

## *Lesson Eleven:* *The Processes of Amending or Adopting a Constitution*

### **BACKGROUND INFORMATION FOR INSTRUCTOR**

For four months during the spring and summer of 1787 delegates from twelve of the thirteen states met in Philadelphia to amend the Articles of Confederation. Almost immediately the delegates decided not merely to amend the Articles, but to replace them with an entirely new Constitution. One of the most important issues considered by the Convention was how their draft constitution would be ratified. The Convention had several precedents to consider.

Two months before the Second Continental Congress declared independence it recommended that new state constitutions be written amenable to the people. Eleven of the thirteen states replaced their colonial charters with new constitutions, while Connecticut and Rhode Island retained their charters, they deleted all references to the king and Parliament. The people would now be sovereign in all of the states.

The new state constitutions were drafted by provincial legislative bodies who by fiat declared them to be in effect once the first state elections had taken place. However, in Massachusetts, the last state to act, the new state constitution was written by a specially-elected constitutional convention and was then submitted to the people in town meetings for their approval. Once the positive reports came in from the towns, the new constitution of 1780 was declared ratified. A second state constitution for New Hampshire followed a similar path being drafted by a convention, confirmed by the people in town meetings, and then put into effect in 1784.

The Articles of Confederation offered two precedents for a process of ratification. The unanimous approval of the state legislatures was necessary to adopt the Articles themselves. On 1 March 1781, Maryland became the last state to ratify and the Articles went into effect. The last article (XIII) provided that any amendment to the Articles needed the approval of Congress and the unanimous ratification of the state legislatures. Such a stringent process of amending the Articles had proven to be impossible to achieve as unanimity was never obtained.

The Constitutional Convention adopted a new process of ratification that had both practical political considerations as well as important philosophical underpinnings. The Constitution would go into effect among the ratifying states once adopted by nine states in specially-elected state ratifying conventions. The approbation of Congress was not needed. State conventions offered a simpler method of ratification because ratification would need to be achieved only once in each state rather than twice in those states with bicameral legislatures. (Only Pennsylvania and Georgia had unicameral legislatures.) The conventions were also a better vehicle in that they could devote their complete attention to the consideration of the Constitution instead of the variety of other considerations on the agendas of state legislatures. Furthermore, as an ad hoc body, conventions would be more willing to transfer power from the state legislatures to the general government. Conventions also would be less likely to be straight-jacketed by political factions that could delay progress in considering the new Constitution. State conventions could also have broader representation in that legislatures excluded governors, judges, members of Congress, and, in the case of five states, clergymen. Property requirements and other kinds of qualifications could also be reduced or completely eliminated for both convention delegates and those who elected them. Finally, philosophically ratification by state legislatures seemed less permanent than ratification by the people in specially-elected conventions, because what one legislature did could be reversed by a

subsequent legislature, but the actions of a convention was the direct will of the people and could not be reversed by a later legislature.

Before the Constitutional Convention adjourned on 17 September 1787, printed copies of the Convention's report (including the proposed Constitution) were given to each delegate. Delegates sent these printed broadsides to governors, legislatures, and political friends. The Convention sent the engrossed Constitution to the Confederation Congress that was meeting ninety miles away in New York City. Congress read the Constitution on 20 September and debated it between 26 and 28 September. A large majority of delegates to Congress favored the Constitution and wanted it sent to the states with congressional approbation and a request that state conventions be called to consider ratification. A much smaller number of delegates opposed congressional approbation and wanted a statement to accompany the Constitution noting that the delegates to the Constitutional Convention had violated the congressional resolution of 21 February 1787 and the instructions from their state legislatures both of which called only for the amendment of the Articles of Convention. Antifederalists also wanted amendments to accompany the Constitution. Richard Henry Lee, a delegate from Virginia, even proposed a bill of rights. Although Federalists could have easily sent the Constitution to the states with approbation, they wanted to give the illusion that there was no opposition to the Constitution in Congress. A compromise was achieved. Federalists gave up their desire for congressional approbation in exchange for the deletion of all opposition from the debate, including the elimination of Lee's proposed bill of rights from Congress' journal. In an adept political move, Federalist delegates inserted the word "unanimously" in the 28 September 1787 resolution transmitting the Constitution to the states, thus implying that Congress approved the Constitution.

When the state legislatures convened, they received the Convention's report. A few sporadic newspaper articles condemned the new process of ratification, but, except for Rhode Island, no opposition to the calling of a state convention occurred in any legislature. Even the staunchest Antifederalists agreed that state conventions should be called to consider the Constitution. This was a major political victory for Federalists—the political contest over ratification would be fought using Federalist rules. Most people also accepted three other Federalist stipulations: that the Constitution should be ratified or rejected in its entirety, that ratifying conventions should not propose amendments to the Constitution, and that ratification for a limited time period was unacceptable.

## **KEY IDEAS IN PRIMARY SOURCE DOCUMENTS**

### **Articles of Confederation, Article XIII, 15 November 1777**

Perpetual Union, Approval of Congress, Unanimity in State Legislatures for Amendments

### **Delaware Act Electing and Empowering Delegates, 3 February 1787**

Acknowledgement of a Convention to Alter the Articles, Reporting Requirement to Congress, Delegates Restricted in Altering Equal State Voting In Congress, Final Congressional and State Approval Required

### **Confederation Congress Calls the Constitutional Convention, 21 February 1787**

Call for Convention, Requirement to Report to Congress and State Legislatures, Final Congressional and State Approval Required

### **United States Constitution, Article V, 17 September 1787**

Two-thirds of Both Houses of Congress Could Propose Amendments, if two-thirds of State Legislatures Requested Congress to Call a Convention to Amend the Constitution, Congress Must Call for a Constitutional Convention, Three-fourths of State Conventions or State Legislatures Required to Amend the Constitution, Prohibition Against Amending the Provisions Relating to Slavery, Prohibition of Denying Equal State Suffrage in Senate

### **United States Constitution, Article VII, 17 September 1787**

Conventions of Nine States Required for Ratification, Constitution Operational Among Ratifying States

### **Constitutional Convention Resolution, 17 September 1787**

Constitution Submitted to Congress, Recommendation that State Legislatures Call Ratifying Conventions, Recommendation that State Conventions Report to Congress

### **Confederation Congress Resolution, 28 September 1787**

Unanimously Agree to Transmit Constitution to State Legislatures, Recommends that State Legislatures Call Conventions to Ratify Constitution

## **PRIMARY SOURCE DOCUMENTS**

### **Articles of Confederation, Article XIII, 15 November 1777**

Every state shall abide by the determinations of the united states in congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state.

### **Delaware Act Electing and Empowering Delegates, 3 February 1787**

BE IT THEREFORE ENACTED by the General Assembly of *Delaware*, That *George Read, Gunning Bedford, John Dickinson, Richard Bassett, and Jacob Broom*, Esquires, are hereby appointed Deputies from this State to meet in the Convention of the Deputies of other States, to be held at the City of *Philadelphia* on the Second Day of *May* next. And the said *George Read, Gunning Bedford, John Dickinson, Richard Bassett, and Jacob Broom*, Esquires, or any Three of them, are hereby constituted and appointed Deputies from this State, with Powers to meet such Deputies as may be appointed and authorized by the other States to assemble in the said Convention at the City aforesaid, and to join with them in devising, deliberating on, and discussing, such Alterations and further Provisions, as may be necessary to render the Foederal Constitution adequate to the Exigencies of the Union; and in reporting such Act or Acts for that Purpose to the United States in Congress assembled, as when agreed to by them, and duly confirmed by the several States, may effectually provide for the same: So always and provided, that such Alterations, or further Provisions, or any of them, do not extend to that Part of the Fifth Article of the Confederation of the said States, finally ratified on the first Day of *March*, in the Year One Thousand Seven Hundred and Eighty-one, which declares, that “in determining Questions in the United States in Congress assembled, each State shall have one Vote.

## **Confederation Congress Calls the Constitutional Convention, 21 February 1787**

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.

## **United States Constitution, Article V, 17 September 1787**

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

## **United States Constitution, Article VII, 17 September 1787**

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

## **Constitutional Convention Resolution, 17 September 1787**

RESOLVED, That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled.

## **Confederation Congress Resolution, 28 September 1787**

Resolved unanimously, That the said report with the resolutions and letter accompanying the same be transmitted to the several legislatures in order to be submitted to a convention of delegates chosen in each state by the people thereof in conformity to the resolves of the Convention made and provided in that case.

## THE LESSON PLAN—Process, Process, What’s the Process?

### OBJECTIVES OF THE LESSON

- \* Students will compare the various steps in the process of adopting the Constitution.
- \* Students will consider if past precedents of amending the Constitution are binding.
- \* Students will evaluate the merits of the recommendations of the Constitutional Convention, Article V, and Article VII of the proposed Constitution.

### THE LESSON

1. Divide the class into groups of 3-5 students.
2. Distribute the graphic organizer below to the students.

Document	Process Required to Amend/Ratify a Constitution
Articles of Confederation Article XIII (Amendments)	
Delaware Act Electing and Empowering Delegates (Amendments)	
Confederation Congress Calls the Constitutional Convention (Amendments)	
United States Constitution Article V (Amendments)	
United States Constitution Article VII (Ratify)	
Constitutional Convention Resolution (Ratify)	
Confederation Congress Resolution (Ratify)	

3. Explain to the class that each of these items was a precedent that influenced how Americans thought about the process of creating or amending a constitution.
4. Have students read each document and record the process described in each as to how a Constitution is created or amended.
5. After groups have had time to read, discuss, and record their thoughts on each document, you can have them report their findings to the class.

6. You can conclude the lesson by leading a discussion using the following questions.
- \* Of the seven processes, which would you consider simple processes? Complex?
  - \* Does it matter who is suggesting the process by which a constitution is amended or ratified?
  - \* Is amending a constitution similar or different to ratifying a constitution?
  - \* Should ratifying a constitution be more or less complex than amending a constitution?
  - \* If you had been alive in 1787, what process would you have thought to be the best way to ratify the Constitution?
  - \* Would you suggest alternative ways to amend a constitution? Ratify a constitution?