

Lesson One:

Delegate Instructions to the Federal Convention

BACKGROUND INFORMATION FOR INSTRUCTOR

The Calling of the Constitutional Convention

The idea of a constitutional convention stemmed from the debate over the creation of state governments in 1776. In several states citizens argued that the revolutionary bodies that had taken the place of the colonial governments could not write constitutions. They insisted that only conventions elected for the purpose could do so and that the constitutions could not go into effect until they had been approved by the people. As a result, the first constitutions of some of the states, including Pennsylvania, Maryland, and Massachusetts, were written by constitutional conventions. The idea that a constitutional convention could be the means of creating a central government for the United States was gaining support throughout the 1780s.

For a time after the ratification of the Articles of Confederation in March 1781, the proponents of a powerful central government tried to increase the power of Congress under the Articles. In the summer of 1782 both houses of the New York legislature adopted resolutions on the deplorable “state of the nation,” particularly in financial matters, and requested Congress to call “a general convention of the states, specially authorized to revise and amend the Confederation, reserving a right to the respective [state] legislatures, to ratify their determinations.”

Congress submitted the proposal to various committees between August 1782 and the middle of 1783, but by then the opponents of a strong central government were regaining control of Congress. The final result was a committee report that suggested further consideration of a convention be dropped.

By the end of 1783 the supporters of a strong central government—a “national” government—were becoming convinced that they could never achieve their goal under the rules prescribed by the Articles of Confederation. Therefore they turned increasingly to the idea of a constitutional convention, an idea expressed in newspapers, pamphlets, and private letters.

A conference to address interstate commercial issues convened at George Washington's home, Mount Vernon, Virginia, in March 1785. The delegates from Maryland and Virginia issued a report known as the Compact of 1785 that was ratified later by both state legislatures, and became the earliest move of individual states toward closer union under the Articles of Confederation.

All proposals for a full continental convention came to naught until 21 January 1786 when the Virginia legislature elected eight commissioners to meet with delegates from other states to consider the problems of trade and to consider the preparation of an act to give Congress power to regulate trade. The proposed convention would meet at Annapolis, Maryland on the first Monday in September 1786.

Some men, particularly New Englanders, suspected the motives behind the call. Nine states elected delegates, but delegates from four states—Massachusetts, New Hampshire, Rhode Island, and North Carolina—did not attend. The delegates met on 11 September, elected John Dickinson chairman, wrote a report, and quickly adjourned on 14 September 1786. The report was addressed to the legislatures of the five states represented at Annapolis, and copies were sent to Congress and to the executives of the other states.

The report called upon the states to elect delegates to meet in convention at Philadelphia on the second Monday in May 1787 “to devise such further provisions as shall appear to them

necessary to render the constitution of the Foederal Government adequate to the exigencies of the Union. . . .”

Between the Annapolis Convention and the spring of 1787, the political climate had changed radically as a result of agrarian outbursts throughout the United States. In April 1786 a paper money party, captured control of the government of Rhode Island and it was widely reported that the Rhode Island legislature was considering a bill for the equal distribution of all property every thirteen years. In September 1786 New Hampshire farmers surrounded the legislature at Exeter, and some of them shouted for the abolition of debts and taxes and for the equal distribution of property. Sheriffs in Pennsylvania, Virginia, and South Carolina found it difficult and often impossible to collect taxes, and some of them in Pennsylvania were beaten up by irate farmers. The violence culminated dramatically in Massachusetts with the armed uprising known as Shays’s Rebellion.

It was against this background of mounting tension that the Confederation Congress considered the report of the Annapolis Convention, although many members of Congress still remained skeptical about a constitutional convention. Five states had already endorsed the Annapolis Convention proposal and had appointed delegates to the Philadelphia Convention.

Eventually, the Massachusetts delegates in Congress moved that Congress consider a motion from their state legislature calling for a convention “for the sole and express purpose of revising the Articles of Confederation,” with the “alterations and provisions” to go into effect when approved by Congress and by the states. The motion implicitly acknowledged the legitimacy of Annapolis Convention proposal by providing that the “delegates who shall have been appointed by the several states” should meet in Philadelphia on the second Monday in May.

The Appointment of Delegates to the Constitutional Convention

On 23 November the Virginia legislature was the first to authorize the appointment of delegates to a convention. The Virginia act specifically approved of the Annapolis Convention’s call for a convention and declared that a convention was “preferable to the discussion of the subject in Congress. . . .” The act, an eloquent political document written by James Madison, was circulated throughout the United States. In it, Madison noted that recent events left little doubt that America faced a crisis and needed “to decide the solemn question, whether they will by wise and magnanimous efforts reap the just fruits of that Independence . . . or whether by giving way to unmanly jealousies and prejudices, or to partial and transitory interests, they will renounce the auspicious blessings prepared for them by the Revolution.”

On 24 November New Jersey empowered its delegates in the language of the Annapolis Convention, except that it omitted the reference to approval by Congress and the states. The Pennsylvania Assembly cited the Virginia authorization act and quoted the report of the Annapolis Convention appointing its delegates on 30 December. North Carolina’s legislature appointed delegates on 6 January, Delaware on 3 February, and Georgia on 10 February 1787. Each of the states quoted or paraphrased the report of the Annapolis Convention, although Delaware forbade one change in the Articles of Confederation: the states were not to be deprived of equal votes in Congress.

Four of the six states—Virginia, Pennsylvania, Delaware, and Georgia—required approval by Congress of any changes proposed. New Hampshire went further in its resolution noting their delegates were to attend only if Congress approved the convention “as advantageous to the Union, and not an infringement of the powers granted to Congress by the Confederation.”

Massachusetts took the lead in limiting the powers of the proposed convention. The legislature adopted resolutions that instructed their delegates not to interfere with those parts of the Articles of Confederation which provided for the annual election of delegates, their recall at any

time, their serving in Congress more than three years in any six, or holding any office of profit under the United States. Furthermore, any proposed changes must be laid before Congress that, if it judged them, or any part of them proper, would lay them before the states, and if approved by them, would become part of the Articles of Confederation.

South Carolina's act authorizing the election of delegates stated that the Articles of Confederation should be revised, and that the revisions should be approved by Congress and by the "several states." The Maryland act cited the call of the Annapolis Convention rather than the call of Congress, and required approval of any proposals by Congress and by the "several states." Rhode Island alone refused to elect delegates. The majority of the legislature insisted that constitutional changes should be made only in accordance with Article XIII of the Articles of Confederation. Furthermore, the majority declared that the legislature could not elect delegates "for the express purpose of altering a Constitution, which the people at large are only capable of appointing the Members."

Upon their arrival in Philadelphia, the delegates presented their credentials, but were not recorded in the Convention Journals. Benjamin Bankson, a clerk of Congress, recorded them in a manuscript volume labelled "Ratifications of the Constitution." Bankson's "Journal" has been used as the standard source for the instructions of the delegates ever since.

Of the seventy-four men chosen, fourteen resigned or refused appointments, five never attended, and thirteen left the Convention before 5 September. Those who resigned or refused appointments were Erastus Wolcott (Connecticut); John Neilson and Abraham Clark (New Jersey); Robert Hanson Harrison, Charles Carroll of Carrollton, Thomas Sim Lee, Thomas Stone, and Gabriel Duvall (Maryland); Patrick Henry, Thomas Nelson, and Richard Henry Lee (Virginia); Richard Caswell and Willie Jones (North Carolina); and Henry Laurens (South Carolina). The delegates who did not resign but did not attend were John Pickering and Benjamin West (New Hampshire); Francis Dana (Massachusetts); and George Walton and Nathaniel Pendleton (Georgia).

KEY IDEAS IN PRIMARY SOURCE DOCUMENTS

Virginia Authorizes Election of Delegates, 23 November 1786

Possible Broad Purpose of Convention; Crisis Rhetoric

Resolution of Congress Calling Convention, 21 February 1787

Narrow Purpose of the Convention

New York Authorizes Election of Delegates, 26–28 February 1787

Narrow Purpose of Convention; Reporting Provisions

Massachusetts Restricts Delegates, 9 March 1787

Very Narrow Purpose of Convention; Reporting Provisions

Connecticut Appoints Delegates, 17 May 1787

Narrow Purpose of Convention; Reporting Provisions

Maryland Appoints Delegates, 26 May 1787

Possible Broad Purpose of Convention; Reporting Provisions

PRIMARY SOURCE DOCUMENTS SUPPORTING LESSON

Virginia Authorizes Election of Delegates, 23 November 1786

An ACT for appointing DEPUTIES from this Commonwealth to a CONVENTION proposed to be held in the City of Philadelphia in May next, for the purpose of revising the FEDERAL CONSTITUTION.

Section I. Whereas the Commissioners who assembled at Annapolis, on the fourteenth day of September last, for the purpose of devising and reporting the means of enabling Congress to provide effectually for the Commercial Interests of the United States, have represented the necessity of extending the revision of the Federal System to all its defects; and have recommended that Deputies for that purpose be appointed by the several Legislatures, to meet in Convention in the City of Philadelphia, on the second day of May next. . . .

And whereas the General Assembly of this Commonwealth, taking into view the actual situation of the Confederacy, as well as reflecting on the alarming representations made from time to time by the United States in Congress, particularly in their Act of the fifteenth day of February last, can no longer doubt that the crisis is arrived at which the good people of America are to decide the solemn question, whether they will by wise and magnanimous efforts reap the just fruits of that Independence, which they have so gloriously acquired, and of that Union which they have cemented with so much of their common blood; or whether by giving way to unmanly jealousies and prejudices, or to partial and transitory interests, they will renounce the auspicious blessings prepared for them by the Revolution, and furnish to its enemies an eventual triumph over those by whose virtue and valour it has been accomplished: And whereas the same noble and extended policy, and the same fraternal and affectionate sentiments, which originally determined the Citizens of this Commonwealth to unite with their brethren of the other States in establishing a Federal Government, cannot but be felt with equal force now, as motives to lay aside every inferior consideration, and to concur in such further concessions and provisions, as may be necessary to secure the great objects for which that Government was instituted, and to render the United States

as happy in peace, as they have been glorious in war:

Sect. II. *BE it therefore enacted by the General Assembly of the Commonwealth of Virginia*, That seven Commissioners be appointed... to meet such Deputies as may be appointed and authorised by other States, to assemble in Convention at Philadelphia, as above recommended, and to join with them in devising and discussing all such alterations and further provisions, as may be necessary to render the Federal Constitution adequate to the exigencies of the Union; and in reporting such an Act for that purpose, to the United States in Congress, as, when agreed to by them, and duly confirmed by the several States, will effectually provide for the same. . . .

Resolution of Congress Calling Convention, 21 February 1787

Whereas there is provision in the Articles of Confederation and perpetual Union for making alterations therein by the assent of a Congress of the United States and of the Legislatures of the several States; And Whereas experience hath evinced that there are defects in the present Confederation. . . .

Resolved That in the opinion of Congress it is expedient that on the second Monday in May next a Convention of Delegates who shall have been appointed by the several States be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several Legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the States render the federal Constitution adequate to the exigencies of Government and the preservation of the Union.

New York Authorizes Election of Delegates, 26–28 February 1787

THE ASSEMBLY, 26 February 1787

Resolved (if the honorable the Senate concur herein), That five delegates be appointed on the part of this state, to meet such delegates as may be appointed on the part of the other states respectively, on the second Monday in May next, at Philadelphia, for the sole and express purpose of revising the Articles of Confederation and reporting to Congress, and to the several legislatures, such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the several states, render the federal constitution adequate to the exigencies of government and the preservation of the Union; and that in case of such concurrence, the two houses of the legislature will meet, on Thursday next, at such place as the honorable the Senate shall think proper, for the purpose of electing the said delegates, by joint ballot. . . .

THE SENATE, 28 February 1787

Resolved (if the honorable the Assembly concur herein), That three delegates be appointed on the part of this state, to meet such delegates as may be appointed on the part of the other states respectively, on the second Monday in May next at Philadelphia for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and to the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the several states, render the federal constitution adequate to the exigencies of government and the preservation of the Union; and that in case of such concurrence the two houses of the legislature will on Tuesday next, proceed to nominate and appoint the said delegates in like manner as is directed by the constitution of this state, for nominating and appointing delegates to Congress.

THE ASSEMBLY, 28 February 1787

Resolved, That the House do concur with the honorable the Senate, in the said resolution.

Massachusetts Resolution Restricting Delegates, 9 March 1787

Whereas Congress did on the 21st day of February 1787 Resolve, “that in the opinion of Congress it is expedient that on the second monday in May next a Convention of Delegates who shall have been appointed by the several States to be held at Philadelphia, for the sole & express purpose of revising the articles of Confederation, and reporting to Congress & the several Legislatures, such alterations & provisions therein, as shall when agreed to in Congress, and confirmed by the States, render the federal Constitution adequate to the exigences of Government; & the preservation of the Union”

And Whereas the Legislature of this Commonwealth did on the third day of this present month elect the honorable Francis Dana, Elbridge Gerry, Nathaniel Gorham, Rufus King, and Caleb Strong esquires, Delegates... for the sole & express purpose mentioned in the aforescited resolve of Congress.

Massachusetts Senate Amendment to the House Resolution, 9 March 1787

And it is further Resolved, that the Said Delegates on the part of this Commonwealth be, and they are hereby instructed not to accede to any alterations or additions that may be proposed to be made in the present Articles of Confederation, which may appear to them, not to consist with the true republican Spirit and Genius of the Said Confederation: and particularly that they by no means interfere with the fifth of the Said Articles which provides, “for the annual election of Delegates in Congress, with a power reserved to each State to recal its Delegates, or any of them within the Year & to send others in their stead for the remainder of the year. . . .

Connecticut Appoints Delegates, 17 May 1787

An Act for appointing Delegates to meet in a Convention of the States, to be held at the City of Philadelphia, on the 2d. Monday of May instant.

Whereas the Congress of the United States, by their Act of the 21st of February 1787, have recommended that on the 2d Monday of May instant, a Convention of Delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole & express Purpose of revising the Articles of Confederation.

Be it enacted by the Governor Council & Representatives in General Court assembled, and by Authority of the same.

That the Honble William S. Johnson, Roger Sherman & Oliver Ellsworth Esqrs be, and they hereby are, appointed Delegates to attend the sd Convention, and are requested to proceed to the City of Philadelphia for that Purpose, without Delay . . . and to discuss upon such Alterations and Provisions, agreeable to the general Principles of Republican Government, as they shall think proper, to render the foederal Constitution adequate to the Exigencies of Government, and the Preservation of the Union; and they are further directed, pursuant to the said Act of Congress, to report such Alterations and Provisions, as may be agreed to, by a Majority of the united States represented in Convention, to the Congress of the United States, and to the General Assembly of this State.

Maryland Appoints Delegates, 26 May 1787

Be it enacted, *by the general assembly of Maryland*, That the honourable James McHenry, Daniel of Saint Thomas Jenifer, Daniel Carroll, John Francis Mercer, and Luther Martin, Esquires, be appointed and authorised, on behalf of this state, to meet such deputies as may be appointed and authorised by any other of the United States to assemble in convention at Philadelphia, for the purpose of revising the federal system, and to join with them in considering such alterations, and further provisions, as may be necessary to render the federal constitution adequate to the exigencies of the union, and in reporting such an act for that purpose to the United States in congress assembled, as, when agreed to by them, and duly confirmed by the several states, will effectually provide for the same; and the said deputies, or such of them as shall attend the said convention, shall have full power to represent this state for the purposes aforesaid; and the said deputies are hereby directed to report the proceedings of the said convention, and any act agreed to therein, to the next session of the general assembly of this state.

THE LESSON PLAN—What are the Delegates to do?

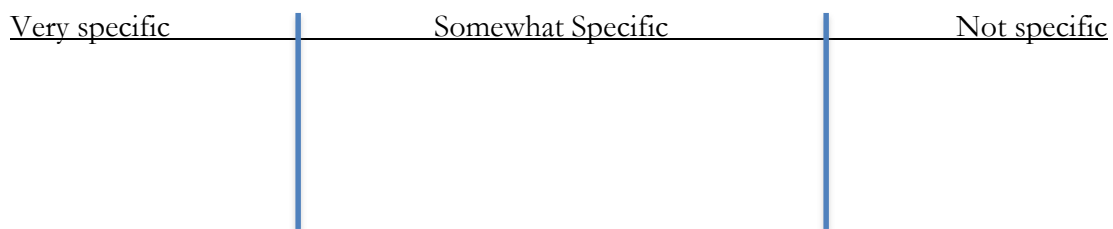
THE OBJECTIVES OF THE LESSON

- * Students should be able to compare and contrast the various sets of instructions given to the delegates sent to the Philadelphia Convention.
- * Students should be able to assess the legitimacy of the Philadelphia Convention given the fact that the delegates created a new constitution.

THE LESSON

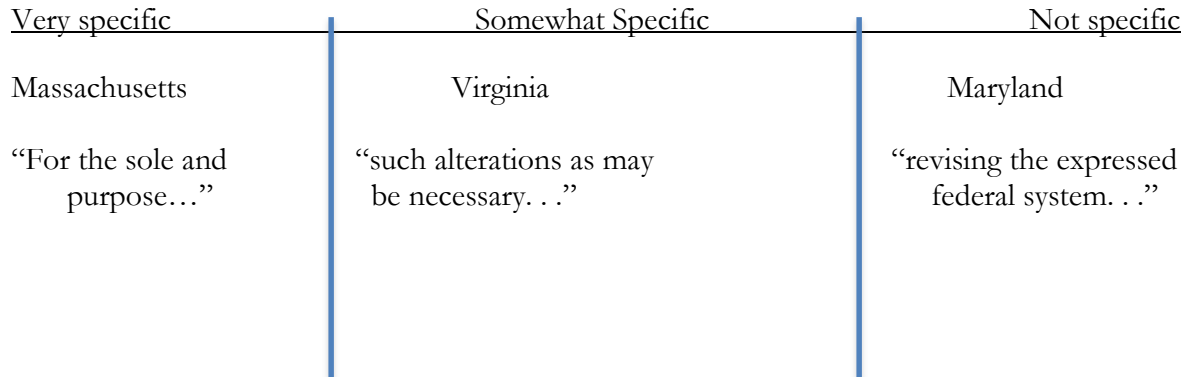
A Note to the Teacher: This exercise can be used as a lesson to illustrate the subtleties in the instructions given to the delegates to the Philadelphia Convention. This can be used when having students consider the legitimacy of the delegates creating an entirely new system of government rather than simply revising the Articles of Confederation.

1. Divide the class into working groups of 3-5 students.
2. Have each group create a spectrum that looks something like the one below.



3. If you want to cover this material in a single class session, you should divide the 13 sets of instructions among the groupings. If you want to spend more time, you could have the groups look at the entire sets of delegate instructions.
4. Have the groups read through their assigned set of instructions. They should generally look for the following items as they read:
 - a) The specific words and phrases that define the task given to the delegates from that state. These are often found in the sections that begin "Be it enacted..."
 - b) Is there a reporting clause? In other words, are the delegates to report their efforts and to whom should they report?
 - c) The preamble sections that often begin with "Whereas..." These may contain words that in some way define the task of the delegates that they are sending to Philadelphia. Do these preambles help define the task that is given to the delegates?
 - d) Whether or not the words "Article of Confederation," "federal union," "union," "Constitution" are used in describing the task assigned to the delegates. What could students conclude from the different words?
5. Have students within their groups discuss and reach a consensus as to where they would place their state's delegate instructions on their spectrum. Be sure to have them also select the key words or phrases that support their decision and on the spectrum have them place that phrase with the state name.

* For example if a group suggests that Virginia’s instructions left much latitude (vaguely defined task) for their delegates whereas Massachusetts left little latitude (very specifically defined task) for their delegates, they might have a spectrum that looked something like:



6. After groups have had some time to read and discuss their findings, have them report their conclusions to the class. It may be important to have the class look at the state instructions in question so they can see if they would agree with the conclusions of their peers.