The Constitutional Convention, A Second General Convention, and A Bill of Rights, 12–15 September 1787

The idea of a second general convention was first advanced in the Constitutional Convention by George Mason of Virginia on 31 August. He declared that, if changes were not made, he would want "to bring the whole subject before another general Convention." Governor Edmund Randolph of Virginia then added that, if he could not approve the final form of the Constitution, he would propose that the state conventions be allowed "To propose amendments to be submitted to another General Convention."

On 15 September Randolph, asserting that the powers given Congress were "indefinite and dangerous," moved that state conventions be allowed to submit amendments to the consideration of a second constitutional convention. Mason seconded the motion which was also supported by Elbridge Gerry of Massachusetts. The motion was unanimously rejected by the states.

During the Convention, various delegates had proposed that certain civil liberties be guaranteed. The Convention accepted some guarantees and incorporated them in the early drafts of the Constitution. A bill of rights was not proposed, however, until 12 September, after the Committee of Style had reported the final draft constitution. On that day Gerry moved that a committee be appointed to prepare a bill of rights. The motion, seconded by Mason, was defeated unanimously.

Because of the increased power of the central government and the Convention's refusal to adopt a bill of rights, Gerry, Mason, and Randolph did not sign the Constitution on 17 September. In the next few months, the three men were attacked for their refusal, and in response, each publicly defended his position. Mason and Gerry opposed the Constitution throughout 1787 and 1788, but Randolph voted to ratify it in the Virginia Convention.

Wednesday, 12 September

Mr. [Hugh] Williamson, observed to the House that no provision was yet made for juries in Civil cases and suggested the necessity of it.

Mr. [Nathaniel] Gorham. It is not possible to discriminate equity cases from those in which juries are proper. The Representatives of the people may be safely trusted in this matter.

Mr. Gerry urged the necessity of Juries to guard agst. corrupt Judges. He proposed that the Committee last appointed should be directed to provide a clause for securing the trial by Juries.

Col: Mason perceived the difficulty mentioned by Mr. Gorham. The jury cases can not be specified. A general principle laid down on this and some other points would be sufficient. He wished the plan had been prefaced with a Bill of Rights, & would second a motion if made for the purpose. It would give great quiet to the people; and with the aid of the State declarations, a bill might be prepared in a few hours.

Mr. Gerry concurred in the idea & moved for a Committee to prepare a Bill of Rights. Col: Mason 2ded. the motion.

Mr. [Roger] Sherman, was for securing the rights of the people where requisite. The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient. There are many cases where juries are proper which can not be discriminated. The Legislature may be safely trusted.

Col: Mason. The Laws of the U.S. are to be paramount to State Bills of Rights. On the question for a Come. to prepare a Bill of Rights
N.H. no. Mas. abst. Ct. no. N.J. no. Pa. no. Del. no. Md. no. Va. no. N.C. no. S.C. no. Geo. no.

Friday, 14 September

Col: Mason moved to strike out from the clause (art I. Sect 9.) "No bill of attainder nor any ex post facto law shall be passed" the words "nor any ex post facto law." He thought it not sufficiently clear that the prohibition meant by this phrase was limited to cases of a criminal nature, and no Legislature ever did or can altogether avoid them in Civil cases.

Mr. Gerry 2ded. the motion but with a view to extend the prohibition to "civil cases," which he thought ought to be done.
On the question; all the states were—no.

Mr. [Charles] Pinkney & Mr. Gerry, moved to insert a declaration "that the liberty of the Press should be inviolably observed."

Mr. Sherman. It is unnecessary. The power of Congress does not extend to the Press. On the question,
N.H. no. Mas. ay. Ct. no. N.J. no. Pa. no. Del. no. Md. ay. Va. ay. N.C. no. S.C. ay. Geo. no.

Saturday, 15 September

Mr. Randolph animadverting on the indefinite and dangerous power given by the Constitution to Congress, expressing the pain he felt at differing from the body of the Convention, on the close of the great & awful subject of their labours, and anxiously wishing for some accomodating expedient which would relieve him from his embarrassments, made a motion importing "that amendments to the plan might be offered by the State Conventions, which should be submitted to and finally decided on by another general Convention." Should this proposition be

disregarded, it would he said be impossible for him to put his name to the instrument. Whether he should oppose it afterwards he would not then decide but he would not deprive himself of the freedom to do so in his own State, if that course should be prescribed by his final judgment—

Col: Mason 2ded. & followed Mr. Randolph in animadversions on the dangerous power and structure of the Government, concluding that it would end either in monarchy, or a tyrannical aristocracy; which, he was in doubt, but one or other, he was sure. This Constitution had been formed without the knowledge or idea of the people. A second Convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, take this or nothing. As the Constitution now stands, he could neither give it his support or vote in Virginia; and he could not sign here what he could not support there. With the expedient of another Convention as proposed, he could sign.

Mr. [Charles] Pinkney. These declarations from members so respectable at the close of this important scene, give a peculiar solemnity to the present moment. He descanted on the consequences of calling forth the deliberations & amendments of the different States on the subject of Government at large. Nothing but confusion & contrariety could spring from the experiment. The States will never agree in their plans, and the Deputies to a second Convention coming together under the discordant impressions of their Constituents, will never agree. Conventions are serious things, and ought not to be repeated. He was not without objections as well as others to the plan. He objected to the contemptible weakness & dependence of the Executive. He objected to the power of a majority only of Congs. over Commerce. But apprehending the danger of a general confusion, and an ultimate decision by the Sword, he should give the plan his support.

Mr. Gerry. Stated the objections which determined him to withhold his name from the Constitution. 1. the duration and re-eligibility of the Senate. 2. the power of the House of Representatives to conceal their journals. 3. the power of Congress over the places of election. 4 the unlimited power of Congress over their own compensations. 5 Massachusetts has not a due share of Representatives allotted to her. 6. 3/5 of the Blacks are to be represented as if they were freemen. 7. *Under* the power over commerce, monopolies may be established. 8. The vice president being made head of the Senate. He could however he said get over all these, if the rights of the Citizens were not rendered insecure 1. by the general power of the Legislature to make what laws they may please to call necessary and proper. 2. raise armies and money without limit. 3. to establish a tribunal without juries, which will be a Star-Chamber as to Civil cases. Under such a view of the Constitution, the best that could be done he conceived was to provide for a second general Convention.

On the question on the proposition of Mr. Randolph. All the States answered no.

On the question to agree to the Constitution as amended. All the States ay.

The Constitution was then ordered to be engrossed,

And the House adjourned

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