

Conventional Wisdom

What is the Perfect Government for an Imperfect People?

©2001 Richard B. Kurz Jr.

Let's review the major arguments from the Constitutional Convention of 1787. What were the big stumbling blocks? What did they understand about government and human nature? How did they finally resolve anything together? And finally, what does family life teach us about government?

Rich Kurz / author
4801 14th St. SW / Loveland CO 80537 / USA
email: prez@chronograf.com / websites:
www.richkurz.com, www.chronograf.com

Conventional Wisdom:

What is the Perfect Government for an Imperfect People?

“Where there is no guidance, the people fall, but in abundance of counselors there is victory.”—Proverbs 11:14

“The refining pot is for silver and the furnace for gold, but the Lord tests hearts.”—Proverbs 17:3

“Grandchildren are the crown of old men, and the glory of sons is their fathers.”—Proverb 17:6

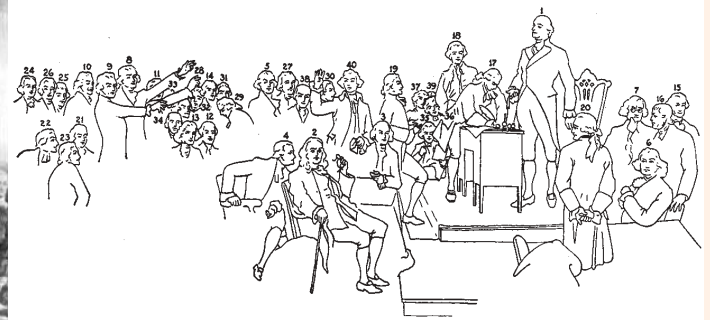
“Where there is no vision, the people are unrestrained, but happy is he who keeps the law.”—Proverbs 29:18

“Open your mouth for the dumb, for the rights of all the unfortunate. Open your mouth, judge righteously, and defend the rights of the afflicted and needy.”—Proverbs 31:8-9

“If you see oppression of the poor and denial of justice and righteousness in the province, do not be shocked at the sight, for one official watches over another official, and there are higher officials over them.”—Ecclesiastes 5:8



SCENE AT THE SIGNING OF THE CONSTITUTION OF THE UNITED STATES



1. Washington, George	..... Va.	11. Butler, Pierce	..... S. C.	21. King, Rufus	..... Mass.	31. Millin, Thomas	..... Pa.
2. Franklin, Benjamin	..... Pa.	12. Sherman, Roger	..... Conn.	22. Gutten, Nathaniel	..... Mass.	32. Clymer, George	..... Pa.
3. Madison, James	..... Va.	13. Johnson, William Samuel	..... Conn.	23. Dayton, Jonathan	..... N. J.	33. First Simon, Thomas	..... Pa.
4. Hamilton, Alexander	..... N. Y.	14. McHenry, James	..... Md.	24. Carroll, Daniel	..... Md.	34. Ingersoll, Jared	..... Pa.
5. Morris, Gouverneur	..... Pa.	15. Stodd, George	..... Del.	25. Few, William	..... Ga.	35. Bedford, Gurnee, Jr.	..... Del.
6. Morris, Robert	..... Pa.	16. Basset, Richard	..... Del.	26. Baldwin, Abraham	..... Ga.	36. Breckley, David	..... N. J.
7. Wilson, James	..... Pa.	17. Saurin, Richard/David	..... N. C.	27. Longdon, John	..... N. H.	37. Dickinson, John	..... Del.
8. Pinckney, Chas. Catesworth	..... S. C.	18. Blount, William	..... N. C.	28. Gilman, Nicholas	..... N. H.	38. Blair, John	..... Va.
9. Pinckney, Chas.	..... S. C.	19. Williamson, Hugh	..... N. C.	29. Livingston, William	..... N. J.	39. Broome, Jacob	..... Va.
10. Rutledge, John	..... S. C.	20. Jenifer, Daniel of St. Thomas	..... Md.	30. Paterson, William	..... N. J.	40. Jackson, William (Secretary)	..... Del.

On Monday, September 17, 1787, 42 men were seated in Independence Hall in front of the president of the Federal Convention, George Washington. In a ceremony that may have taken 45 minutes, they one by one signed their names to the freshly penned parchment. Benjamin Franklin had been thinking about the decoration on the president's chair—a carved sun with rays. He commented on it and James Madison caught the remark. *“Doctr. Franklin...observed to a few members near him, that Painters had found it difficult to distinguish in their art a rising from a setting sun, I have, said he, often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting Sun.”*¹ And with the signatures of all but three of the delegates, they adjourned and dissolved the Convention, departed Philadelphia, and entered history.

To quote Solomon, *“there is nothing new under the sun.”* (Ecc1:9c) And yet, there was an anomaly at work here. Although just over 200 years old, the United States has one of the oldest continuing governments. When it was formed, there was nothing comparable in all recorded history. And the men who we now call the Founding Fathers knew it. The challenge to them was to come up with a new way to form a government unlike all forms that had gone before. They succeeded, in spite of themselves. There were nearly fatal differences between the delegates to the Constitution Convention about what was the best form of government to protect the people's rights and freedoms. They achieved a compromise that perhaps surprised them when it actually worked. They were fully aware of having made a compromise, a deal if you please. They considered it the best that could be achieved at that moment because... they could not agree on what WAS the best.

They were driven by the realization that they were perhaps the last hope for government by the people and for the people that the world would see for hundreds of years into the future. If they failed to reach an agreement, they despaired that the rest of the world would ever be able to create such a government from the people. That the same basic form of government is still in place more than 200 years later is unprecedented. It even survived a civil war. They expected changes to be made to correct their blind spots once the government was put into operation. But that never really happened. Most amendments do not really affect the form or the operation of the Constitution.

When the delegates finally began their sessions on May 28, 1787, they all agreed that something needed to be done to fix the federal government. Congress was then meeting as a single house acting in a legislative, judicial and executive capacity. It had the authority to vote laws and requisition funds, but no power to enforce them. It relied wholly on the states to carry out its decisions. But its treasury was broke, the debts from the Revolutionary War still unpaid, its treaties disregarded for lack of compliance, and revolts were brewing in the states—in Massachusetts just that winter. But how to solve the problem? And what really *was* the problem?

They established their operating rules on the 28th of May and began their work on the 29th. Edmund Randolph, governor of Virginia, was the first to offer a plan for discussion to the Convention. And immediately THE issue that would embroil the entire convention jumped out of the frying pan and into the fire. His proposal would change the very method that Congress was composed. At issue was PROPORTIONAL REPRESENTATION—as opposed to the existing EQUAL REPRESENTATION. It was a Gordian Knot that they were now going to have to unravel.

Let's look at some background first. The method of voting by state was established by the Continental Congress in 1774 and institutionalized by the Articles of Confederation which were approved in 1781. Now in 1787, Virginia argued on behalf of states with large populations, such as itself, that they were obliged to agree to it at that time because of the emergency conditions during the war. But it was inherently unfair because it did not reflect accurately the will of the people. This was particularly difficult when it came to raising revenue, i.e., taxes. Nine states could raise a new tax, but the nine could have less than half of the total population of the United States. Taxation and representation should go hand in hand, it was argued. The people should be consulted when taking the people's money.

Sounds fair and simple, doesn't it? But...who did Congress represent and who did it not? Did this mean that the United States is a federated government or a national government? Was the government instituted to protect individual rights, or states rights? Who did it operate on and who should it represent? Were they there to amend or to replace the existing government of the Confederation? The battle would be over representation. Should it be equal or proportional?

The delegates from the small states were uniformly against the Virginia Plan as Randolph's resolutions came to be called. They said that the Confederation was a government made by the states for the states. A union yes, but a union of states. The states were thought to be sovereign political bodies who had voluntarily formed a league for common purposes. But they retained all their sovereignty, meaning their independence. The citizens specifically had not formed the league and were not the object of its direct attention. Instead the citizens, the people, had given their authority to the particular states they inhabited. It was the states who represented the people and who protected their rights and interests. The Confederation, then, was instituted by and for the states directly. And the states had not given up their sovereignty when they entered into a union together. As all states were of equal stature and equal importance, they were equally represented in Congress— one state, one vote.

Was the government to be a "federal" one or a "national" one? During the Federal Convention, the term 'federal' could mean both the old confederation as well as the new constitutional government. In May it usually meant confederated, but in September it meant the new system. A confederation was by common understanding an agreement made between equal and independent political states. It was very like a treaty

made between two countries. The states were not reduced in any capacity by the agreement. It was meant for each other's benefit with certain restrictions or privileges that all parties had agreed to. It did not reduce a state to a condition of subservience.

But a national government DID. States that formed themselves into a national government gave up their absolute sovereignty to the national government which had absolute authority over all the political entities that were a part of it. It did not mean that the national government had authority in all matters. But in the matters it governed, it was THE authority. No others could conflict with it. It was sovereign in those matters. It was like the difference between a congregation (confederation) and a family (national.) This was important in the matter of funding the laws and purposes of the national government. To more equitably represent the large states interests, it was better to make representation proportional to the number of citizens or the wealth of the entire population of each state. Since states varied in population from 40,000 to 700,000, the difference between voting according to population and voting by state was dramatic.

The national government could directly govern political entities (like states) or citizens. The Virginia Plan chose to operate upon the citizens. Therefore the Virginia Plan appealed to the ultimate authority of the people for its legitimacy. It had to. To change any article of the Confederation would require a unanimous approval of the state legislatures. It was obvious that the smaller states were not going to give up their advantage, their guarantee of safety as they saw it, for this new system. The delegates from Delaware, Connecticut, New Jersey, and Maryland had made their opposition known. And Rhode Island didn't even bother to show up. In the opinion of the small states, all that was needed were some amendments giving the Confederation some powers to enforce its laws, especially in requisition of revenues from the states. It was the states who collected revenues from their populaces and contributed them to the Congress. But one quickly came to the obvious problem of how to enforce collections or force compliance from delinquent states? Either Congress had to call out the state militias against a sovereign state or it had to raise an independent army and send it against a sovereign state. To raise an army required money, forming a vicious circle. In either case, to invade a sovereign state would be perceived as an act of war by the invaded state. The result would likely be either a civil war or a break-up of the Confederation. James Madison understood that clearly and early on.

"Mr. (Madison), observed that the more he reflected on the use of force, the more he doubted the practicability, the justice and the efficacy of it when applied to people collectively and not individually.—, A Union of the States (containing such an ingredient) seemed to provide for its own destruction. The use of force agst. a State, would look more like a declaration of war, than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this recourse unnecessary, and moved that the clause be postponed. This motion was agreed to nem. con." (May 31)¹

To the supporters of the Virginia Plan, simply amending the Articles of Confederation would not resolve the most basic flaw in the Confederation. The government could not rely on the good will of the states. It must have the power to compel compliance. (see G.Morris May 30)¹ The states had to part with some of their sovereignty. They could no longer be absolute, independent equals with all other nations in the world. A small number of the delegates were in favor of abolishing the states altogether. Others were for transforming them at best into administrative districts for the new government. Most preferred to take away only those powers that were necessary to be exercised for the common welfare of all the states and the citizens. The national government would be limited to specific purposes of national interests.

What were those purposes? Randolph (May 29)¹ listed five which were echoed by others throughout the Convention:

"1. to secure against foreign invasion

"2. against dissensions between members of the Union, or seditions in particular states

"3. to procure to the several States various blessings, of which an isolated situation was incapable (of providing)

“4. to be able to defend itself against encroachment (by states)

“5. to be paramount to the state constitutions.”

In order to invigorate the new government, the Virginia Plan split the government into three departments— legislative, executive, and judiciary. The legislative was split into two branches, the lower and upper house. Both would be elected by the people instead of the state legislatures as was done under the Confederation. Their numbers and terms in office differed. The upper house was meant to be a check on the decisions of the lower house who would have more representatives and be more likely to pass bad laws in the heat of the moment.

For the next two weeks the Convention worked through the Virginia Plan, article by article, until it had been completely debated and voted on. The large states largely had their way with the plan, outvoting the supporters of equal representation. But on June 15, William Paterson of New Jersey presented an alternative to the Virginia plan on behalf of those who were against it. It became known as the New Jersey Plan.

The New Jersey Plan simply enlarged the Confederation. It split out new executive and judicial departments and added powers to the legislative to directly levy and collect taxes. Both plans were referred back to a committee for a recommendation. After three days of magnificent debate by the two sides, the committee reported it could not recommend the New Jersey plan. So it went no further. Instead the Convention continued a second pass through the Virginia plan, article by article, phrase by phrase, detail by detail. Not surprisingly, they voted against electing the lower house by the state legislatures. Surprisingly though, they also voted to have the state legislatures elect the members of the upper house!

For the next month the debates grew hotter and the gap between the two sides widened. By the June 28th, Benjamin Franklin suggested they turn to the “Father of Lights” by opening each session with prayer. There were no takers. On June 30th, Gunning Bedford of Delaware openly threatened that if the small states were not accommodated, they would turn to foreign powers for help. Gouverneur Morris of Pennsylvania (Gouverneur was his name and not his office) threatened back that the end of such action was the sword and the gallows!

They managed to cool off enough to work their way through all the articles, but it was evident that the Convention was at an impasse. Something or someone had to give. On the morning of July 16 prior to that days session, the delegates from the large states met to decide how they were going to proceed in the face of the small states obstinacy. Interestingly, they allowed the small state delegates to sit in and listen. What they decided was that they couldn't decide what to do. What the small state delegates saw and heard was that there was no coordinated voting block against them. The small states could proceed in accepting the revised Virginia plan without fear that they would be devoured by the new government. The large states could only accept the revised plan now containing equal representation in the upper house, or end the Convention. They were principled men, but they valued any government over anarchy and civil war. So they all agreed to continue on. This became known as the “Great Compromise.”

What they agreed to was not an ‘either/or,’ but a ‘both/and.’ It was not a confederated government nor a national government. It was a federal government which operated on both individuals as well as states. In effect there were two parallel governments that operated directly upon any one citizen— the state and the national governments. The states were semi-autonomous, neither equal to nor completely subservient to the national government. One had jurisdiction for local concerns, the other for national concerns. It was a hybrid and unlike anything that had been tried before.

But there were details to be worked out to make it tick. The next major problem was the relationship between the three departments and the two branches. It was important to separate the functions of government into three departments, legislative, executive, and judicial. The idea was to prevent collusion, cabal, corruption and abuse of the public's rights. Each department would be independent of the others with powers that could check the actions of the others. The first branch represented the citizens and the states. But how to keep the popular will from becoming an oppressive democracy? Enter the second branch

which represented the states and property and wealth. And how to prevent the Senate from becoming an aristocracy? The first branch only was given the power to originate all spending bills. The executive department was to be independent of the legislative department. How would they keep it from becoming a monarchy? The judicial department was to be the expounder of the law. How would they keep it from becoming the lawgiver?

The office of the chief executive was the stickiest problem. It was only resolved during the last two weeks of the Convention. The solution came from a creative compromise offered by a special committee set up to do just that. Until that compromise, the chief executive (the president) would have been elected by the national legislature for a seven year term. He would have been ineligible for a second term. This was done to protect him from scheming by the legislators who might elect someone who would do their bidding rather than the peoples'. A popular direct election by the citizens was repeatedly voted down. The people, it was said, would be ignorant of the qualifications of candidates from outside their locale. The committee proposed instead that electors voted by the people as determined by the state legislatures would then vote on presidential candidates. The president would then serve for four years and be eligible again. This made him independent of the legislature and made clear how to proceed with treaty powers, veto power, impeachment, and an executive council. Everything pretty much fell into place after that.

Another big issue had to do with how slaves were to be treated when deciding both representation and taxation. For the purposes of representation slaves would be counted as three-fifths of a person. This gave the Southern states more representation in Congress. Southern states were also the major exporters. At the same time they had been exempted from taxation. The Northern states thought this grossly unfair. First of all, slavery was an insult to the spirit of the founding principles. Secondly, states that did not endorse slavery might have to send armies to protect states that practiced it. On top of that, taxation on export goods which were produced mainly by the Southern states by slaves was not permitted. The Northern states would have to risk their lives and spend their wealth to defend a practice they found unacceptable. The Southern states replied with an economic argument. Slaves contributed to the welfare of the nation by the goods they produced. Their owners in turn could be taxed when they bought goods. Northern delegates wanted slavery to cease. The South Carolina and Georgia delegates vowed that their citizens would never accept the loss of their slaves and would not join in the new government.

The thorniest question asked whether slaves were people or property. If people, why were they counted in the Constitution but not allowed to vote in their home states? If property, why were they uniquely excluded from computations of taxation based on tangible property like cattle and buildings? In the end the desire to have a united government of all the states was greater than the desire to abolish slavery. They compromised. The importation of slaves would cease in 1808. The language of slavery was expunged from the Constitution. Instead of servitude, it talked about service.

It must be said that there was an expectation that slavery would wither and die on its own. Indeed, it might have if it were not for Mr. Eli Whitney. But the seeds of internal strife had been planted. It would take a constitutional crisis and a civil war to resolve the outcome.

The debates were meaty and passionate. And they were purposeful. The delegates labored to produce a stable and lasting government, for themselves and their offspring. But the framers of the Constitution in 1787 expressed doubts that this same government would be around in 200 years. They expected it to descend into corruption and tyranny. They also seriously doubted that a country so large could ever be run by one national government. Remember that at this time the United States stretched from Georgia to Massachusetts and from the Mississippi to the Atlantic. They saw three distinct regions that could incorporate into three different confederations. It was one of the big arguments used against the ratification of the Constitution.

What were the odds against this new government? Well, what are the odds that it should exist at all? The answer lies not so much in the Constitution or in one particular form of government. It lies in the people who actuate it, who serve under it, who are governed by it. The Framers of the Constitution approached their task by asking mostly how will the officeholders likely abuse their trust and try to turn their influence to personal gain at the expense of the welfare of the nation? They then tried to check those abuses. At the same time they argued about the best form of political organization. They all understood the pitfalls, but there was no consensus about one best form—only compromise. They concluded that even the best form of government could not be protected from corruption once the people became complacent and corrupt themselves. What is the perfect form of government for an imperfect people? I submit to you, it is the one that permits the people to work out their own salvation in fear and trembling.

1 "The Records of the Federal Convention of 1787," 4 Volumes, Max Farrand, Editor, New Haven, Yale University Press, 1937

Some Thoughts about Government and the Family

The difference between the Virginia and the New Jersey Plans was like that between the congregation one attends and one's family.

The congregation is a voluntary association and can enforce its authority only as much as we are willing to submit. Its only recourse is to disenfranchise or revoke one's membership.

The family is an involuntary association. One is born into it without any say about the choice of family. Authority is vested in the parents always who may delegate some of it. Children are subject to it and accept its punishments and rewards.

The members of a congregation are confederated (full sovereignty—N.J. Plan.) The members of a family are nationalized (limited sovereignty—Va. Plan.)

So...what can family life teach us about how to govern?

...that like the union of the states, families share common experiences, heritage, and interests.

...that like the progression from colonies to states, families progress from despotism to confederation.

...that the ties that bind people to each other as a nation or as a family are those of the heart.

...that one learns how to operate in each stage of political/social development to advance towards self-governance.

...that the hardest stage is the last—peership and voluntary association.

...that families are foundational to personal development and civil society.

...that families are dynamic, self maintaining, and self-replicating—just as nations must be, too.

