

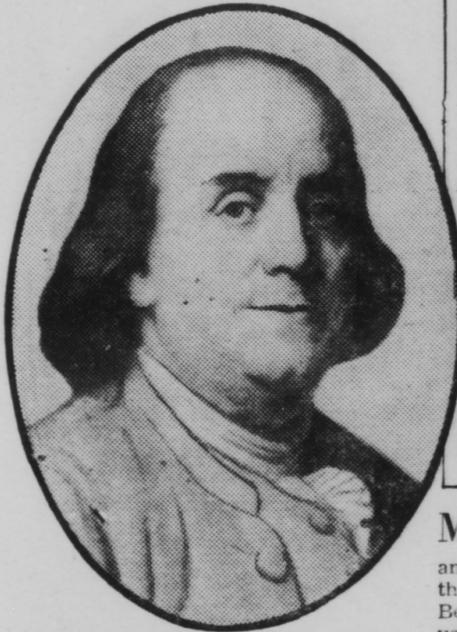
When HE-MEN Met to Build the CONSTITUTION

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"SEVEN score and ten years ago our fathers brought forth on this continent a new Constitution, conceived in unity and dedicated to the proposition that, in the 18th century, a strengthening of our federal government was urgently needed. Now we are engaged in a great constitutional struggle, testing whether any constitution so conceived and so dedicated can, in the 20th century, longer endure."

In some such Lincolnesque words might be described the present controversy over our federal Constitution and



Benjamin Franklin, in Duplessis' painting. Indiscreet about secrets, he enlivened the convention with bursts of dry humor.

its relation to the Supreme Court and to the New Deal.

The roots of this controversy reach back beyond the Constitutional Convention of 1787, whose sesquicentennial we are commemorating this year, almost at the same moment when Great Britain is celebrating the coronation of the most recent successor to that unfortunate King George III whose misrule of his American colonies invited them to revolt, and later to establish the Constitution of the United States of America. The convention assembled in Philadelphia on May 25, 1787, 11 days after the day appointed.

In 1787 the Articles of Confederation held the 13 states together just about as firmly and hopefully as the League of Nations unites the states of the world today. Somebody had to decide then whether the states were to drift on entirely apart or form a genuine union.

When such grave emergencies have arisen in United States history, the really great leaders have usually met them, not seeming to care very much whether or not there was any precedent for their action.

Thus George Washington and his fellow-founders of this republic disregarded almost altogether the prescribed method for amending the inadequate Articles of Confederation when they forced through the adoption of the present Constitution. The authorization was not the law—that they violated—but rather the nation's urgent need for a stronger central government.

For the convention had legal authority only to amend the Articles of Confederation, and this required the consent of the legislatures of all 13 of the states. The delegates could either obey the law and achieve little or nothing, or disregard the law and create a new and adequate constitution. They chose the latter.

So it is not surprising that the Constitutional Convention decided to keep its debates strictly secret. The official journal of the convention gave no speeches, only the votes on the motions; and no outsider was permitted to see even this scanty record.



MEMBERS were expected to be close-mouthed outside the meeting hall, and they usually were, though it is said that the genial and somewhat talkative Benjamin Franklin, then in his 80s, was usually accompanied at public dinners by some discreet member to check him from blurting out any secrets.

George Washington, the presiding officer, tolerated no laxness in this matter, and when members occasionally made slips, he seems to have talked to them as though he might be intending to spank them later on.

An illustration is given by one of the members, Pierce, from Georgia, who relates that when the convention first opened there were a number of propositions brought forward as great leading principles of the new government to be established. A copy of them was given to each member, with an injunction of profound secrecy.

One morning a member, by accident, dropped his copy of the propositions. It was picked up and handed to Washington, who put it in his pocket. Just before putting the motion for adjournment, Washington rose and administered a stern rebuke.

"Gentlemen," he said, "I am sorry to find that some member of this body has been so neglectful of the secrets of the convention as to drop in the State House a copy of their proceedings; which, by accident, was picked up and delivered to me this morning. 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

When a delegate lost a copy of confidential measures, Washington read the convention a lecture on carelessness, laid the recovered paper on the desk, and invited the loser to claim it. No one dared do so.

paper it is, but there it is," and he threw it down on the table, adding, "Let him who owns it take it."

At the same time he bowed, took his hat, and left the room with a dignity so severe that, says Mr. Pierce, "everyone seemed alarmed. For my part," he continues, "I was extremely so, for, putting my hand in my pocket, I missed my copy of the same paper." Pierce found his paper later, however, in the pocket of another coat, and felt immensely relieved. Nobody ever ventured to claim the paper on the desk.

If Benjamin Franklin did not actually blurt any secrets, he at any rate enlivened the solemnities of the convention by flashes of wit and wisdom. For instance, when they were discussing the provisions for impeaching a president, he remarked that these provisions would confer a favor on a bad president, since without them he would probably be assassinated and thus be "not only deprived of his life but of the opportunity of vindicating his character."

Apparently this genial philosopher merited somewhat the remark of a modern historian that "Franklin was not entrusted with the task of drawing up the Declaration of Independence, because his contemporaries were afraid he might conceal a joke in it."

WHEN the convention got around to establishing the Supreme Court, Franklin had an amusing proposal for the selection of justices.

Why not, said he, use the old "Scotch mode, in which the nomination proceeded from the lawyers, who always order to get rid of him and share his practice among themselves." His respectful contemporaries permitted the 81-year-old sage this little joke; then entrusted the selection of justices to the President.

They easily agreed that the judicial term should be life, and they forbade Congress to reduce the judges' salaries, lest the legislative thus browbeat the judiciary by financial threats. It was even proposed that Congress be denied power to increase the salaries, in fear that it might thereby bribe the Supreme Court, but this was voted down, because, as Franklin said, "money may become plentier."

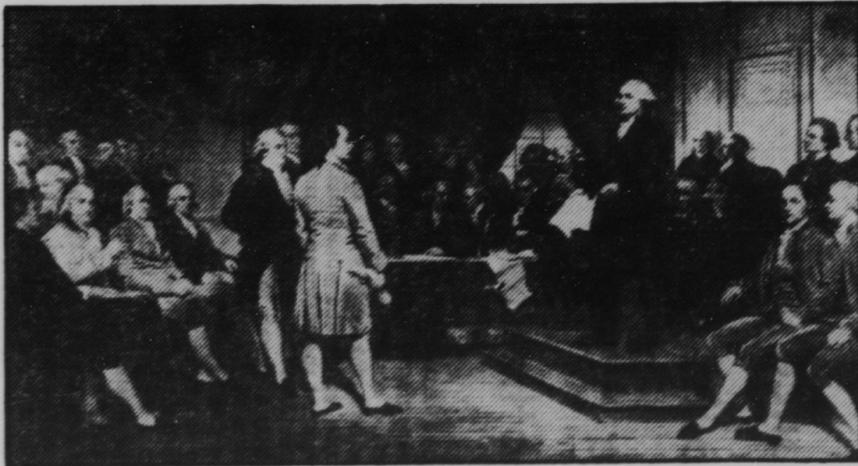
As to a judicial veto, there was much discussion and a close vote; but this refers not to the power of declaring laws unconstitutional after they have been enacted, but to the right to prevent their enactment, regardless of their conformity to the Constitution. Following the proposal contained in Randolph's "Virginia Plan" that the Supreme Court might join with the executive in vetoing laws passed by Congress, Wilson of Pennsylvania argued that this was better than merely empowering the Court to declare laws unconstitutional some time after their passage.

When the time came to secure the ratification by the people of the great work of the Constitutional Convention, a battle royal was waged between the creators and the objectors. Illustrative of the latter is the attitude of Patrick Henry. Said he, in a letter to George Washington:

"This government subjects everything to the northern majority. We thus put unbounded power over our property into hands not having a common interest with us. Sir, this is a picture so horrid, so wretched, so dreadful, that I need no longer dwell upon it!"

Washington replied in explanatory and persuasive fashion.

"Your own judgment will at once discover," he wrote, "the good and the exceptional parts of this Constitution; and your experience of the difficulties which have ever arisen when attempts have been made to reconcile such a variety of interests and local prejudices as pervade the several states, will render explanation unnecessary."



The 39 "founding fathers" of the constitutional convention, with Washington presiding . . . from the painting by Stearns.