



Written by [Joe Wolverton, II, J.D.](#) on May 29, 2013

Secrecy and States' Rights: The Constitutional Convention of 1787 Begins

On Tuesday, May 29, 1787, two very important delegates arrived in Philadelphia for the Constitutional Convention: John Dickinson of Delaware and Elbridge Gerry of Massachusetts.

With the arrival of these two eminent representatives, the necessary quorum of seven states was present in the State House and a very critical and controversial rule was soon to be enacted: the Secrecy Rule.



Two days before the rule was adopted, [George Mason of Virginia](#) wrote his son, saying:

It is expected our doors will be shut, and communications upon the business of the Convention be forbidden during its sitting. This, I think, myself, a proper precaution to prevent mistakes and misrepresentation until the business shall have been completed, when the whole may have a very different complexion from that in which the several crude and indigested parts might, in their first shape, appear if submitted to the public eye.

James Madison, the young, slight, sickly, and superbly prepared delegate from Virginia, sounded a very similar tone in a letter to his friend and neighbor — Thomas Jefferson. After voting in favor of the Secrecy Rule, Madison wrote, “It was thought expedient, in order to secure unbiased discussion within doors and to prevent misconceptions and misconstructions without, to establish some rules of caution, which will for no short time restrain even a confidential communication of our proceeding.”

Jefferson, living in Paris, was not persuaded as to the propriety of the gag order, however. In a letter to John Adams in London, Jefferson decried the rule, saying, “I am sorry they began their deliberations by so abominable a precedent as that of tying of the tongues of their members. Nothing can justify this example but the innocence of their intentions and ignorance of the value of public discussions.”

Others were similarly disposed regarding the Secrecy Rule. Regardless, the requirement of keeping mum was imposed on the delegates and even newspapers of the time commented on the hush-hush historic happenings occurring inside the State House.

An opinion piece published in several newspapers around the country expressed the vexation of the press at being kept in the dark during the summer of 1787. It read:

Such circumspection and secrecy mark the proceedings ... that the members find it difficult to acquire the habits of communication even among themselves, and are so cautious in defeating the curiosity of the public that all debate is suspended on the entrance of their own officers. The anxiety of the people must be necessarily increased by every appearance of mystery in conducting this important business.

How strictly was the Secrecy Rule enforced? Consider this anecdote from [William Pierce](#), a delegate from Georgia, as evidence:

Early in the sessions, one of the delegates dropped a copy of the propositions which were before



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the Convention for consideration, and it was picked up by another of the delegates and handed to General Washington. After the debates of the day were over, just before putting the question of adjournment, Washington arose from his seat and reprimanded the member for his carelessness. “I must entreat gentlemen to be more careful, lest our transactions get into the newspapers, and disturb the public repose by premature speculations. I know not whose paper it is, but there it is (throwing it down on the table), let him who owns it take it.” At the same time, he bowed, picked up his hat, and quitted the room with a dignity so severe that every person seemed alarmed.... It is something remarkable that no person ever owned the paper.

That doesn’t seem remarkable at all! As others could attest (I’m looking at you, Gouveneur Morris), there is no rebuke quite as severe as a George Washington rebuke.

James Madison, Alexander Hamilton, and others were likewise convinced that permitting the public to participate or even comment on the deliberations would have “prevented any satisfactory result,” to use Hamilton’s words.

We’ll never know.

We do know, however, that the Secrecy Rule was invoked and, for the most part, followed from May to September, 1787 as the rough plan for a new government was refined by the delegates from 12 of the 13 states gathered in Philadelphia.

Thirty-three years old and already governor of the Old Dominion, standing nearly six feet tall and possessed of a magnetic air of aristocracy and erudition, Virginia’s Edmund Randolph rose and, in the words of James Madison, “opened the main business.”

After spending the previous day hammering out the rules (“this was an age of formal manners,” observed Catherine Drinker Bowen), the delegates were ready to hit the ground running, revising — they thought — the Articles of Confederation.

Randolph and his Virginia colleagues had another idea, however. In consultations at the Indian Queen pub held prior to the opening of the “main business,” Randolph and his fellow Virginia delegates received from James Madison a draft of a plan of a federal government (the Virginia Plan) that scrapped the Articles altogether, replacing it with Madison’s vision.

Within the [15 resolutions of the Virginia Plan](#), a new national government was proposed. A government of three branches — legislative, executive, and judicial — was laid out. The legislative branch would be bicameral, with an upper and lower body.

Although Hollywood has portrayed the reaction of the representatives at the convention as one of shock, the reality as reported by Madison and Robert Yates of New York was much more sangfroid.

In his chronicle of the convention, Yates adds one detail that Madison omits. According to Yates, Edmund Randolph made no secret of his intent (and by extension, the intent of James Madison) to see the Articles of Confederation supplanted by a new, more robust, national government.

Yates quotes Randolph admitting that the resolves of the Virginia Plan “were not intended for a federal government — he meant a strong consolidated union, in which the idea of states would be nearly annihilated.”

Despite Yates’ flair for the dramatic, it is all but certain that Randolph neither made that comment nor did he or any of his fellow Virginians desire such a destruction of the states.



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The aforementioned recipient of Washington’s wrath — Gouverneur Morris of Pennsylvania — wrote a letter evincing the prevailing preoccupation of repairing of the union without throwing the baby of state sovereignty out with the dirty bathwater of weaknesses of the Articles of Confederation. Morris wrote that the dilemma facing the convention was “how to arrange a National system of Government of sufficient strength to operate in despite of State opposition, and yet not strong enough to break down State authority.”

Over the next three and half months, the 55 (or fewer, on any given day) men gathered at the State House in Philadelphia would confront that very issue over and over again.

There were among them those with more nationalist tendencies (Alexander Hamilton) and those who would have preferred a less dynamic union (George Mason). This difference would define the convention day in and day out as the various “resolves” of the Virginia Plan were debated.

It is impossible to know what final form the Constitution would have taken — if any — had the press and the public been given access or information. History is not typically kind to secrets, particularly the kind that create new governments.

Our own experiment with self-government and federalism continues and ironically, the government established by the Constitutional Convention of 1787 too often envelops itself in a similar shroud of secrecy, worn to mask its efforts to dismantle the very freedoms protected by the product of that historic convention.

Over the next few months, a series of articles in *The New American* will chronicle the clashes and compromises that seeded the soil from whence grew the very tree of a federal government that now bears such poisonous fruit.

Image: Scene at the Signing of the Constitution of the United States by Howard Chandler Christy

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