

Restoring Civil Discourse: Lessons from the Constitutional Convention

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Thomas Mann, Director of Governmental Studies at the Brookings Institution, observed several years ago that, “Democracy is a means of living together despite our differences. Democratic deliberation is an alternative to physical violence. It is predicated on the assumption that it’s possible to disagree agreeably...”¹ Political commentators increasingly note the disintegration of agreeable disagreement in our democracy. In our public debates, in panel discussions on radio or television, in town hall meetings and community forums, in legislative chambers, on internet blogs, and even on college campuses, where free and candid exchanges of views are thought to be the norm, negativity and personal attacks abound. Issues are cast as deadly battles between opposing ideologies.

All of us probably have experienced the challenge of remaining civil when we are discussing policy matters about which we are passionate. Acknowledging that incivility does not advance the cause of democracy is one thing. Finding constructive examples of civil debate over contentious issues is another.

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One remarkable example of civil discourse is the Constitutional Convention of 1787. Many Americans view the United States Constitution with reverence. However, most are unaware that the four-month-long process of drafting the Constitution was arduous and anything but serene. The delegates to the convention were so deeply divided (morally, politically, and economically) on so many issues that the convention almost collapsed several times. With but a few exceptions, the delegates persevered. The story of the convention is filled with complex characters, motives, intrigues, and a plot that continues to affect our daily lives. A look at how the delegates resolved their differences provides suggestions for ways we can improve the quality of our debates with one another over divisive issues of public policy today.

To set the stage for the convention, we need to revisit the revolutionary times of America's founding. The Declaration of Independence in 1776 did not merely assert America's separation from Great Britain. It also described the revolution in Americans' thinking about popular sovereignty and the legitimacy of governmental power. Significantly, the Declaration did not declare independence on behalf of Americans as individuals. Rather, the last paragraph declared that the thirteen colonies "are, and of Right ought to be, free and independent states," absolved from all allegiance to the British crown.

Those free and independent states quickly began writing constitutions and forming governments. Those constitutions and forms of government had many similarities, but they also had many differences. Some states had established religions. Other states maintained a separation between church and state. Some state economies depended on slavery. Some states vehemently opposed slavery. Some states were primarily agrarian. Others depended on foreign trade and commerce. Some states were small and sparsely populated. Other states were large, and economically and culturally diverse. Each state had its own currency, trade policies, tax structure, and legal system. The free and independent states of America were like thirteen independent nations dotted along the east coast of the continent. State sovereignty also meant small states were the political equals of large states.

Before the Revolution, the colonies had formed a Continental Congress, which met for the first time in Philadelphia in September 1774. Three years later, in 1777, the newly free and independent states of America formed a “league of friendship” under the Articles of Confederation. The Articles, ratified in 1781 while the country was in the midst of a desperate war with Britain, were a concession that the states had to act collectively to address common problems. Those problems included how to arm, feed, and clothe the soldiers who had come from the various states to fight the Revolutionary War.

Under the Articles of Confederation, however, each state retained its “sovereignty, freedom and independence.”² Remember—at the time each state thought of itself as a small country. Congress was a unicameral body in which each state was represented equally. It had limited domestic powers and no effective way to raise money apart from borrowing from other countries or from the states. The Articles required a vote of nine of the thirteen states for Congress to enact laws, and the states had to agree unanimously to any amendments to the Articles. Each state was responsible for levying and collecting taxes to contribute to the common treasury, but Congress had no independent taxing authority. Enforcement of laws passed by Congress depended on the good will of the states. For all practical purposes, there was no national judicial system.

After the Revolutionary War, the “league of friendship”³ among the states began to disintegrate. The Revolutionary War left the Congress with a massive debt to other countries and to the states, but no effective way to pay it. The money Congress printed quickly became worthless; most creditors demanded repayment in gold. Moreover, America’s victory cut off trade with the British Empire, including the previously lucrative trade with West India. Trade with Mediterranean nations continued, but British naval forces no longer protected American ships from pirate attacks. Farm prices dropped precipitously when wartime demand fell off. The states enacted trade barriers to protect themselves, imposed taxes on interstate goods and vessels, and accused one another of refusing to pay their fair share of taxes to Congress. A massive economic recession swept through the states. Creditors began foreclosing on debtors. Debtor rebellions

erupted in Massachusetts, New Jersey, South Carolina, Pennsylvania, and Maryland. Political leaders like James Madison and Alexander Hamilton became persuaded that the confederation of states had to be replaced with a strong national government.

In an effort to understand, and then to explain, why the confederation of states was incapable of dealing with the problems America faced, Madison for several months studied what had happened to other confederacies. He wrote “Notes on Ancient and Modern Confederacies,” which surveyed every available treatise on present and past confederacies. Madison and others referred to those notes often in the months to come.

In 1786, delegates from five states had met in Annapolis and issued a report that described the serious situation facing the American confederation. In February 1787, Congress invited the states to send delegates to Philadelphia in May “for the sole and express purpose of revising the Articles of Confederation” to make it “adequate to the exigencies of government, and the preservation of the Union.”⁴ That meeting, of course, became known as the Constitutional Convention. All the states except Rhode Island sent delegates. New Hampshire had problems funding its delegates, who did not arrive until several weeks after the convention had begun. The fifty-five delegates, all white men, ranged in age from 26 to 81. Most of the delegates were in their forties. Some states sent large delegations—eight from Pennsylvania, for example, as compared to New Hampshire’s two—but each delegation voted as a state, and each state was entitled to only one vote. If a state’s delegation lacked a quorum on a particular day, or if the delegates were evenly divided, then that state’s vote did not count. On average, approximately thirty delegates were present each day. Typically, no more than ten states at a time could muster quorums to vote on the hundreds of proposals the delegates debated. Most of the delegates were well educated and had experience in state or confederation government, but there were significant personal, professional, religious, and philosophic differences among them.

As Madison prepared for the convention, he also wrote an essay titled, “Vices of the Political System of the United States,” which built upon his earlier study of ancient and modern

confederacies. His research and reflection led him to conclude that America could succeed only if it were transformed from thirteen independent states into one extended republic. Madison's pre-convention preparation laid the groundwork for a proposal that his state's delegation submitted early in the convention. That proposal, for a strong national government, shaped all the debates that followed. Too many people think that to be effective in debates over policy matters they need only to have strong opinions. One obvious lesson from the Constitutional Convention is that preparation, knowledge, facts, and forethought are essential in shaping public discussions.

As noted, Madison arrived at the Constitutional Convention committed to creating a strong national government. As the delegation from Virginia waited for a quorum of delegates from other states to arrive, they met with others who had arrived at the appointed time and who shared the belief that the Articles of Confederation needed to give way to a strong central government. With Madison's leadership, they outlined a plan for the transformation of American government.

However, many other delegates came to Philadelphia committed to the sovereignty and independence of the states. Maryland's Luther Martin, for example, argued that Americans looked to their state governments to protect their lives, liberties, and properties and that only a general government that preserved the state governments would be acceptable in this country. Then there was the intractable problem of slavery. Delegates from some states viewed it as economically necessary and socially acceptable, while delegates from other states condemned it as an intolerable moral abomination. The delegates also had radically different views of executive power and how it should be organized.

How could a convention that began with such deep moral, philosophical, and economic differences have any chance of success? Consider some of the strategies the convention and individual delegates employed to overcome the obstacles that separated them. First, before they entered the substantive fray, the delegates adopted rules of procedure that were slanted in favor of achieving consensus whenever possible. Four of those rules are particularly significant for us to think about today.

The first rule was that every member who rose to speak had to address the President of the Convention, George Washington.⁵ Washington's very presence provided some assurance that the discussions would be dignified and respectful. The requirement that speakers address the president facilitated the difficult debates that followed and helped to avoid personal attacks. It is also important that the president of the convention was a man of George Washington's stature. Although he did not participate as actively in the debates as other delegates, his presence signaled the integrity of the process. Imagine what the convention would have been like if one of today's "talk radio" hosts had been taking the calls!

A second rule was that, while a delegate was speaking, no other delegate would "hold discourse with another, or read a book, pamphlet, or paper, printed or manuscript. . . ."⁶ In other words, the delegates made a commitment to take the work of the convention and one another seriously. We should adopt a similar rule today and accept its modern consequences when we are debating issues of public policy: Turn off the cell phones and text messaging and computers and other distractions that take our attention away from the discussion. Pay respectful attention to what others are saying.

A third rule was that no one would speak more than twice on the same question without special leave of the other delegates, and no one would speak a second time before anyone else who wished to be heard had spoken.⁷ This rule prevented a few delegates from monopolizing the debates and assured that everyone would have an opportunity to be heard without having to struggle to get the floor. Some delegates, like Maryland's Luther Martin and New York's Alexander Hamilton, held the floor for hours at a time. No matter how exasperated other delegates might have been with the substance of what those delegates were saying, however, they listened and waited patiently for their turn to respond. All views eventually were heard and the delegates were willing to commit the time—which turned out to be almost four months during one of Philadelphia's hottest summers—to air all views. Another important lesson we learn from the conduct of the convention is that public debate on difficult issues is incompatible with sound-bite thinking. Civil discourse requires a

commitment to the patient exchange of ideas and the search for solutions to complex problems, not interrupting and talking over others in the quest for fast answers.

The final rule that the delegates agreed to was to keep their discussions secret.⁸ Years after the convention, Madison explained to Henry Adams the importance of secrecy, which Adams reported this way:

Had the members committed themselves publicly at first, they would have afterwards supposed consistency required them to maintain their ground, whereas by secret discussion no man felt himself obliged to retain his opinions any longer than he was satisfied of their propriety and truth, and was open to the force of argument. Mr. Madison thinks no Constitution would ever have been adopted by the convention if the debates had been public.⁹

People in the 18th century apparently were no more tolerant with public figures changing their minds than we are today. But what is the purpose of public deliberation and debate if not to put forth arguments and evidence for positions and to garner support for those positions? If we value openness, we must also learn to accept that public officials, like the rest of us, can and do change their positions based on better information, superior arguments, reflection, and even the need to accommodate others to achieve a broader goal. We should expect people to change their minds if they find that their opinions do not stand up to scrutiny. Moreover, there are situations where secrecy still serves an important function, such as in the jury room and the conferences of appellate judges. In both forums, secrecy encourages candid discussion and it is assumed that people can and will be persuaded to change their minds.

With the rules in place, Virginia's Edmund Randolph set the stage for the ensuing debates by submitting fifteen resolutions known as the Virginia Plan. Although this plan was largely Madison's brainchild, Madison did not introduce it. There is another important lesson for students of modern public debate; effective leaders do not always need to be the center of attention.

They help to build consensus by including others and even letting others take credit for success.

The Virginia Plan proposed a strong national government, consisting of three branches and a bicameral legislature. For Madison, three elements of the plan were essential to the success of the new national government. First was creation of a national legislature that represented the people, not the states. Madison believed that the national legislature should have plenary power “to legislate in all cases to which the separate States are incompetent.”¹⁰ Members of the first house were to elect the members of the second house. The second crucial element of the Virginia Plan in Madison’s view was the authority of the national legislature to veto all laws passed by the several states. Third was a council of revision made up of the executive and some number of national judges with a qualified veto over all national legislation before it went into effect and over the national legislature’s veto of state laws.

What Madison and other nationalists considered essential, however, advocates of state sovereignty found totally unacceptable. New York’s John Lansing, for example, asserted that the states would “never sacrifice their essential rights to a national government.”¹¹ Delaware’s Gunning Bedford noted a further complication: small states had everything to fear from a strong union, while large states had nothing to fear. At one point the usually good-natured Bedford told delegates from the large states, “I do not, gentlemen, trust you.”¹² Bedford could envision amending and enlarging the confederation, but not scrapping the Articles of Confederation.

For almost a month the delegates debated without resolution the need for a new national government, its organization and its powers. They considered and rejected New Jersey’s proposal essentially to amend the Articles of Confederation. But that defeat did not mean victory for the Virginia Plan and its insistence on a strong national government with representation grounded on population. On June 28, Maryland’s Luther Martin spoke for three hours, arguing that a general government should be formed for the states, not individuals, and that an equal vote for each state in the national legislature was essential. Madison and the other nationalists would not yield their view that the national

government had to have power to act directly on individuals. The convention had reached an impasse.

An easy response to the impasse of June 28, 1787, would have been to give up and go home, the delegates pointing fingers at each other for the convention's failure. Another response could have been the creation of a variety of state confederacies based on the narrow interests of particular states. That, of course, is not what happened. Instead, one of the convention's elder statesmen and America's foremost diplomat, Benjamin Franklin of Pennsylvania, took the floor. Franklin said:

The small progress we have made after four or five weeks close attendance and continual reasonings with each other—our different sentiments on almost every question, several of the last producing as many noes as ays, is methinks a melancholy proof of the imperfection of the Human Understanding. We indeed seem to feel our own want of political wisdom, since we have been running about in search of it.¹³

Franklin argued that, if the convention were to fail, mankind would despair of establishing governments by human wisdom and leave it to chance, war, and conquest. He moved to begin each morning by acknowledging the limits of human understanding by praying for the assistance of heaven. Franklin's motion received a second, but it was not voted on because several delegates objected to prayer. Nonetheless, Franklin's insight into the limits of human wisdom is as relevant today as it was then. It is folly to think we have all the answers and that we can bully others into agreeing with our opinions.

Franklin's comments on June 28 also emphasize the importance of having experienced leaders who are willing to step up in times of crisis. Franklin's reminder that the delegates had to choose between reason and war in framing a government for the United States had the desired effect. The next day, June 29, Oliver Ellsworth of Connecticut, one of the delegates opposed to a strong national government, rose to state that he did not despair and that he still trusted a good plan of government could be devised and adopted. Later that day Ellsworth described what he

considered to be a fundamental, unalterable fact about America that must be reflected in its government: it is “partly national; partly federal.”¹⁴ Neither a national government obliterating the states nor the states in loose association without a national government was suited to the American way of life. Accordingly, Ellsworth renewed a proposal that his colleague Roger Sherman had made earlier in the convention: base representation in the first house on population, but keep representation in the second house the same as it had been under the Articles of Confederation. Under this proposal, the states as well as the people would be represented in the national legislature.

Advocates of a strong national government, such as Virginia’s James Madison and Pennsylvania’s James Wilson, argued strongly against Ellsworth’s proposal and the convention once more appeared to be on the verge of collapse. On June 30, Franklin spoke again:

When a broad table is to be made, and the edges of planks do not fit, the artist takes a little from both, and makes a good joint. In like manner here both sides must part with some of their demands, in order that they may join in some accommodating proposition.¹⁵

As frequently happens when a large body cannot agree, the delegates voted to commit the matter of representation in the national legislature to a committee. Elbridge Gerry of Massachusetts was the chair. Madison and Wilson objected strongly to the committee, no doubt foreseeing that it would endorse a scheme of mixed representation in the national legislature. That is precisely what the committee did; it recommended that representation in the first house be based on population (one representative for every 40,000 inhabitants) and that each state have equal representation in the second house. The convention narrowly adopted the recommendation on July 16—five states to four.¹⁶

The decision to give the states, as states, a place in the national governing scheme was a victory for adherents of state sovereignty in general and for the small states in particular. It was a massive blow to Madison and the other nationalists, who

continued to believe that the national government would be effective only if it could act independently of the states. Nonetheless, when delegates opposed to the compromise met in a caucus on July 17 to discuss whether to seek reconsideration of the previous day's vote, they decided not to challenge it.

Madison's defeat on the issue of representation in the national legislature was immense. In the days to follow, his Virginia Plan would suffer two more devastating blows: the delegates would reject the national veto over state laws, and they would reject the council of revision. In other words, Madison—the man we honor as the father of the Constitution—lost on all three proposals he deemed essential to the creation of an effective national government.

Just as we have much to learn from how the convention resolved its impasse over representation in the national legislature, we have much to learn from Madison's responses to the defeat of his central proposals at the convention. Everything he knew told him that a national legislature composed of representatives of both the people and the states could not be effective, and that the principle of equal state representation was both impractical and unfair. Moreover, he feared that the states would use their representation in the Senate to interfere with the national government. Some delegates left the convention when things were not going their way. Some, like Alexander Hamilton, returned, but others, like his fellow New Yorkers John Lansing and Robert Yates, did not.

Madison, by contrast, persevered. He did not miss a moment of the convention. The detailed notes he kept of the proceedings, which were published after his death in 1836, faithfully record his defeats as well as his victories. Committed to the notion of a strong national government as the only solution to the problems confronting the states, Madison sought other ways to achieve it. He consulted with other delegates, like Pennsylvania's James Wilson, about the best way to structure the executive branch. He helped win approval of the clause in Article VI that declares all laws made under the authority of the United States the supreme law of the land. He argued in favor of an independent national judiciary.

The debates over the structure and powers of the national

legislature also reminded Madison of the inevitability and importance of compromise—or what the delegates frequently referred to as accommodation—if a constitution for the United States was going to emerge. Madison played a central role in crafting compromises that resolved impasses almost as significant as the crisis over representation: the process for selecting the president, how slaves would be counted for purposes of representation, and the future of the slave trade. No matter how we view those compromises today, without them there would have been no Constitution. American politics has been described as the process of getting half a loaf. Madison’s careful preparation for the convention helped him make calculated decisions about when and how to compromise, even on issues over which he did not believe compromise desirable.

What else can we learn from the convention? Special committees, of which there were at least ten during the course of the deliberations, helped the delegates to complete their work and come to agreement. Although little is known about how the five-member Committee of Detail worked, in less than a week it reduced the broad proposals and propositions the convention delegates had debated to twenty-three “articles,” a term with which we are familiar when we talk about the Constitution. The Committee on Remaining Matters, chaired by New Jersey’s David Brearly, made significant contributions, including recommending Madison’s proposal for an electoral college to resolve disagreements over the selection of the president. The Committee on Style, relying on the drafting talents of Pennsylvania’s Gouverneur Morris, gave the Constitution its recognizable form and wording. As cynical as we frequently are about committees, the fact is that people working together in small groups often can be effective when a larger group cannot.

The convention finished its work on September 17, 1787. The delegates were exhausted. Several were known to object to various provisions and some refused to sign. Benjamin Franklin agreed to put his signature on the final document because he had learned an important lesson in his 81 years, many of them devoted to public service:

I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others.¹⁷

We would be well advised to recall Franklin's insight whenever we are engaged in pitched battles over public policy. Even our most strongly held opinions might be incomplete. Perhaps, with more time and insight, we will view issues differently.

Exhausted though they were, and no doubt weary of one another's company after four months of difficult negotiations during one of the hottest Philadelphia summers on record, the delegates went to the City Tavern after the convention adjourned. George Washington recorded in his diary that they "dined together and took a cordial leave of each other."¹⁸ The delegates' decision to conclude their work by sharing a meal offers another important insight into the contours of civil discourse. We must always seek ways to acknowledge one another's importance as human beings, colleagues, and even friends, notwithstanding divisive differences over policy.

We have reviewed here only a few of the issues that separated the delegates, taking the Constitutional Convention to the brink of failure several times, and some of the strategies the delegates employed to produce the document Americans celebrate today. Consider just one more story.

During a particularly contentious debate over representation in the national legislature, Gunning Bedford of Delaware accused delegates from the large states of treating the small states with a "dictatorial air." He hinted that the small states might be forced to "find some foreign ally of more honor and good faith, who will take them by the hand and do them justice."¹⁹ Edmund Randolph was appalled by Bedford's "rash" threat and said so.²⁰ What did Bedford do? He apologized. He assured the convention that the small states, "would not court the aid and interposition of foreign

powers.”²¹ According to Madison’s notes, “[Bedford] observed also in apology that some allowance ought to be made for the habits of his profession in which warmth was natural and sometimes necessary.”²² (Bedford, of course, was a lawyer.) Most of us step over the line at some point, and it is particularly easy to do so in the midst of passionate public debates. We advance the cause of civil discourse greatly by remembering the power of an apology.

We have examined only a fraction of the lessons we might learn from the Constitutional Convention as we seek ways to engage civilly with one another over contentious issues today. Fortunately, several members of the convention kept notes of the proceedings and scholars have assembled other documents associated with the convention, so we have ready sources for exploring the debates in greater detail. The debates surrounding the transition from confederal to constitutional government were no less divisive and impassioned than many of our debates today. Yet they were remarkably civil. As citizens we have a duty not merely to revere the document produced in Philadelphia, but to continue to learn from the process that allowed it to come into being.

About a month after the convention, James Madison wrote to his friend Thomas Jefferson, who was in France during the convention, describing four of the major issues that had made it so hard for the delegates to agree on the Constitution. “Adding to these considerations,” Madison wrote, “the natural diversity of human opinions on all new and complicated subjects, it is impossible to consider the degree of concord which ultimately prevailed as less than a miracle.”²³ Living together in a democracy despite our differences makes the search for concord a fundamental necessity. This is one miracle we can and must make happen.



NOTES

- ¹ Woodstock Report 6, 1997, No. 50;
www.georgetown.edu/centers/woodstock/report/r-fea50.htm.
- ² Article II, "Articles of Confederation," in Henry Steele Commager, *Documents of American History*, vol. I (New York: Appleton-Century Crofts, 1968), 111.
- ³ Article III, *ibid.*
- ⁴ Quoted in Samuel Eliot Morison, *The Oxford History of the American People* (New York: Oxford University Press, 1965), 305.
- ⁵ *Notes of Debates in the Federal Convention of 1787, reported by James Madison*, ed. by Adrienne Koch (Athens, OH: Ohio University Press, 1966), 25.
- ⁶ *Ibid.*
- ⁷ *Ibid.*, 26.
- ⁸ *Ibid.*, 28.
- ⁹ Max Farrand, *The Records of the Federal Convention*, vol. 3 (New Haven: Yale University Press, 1966), 479.
- ¹⁰ *Notes of Debates*, 31.
- ¹¹ *Records of Federal Convention*, vol. 1, 258.
- ¹² *Ibid.*, 500.
- ¹³ *Notes of Debates*, 209.
- ¹⁴ *Ibid.*, 218.
- ¹⁵ *Ibid.*, 227.
- ¹⁶ The Massachusetts delegation was split, so that state's vote did not count. New York lacked a quorum the day the proposal was approved. Rhode Island had refused to send delegates and New Hampshire's delegates had not yet arrived. It is reasonable to assume that both New York and New Hampshire would have voted in favor of the compromise.
- ¹⁷ *Notes of Debates*, 653.
- ¹⁸ Reported in Ralph Ketchum, *James Madison: A Biography* (Charlottesville: University Press of Virginia, 1990), 228.
- ¹⁹ *Notes of Debates*, 230.
- ²⁰ *Ibid.* 235.
- ²¹ *Ibid.*, 242.
- ²² *Ibid.*
- ²³ *The Papers of James Madison*, vol. 10, Robert Rutland editor-in-chief (Chicago: University of Chicago Press, 1977), 208.