued that ‘security’ required an equal state vote in one house at least.

Early tests of strength went mostly to the large state coalition. But a critical vote of July 2nd found the Convention evenly deadlocked on a motion for an equal state vote in the Senate. With little progress having yet been made on any other issue, this vote gave calls for compromise their own logic. The Convention immediately appointed an eleven-man committee (one from each state) to break the impasse. The small states were represented by their leading spokesmen, but for the large states the Convention revealingly named not ‘hard-liners’ but rather three men who had already taken conciliatory stances: the great sage, Benjamin Franklin (at eighty-one the senior delegate); the independent-minded George Mason of Virginia, a crusty whig of the old school; and Elbridge Gerry of Massachusetts, a true maverick.

The committee met on July 3rd, joined the celebrations of the eleventh anniversary of Independence on the 4th, and delivered its report the next day. The purported ‘compromise’ hinged on giving the states an equal vote in the Senate while allowing the lower house to initiate all bills relating to taxes. Further debate led to the adoption of a rule counting five slaves as equivalent to three free whites for purposes of apportioning representation in the lower house (the ‘three-fifths clause’).

Madison and Wilson scoffed that the proffered compromise was worthless. If the Senate could not ‘alter or amend money bills’, it could simply reject them until the lower House came into line. Few minds in fact were changed during these debates. But, after final impassioned pleas from Madison, Wilson, and King, the key vote of July 16th found Gerry and Caleb Strong splitting the
vote of Massachusetts, allowing the compromise to pass by the narrow margin of five states to four, with one divided.

In its inception, then, the Great Compromise was that in name only. One side had gained its point, the other had lost. But when a dispirited group of large state delegates met the next morning, they realised that their bluff had been called. No one would break up the Convention over this one issue, unjust as its resolution might be. 'The time was wasted in vague conversation', Madison noted; then they filed back into the main chamber on the first floor of the Pennsylvania State House.

The vote of July 16th had three major consequences for the course that the remaining two months of debate would take.

First, the decision in favour of the small states reinforced the notion that ratification of the Constitution would finally depend on persuading the individual states that their particular interests and concerns had been duly treated. Appeals to the need for mutual accommodation became both more candid and acceptable after July 16th, and led even Madison to concede, grudgingly, that the 'interfering pretensions' of local interests 'compelled [the Convention] to sacrifice theoretical propriety to the force of extraneous considerations'.

A second major consequence of the Great Compromise lay in the more realistic – or limited – conception of the range of powers and responsibilities the national government would be asked to exercise. The Virginia Plan had proposed vesting Congress with a broad and indeed open-ended grant of legislative power. But in emphasising the need to 'secure' particular states and regions against potential abuses of power, the debate over representation led to a different conclusion. The legislative authority of the union would reach only to well-defined, 'enumerated' objects. Indeed, many of the framers left Philadelphia imagining that once the early sessions of Congress had framed laws for revenue, commerce, and the organisation of the western territories, the national legislature might not even have to meet annually. Within its sphere, the national government could govern as it wished; but that sphere was more constricted than many delegates had originally imagined.

One casualty (in fact the first) of this diminished notion of legislative power was the scheme for a national veto on state laws that Madison had seen as the cure for the evils of law-making within the states. In agreeing that the Senate would represent the states as states, the Convention had also given the power of electing senators to the state legislatures. But this in turn made it extremely unlikely that Congress would ever muster the will to overturn state laws. In place of the veto, the Convention adopted a clause declaring national acts and treaties to be 'the supreme law of the land' and binding the state judiciaries to enforce them, 'anything in the respective laws of the individual states to the contrary notwithstanding'.

Over time, the supremacy clause became the principal basis for both the superiority of federal over state law and for the greatly expanded role that both federal and state judiciaries would play in the American constitutional order. The delegates to the 1787 Convention clearly had some grasp of the still quite novel doctrine of judicial review – the distinctively American idea which gives the judiciary the great duty of defending the Constitution (and the individual rights it came to protect) against violations by the political branches of government.

Even so, the framers spent little time exploring the judicial function. It was instead in designing the presidency that they were at their most creative. The dramatic growth of executive power that occurred during the Convention's final weeks marked the third major consequence of the Great
Compromise.

Serious debate about the executive had been largely deferred while the Convention wrestled with the problem of representation. In early June the Convention had agreed that efficiency and responsibility in administering the laws required vesting the executive power in one person. At the same time, they resisted the idea, as Wilson put it on June 1st, that 'the prerogatives of the British monarch' offered 'a proper guide in defining the executive powers'. As late as August, the delegates assumed that the Senate would conduct foreign relations and have the power to appoint major executive and judicial officials. Largely absent from their initial thinking, too, was any idea of the president as prime minister or chief architect of national policy.

Two factors, however, worked to enhance the stature of the presidency the more the delegates pursued the issue. First, the framers agreed, with Madison, that a faithful administration of the laws required the executive to be insulated from the meddlesome interference of the legislature. Second, the fear that a Senate elected by the state legislatures might too faithfully reflect the parochial wishes of its constituents led many of the framers to begin to think of the president, in the words of Gouverneur Morris, as 'the general guardian of the national interests' and potentially as an active force in politics.

The first of these convictions made modes of election and re-eligibility the crucial issues under debate, as the framers struggled to find a way to render the president politically independent of the legislature whose decisions he was supposed to enforce. The strange device of the Electoral College was the answer the framers finally adopted – less than a fortnight before adjournment – to solve the problem of election. Today this body is often dismissed as a relic of the framers' fear of democracy. But what they actually feared was that a scattered population could never 'be sufficiently informed of characters', as Roger Sherman put it, to choose wisely among a large field of candidates. Believing that popular election was impractical, many delegates at first saw no alternative to election by Congress.

But the proposed Electoral College, awkward as it seemed at first, gradually made converts. An élite body that would convene in the separate states, meet once and then disband, would permit an informed choice by qualified electors who would be difficult to corrupt and incapable of exerting any improper influence over the president once elected. Moreover, the electoral formula itself was artfully designed to repeat the Great Compromise. Votes would be apportioned among the states according to their total representation in Congress, thus giving the large states the initial advantage in promoting candidates. Should no candidate gain a majority, the election would fall to the lower house of Congress, which would vote by states, thus giving the small states greater weight in the final selection.

To modern critics of the American system, this desire to make a bicameral Congress and the president independent of each other is the great curse the framers bequeathed to posterity, since it greatly complicates the task of framing policies and legislation and renders presidential leadership ever vulnerable to congressional resistance. What such criticism ignores is the fact that the Convention also sought to give the executive more authority than it had initially been inclined to delegate to an office that some feared would prove 'the foetus of monarchy'. The existence of the Electoral College allowed the president to be eligible for re-election, and thus provided a spur to executive ambitions. Equally important, in its final decisions on executive power, the Convention transferred the authority to make treaties (and thus conduct foreign relations) and to appoint major officials (including judges) to the president – subject, in both cases, to the 'advice and consent' of the Senate. In so doing, it laid a broad foundation for the growth of the modern presidency.
The development of the executive nicely illustrates the striking mixture of principled and interested concerns that operated throughout the Convention. Some of the delegates left Philadelphia fearful that the compromises they had been forced to strike would still leave the national government too enfeebled to discharge its duties, much less cure the mischiefs of republican government within the states. This was certainly the private opinion of both Madison and Hamilton.

But it took only a little reflection for both men to accept the wisdom in the concluding speech that Benjamin Franklin had asked James Wilson to read just before the delegates signed the finished Constitution. 'I doubt', Franklin had written:

...whether any other Convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected?

Franklin confessed that he was thus 'astonish[ed]... to find this system approaching as near to perfection as it does', and he went on to note that he consented to the Constitution 'because I expect no better, and because I am not sure that it is not the best'. What he understood was that no second convention could enjoy the same intellectual liberty and political flexibility that the delegates had just exploited. The framers had come to Philadelphia largely unfettered by the instructions of their constituents, but should their proposed Constitution be rejected and a second convention found necessary, its members would likely have far less room for manoeuvre and thus for compromise.

Franklin's appeal failed to sway the three known dissenters at whom it was aimed (Gerry, Mason and Randolph), but his image of the Convention and the Constitution it produced quickly became the dominant one. The irony is that the success of the Federal Convention has left most Americans convinced that it was not so much an experiment that could be repeated as the changing situation of the republic warranted, but a miracle – and even those who believe in miracles do not expect to see them repeated.

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