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THE REACHING OF RATIFICATION

by George Street Boone

Two hundred years ago on June 25, 1788, the Virginia Convention, meeting in the new Academy on Shockhoe Hill in Richmond, voted on the Constitution. A fifth of the population of the entire union lived in the Commonwealth of Virginia which included West Virginia and the District of Kentucky.

At the Virginia Convention were fourteen Kentuckians, two from each of its seven counties, and sixteen from the eight counties in what is now West Virginia. All had been chosen in April, 1788, as had been the other delegates from Virginia.

The Kentucky delegates to the Richmond Convention were: From Bourbon County went Henry Lee and Notley Conn; from Fayette, Humphrey Marshall and John Flowler, and the Jefferson County delegates were Robert Breckinridge and Rice Bullock. John Logan and Henry Pawling came from Lincoln County. From Madison County, John Miller and Green Clay; from Mercer County, Thomas Allin and Alexander Robertson; and from Nelson County, Matthew Walton and John Steele. The fourteen Kentuckians sat near the rear of the hall, wearing pistols and hangers, since they had ridden through Indian Country to reach the capitol.

Each Virginia county was represented by two delegates, no matter what its population. This was 174 years before the U. S. Supreme Court they were establishing decided the classic case of Baker against Carr. That famous case involving the Tennessee Secretary of State established "one-man, one-vote," as a constitutional principle.

There were 170 delegates in Virginia's Convention and at the time the

Virginia delegates voted, the Constitution had already been approved by nine states. According to its terms the instrument had become effective with the ratification on June 21st by New Hampshire, four days before the Virginia vote.

In North Carolina, opposition was strong and two counties in middle Tennessee, Davidson and Sumner, were then a part of that state. According to Judge/Historian J.C. Guild, writing in 1878, citizens of North Carolina overwhelmingly voted no on the constitution in early 1788 and sent "negative" delegates to a Hillsborough, North Carolina, Ratification Convention which met on July 25, 1788. Delegates there voted 184 to 84 against the document. All five of the Davidson County delegates voted no; only two from Sumner (General James Winchester and William Stokes) wanted to give it a try. The three other Sumner County delegates either did not vote or stayed at home. A second North Carolina convention was held on November 22, 1789, in Fayetteville, North Carolina, and the delegates, including those from middle Tennessee, ratified the Constitution 194 to 77 but their belated endorsement meant that North Carolinians had no opportunity to vote for the first president, nor were they represented in the first session of the U. S. Congress. In that session, Rep. James Madison introduced a Bill of Rights that was expeditiously approved by both the House and Senate in a matter of days in July, 1789.

The latter quarter of the 18th Century had been a period of intensive constitutional drafting, and it may surprise some to find that Kentuckians wanted to reject the proposed Federal Constitution. If the Federal Constitution proposed in 1788 did not satisfy Kentuckians, why did our forbears hold that opinion.

Kentucky has had four constitutions of its own, the first in 1792. That one was approved only after Virginia, of which Kentucky was a part, had rejected three earlier ones Kentuckians proposed. As early as 1776, the Virginia Constitution had contained a provision authorizing Kentucky or the Western Counties to separate from the Old Dominion, recognizing the problems presented because of the great distances and the diversity of interests.

Kentuckians have never demonstrated an overwhelming gift in the field of constitutional drafting, and while the first brief 1792 Kentucky Charter had a Bill of Rights it lacked an amending procedure. In fact, that document was endured but seven years. The second instrument lasted nearly half a century. The next lasted 41 years and our current enormously detailed and rigid Charter was adopted in 1891. The delegates at our last state constitutional convention seemed determined that a constitution should provide detailed, precise and inflexible rules satisfactory to the establishment of 1891, and it should make constitutional change a slow and difficult procedure, concepts at great variance with ideas of the flexible federal document.

Often the drafting of the Federal Constitution has been regarded as a genetic sport, a mutation from parent stock, rather than what it truly was: a synthesis hammered out in that hot summer by the hands of highly intelligent and practical men, close to the independence and responsibilities of frontier life, and yet possessing a sophisticated awareness of men and of philosophies of government.

While the Constitution may be the supreme collective feat of political leadership in American history and while it was created at a stroke in 1787, its intellectual origins and its sources, like those of most great events, reached far back into the past. No one particular philosopher or work seems to have dominated the framers, though Plato, John Locke, David Hume, Montesquieu and many others were significant influences even though none was slavishly followed.

The Federal Constitution whose bicentennial we celebrate is really our second Constitution, the first having been the Articles of Confederation whose defects and limitations had become so apparent as to provoke the Annapolis Convention in September, 1786.

The Articles of Confederation were first proposed in 1777 and were markedly similar in design and scope to the Charter of the United Nations. Those Articles ratified finally in 1781, basically comprised a treaty among equal sovereign states. They established an alliance rather than providing for a national sovereignty. They supplied no effective executive, and denied Congress taxing powers and control over commerce. The Confederation possessed no military resources, nor could it force the British Army to evacuate frontier posts occupied by it on American soil, even though the Treaty of Paris of 1783 agreed to this. The Confederation had proved unable to negotiate a treaty to allow Americans the free right of navigation of the Mississippi River, important since Spain owned both the east and west banks of the lower river. The Confederation of 13 colonies lacked even the resources to prevent Barbary pirates from seizing and holding Americans as hostages.

When Shays' Rebellion forced the suspension of the Courts in western Massachusetts, the Continental Congress lacked power to respond to Governor James Bowdoin's plea for help. Public credit was demoralized, the national currency was virtually worthless. The prestige of the government was as nearly non-existent at home as it was abroad. The public will as evidenced in the legislative body under the Articles of Confederation seemed paralyzed.

As Hamilton pointed out in The Federalist No.21, the Confederation was in

> "...total want of a sanction to its laws. The United States, as now composed, have no powers to exact obedience, or punish disobedience to their resolutions, either by pecuniary mulcts, by a suspension or divesture of privileges or any other constitutional mode."

Finding the United States under the Articles of Confederation in such desperate straits, the Annapolis Convention resolved that a broadly based convention should be convened to address the problems. The work of the Constitutional Convention which the Convention at Annapolis called for has been described as the climax of the Enlightenment, the great 18th Century attempt to apply the results of western science and learning to human affairs.

Though the delegates to the Constitutional Convention were experienced, pragmatic political leaders, in addition they were men intensely interested in ideas and concerned with making theoretical sense of what they were doing.

At this juncture, the most pervasive characteristic of the American political culture was its republicanism. According to one respected historian, this republican political climate of thought not only determined the elective system the Founders believed in, it also determined their moral and social goals. To become republican was what the American Revolution had been about; it was the ideology of a people against monarchs and hereditary aristocracies.

The deepest origins of these civic and moral values went back at least as far as Athens, to the Greek philosophers, to Ancient Rome and its historians, to the great era of the Roman Republic and its decline, and to Magna Carta.

In 1776 the Americans had launched their national experiment in a spirit of high adventure but the Americans of 1787 were no longer the unfocused republicans they had been in 1776. The inadequacies of the Articles had been all too graphically demonstrated, nor were the Founders ideologues impervious to experience.

Since the 13 American States were in a chaotic situation, independent not only of the Mother Country but of each other, they had no national currency, nor did they have a government to impose one. One state would impose tariffs on other state's trade and many states coined money and even issued paper money of highly questionable value. There had been boundary conflicts.

The audacious plan adopted by the Constitutional Convention went far beyond a revamping of the Articles of Confederation, replacing them with a strikingly different constitutional structure embracing a balanced government of three branches, supreme over the states.

While there was a consensus that some action was essential, the initial public reaction to the Constitution itself was one of surprise, even shock. Initially, it seems likely that the majority of the people were completely against it. Opponents argued that the proposed system provided for much too strong a central government, especially with its power to tax, a prime issue in the fight to escape from British rule. The best way to protect and nurture liberty, the opponents said, was to keep government relatively weak, small, open and close to the people. They invoked Tom Paine's sentiment that "That government is best which governs least."

Adversaries of the proposed Constitution, however, failed to unite in advocating any alternative plan to address the all too apparent weaknesses of the Articles. The bulk of objections centered around the idea that a strong government would threaten the rights of citizens.

The drafters had argued successfully in the Constitutional Convention that the new federal system would be severely limited to those powers delegated by their document, and that all original powers remained in the sovereign states. Confronted, however, with the clamor and the apparent great public concern for the rights of citizens, the Federalists led by Madison, Hamilton, Jay and others speedily became strong advocates of adding a Bill of Rights to the original document.

Indeed, the sum of the political strategies adopted by the Federalists to secure the endorsement of their Constitution would raise eyebrows today.

An early example was in response to the original reaction to the Constitution in Philadelphia, a reaction that was the most violent of the lot. On September 18, 1787, the day after the Constitutional Convention adjourned, a convention delegate read the new Constitution to the Pennsylvania Legislature in the State House. On a Friday, ten days later, George Clymer, a convention delegate, rose in his place to propose a State Convention in Pennsylvania to consider ratification. The assembly was due to adjourn on the following day, Saturday, and the 19 Anti-federalists who opposed the proposal withdrew, barred themselves in their lodgings at Mr. Boyd's house and refused to move. Their refusal to attend the legislative session prevented action by the assembly, since their absence meant a quorum was not in attendance.

That Friday night there was considerable agitation in Philadelphia and on Saturday morning a riot ensued. A mob broke into Boyd's house where the Anti-federalists had barricaded themselves. The intruders seized two Anti-federalist assemblymen and carried them to the State House even as they struggled against their captors. The unfortunate pair were forcibly seated in their chairs, clothes torn and their faces white with rage. With their involuntary attendance, there was now a quorum and a vote taken. With only two dissenting votes, the Pennsylvania Convention was set for November 21st. There was considerably more attendant violence before the Pennsylvania Convention ratified the document but this was done by a vote of 46 to 23 on December 12, 1787.

Samuel Eliot Morison, in his "Oxford History of the American People" published in 1965, perceived the cleavage between "Federalist," those supporting the newly drafted Constitution, and the "Anti-federalists," those who opposed it, to be largely personal, not of class, sectionalism or economic interests. According to his analysis, the only generalization that he believed could stand the test of fact was that the division, with conspicuous exceptions, was one of age against youth. He pointed out,with a few conspicuous exceptions such as Washington and Franklin, that the old political warhorses were "Anti-federalist" while the warmest advocates were the eager young men such as Madison and Morris, each within a year of 35; King and Hamilton, who were 32, and Charles Pinckney who was 29.

Morison differs with an older, respected historian, Charles A. Beard, whose 1913 volume, "An Economic Interpretation of the Constitution of the United States," expressed a contrasting view. Beard said that the Fathers of the Republic regarded the conflict over the Constitution as springing essentially out of differing economic interests which had a certain geographical or sectional distribution.

Beard describes Orin Grant Libby's "Geographical Distribution of the Vote of the Thirteen States in the Federal Constitution" as the most important single contribution to the interpretation of the movement for the Federal Constitution of 1787-8.

Libby's paper was one of a series written for a seminar conducted by Frederick J. Turner at the University of Wisconsin in 1894.

Libby described the plan of his paper as follows: "A map has been prepared to show the location of the Federal and Anti-federal areas. This has been done....by indicating as Federal all those towns, counties, or parishes whose delegates to the Ratification Conventions of the States voted for the Constitution; and as Anti-federalist those towns, counties or parishes, whose delegates voted against ratification. Those local units whose delegates divided have also been indicated....to show on which side the majority lay...."

According to Libby, the distribution of support for and opposition to the document depended far more on the great social and economic areas, independent of state lines, which acted as political units, and those political attitudes changed as they changed their political organizations.

Viewing the distribution of voting, Libby judged that the Constitution was carried in the original 13 states by the influence of those classes that lived along the great highways of commerce, the sea coast, the Connecticut River, the Shenandoah Valley and the Ohio River, and it was in the less developed, the interior and agricultural sections of the country and the frontier regions that the voters rejected the document.

He rejected the idea that the fate of the Constitution was determined even predominently by discussions of the various provisions of the instrument in the Conventions. He points out, also, that the period was one of paper money agitation, of efforts to evade the payment of debts, and a resistance to taxation.

Libby observes that the system of independent sovereign states obtaining under the Articles served as a shield for the debtor classes, and that many delegates went instructed to the Convention and voted according to their instructions. Against these attitudes there were consisent efforts on the part of others to give security to interstate commerce, and strength to the national credit.

As to the issues, Frederick J. Turner pointed out in his introduction to Libby's paper that agricultural settlements even then felt a marked antipathy to strong government. The influence of frontier conditions and sparse settlements favored lax business honor, inflated paper currency and wildcat banking. That appeal during the ratification process found acceptance primaily in the less developed regions.

New York State itself was sharply divided with its governor, George Clinton, opposing ratification, although the area around New York City favored its approval by a majority of 10 to one. Clinton argued in opposition that if the Constitution were ratified his constituents would be heavily taxed to support their government, since the state would have to replace revenues New York then derived from import taxes which fell on residents of other states as well as upon his own constituents.

After Delaware, New Jersey, Georgia and Connecticut had approved the document, the next forum was the Commonwealth of Massachusetts whose Convention assembled January 9, 1788, with the largest delegation of any of the states. Three hundred and fifty delegates met at Brattle Street Church in Boston where the State House proved too small. Prayers were held every morning and old Samuel Adams saw to it that John Hancock, governor of the state, was elected president of the convention.

Hancock refused to attend, offering for excuse a convenient attack of gout. It was he who had been the first signer of the Declaration of Independence, then declaring he affixed his signature so large that George III could read it without his spectacles.

Massachusetts itself was considered predominantly Anti-federalist and in the Convention were 29 men who had fought with Shays in his rebellion against the Commonwealth less than a year before this assembly. Samuel Adams had supported Governor Bowdoin's strong military action against the mob of farmers, many Revolutionary War veterans, who had prevented the Courts from sitting in the four western counties and in Concord. Their main object was to stop execution for debt and taxes in a time of severe depression until a new legislature could be elected to grant them relief.

Shays' Rebellion had a great impact on public opinion at home and abroad, especially when the Confederation could provide no assistance to Governor Bowdoin.

Although Adams originally opposed the Constitution,in the course of the intense debate he became convinced of the advisability of approving the new governmental structure and even agreed to help convince his longtime, if somewhat uneasy, political friend, Governor Hancock, provided proponents of the document would accept nine amendments entitled the "Conciliatory Proposition." These related to citizens' rights and taxation.

Former supporters of Gov. Bowdoin were guaranteed to Hancock at the next election if he would change his position. Moreover, ratification by the State of Virginia appeared questionable with Patrick Henry, Monroe, George Mason and Richard Henry Lee working in opposition to the document. Samuel Adams suggested that if Washington's home state failed to ratify, Washington could hardly expect to be named president. Then Hancock would be a natural to be nominated for that office, he opined. Lyndon Johnson himself would have well understood and approved these tactics.

Such a prospect not only induced Hancock to change his position, it even cured his gout and he made an appearance at the Convention to support the document. On February 2, 1788, Massachusetts became the sixth state to ratify the Constitution by 187 ayes to 168 nays.

Maryland ratified on April 29th and South Carolina became the eighth state to ratify on May 23rd.

It looked as if Virginia might be the ninth state to ratify when its Convention assembled on June 2nd in Richmond.

Kentuckians' concerns about the instrument were genuine. They feared that if Congress were given power to regulate foreign commerce, the need of the West to use the Mississippi River might be bartered away in exchange for Spanish concessions that would benefit only the people in the eastern states. John Jay, a New Yorker, one of the authors of "The Federalist Papers," and a strong Federalist, had for several years been engaged in negotiations with

Spain on the issue of the use of the Mississippi.

In addition, granting Congress the authority to call out the state militia might leave Kentucky at the mercy of the Indians if their militiamen were sent elsewhere. The Kentuckians, as well as Jay, were acutely aware that British troops still kept an army of almost 10,000 men in New York and maintained other forces in interior forts where they could be counted upon to stir up trouble with the Indians and prevent American westward settlement. Though required by the peace treaty to remove their troops, the British still had not complied with it and did not until 14 years after the treaty was signed. The Confederation was simply too weak to compel British withdrawal as required by the Treaty.

Also, Kentuckians feared that their distance from the proposed Supreme Court would make litigation a long and expensive procedure. Many Kentuckians, close to frontier conditions and whose regions were commercially undeveloped, believed it would be better for the people west of the Appalachian Mountains to separate from the United States, form an independent government and arrange a commercial treaty with Spain to secure to these western areas the right to use the Mississippi. There was substantial sentiment in favor of such a Spanish connection. This sentiment had appeal even in western Pennsylvania.

The Virginia Convention itself was by all odds the most distinguished of the gathering which addressed the question of ratification. From Henrico County in Virginia the delegates were the governor, Edmund Randolph, who had refused to sign the Constitution he had helped to draft, and John Marshall, brother-in-law and first cousin of Fayette County's Humphrey Marshall. Washington did not attend the Convention but James Madison was the indefatigable leader of the Federalists while Patrick Henry was the leading advocate for the Anti-federalists.

Clause by clause, the Virginia delegates went through the Constitution and what set Madison apart was his ability to take a complicated problem in government, examine it from historical and practical viewpoints, and explain it. Delegate John Marshall, though a political enemy, once said of Madison that if eloquence included the unadorned power of reason, then Madison was the "most eloquent man I ever heard."

On a Wednesday, June 25th, the Committee of the Whole presented a resolution to the effect that the Constitution be ratified with amendments to correct defects, and to propose a Bill of Rights in the First Congress. After considerable maneuvering, this resolution was adopted by a ten vote margin, 89 to 79. Eleven of the 14 Kentucky delegates voted against ratification. Only 3 voted for it: Robert Breckenridge and Rice Bullock of Jefferson County, commercially the most highly developed area in Kentucky, and Humphrey Marshall of Bourbon County, voted in favor. According to the paper of Orin Grant Libby, Humphrey Marshall was the only Kentucky delegate to vote against his constituents' wishes.

Of the 16 West Virginians, 11 had at some time been actively engaged in the defense of the frontier and were well aware of the dangers from Indians. Nevertheless, 14 of them voted for ratification. John Evans of Monongahela County, opposed the Constitution, although his reasons for doing so are obscure, and Ebenezer Zane of Ohio County did not vote.

As noted earlier, the Tennesseans from Davidson County in the first North Carolina Convention were opposed and those from Sumner County were in favor of the document. However, in their second Convention held after the First Congress had approved Madison's Bill of Rights, North Carolina ratified by a vote of 197 to 77.

Virginia became the 10th sate to ratify and New York, after a spirited battle with rioting in Albany and a public burning of the Constitution, endorsed the document on July 26th by a vote of 30 to 27 and Rhode Island and North Carolina came along in their time.

The most significant action taken by the First Congress under the Constitution, which convened in New York's old City Hall in 1789, was to honor the pledge made by leaders of the Federalists in some five states to add to the instrument a set of guarantees of the rights of individuals and to confirm the people and the states in the possession of all powers not delegated to the federal government or prohibited to them. The initiative was Madison's although he had opposed a Bill of Rights in the Constitutional Convention as unnecessary. He had been elected to the first U. S. House of Representatives despite the opposition of Governor Patrick Henry. His propositions for a Bill of Rights were drawn mainly from the Virginia Declaration of Rights of 1776, the handiwork of George Mason, who had been one of his most vigorous opponents in the Ratification Convention in Richmond. The ratification by all of the states, involved as it was, appears to have answered the question posed by Hamilton in the opening "Federalist Paper," the question being that "It seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable of establishing good government from reflection or choice, or whether they are forever destined to depend for their political constitutions upon accident and force."