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The Characters Behind the Constitution

*Tim Slover**

I would like to draw for you today a quick sketch of the 55 men who deliberated our future as a nation, and single out a few for fuller portraits.

Eight of the 55 men who deliberated our political present had signed the Declaration of Independence eleven years earlier in the same room, Independence Hall, in which they now met. And one, John Dickinson of Delaware, had refused to sign the Declaration. Six of the delegates had signed the Articles of Confederation which were then governing America and which were about to be abolished by the present convention. Fifty-two of the 55 had served in Congress. We need to think of that fact when we hear—not ourselves, of course, but others, disparage the institution of Congress. Among the many great men which that body produced was James Madison, the father of the Constitution. Seven had been governors of their states. One, Edmund Randolph, current governor of Virginia, proposed the plan, conceived by Madison but named for Randolph, which, with modification, became the Constitution. He is one of early America's interesting figures, and I want to sketch him briefly to show that among the high-minded and selfless who helped draft the Constitution were also the familiar, late 20th century opportunists.

Edmund Randolph was, one might say, a politician in an age of statesmen. Large, handsome, given to expensive and flamboyant dress, Randolph had been one of General Washington's aides-de-camp in the Revolutionary War—Alexander Hamilton was the other—and though governor, was among the younger delegates. He had risen quickly and always wished to be considered moderate and

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prudent. On the issue of the Constitution, he was pulled in two directions: His fellow Virginia delegates, ardent nationalists both, were the formidable Washington and Madison; however, his true political mentor was Patrick Henry, whom we chiefly remember as the firebrand of the American Revolution, but who eleven years later, and after having served multiple terms as Virginia's governor himself, was now the firebrand of anti-nationalism. Though urged repeatedly by Washington to attend the Federal Convention as a delegate, Henry had adamantly refused and vowed to work against any institution which had as its object robbing Virginia of its sovereignty. So, putting his political finger to the wind on the issue of the Constitution, Randolph found it blowing in two opposite directions. Which would he choose? Madison often found Randolph exasperating because of his unwillingness to commit wholeheartedly to the nationalist cause, but Washington once reminded him that Randolph represented the conflicted feelings of the people of Virginia and expressed his opinion that, probably, they would never go beyond what Randolph could understand and approve. In the end, Randolph refused to sign the plan he originally proposed in Convention. His name is not found on the Constitution.

But Randolph's story doesn't end there. When it came time for the state of Virginia to hold its ratification convention, Randolph, having now seen the success of the Constitution in other states, had by this time issued so many conflicting statements about his opinion of the document that no one at the state convention was sure where the governor stood. In the end, Randolph supported the pro-ratification forces, thus infuriating the easily infuriated Patrick Henry so much that he called him a traitor. However, Randolph assured the fulfillment of his higher political ambitions: when Washington was elected the nation's first president, he appointed Edmund Randolph the nation's first attorney general. There is a moral in the story of Randolph, but I don't think we want to dwell on it.

All of the delegates to the Federal Convention were white, male, and land-owning. Only eight had been born abroad. A few were of modest circumstances, but the majority were well off. This homogeneity among the delegates has made their deliberations at the federal convention not less, but more, remarkable to me for two reasons: that such seemingly similar men would have so much to argue about, and that they would

deliberate so seriously and, for the most part, conclude justly—the retention of slavery and the refusal to grant universal suffrage being the two most egregious exceptions—about people in different circumstances than their own.

About half the delegates had graduated from college, a high percentage at the time, and of the graduates, the plurality—nine—were alumni of Princeton. Yale, Harvard, William and Mary, the College of Philadelphia—now the University of Pennsylvania, King’s College—now Columbia—Oxford, and St. Andrews, Scotland, contributed the other graduates. The oldest delegate boasted an honorary degree from St. Andrews, an LL.D. conferred in 1759, from which date onward he claimed and was accorded the title, Dr. Benjamin Franklin. Alexander Hamilton was a Columbia dropout, having left school never to return to fight the Revolutionary War.

Two of the most famous Americans of their period were conspicuously absent from the Federal Convention, neither because he would not gladly have played a role. Both appointed in the same year of 1785, John Adams and Thomas Jefferson were in the second year of their terms as ambassadors in, respectively, England and France. Scholars have always been intrigued by the prospect of how the convention would have gone if these two political giants had been present. Adams had recently concluded a long treatise on the several state constitutions and written a theoretical “model constitution”, both of which he thought were very good, and both of which he was eagerly pressing into the hands of any who happened to stop by his and Abigail’s residence in Grosvenor Square. Adams had clearly been the man to push forward the writing of that straightforward tract, the Declaration of Independence, but would he have served well in the constitutional convention, the hallmark of which was bargaining and compromise?

Jefferson, meanwhile, was busy in pre-revolutionary Paris soaking up more of his radical solutions to problems and letting everyone on both sides of the Atlantic know his opinion that a little revolution now and then was a good thing because, as he put it, “the tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is

its natural nature.”¹ Precisely what they were trying to avoid in Philadelphia was a second American revolution. So, would Jefferson have been as helpful in Independence Hall now as he had been eleven years earlier? We will never, of course, know the answers to these questions, but my personal belief is that, whatever would have been the outcome of the presence of Jefferson and Adams at the federal convention, one thing is clear: it would have been longer.

Benjamin Franklin, honorary L.L.D., was 81 at the time of the Convention, its eldest statesman. By 1787 he had done and been just about everything a man could do to qualify as the quintessential “Renaissance Man.” He was known internationally as a scientist, diplomat, public servant, Indian negotiator, wit, publisher, revolutionary, businessman, and ladies’ man. Often immobilized now by gout and racked by the pain of bladder stone, he was nevertheless currently serving as Pennsylvania’s Supreme Executive Council, in effect, its Governor. On days when he attended the Convention, Franklin sallied forth in an elegant, closed lounge-chair which he had designed himself, carried by four convicts from the local prison—supervised, of course by the warden. The lounge-chair was considered a French affectation in an American town, but that was Franklin all over, going against the grain: when in Paris he loved to dress in Quaker homespun and even a coonskin cap while among the silked and jewelled dandies.

Franklin apparently had the hardest time of any of the delegates observing the secrecy rules that had, by unanimous vote, been imposed on its proceedings. There are accounts of his being accompanied in public during the time of the Convention by other delegates whose job it was to keep their ears open for his violations of the rule. But it was deucedly hard to tell with Franklin when he was about to reveal Convention secrets, so filled was his conversation with apothegms and metaphors. Once in lively discussion with several men under his famous mulberry tree, he began to draw an extended simile based on a two-headed snake he had recently received from an admirer. According to Manasseh Cutler, who was present:

1. MARTIN A. LARSON, *JEFFERSON, MAGNIFICENT POPULIST* 35 (1984) (letter to Colonel Samuel Smith dated November 13, 1887).

He was then going to mention a humorous matter that had that day taken place in Convention, in consequence of his comparing the snake to America, for he seemed to forget that everything in Convention was to be kept a profound secret; but the secrecy of Convention matters was suggested to him, which stopped him, and deprived me of the story he was going to tell.²

To save his voice in the Convention, Franklin often wrote out his speeches and had them read out by his fellow Pennsylvania delegate, James Wilson. So we must imagine some of Franklin's most famous speeches, such as his speech urging prayer at the Convention, delivered with a noticeable Scots burr.

It is difficult for us to comprehend, in our post-Vietnam, post-Watergate, post-Irangate, post-Monkey Business America just how revered George Washington was in 1787. It is not going too far to say that he was to Americans—and to Europeans—a living legend. He was a private citizen, holding no political or military office. And this very fact added to his personal mythology. When, in the face of almost insuperable odds, he had secured a victory for the rebel American forces and received the official British surrender at Yorktown, he stood alone at the pinnacle of the infant nation's leaders. Many Englishmen and Americans believed he would take advantage of his unique position as hero and commander-in-chief and, ignoring due process and democracy, become America's first king. The new country was before him for the taking. The fact that he instead resigned his military commission and retired to his private estate at Mount Vernon so deeply impressed friend and former foe alike, that a cult of his former officers grew up around him called the Society of the Cincinnati, their name taken from a Roman general who had resigned his military rank instead of seizing imperial power. It is interesting to note that Washington disapproved of this Society established to honor him because, eleven years on, it had become dangerously aristocratic in its philosophies and had begun to see itself as a would-be House of Lords. It is an interesting quirk of history that a triennial meeting of the Society of the Cincinnati was being held in Philadelphia at precisely the same time as the Federal Convention.

2. WILLIAM A. PETERS, *A MORE PERFECT UNION* 123 (1987).

Washington had begged off attending the Society's meeting, claiming—justifiably—ill health. When he overcame his health problems to attend the Constitutional Convention, the Cincinnati club must have felt the snub.

Then there was the sheer size and bearing of the man. In 1787 he was 55 years old and stood ramrod erect at 6'2" tall, towering over most men. By contrast, James Madison was almost a foot shorter. Over and over again, contemporary observers commented on Washington's "stately bearing" and "mild gravity." Indeed, to most he appeared solemn and grave—even cold, though courteous. In fact, the story dramatized in the Brigham Young University film production *A More Perfect Union* is true: Federal Convention delegates Alexander Hamilton and James Wilson bet the blithe and boisterous delegate Gouverneur Morris, who had never met Washington, that he would not have the temerity to slap the General on the shoulder and say, "My dear General, how happy I am to see you look so well."³ Morris accepted the challenge and won the bet, but, peering into that grave and dignified face after his assault from Washington's flank so unnerved the man that he said afterwards that he had "paid dearly for it" and that "nothing could induce me to repeat it."⁴ Such was the effect of General Washington on the delegate who was known for his boldness in social situations. Though Morris was among the most voluble of all the delegates at the convention, he was cowed into silence by Washington.

It was a foregone conclusion that Washington would be named the president of the Convention once Madison finally convinced him to come to Philadelphia. In his position as president, he felt the need to convey impartiality and so engaged only very rarely in the debates—some of them wrangles—which characterized the meetings of the Convention. But his strong nationalism was known and his presence was palpably felt both on the convention floor and behind the scenes. As the Convention deliberated the role of the Executive Branch in the proposed tripartite government, one delegate, fearful that the Chief of that branch might accumulate too much power and become a tyrant, expressed himself vehemently on the subject. There was an awkward silence after the speech: every man in Independence Hall

3. FRED BARBASH, *THE FOUNDING* 77 (1987).

4. *Id.*

knew without it ever being spoken that, naturally, just as he had been named president of the Convention, it was George Washington who would fill the role of first Chief Executive of the new United States. Was the gentleman presuming to express the view that *George Washington* would take upon himself the role of tyrant? It was Benjamin Franklin who smoothed the matter over. Taking the floor, he diplomatically said, "The first man put at the helm will be a good one. Nobody knows what sort may come after."⁵ Pierce Butler, delegate from South Carolina, wrote to a relative in England—breaking the Convention's rule of secrecy—that the delegates had made the powers of the President of the United States

full great, and greater than I was disposed to make them. Nor, entre nous, do I believe they wold have been so great had not many of the members cast their eyes towards General Washington as President; and shaped their Ideas of the Powers to be given to a President, by their opinions of his Virtue.⁶

Despite his many virtues, Washington was not, nor did he ever claim to be, a genius. Jefferson described Washington's mind as being "slow in operation, being aided little by invention or imagination, but sure in conclusion."⁷ But many accorded to Washington the perhaps greater virtue of knowing his limitations, listening to and weighing the opinions of others. At the Federal Convention, he deferred to the brilliance and scholarship of his fellow Virginia delegate, James Madison, the chief intellect behind the Constitution. But had Washington not appeared at the Convention, it surely would not have succeeded. His reputation, his gravitas, his status as the most famous and revered American alive, made our Constitution possible.

I have said that James Madison, 37 at the time of the Convention, was a small man. Mrs. Mary House, owner and proprietor of the Philadelphia boarding house where Madison roomed, described him as being "no bigger than a half a piece

5. PETERS, *supra* note 3, at 58.

6. *Id.*

7. LARSON, *supra* note 2, at 266 (letter to Dr. Walter Jones dated January 2, 1814).

of soap."⁸ Undeniably slight in stature and worried about his stamina holding out at the Federal Convention that he had almost singlehandedly cobbled together out of sheer determination, Madison deliberately put himself on an exercise regimen a few months before going to Philadelphia. This was a considerable sacrifice for the man. Carving from his day a few hours to walk and ride his horse to exercise his body took away from the years-long task he had set himself to exercise his amazing mind. Madison, alarmed for years by what he saw as a political, economic, and social crisis which would soon result in the termination of the American experiment in popular self-governance, decided simply to learn all there was to know about the science of governments ancient and modern. He read everything he could get his hands on the subject, including trunkloads of European books sent him from Paris by his friend Thomas Jefferson. He even waded through John Adams' book on constitutions. Day after day, month after month, he absorbed this material, taking careful notes, weighing and comparing each form of government. Painstakingly he drew his conclusions, formed his opinions on what he felt were the best principles for a democratic society, and drafted a model constitution for such a society. This is the so-called Randolph plan which he brought with him to Philadelphia. It was difficult for Madison to compromise these principles to the ideas—many of which must have seemed half-baked to him—of delegates he believed to know far less than he.

When Madison spoke on the floor of the Convention, we may imagine that his voice carried with it the thunder of conviction. But the real Madison was no orator. Unlike the flamboyant style of Alexander Hamilton, who could, and on one occasion did, entertain the Convention in a speech extempore, from his mother wit, which lasted through the afternoon hours of three consecutive days, Madison tended to speak from notes—which he hid inside his hat, glancing down often as he spoke. He is said to have swayed back and forth as he presented his ideas and, in the Virginia ratifying convention when he was exhausted and sick from his labors, to speak in a voice so low that delegates were forced to gather around him in a hushed silence to hear him. Imagine that

8. CATHERINE DRINKER BOWEN, *MIRACLE AT PHILADELPHIA* 13 (1966).

unimpressive style as a contrast to the oratorical blasts of Patrick Henry!

What persuaded men was not Madison's style, but his substance. Inside of four days he persuaded the delegates at the Federal Convention, many of them ardent states' rights advocates, to relinquish state sovereignty in favor of a strong national government. In doing so, he explained in quiet, persuasive terms the federalist principle which may have been his greatest intellectual contribution to the Convention: the virtue of a large republic over an amalgam of small republics. His idea was radical. It flew in the face of conventional wisdom, particularly American conventional wisdom. Madison reasoned thusly: Society was divided into competing factions—the rich against the poor, religion against religion, ethnic group against ethnic group. In a tyrannical form of government, the tyrant could, if he wished, control these competitions. But how could they be controlled in a democracy? He looked around him at the governments of the states and saw that they were doing a poor job of it. Why? Madison's conclusion was that, as republics, states were too small. A state, because of the smallness of its population, could be controlled by one or another faction.

Thus, in one state, the rich oppressed the poor, a major factor in fomenting the rebellion led by Daniel Shays in Massachusetts in that very year. In another state, one religion might dominate, to the exclusion from power and the detriment of those of another religion. Madison believed, and persuaded his fellow delegates to believe, that America could be better governed if all the states united into one large republic. This would not eliminate the factions. Madison believed that nothing could accomplish that. But it would balance the factions so that no one faction could easily dominate the nation. This idea was a testimony to Madison's strong belief in the basic goodness of the majority of Americans and his testimony, if you will, that as it became larger and more diverse, it would, in fact become fairer and more just.

It is difficult not to be persuaded by Madison's argument for a large republic made 204 years ago. When I think of what could have become of the civil rights movement if Alabama had retained its sovereignty as a small republic where one racist faction controlled the society and government, I think of Madison's argument. The desegregation laws which were

enforced by federal marshals were federal laws, passed by a federal Congress which represented the beliefs and sense of fairness of the majority of the American people—over the objections of one local faction. The large republic spoke its will. When I read in the news of current events in the former Soviet Union and its former captive states, I think of James Madison's argument. As that area of the world passes from the centralized tyranny of a large dictatorship into smaller units, some democratic, some not, many good things will result. But we are already witnessing the slide into factionalism, resulting in ethnic violence in would-be nations such as Armenia, Azherbazhan, and Croatia. Will they—and the small ethno-centered breakaway republics of the Soviet Union—suffer from the small-republic syndrome Madison so cogently described two centuries ago?

We know as much as we do about the proceedings of the Federal Convention because James Madison was there. Having worked tirelessly to prepare himself and his plan for a new government before coming to Philadelphia, he worked as tirelessly once he was there. He believed it was crucial to record in as much detail as possible all the arguments, votes, and proceedings of the Convention, and he didn't much trust the official secretary of the Convention to do it. In this mistrust he was justified. The official secretary took a scant few pages of notes over the four-month arc of the deliberations. Since he sat at the front of Independence Hall, facing the delegates, I can't help wondering what he actually did all the time, since he wasn't taking notes. Try to look busy? Try not to fall asleep while wondering when the gentlemen from the several states would pack up their quill pens and go home?

In any event, Madison said that his conviction to get it all down

determined me to preserve as far as I could an exact account of what might pass in the Convention . . . I chose a seat in front of the presiding member, with the other members on my right and left hands. In this favorable position for hearing all that passed, I noted . . . what was read from the chair or spoken by the members . . . It happened also that I was not absent a single day, nor more than a casual fraction of an hour in any day, so that I could not have lost a single

speech unless a very short one.⁹

He sounds a little smug doesn't he? I suppose he had a right to be. Even Washington, the president of the convention missed several days of it. Many left for other reasons—to attend Congress, to settle business affairs, to fight a duel in one case. The entire New Hampshire delegation didn't show up until the Convention was three months old, and Rhode Island, the legislature of which was controlled by so unruly and defiant a faction that the state was dubbed Rogue Island by those outside her borders, never sent a delegation to the Convention, at all. Madison, by contrast, spent every convention day in stuffy Independence Hall, made stuffier many days by the insistence of the more security minded to keep all the windows and shutters closed and talk by candlelight. And he spent every night transcribing his notes. Not exactly a summer holiday. When we consider that, as soon as the Convention was over, Madison barely took the time to yawn and stretch before he rushed to New York to persuade Congress to begin organizing ratifying conventions and then sat down to write the bulk of the Federalist Papers, we understand why this diminutive, brilliant man is justly called the Father of the American Constitution.

Many, including myself, revere that Constitution as a divinely inspired document. It was nevertheless produced as men—remarkable men, in this case—produce political documents, through argument, compromise, and disappointment. It was not a perfect document, as the many improving additions to it, from the Bill of Rights onwards, attest. Washington wondered in private correspondence if it would last twenty years. But it has lasted, to be a blessing to those fortunate enough to live under its principles and a beacon to nations of the world searching for ways to govern themselves democratically.

9. PETERS, *supra* note 3, at 26.