



Written by [Joe Wolverton, II, J.D.](#) on September 17, 2023

A Rising or a Setting Sun? Lessons From the Last Day of the Convention of 1787

When posterity doth not still further adorn by their virtue the [freedom] their ancestors first got for them by their merit, they deserve that penalty of being deprived of it.

— George Savile, Lord Halifax

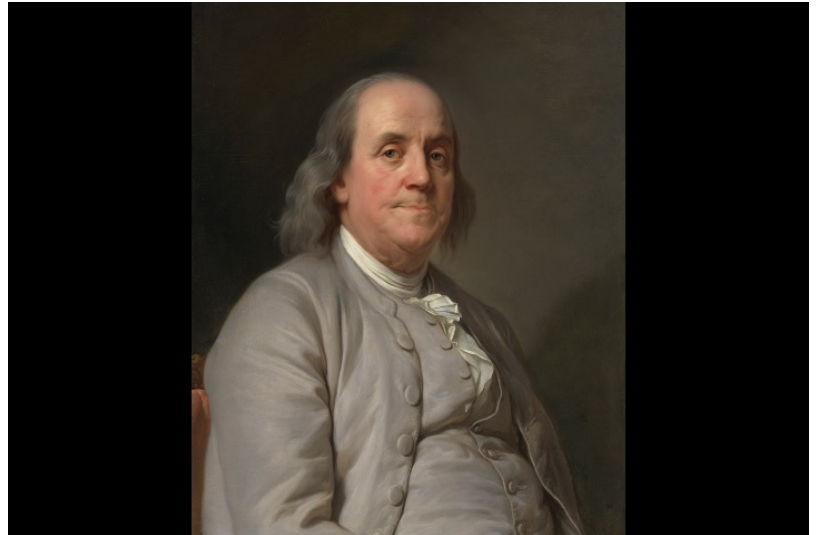
It had, by published accounts, been a rainy and dark weekend. Many of the more classically or superstitiously minded among the delegates yet gathered in Philadelphia may have imagined the weather to have been some sort of omen, a portent of a problematic future.

Monday, however, dawned brightly, the sun shining and perhaps penetrating through the worries of those who likely wondered if the weariness and toil of the summer had been wasted. Would the states — would the people — accept the fruit of their labor? That was certainly doubtful.

In February, what seemed like an eternity ago to those whose nights and days had been spent sorting out the best form of government to keep the states united and the people secure in their liberty, Congress had granted to the convention the “sole and express” power to offer proposed amendments to the Constitution (the Articles of Confederation, as they would more commonly be called in the future). Then, their proposed amendments would be sent to Congress and to the state legislatures for their consideration. Should Congress and the state legislatures sign off on the changes, they would become part of the Constitution.

After all, the Constitution had seen them through the recent war to restore their self-government, a war that resulted in the complete and permanent secession of the American Colonies from the British empire. The Articles of Confederation had their defects, as any human constitution does (“All human constitutions are subject to corruption,” as Algernon Sidney wrote), and the idea of, as Congress instructed, “devising such farther provisions as shall render the same adequate to the exigencies of the Union” was worthwhile and necessary.

But that isn’t what they did. No, the men assembled at the State House in Philadelphia that summer of 1787 did not adhere to the “sole and express” authority granted to them by Congress. When the sun rose in the clear sky on Monday, September 17, 1787, the representatives who remained to see the end of the endeavor were being asked to sign a document that was an entirely new constitution, establishing an entirely new form of government, and rather than requiring the unanimity of the state legislatures for its ratification, it would need be approved by only 9 of the 13 states. Even the method of accepting amendments had been changed by the vote of the convention.



Benjamin Franklin



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For those reasons, there were many men who awoke on that bright morning more than usually preoccupied with the day set before them.

There were 55 men who had attended the convention's sessions over the summer, but there would only be 39 (some accounts put it at 40) delegates seated in the east room of the State House that day. Each man sat in his accustomed seat, as General Washington gavelled the final meeting to order and then instructed the secretary to read the final, engrossed copy of the Constitution.

After having heard the recitation of the proposed Constitution for the United States of America, Benjamin Franklin rose with speech in hand. He gave the paper to his colleague from Pennsylvania, James Wilson, whom he had arranged to read the speech on his behalf. These are the historical words of Franklin, as delivered by James Wilson that crisp September morning in 1787, and they should be read in their entirety, as the pathos and prudence of them should be appreciated by every American:

Mr. President:

I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them. For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that, the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men, indeed, as well as most sects in religion, think themselves in possession of all truth, and that wherever others differ from them, it is so far error. Steele, a Protestant, in a dedication, tells the Pope, that the only difference between our churches, in their opinions of the certainty of their doctrines, is, "the Church of Rome is infallible, and the Church of England is never in the wrong." But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain French lady, who, in a dispute with her sister, said, "I don't know how it happens, sister, but I meet with nobody but myself that is always in the right — *il n'y a que moi qui a toujours raison.*"

In these sentiments, Sir, I agree to this Constitution, with all its faults, if they are such; because I think a General Government necessary for us, and there is no form of government, but what may be a blessing to the people if well administered; and believe further, that this is likely to be well administered for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other. I doubt, too, 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? It therefore astonishes me, sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded, like those of the builders of Babel; and that our states are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats.

Thus I consent, Sir, to this Constitution, because I expect no better, and because I am not



sure, that it is not the best. The opinions I have had of its errors I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. If every one of us, in returning to our constituents, were to report the objections he has had to it, and endeavor to gain partisans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects and great advantages resulting naturally in our favor among foreign nations as well as among ourselves, from our real or apparent unanimity.

Much of the strength and efficiency of any government, in procuring and securing happiness to the people, depends on opinion, — on the general opinion of the goodness of the government, as well as of the wisdom and integrity of its governors. I hope, therefore, that for our own sakes, as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts and endeavors to the means of having it well administered.

On the whole, Sir, I cannot help expressing a wish that every member of the Convention, who may still have objections to it, would with me, on this occasion, doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.

There is on display much humility in Dr. Franklin's speech, as well as much of his diplomatic rhetorical skill. He knew there were men who'd already left the convention, refusing to in any way ratify the document drafted, and he knew there were yet a few who remained who had decided not to endorse the plan. Franklin knew the persuasive power of unanimity, and he truly believed the best plan had been produced.

Franklin then moved to have the document be signed by the representatives of the states there present. Not so fast.

Even now, as the grains of sand tumbled to the bottom of the hourglass, motions were to be made and deliberated upon.

Nathaniel Gorham of Massachusetts made a motion that "the clause declaring 'the number of Representatives shall not exceed one for every forty thousand' which had produced so much discussion, might be yet reconsidered, in order to strike out 'forty thousand' and insert 'thirty thousand.'"

Seconded by Rufus King and Charles Carroll.

It was at this point that the president of the convention, General George Washington of Virginia, rose for the first and last time throughout the entire summer to participate in the deliberations. As recorded by James Madison, Washington said that:

although his situation had hitherto restrained him from offering his sentiments on questions depending in the House, and, it might be thought, ought now to impose silence on him, yet he could not forbear expressing his wish that the alteration proposed might take place. It was much to be desired that the objections to the plan recommended might be made as few as possible. The smallness of the proportion of Representatives had been considered, by many members of the Convention an insufficient security for the rights and interests of the people. He acknowledged that it had always appeared to himself among the exceptionable



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parts of the plan; and late as the present moment was for admitting amendments, he thought this of so much consequence, that it would give him much satisfaction to see it adopted.

The motion by Gorham regarding representation was approved unanimously.

The next line recorded by Madison is illustrative and says more about the intended structure of our federal system — as well as the identity of the creators of that system — than any shelf full of civics and history textbooks found in any school library. Madison recorded:

On the question to agree to the Constitution, enrolled, in order to be signed, it was agreed to, all the *States* answering, aye. [Emphasis in the original.]

Then, one after another, distinguished delegates rose to give their final opinion on the product put before them. Again, their statements are published here as they were recorded that day by James Madison:

Edmund Randolph: “He refused to sign, because he thought the object of the Convention would be frustrated by the alternative which it presented to the people. Nine States will fail to ratify the plan, and confusion must ensue.... In refusing to sign the Constitution, he took a step which might be the most awful of his life; but it was dictated by his conscience, and it was not possible for him to hesitate, — much less, to change. He repeated, also, his persuasion, that the holding out this plan, with a final alternative to the people of accepting or rejecting it in toto, would really produce the anarchy and civil convulsions which were apprehended from the refusal of individuals to sign it.”

Gouverneur Morris: “Said that he too had objections, but considering the present plan as the best that was to be attained, he should take it with all its faults.”

Alexander Hamilton: “No man’s ideas were more remote from the plan than his own were known to be; but is it possible to deliberate between anarchy and convulsion on one side, and the chance of good to be expected from the plan on the other?”

William Blount: “Said he had declared that he would not sign so as to pledge himself in support of the plan, but he was relieved by the form proposed, and would, without committing himself, attest the fact that the plan was the unanimous act of the States in Convention.”

Benjamin Franklin: “He possessed a high sense of obligation to Mr. RANDOLPH for having brought forward the plan in the first instance, and for the assistance he had given in its progress; and hoped that he would yet lay aside his objections, and, by concurring with his brethren, prevent the great mischief which the refusal of his name might produce.”

Elbridge Gerry: “He hoped he should not violate that respect in declaring, on this occasion, his fears that a civil war may result from the present crisis of the United States. In Massachusetts, particularly, he saw the danger of this calamitous event. In that State there are two parties, one devoted to Democracy, the worst, he thought, of all political evils; the other as violent in the opposite extreme. From the collision of these in opposing and resisting the Constitution, confusion was greatly to be feared. He had thought it necessary, for this and other reasons, that the plan should have been proposed in a more mediating shape, in order to abate the heat and opposition of parties. As it had been passed by the Convention, he was persuaded it would have a contrary effect. He could not, therefore, by



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signing the Constitution, pledge himself to abide by it at all events.”

At this point, the question was put by the president of the convention, and the states voted 10-0, with South Carolina divided. New York could not vote, as only Alexander Hamilton was present from that delegation and convention rules required that at least two of the delegates be present for that state’s vote to count.

At this point, the Constitution was signed by all the states, without the signatures of Edmund Randolph, Elbridge Gerry, and George Mason, who’d declared on August 31: “I would sooner chop off my right hand than put it to the Constitution as it now stands.” On September 16, he’d written a letter laying out his objections to the Constitution and mailed it to many influential people.

As the last few members were affixing their names to the bottom of the parchment, Benjamin Franklin, in the words of James Madison,

looking towards the president’s chair, at the back of which a rising sun happened to be painted, 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.

Now, as we stand in the United States of America, on the very day that some 236 years ago Franklin made his optimistic observation, we are called on to decide by our *actions* if the sun is now setting on the federation of sovereign republic-states, or if the restoration of our liberty and the sovereignty of our republics will make the sun rise again.



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