

# THE MAKING OF THE CONSTITUTION.

BY THOMAS BRACKETT REED,

Speaker of the House of Representatives.

Speaker Reed extols the wisdom, foresight, and patriotism of the men who formulated the bond of union between the American States, and explains the nature of the constitution in the light of contemporary problems and conditions.

THE constitution of the United States was not the work of inspiration, or even of genius. It had its origin in the good sense of able men applied to the practical work in hand, in a keen appreciation of the dangers already existing, and the greater dangers to come, and in the spirit of conciliation forced upon its authors by the ever present nature of the troubles to be avoided. Undoubtedly many men not in the convention, and also the general public sentiment, had great and serious weight in the deliberations, though the secrecy of the debates, and the lack of communication—impossible of appreciation by men of today—put it beyond the power of the debaters to know immediately the effect of what they had said or done. Yet from the nature of things there must have been much of consultation outside. Indeed, traces of it appear once or twice in the proceedings, even without reading between the lines.

Of course the germs of the constitution had long been in the public mind. The errors of the arrangement under which the Continental Congress acted were too painfully apparent for the thoughts of the governing men of the country to have shut out speculations as to the methods of improvement so sadly needed to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to themselves and their posterity.

Of course they had against them the inertia of the existing state of things, and the opposition of those who, being well placed themselves, were quite willing to

let well enough alone, and continue themselves in power and dignity regardless of any deluge not yet arrived. Demetrius, the silversmith, with a laudable desire to continue to make images of Diana, confronted the fathers, as he confronted St. Paul. There were other private ambitions, also, which were ready to do their work. If the constitution had not been on the whole a fair reflex of the general sentiment of the people, it would have been wrecked upon inhospitable shores. Almost every important man appears to have been defeated on some point which he regarded as of the gravest importance; and yet all such men, except Edmund Randolph, Mason, and Gerry, seemed willing to consent to advocate and champion the whole instrument.

There had been one previous attempt to call a convention for special amendments to the existing system, at the instigation of Madison; and commissioners of the State of Virginia invited the other States to meet them at Annapolis. Virginia, Delaware, Pennsylvania, New Jersey, and New York sent representatives. As only five colonies were represented, the commissioners did not feel that they ought to take up even the limited task for which they were appointed; but observing that popular feeling in favor of a union of a more satisfactory nature had increased and was increasing, they took occasion to issue a recommendation in favor of a convention with powers adequate to the occasion. Copies of this recommendation, which was drafted by Alexander Hamilton, were sent to the other colonies, and to the Continental Congress.

Virginia, the legislature of which was then, or soon afterwards, in session, took up the recommendation, and assumed the task of leading the movement. "As proof," says Madison, "of the magnitude and solemnity attached to it, they placed General Washington at the head of the deputation from the State; and as a proof of the deep interest he felt in the case, he overstepped the obstacles to his acceptance of the appointment." There are acts in history which are very simple and yet very great. The placing of the foremost man in American history at the head of the first deputation to the convention which was to assemble to decide on the government of the United States of America, had a rare fitness, which satisfies the mind. And when Washington was chosen president of the convention, it was also fitting that the rule of the house should decide that "when the house shall adjourn every member shall stand in his place until the president pass him."

It is not in the least the purpose of this article to give a summary of debates, or even a consecutive narrative of the acts and doings of this historic body. The story as we already have it in the sixteen hundred pages of the Madison papers is a condensation by a remarkably competent hand. There are, however, in those pages many things disclosed of doctrines forgotten, and plans which have vanished from our thoughts, which are worth a revival.

A little less than four months of almost constant discussion covered the period between the 25th of May, when they began, and the 17th of September, when all but three who were present signed and recommended the constitution to the people of the United States. There were twenty nine members present when they organized, and during the four months, from time to time, came in other members to the number of twenty three. Fifty two men, therefore, contributed their wisdom to the final result, though only thirty nine certified by their signatures to the "Unanimous Consent of the States present." Randolph, Gerry, and Mason—two of them certainly very able men—refused to sign.

When the convention first met, Mr.

Edmund Randolph, representing Virginia, laid before it a series of resolutions, stating the principles and many of the details of the plan which had its advocates in that colony. While there is no indication in the debates of the origin of this plan, much, if not most of it, will be found in Madison's letters to Randolph and Washington only a month earlier. On the same day, the 29th of May, Charles Pinckney of South Carolina presented a detailed proposition for a constitution of sixteen articles, which contains most of the articles under which we now live, save and except the disputed points which the convention finally determined.

Next day they proceeded to the discussion of the resolutions of Mr. Randolph. Their parliamentary methods were very simple, and consisted largely in moving to postpone the clause under discussion, to take up another, and proceeded, if the postponement was ordered, to consider the new proposition. They divided the questions freely, and addressed themselves mainly to intelligent discussion of the matter in hand. At first there was a little stiffness about the remarks, and each seemed afraid of the other, as was but natural; for they were to embark upon an untried ocean, and were not sure of their shipmates. Mr. Rutledge, of South Carolina, on the 1st of June "animadverted on the shyness of gentlemen on this (the executive) and other subjects. He said it looked as if they supposed themselves precluded, by having frankly disclosed their opinions, from afterwards changing them—which he did not take to be at all the case."

The first contest was on the legislature, and it was determined that there should be two branches, though Dr. Franklin desired but one, and Pennsylvania voted that way. Sherman and Luther Martin agreed with Franklin. On the proposition that the members of the first branch—afterwards called the House of Representatives—should be chosen by the people, the motion prevailed, with five States in favor, two against, and two divided. Democracy was not very fully approved of in this country at that time, though it is but fair to say that the ablest men were on that side in this particular phase of the question.

As to the Senate, it was proposed by Mr. Randolph that the Senate ought to be chosen by the House, out of persons nominated by the State legislatures; but on the 8th of June it was practically settled that the legislature of each State should choose its Senators. The question of the method of representation in the Senate was the great subject of contention, and reappeared on numerous occasions. The smaller States were determined to retain the equality with the larger States, which they possessed under the confederation then existing. On this question, on the 11th of June, and for some days previous, the discussion seems to have become very hot. The "shyness" for which Mr. Rutledge had chided the members seems to have disappeared, and they had indulged in such vehemence that Dr. Franklin intervened with some philosophical remarks in which he reminded those who were excited, that they were sent there "to *consult*, and not to *contend*," and that "declarations of a fixed opinion, and of determined resolution not to change it, neither enlighten nor convince us."

On that day, shortly after Dr. Franklin's address, the vote was taken, and the convention voted negatively that the States should not each have one vote in the Senate, and affirmatively that the ratio should be the same in both branches. The vote was 6 to 5. But this was one of the cases where votes do not end questions. Three days afterwards, Mr. Patterson of New Jersey asked time to prepare a plan of amendment to the articles of confederation which would render a new constitution unnecessary. Accordingly, on the 15th of June, he presented his plan, which was then debated. Mr. Patterson declared that the only power the convention had was to try to amend the articles, and that his plan was the sentiment of the people. Mr. Wilson of Pennsylvania, in a speech of great power, fully exposed the defects of the New Jersey plan, while Mr. Pinckney, discarding excuses, and putting forward the real underlying reason, said: "Give New Jersey an equal vote, and she will dismiss her scruples, and concur in the national system."

On the next legislative day, Monday,

June 18, Alexander Hamilton broke silence, and in a speech still extant, which had the benefit of his own revision, explained the faults of both plans before the audience, and then unfolded his own, the hopelessness of concurrence in which he frankly and openly admitted. After Mr. Hamilton's speech, the convention adjourned, and the day following, after Mr. Madison had spoken at length, Mr. Patterson's plan was rejected, 7 to 3, with one State divided. On the 2nd of July Mr. Ellsworth's proposition for one vote for each State in the Senate was lost by a tie, 5 to 5, Georgia divided.

"We are now at a full stop," said Roger Sherman, and then the whole matter went to a committee to devise some "expedient." The committee adopted the expedient of an equal vote in the Senate, with money and salary bills originating in the House, without the right of amendment in the Senate. A twelve days' struggle ensued. The small States were stubborn and determined, their hostility was reinforced by the institution of slavery, and there began that struggle between the North and South which ended at Appomattox.

On the morning of the 17th of July, after a vote on the preceding day of 5 to 4 in favor of the equality of all the States, there was a meeting of members of the larger States, and it was found that they were divided as to the importance of the action just taken, some thinking it of supreme consideration, and others not regarding it as cause of final disagreement. Naturally enough this ended the contest, and notwithstanding the strong language, and still stronger reasoning, of Madison and Hamilton, the substitution of representatives of the States on a basis of equality for the representatives of the people on a basis of population became the organic law of the land.

Today we can see that there was something prophetic in Madison's fourth point, that "the evil, instead of being cured by time, would increase with every new State that should be admitted." Nevertheless, the bad result of which Hamilton was so sure has not yet come upon us. "It is not in human nature," said he, "that Virginia and the other large States should consent to it; or, if they did, should long abide by

it. It shocks too much all ideas of justice and every human feeling. Bad principles in a government, though slow, are sure in their operation, and will gradually destroy it."

Hamilton wanted a legislature composed of an Assembly elected by the people for three years, and of a Senate. The Senators were to serve during good behavior, and to be chosen by electors, selected by the people in districts, into which States were to be divided for that purpose. The executive was to be called Governor, and was, like the Senators, to serve during good behavior, to have a negative on all laws about to be passed, the execution of all laws passed, and the direction of war when begun by the Senate, which had the sole power of declaring war. The Governor was to appoint heads of departments at his own pleasure, and all other officers with the consent of the Senate. Treaties were to be made by the Governor, while the Senate had the power of advising and approving. In order to prevent laws being passed by the States in derogation of the powers of the general government, such laws were to be utterly void, and to be subject before passage to the negative of the Governors of the States, who were to be appointed by the United States. We have, unfortunately, no note of Hamilton's particular explanations on these propositions separately. He was to furnish them, but did not find time.

The right to negative State laws was frequently urged by Madison also, but without success.

The struggle over the executive was not so protracted or so important. It was soon seen that the convention was not inclined to a plural executive, though good men were on that side, and it was in Mr. Patterson's plan, which had the vote of three States. As to the term of service, and the manner of selection, there was much dispute; and yet, on the 2nd of June, when it was so voted, 8 to 2, it seemed the opinion of the convention that the President should have a term of several years and be chosen by Congress.

This, apparently, remained the prevailing opinion until the very last days of the convention. But the discussions as to eligibility to a second term, and the

hold the legislature would have on the executive of its choice, and the nature of the powers to be conferred on him, had evidently caused much thought on both subjects—the term of office and the method of election. Election by the people had been rejected by a very strong vote, early in the discussion.

Finally, August 31, the whole question went to a committee, who determined that the term should be four years, and that electors should choose. If they failed of a choice, the Senate was to determine out of the two equal highest votes, or, if there were no equal votes, out of the first five who had been voted for by the electors. This scheme Colonel Mason thought would make the Senate choose nineteen times out of twenty. Mr. Pinckney seemed to agree, and so did many others. The debate lasted for a day or two, during which all sorts of propositions were offered, until the plan which actually became part of the constitution was presented by Roger Sherman, and was promptly assented to, 7 to 3, though further details were immediately added.

A council of revision, to be composed of the Justices of the Supreme Court, and of other officials, was frequently mooted, and was dear to the heart of Mr. Madison, who proposed to have all bills submitted to the President, and to the Justices. If either decided against the proposed laws, then each House must pass the bill again by a two thirds vote. If both decided against the bill, then a three fourths vote alone could give it vitality. Only three votes, however, were given for this proposition, while eight were cast against it. But in the article defining the veto power, the reasoning in this debate, and the apprehensions it had raised, kept alive for more than a month the three fourths vote needed to override the executive disapproval. Up to the last days of the convention the President had the title of "his excellency," but fortunately lost it.

The time will come, in the growth of the republic, when the wisdom of the fathers in requiring a majority for a quorum in each House will be as much questioned as the reasoning which led to the adoption of that provision. They thought that the States near by the Capitol would

be there at all times, and that those from a distance would rarely be present. Experience has shown that the Pacific Coast members are always present, while those from neighboring States furnish the largest proportion of absentees. The same causes which have increased the membership of the House are likely to be long at work, and in time the House of Representatives will be very large.

Those who, in one session alone, have seen the equivalent of thirty days wasted in factious roll calls to obtain the yeas and nays, will enjoy, even if they do not fully agree with, the hearty denunciation of Roger Sherman when he said: "They have never done any good, and have done much mischief. They are not proper, as the reasons governing the voter never appear along with them." The convention itself refused to adopt a rule for the yeas and nays, and they were never once taken during the whole four months.

To give proper attention to the conflicts in the convention over slavery, and the provisions which had to be made for the institution, would be far beyond what is here required. The subject was once replete with living and growing passion, but it has been fought out, and has no longer anything but a historic interest.

When we look over the debates, and see how the questions arising out of shipping and navigation went with equal step alongside the privileges of slavery, one is tempted to remember, with a new interpretation, George Stephenson's aphorism that where combination is possible

competition ceases. Nevertheless, the reader of the debates arises from their perusal with increased respect for the wisdom and foresight of the men of whom Madison justly says: "There never was an assembly of men charged with a great and arduous trust who were more pure in their motives, or more exclusively or more anxiously devoted to the object committed to them." Peace to their ashes. Reverence to their memories. If their work should not be eternal, that work and its results will have educated their children to meet successfully the problem of that future into which they could not penetrate.

How earnest they were, and how doubtful was the issue, how often they were alternately torn by doubts and difficulties, and rejoiced by successful coping with their hazardous problems, was voiced by the many sided intellect of the great Dr. Franklin.

"Whilst the last members were signing, Dr. Franklin, 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 in 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.'"

*Thomas B. Reed.*



## SYMPATHY.

A FLOCK of birds that far from woodland trees  
Have built and sung within a city mart,  
The tenderest of thoughts and sympathies  
Are sometimes found housed in a busy heart.

*Frederic Fairchild Sherman.*

# PASQUALE'S STRATAGEM.

BY WARREN McVEIGH.

A plain tale of life and love in an obscure corner of the metropolis—The romance of Julia Morelli and Pasquale Bucio.

JULIA MORELLI lived on the top floor of the three storied rickety old building in the rear of the four storied rickety old building that looked out on Mulberry Street. The four storied building had a little air and sunlight to give to its hundreds of men, women, and children. The three storied building had none at all. Once where it stood there had been a play yard for the scores of dirty little Italians who lived in the front house, but land is too valuable to let it run idle just to make little children happy, and so the three storied building had been patched up and now the children played about in the halls and in the alley that led from Mulberry Street to the building in the rear.

In the winter the building in the rear was comfortable as a home, but in the summer it was fearfully hot and everybody had to sleep on the roof. Here little Julia, for she was only fourteen years old and small for her years, could lie awake at night and look up at the stars and dream of Pasquale.

He was her neighbor. He lived in the front house. He was eighteen, and he was tall and brave and gave her the peanuts and apples that he could not sell, so that she loved him and he loved her.

Julia's father was a shoemaker, and so had but little liking for Pasquale. All of the Bucios had been ne'er-do-wells, he declared; the father had died and left his only son nothing but a push cart and a barrel of apples and a bag of peanuts. Pasquale had worked hard, he admitted, but he was not in a good position and his trade did not pay well, for the policeman ate half his stock in trade on some days, and on other days waited until he had sold three dollars' worth of apples and peanuts and then arrested him and took

him off to court, where he was fined all that he had made. No, Pasquale was not the man for Julia, her father declared; for she was extravagant and used to every comfort, such as shoes in the summer time and new shawls when the patriotic sons of Italy had their picnics in Lion Park. So Julia was told never to think of Pasquale again.

Of course she never did think of him after that, for she was an obedient little girl, but it did make her heart sick thinking that she must never think of him again, and she was not the happiest girl in Little Italy.

Pasquale declared that he was not a bit afraid to climb up the fire escape and that he knew there was no danger of her mother interrupting them, for he had just left her talking with old grandmother Estella about the elopement of banker Lacio's wife. Julia said that it was wrong for him to come to see her in that way, but Pasquale was too wise a lover to talk.

Julia was sure that she loved Pasquale, and she knew that he loved her, too. So that it was all soon arranged.

Pasquale said that he would make a formal offer of his heart and hand, and then, if her father would not let them get married, why they would do so anyhow and ask his consent afterwards. Then he went away.

Julia heard him make his offer that night, and heard her father tell him to go ask for the moon.

The next morning when her mother went out to market she was ready. She crept down the stairs and then through the alley to Mulberry Street and then down to the Bowery. Pasquale was waiting for her. They got on the elevated and went away up town.

"Now we are safe," said Pasquale;