... done in Convention ... the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. ARTICLE VII

The Convention: How The Deed Was Done

SOME OF THE NOTABLES INVITED TO THE CONVENTION IN that summer of 1787 simply refused to come. One, Virginia's Patrick Henry, said of the gathering in Philadelphia that he "smelt a rat." Others came and found the impassioned arguments profoundly dispiriting. Even George Washington, who had given his support early to the idea of such a gathering, watched the debates with misgivings. In the later weeks of their discussions he wrote to Alexander Hamilton, who had already gone back to New York City: "I almost despair of seeing a favorable issue to the proceedings of the convention and do therefore repent having had any agency in the business."

Actually the 55 delegates who concocted that remarkable Constitution over the course of a long, hot summer had no real mandate to do what they did. They had gathered only to consider some possible improvements in the Articles of Confederation, which the 13 rebellious

colonies had agreed to in 1777 but which had clearly failed to establish an effective national government. Neither Congress nor anyone else had authorized the delegates to invent a whole new political system. That was one reason why the group decided at the start to confer in total secrecy, with the windows of the Pennsylvania statehouse shut tight and sentries stationed at the doors. When one delegate carelessly dropped a copy of a convention document, Washington began scolding, "I must entreat the gentlemen to be more careful, lest our transactions get into the newspapers and disturb the public repose."

There was very little public repose to be disturbed. The seven years of the Revolutionary War had nearly bankrupted the colonies, and both credit and currency were almost worthless. The supposedly united states quarreled fiercely over economic resources, like oyster-harvesting rights in Chesapeake Bay, and Congress had no real power to keep the peace. Then in the winter of 1786 the brief but violent Massachusetts farmers' uprising known as Shays' Rebellion had provided a garish vision of things to come.

Though it had taken Virginia's James Madison and his like-minded colleagues nearly two years to prepare the way for this "Federal Convention," the scheduled opening day, May 14, came and went without enough delegates on hand to get started. Washington's arrival the previous day was a good omen, though. Without his prestigious presence, there was little hope for any new constitution. The retired commander of the Revolutionary Army originally was a little reluctant to come, but cheering crowds hailed him all along the route from his home at Mount Vernon. In Philadelphia, Washington soon went to call on his old friend Benjamin Franklin, now 81 and gout-ridden, who traveled around Philadelphia in the city's first sedan chair, a glass-windowed Parisian creation carried by four prisoners from the Walnut Street jail. Franklin, who knew Washington's tastes well, had a cask of porter ready. Washington, Franklin, Madison—when Thomas Jefferson, then serving as Minister to Paris, read the names of all those worthies reported gathering in Philadelphia, he called them "an assembly of demigods."

They were something less than that, of course, but they were none-

THE NEED TO REVISE —OR REPLACE —THE ARTICLES OF CONFEDERATION HAD BEEN MADE CLEAR BY THE FEEBLE RESPONSE BY CONGRESS TO SHAYS' REBELLION, AN ARMED REVOLT THAT ERUPTED IN MASSACHUSETTS IN 1786.

theless an unusually admirable lot, experienced, educated, patriotic, dedicated. And though they displayed powerful individual differences in both philosophy and temperament, they showed important similarities too. Of the 55 delegates from twelve states (Rhode Island refused to participate), more than half were lawyers and eight were judges; another

quarter were large landowners. All of them had held public office, 42 as Congressmen and seven as governors. And they were young. Madison, for example, was 36; Hamilton was 32. There were no women, of course, not to mention African- or Native-Americans. The new Republic that these men were to create was a republic in which slavery was still widely accepted and in which only about 10% of the inhabitants—generally white male heads of households—could vote.

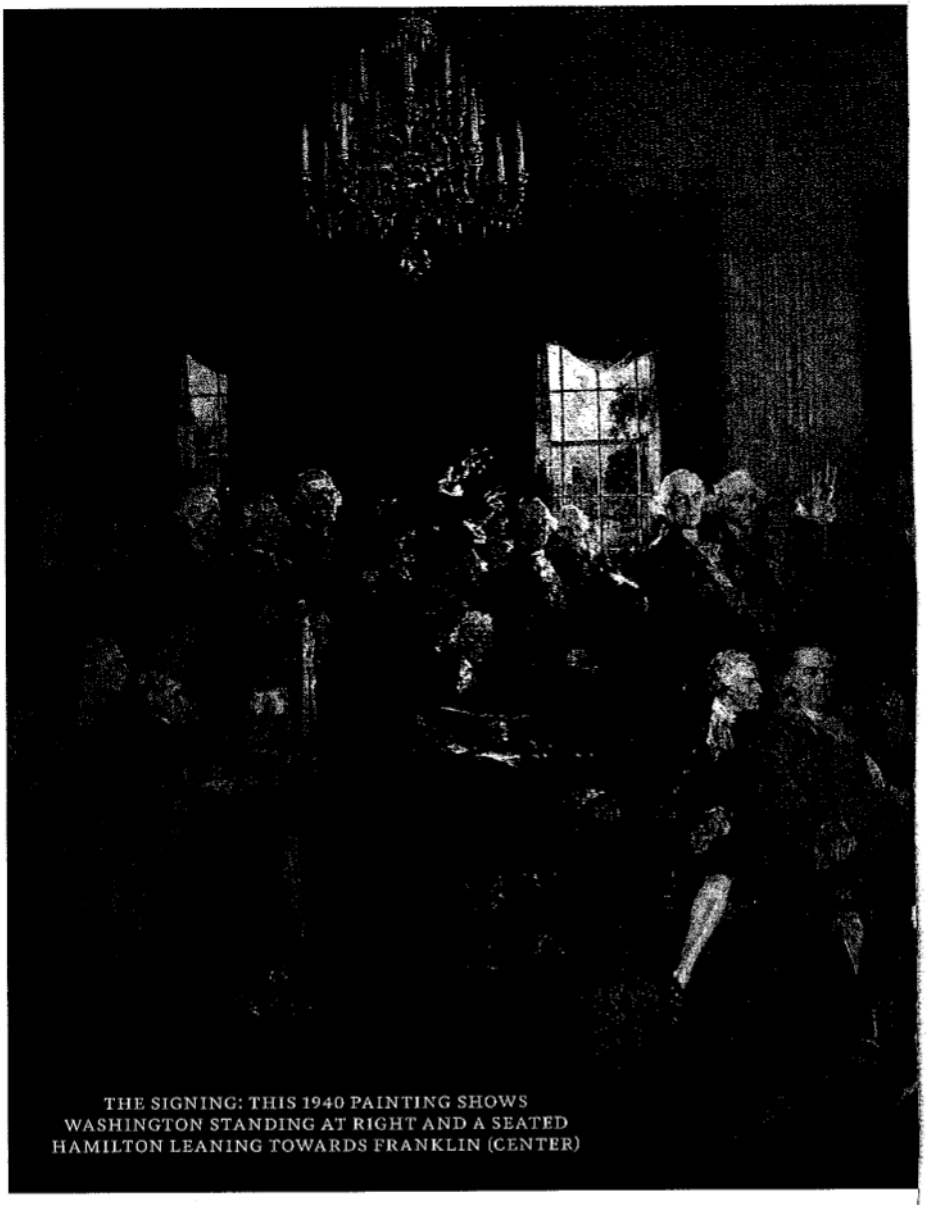
When the convention finally opened in the high-ceilinged, gray-walled East Room of the Pennsylvania statehouse on a rainy Friday, May 25, the first action was to name Washington its presiding officer, a responsibility that led him to remain all but silent in the ensuing debates. He took up his position in a handsome mahogany chair ornamented with a half-sun, prompting Franklin to wonder whether it would prove to be a setting or rising sun. Many of the delegates expected Washington's fellow Virginians to provide direction. In the absence of Jefferson, the state's intellectual leadership inevitably came from "Jemmy" Madison, who was to become "the Father of the Constitution." He was shy and soft-spoken, a slender bachelor about 5 feet 6 inches tall, and, according to one account, "no bigger than a half a piece of soap." His father was a wealthy landowner (and slaveholder), and Madison never had to work for a living. He studied philosophy at the College of New Jersey (now Princeton), became an early supporter of the Revolution, helped write the Virginia constitution and won a seat in Congress. The young politician had, said a friend, "a calm expression, a penetrating blue eye—and looked like a thinking man." He studied Locke and Hume, thought deeply about political philosophy, became a protege of Jefferson's. The author of the Declaration of Independence sent him books from Paris: Voltaire, Diderot, Mirabeau. Madison sent back grafts of native American plants: pecans, cranberries.

It was typical of Madison that he had come to Philadelphia eleven days early, the first outsider there. As the opening was delayed, Madison met daily with the other Virginia delegates to work out what came to be known as the Virginia plan, a blueprint for the Constitution and thus the basic agenda for the convention. His ideas were

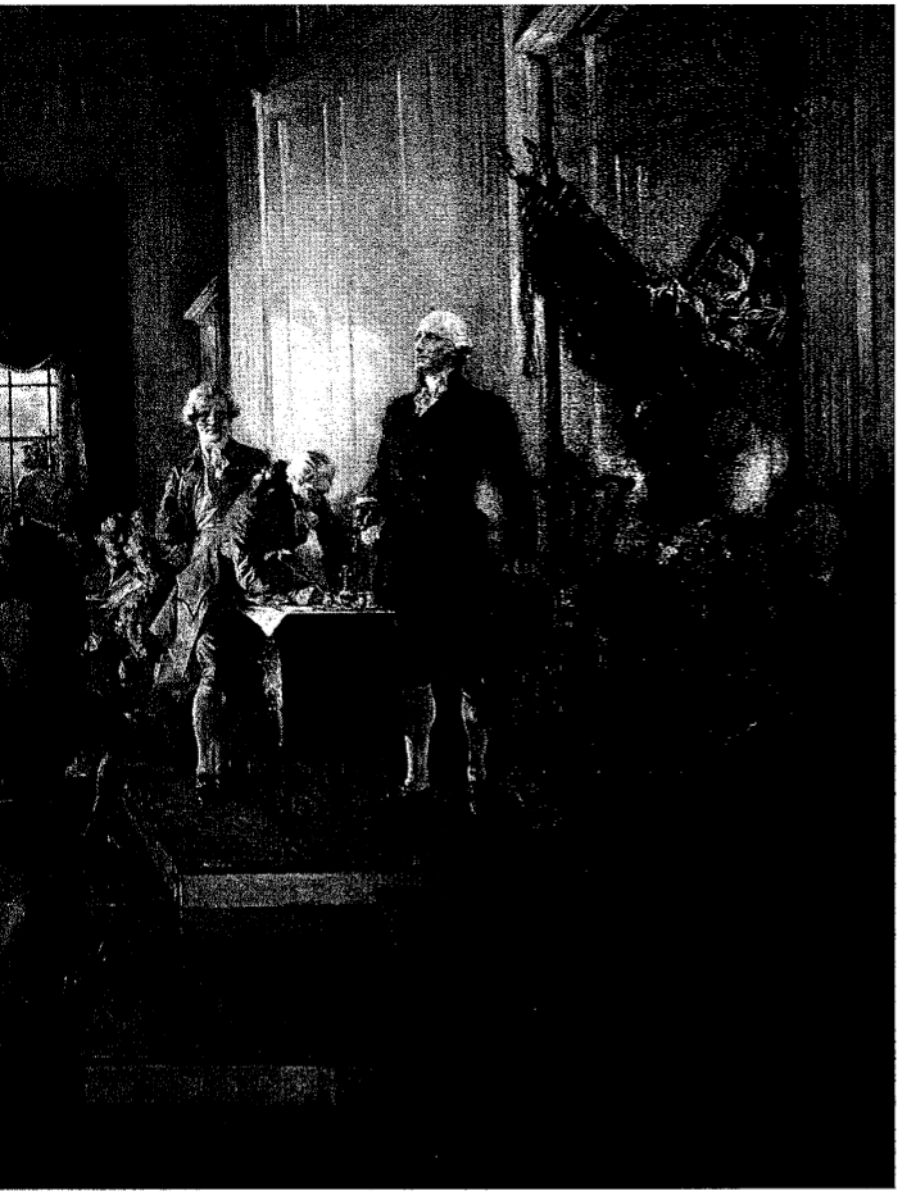
fairly representative of liberal opinion in his time. He was deeply suspicious of executive authority, of anything that smacked of monarchism. He believed profoundly in the sovereignty of the people and in their civil rights. But he was worried that political groups tended to divide into hostile factions, and that factions eventually led to paralysis and chaos. The trick was somehow to bring rival forces into equilibrium. Hence the theory of checks and balances and the separation of powers. After the convention's ceremonial opening on May 25, the Rules Committee spent the weekend organizing its procedures, which were formal and parliamentary—and included an important provision that no vote could prevent the delegates "from revising the subject matter of it when they see cause." Then, although Madison had probably drafted the Virginia plan, Governor Edmund Randolph was given the honor of introducing it. It took him more than three hours.

The Virginia plan envisioned replacing the Confederation with a strong national government. This government would be dominated by a bicameral legislature elected by proportional representation (i.e., more seats for the more populous or wealthier states). There would be a national "executive," but the executive's only function would be to carry out the wishes of the national legislature. This Virginian view of a powerful national government was anathema to many of the delegates. The Articles of Confederation had promised that "Each state retains its sovereignty, freedom and independence." Indeed, when the delegates from tiny Delaware had presented their credentials on opening day, they announced that their state legislature had expressly forbidden them to accept any change in the system by which each state had one vote in Congress. Delegate George Read had asked the legislature to impose that restriction because, as he wrote to a colleague, "such is my jealousy of most of the larger States that I would trust nothing to their candor, generosity or ideas of public justice."

So the battle was joined on the most fundamental conflict between the sovereign states. There were plenty of other differences—between Northern and Southern states, commercial and agricultural states, coastal and inland states, slave and nonslave states—but the basic issue was the comparative voting strengths of large states and small. Most



THE SIGNING: THIS 1940 PAINTING SHOWS WASHINGTON STANDING AT RIGHT AND A SEATED HAMILTON LEANING TOWARDS FRANKLIN (CENTER)



of the big states demanded a powerful national government; the small ones feared coercion and insisted on states' rights. And neither side put much trust in the other. The Virginians pushed their plan through to a vote of approval within two weeks. Not only had they drafted the blueprint, but they had also created an alliance of the three most populous states, Virginia, Pennsylvania, and Massachusetts, with three Southern states that expected to grow rapidly, Georgia and the Carolinas, a sort of proto-Sunbelt. But since the rules of the convention stipulated that no preliminary votes were final, any question could be reopened, and new delegates kept arriving. New Hampshire's team came two months late, and the last Marylander only on Aug. 6.

William Paterson of New Jersey opened the small states' attack on June 9 by proposing a reconsideration of proportional representation. "New Jersey will never confederate on the plan," he declared. "She would be swallowed up. I will never consent to the present system ... Myself or my state will never submit to tyranny or despotism." The supporters of the Virginia plan were no less vehement. "Are not the citizens of Pennsylvania equal to those of New Jersey?" demanded James Wilson of Pennsylvania. "Does it require 150 of the former to balance 50 of the latter? ... If the small states will not confederate on this plan, Pennsylvania would not confederate on any other." Roger Sherman of Connecticut offered a compromise. Why, he asked on June 11, could not one chamber of the Congress have seats allotted according to population, while the other preserved the principle of one vote for each state? Eventually, of course, that was the proposal that would prevail, but Sherman's compromise met a predictable fate. The big states, having a majority, ignored it. The small states took the offensive on June 15, when Paterson presented the relatively cautious New Jersey plan. It called for a unicameral legislature of limited authority, with each state getting one vote. Others offered plans of their own. Hamilton, for example, declared that the new nation should have a kinglike executive to govern as long as he was on "good behavior." So they voted again, and the Virginians won again, by 7 to 3. And the struggle continued.

By now the heat was almost unbearable, along with the humidity and

the flies. "A veritable torture during Philadelphia's hot season," wrote a French visitor, "is the innumerable flies which constantly light on the face and hands, stinging everywhere and turning everything black because of the filth they leave wherever they light." Connecticut offered Sherman's compromise a second time and a third. The Madison forces refused to budge. Madison gibed at Connecticut for tax evasion: "Has she paid, for the last two years, any money into the Continental Treasury?" Oliver Ellsworth angrily retorted, "Connecticut had more troops in the field than even the state of Virginia ... We feel the effects of it even to this day." Pennsylvania's Wilson fretfully asked why the small states persisted in their suspicions of the large ones. Gunning Bedford of Delaware provided a sharp answer: "I do not, gentlemen, trust you."

As with many battles that have long since been won, it is hard now to realize how near the delegates came to failure, an event that might have led to the breakdown of the fledgling confederation, even to the reappearance of European forces eager to recapture their lost lands. Bells rang and cannons fired for the public celebration of July 4, when many of these same men had met in this same statehouse to proclaim the Declaration of Independence eleven years earlier. But the secret debates, Washington wrote to Hamilton, "are now, if possible, in a worse train than ever; you will find but little ground on which the hope of a good establishment can be formed." Some think that compromise came only because the weather finally relented. After weeks of broiling heat, a breeze blew from the northwest on Friday, July 13. That weekend the delegates could get some sleep.

Monday the 16th was cool. The Connecticut compromise offered by Sherman a month earlier began to seem eminently reasonable. So a somewhat amended version was agreed on. From then on, things moved faster, but the long argument between the strong-government men and the states'-righters colored many other issues. It took 60 ballots before the convention could agree on how to pick a president. It voted five times to have the president appointed by Congress and voted once against that. It voted repeatedly on whether a president could be impeached and how long his term should be and whether he must be native born. The

delegates also avoided settling some things, like the future of slavery. Expediently ducking the question of whether slaves were people or property, the delegates decided only that a state's voting strength should be based on the number of free citizens "and three-fifths of all other persons except Indians paying taxes."

On July 24, the convention named a five-man Committee of Detail to sort everything out and draft a coherent summary of all the votes. It gave the committee nine days to accomplish this, and then adjourned. Washington went fishing for trout. When the committee duly presented its report, the newly returned delegates began wrangling about how, if they ever got a constitution finished, it should be ratified and put into effect. With the coming of September, the framers could finally see the beginning of the end. The Pennsylvania state legislature had reconvened, and it needed the chamber where the Constitutional Convention was meeting. The dwindling collection of delegates, a dozen of whom had already gone home for one reason or another, picked a five-man Committee of Style and Arrangement to undertake the actual writing of the Constitution. Although they were not supposed to change the substance of what the convention had so far decided, it was hardly accidental that all five were strong-government advocates, and that one of them was Madison.

The actual writer was Gouverneur Morris, a one-legged but rather rakish Philadelphian who boasted what he liked to consider a muscular prose style. And prose styles do have an effect. The convention had given the committee a draft that began: "We the undersigned delegates of the States of New Hampshire, Massachusetts-bay" and so on. Morris rewrote that so it began: "We, the People of the United States..."

When the committee presented its constitution on Sept. 12, the delegates eagerly began trying to change things all over again, in ways large and small. George Mason of Virginia declared for the first time that summer that there should be a bill of rights. He was voted down, 10 states to none. Madison wanted a statement that Congress should create a national university, and Franklin wanted it authorized to dig canals, but they were both voted down too. The changing continued right up to the scheduled closing day, Sept. 17, but then it was finally time to sign. Three

of the delegates present still refused, among them Virginia's Governor Randolph. The rest, however, generally subscribed to Franklin's declaration that although he too still had doubts and reservations, "I consent, sir, to this Constitution because I expect no better." He had decided that the sun on Washington's chair was rising.

Still ahead lay nine months of bitter debate before the necessary nine states ratified what had been written that summer in Philadelphia. Ahead lay the creation of the Bill of Rights. Ahead lay the Civil War, which led to the 13th Amendment, finally abolishing slavery. And the 19th Amendment declaring that women have the right to vote. But on this 17th day of September 1787, Washington wrote in his journal: "The business being closed, the members adjourned to the City Tavern, dined together and took a cordial leave of each other; after which I returned to my lodgings ... and retired to meditate on the momentous work which had been executed."