

## **The Confederation Congress and the Constitution, 26–28 September 1787**

On the morning of 18 September William Jackson, Secretary of the Constitutional Convention, left Philadelphia for Congress in New York, carrying the engrossed Constitution. He arrived the next day and submitted the Constitution to Charles Thomson, the Secretary of Congress.

The Constitution was read to Congress on 20 September, and Congress assigned 26 September for its consideration. By the 26th, ten Constitutional Convention delegates, who were also members of Congress, had taken their seats. Of the ten, nine had signed the Constitution; the tenth (William Pierce) had left the Convention early.

Five of the Convention delegates—Pierce Butler, Nathaniel Gorham, William Samuel Johnson, Rufus King, and James Madison—are known to have taken part in the congressional debates on the Constitution between 26 and 28 September. Other members of Congress who participated were Edward Carrington, Abraham Clark, Nathan Dane, William Grayson, Henry Lee, and Richard Henry Lee. Gorham, Grayson, Johnson, King, Madison, and Henry Lee later sat in state conventions, and all but Grayson voted to ratify the Constitution.

On 26 and 27 September Congress debated the manner in which it would send the Constitution to the states. Critics of the Constitution wanted it transmitted to the state legislatures with an indication that the Convention had violated Article XIII of the Articles of Confederation and the congressional resolution of 21 February 1787. Supporters of the Constitution advocated that Congress should approve the Constitution before submitting it to the state legislatures. They also wanted to recommend that the legislatures call conventions to consider the Constitution.

On 27 September Richard Henry Lee, a critic, moved that Congress consider amendments to the Constitution which he then proposed. Congress refused to debate the substance of Lee's amendments and rejected his proposal. Nor were Lee's motion and amendments placed upon the Journals.

On 28 September Congress reached a compromise. It resolved "unanimously" that the Constitution and the resolutions and the letter of the Convention be sent to the states with only a suggestion that the states call conventions to consider the Constitution. This compromise followed the recommendation of the Convention.

On the same day Secretary Thomson transmitted to the state executives a four-page broadside which included the Constitution, the resolutions and the letter of the Convention, and Congress' resolution of 28 September. The broadside had been printed by John M'Lean of the New York *Independent Journal* and then attested by Secretary Thomson.

News of the adoption of the 28 September resolution circulated widely. By 23 October more than fifty newspapers had printed the text of the resolution or reported its passage, but only one brief newspaper item even hinted that a debate had occurred (*Pennsylvania Herald*, 6 October, CDR, 351).

Many individuals, however, knew that a heated debate had taken place and that

there had been opposition to the Constitution. Between 29 September and 16 October, Richard Henry Lee sent copies of his amendments to such Antifederalists as Elbridge Gerry, George Mason, William Shippen, Jr., Samuel Adams, and Edmund Randolph. Another manuscript version of the amendments, not in Lee's hand, was sent to the Governor of North Carolina. Federalist delegates to Congress such as James Madison also admitted in private correspondence that there was considerable disagreement among the delegates (see, for example.

The general public became aware of the debate in Congress through the publication of two widely reprinted Antifederalist items. On 24 October "Centinel" II stated that after "two days animated discussion," the proponents of the Constitution dropped their attempt to have Congress send the Constitution to the states with its approval. By cleverly wording the resolution of transmittal, however, they tried to mislead the public into believing that Congress had "unanimously" approved the Constitution (CC:190). On 6 December the Petersburg *Virginia Gazette* published Lee's amendments and his letter of 16 October to Edmund Randolph which reiterated the charge made by Centinel.

The proceedings of Congress for 26, 27 and 28 September (printed below) are reconstructed from the Journals of Congress, manuscript motions made in Congress, Melancton Smith's notes of debates, Richard Henry Lee's amendments, and the letterbooks of the Secretary of Congress.

The most complete record of Congress' actions on the Constitution is the notes of debates kept by Melancton Smith, a New York delegate. In recording the arguments of the speakers, Smith placed all motions in their proper order. His notes are undated, but it is evident that they cover the events of 26 and 27 September. Smith's notes are in the New York State Library and have been published by Julius Goebel, Jr., as "Melancton Smith's Minutes of Debates on the New Constitution." Smith's notes are composed of seven manuscript pages headed "On the constitution reported by the Convention--." A blank eighth page is docketed "Minutes of Debates on the new Constitution." The notes are printed below in literal form. Some abbreviations, however, have been spelled out for clarity, in which case the editors' amplifications have been set in italic. For more on Congress and the Constitution between 20 and 28 September.

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