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csac.history.wisc.edu > Ratification at a Glance > Massachusetts > Massachusetts
Ratification > Significant Events and Individuals in Massachusetts Politics

Introduction to Ratification in Massachusetts

Under the royal charter of 1691, Massachusetts enjoyed considerable control over its government. As in other royal colonies, the governor was appointed by the Crown. A Council of twenty-eight was elected annually by the House of Representatives and the outgoing Council, although each councillor had to be approved by the governor. The Council served as the upper house of the legislature (i.e., the General Court) and as an advisory body to the governor. The governor had an absolute veto over legislation. With the advice and consent of the Council, he appointed all military and judicial officers whose commissions were issued in the name of the Crown. The General Court appointed all other officials. Dual officeholding was rife. The power to tax was controlled by the General Court which used its authority over the governor's salary to excellent political advantage for much of the colonial period. Beginning in 1770, however, the governor received his salary from money raised by Parliament and under the Crown's control.

According to law, each town with forty freeholders was obliged to send one delegate to the House of Representatives. Towns with 120 freeholders could send two, Boston was permitted four. A town that had between 30 and 40 freeholders might send a delegate or not, if it pleased. A town with fewer than 30 freeholders might have a delegate, or join with the next town in sending one. Because towns were required to pay the expenses of their own representatives, many of them did not send delegates, preferring instead to pay a fine levied by the House of Representatives. As the lower house grew in size, Britain prohibited new towns (called districts) from having representation. (In August 1775, however, the General Court passed an act granting the right of representation to every district.)

As in the seventeenth century, the town meeting continued to be the fulcrum of political power where freeholders expressed their concern about public issues and elected numerous town officials and representatives to the legislature and where town leaders assessed taxes and passed regulations affecting everyday life. A county court called the quarter sessions, composed of a county's justices of the peace (sometimes over three dozen) served as a criminal court and heard minor civil cases. The quarter sessions also assessed taxes, licensed tavernkeepers, and laid out roads and bridges. A county court of common pleas composed of four justices heard land title cases and major civil suits.

In the aftermath of the Boston Tea Party (December 1773), Great Britain totally altered government in Massachusetts. The "Intolerable Acts," adopted by Parliament between March and June 1774, closed the port of Boston to most traffic; enlarged the Council, now appointed by the king and council to serve at the pleasure of the king; prohibited towns from meeting without the governor's consent (except for elections); and allowed government officials to move trials for capital offenses to England to avoid hostile local juries. General Thomas Gage, com-

mander in chief of British forces in North America, was appointed governor and was given extensive powers. Gage assumed the governorship in May 1774.

Relations between Massachusetts and Great Britain deteriorated further. After Governor Gage dissolved the General Court scheduled to meet in October 1774, some members of the House of Representatives met with delegates elected by county conventions to form a provincial congress. Between October 1774 and July 1775 three provincial congresses governed Massachusetts. In December 1774 and February 1775, the first and second provincial congresses elected delegates to the First and Second Continental congresses. In May 1775, a month after fighting broke out at Lexington and Concord, the second provincial congress declared Gage unfit to be governor.

On 9 June 1775 the Second Continental Congress recommended that the people of Massachusetts consider the governor and lieutenant governor to be absent. They should elect a house of representatives, which, in turn, should elect a council. Together the house and council were to govern the colony until the Crown appointed a governor who would govern according to the charter of 1691. On 20 June the third provincial congress called for elections to a house of representatives that was to meet on 19 July. These representatives met on the appointed day and elected a council that had both legislative and executive functions.

The Second Continental Congress on 10 and 15 May 1776 requested that the colonies form new governments whose powers should be exerted “under the authority of the people of the colonies.” A year later the Massachusetts General Court voted to draft a constitution to be submitted to the towns for their approval. On 17 June 1777 the Court resolved itself into a constitutional convention. This body adopted a constitution on 28 February 1778, which it submitted to the freemen of the towns for their approval by 15 June. The freemen rejected the constitution by about a five-to-one margin. Among other reasons for rejection, some towns objected to the drafting of the constitution by the legislature, instead of a specially-elected constitutional convention.

The General Court continued to govern after the rejection of the constitution of 1778. Various towns petitioned the legislature to call a constitutional convention, and in February 1779 the Court resolved that town selectmen should call town meetings to determine whether the people wanted a constitution to be written and whether they wanted to authorize the General Court to call a constitutional convention. The towns by a margin of two-to-one favored the resolution. In June 1779 the Court called a convention to draft a constitution that would be submitted to the towns and that would need the approval of two-thirds of the freemen voting to be adopted. The convention would determine if the necessary two-thirds vote had been cast.

The constitutional convention met on 1 September 1779 in Cambridge and elected James Bowdoin president. A committee of thirty was assigned to draft a constitution, but a three-man subcommittee (Bowdoin, John Adams, and Samuel Adams) did most of the work. John Adams provided the basic draft, which was debated and amended by the convention. The proposed constitution, containing a declaration of rights and a frame of government, was submitted by the convention to the towns on 2 March 1780. The convention’s letter transmitting the constitution explained the philosophy of government that drove the drafting of that document: “A Government without Power to exert itself, is at best, but an useless Piece of Machinery. It is probable, that for the want of Energy, it would speedily lose even the Appearance of Government, and

sink into Anarchy. Unless a due Proportion of Weight is given to each of the Powers of Government, there will soon be a Confusion of the whole. An Overbearing of any one of its Parts on the rest, would destroy the Balance and accelerate its Dissolution and Ruin: And, a Power without *any* Restraint is Tyranny. The Powers of Government must then be balanced: To do this accurately requires the highest Skill in political Architecture.”

During the spring the towns met and voted on the constitution, often objecting to individual provisions and proposing various amendments and alterations. On 7 June 1780, the convention reconvened in Boston to consider the alterations proposed by the towns. After struggling with a conglomeration of votes against various provisions, the convention on 15 June declared that the people of Massachusetts had accepted the constitution as proposed on 2 March.

The constitution of 1780 created the General Court composed of the House of Representatives and the Senate, each with the power to check the other. Members of both houses were to be elected annually by the vote of adult males. Property qualifications were required for both voting and holding office. Nine senators were chosen annually by joint ballot of the legislature to sit as the Council to advise the governor. The governor, with a fixed salary, and lieutenant governor were to be elected annually by the people. The governor was commander in chief of the state militia and navy, and he had the power to grant pardons, with advice of the Council, and veto all bills. Vetoes could be overridden by a vote of two-thirds of both houses. The governor, with the advice and consent of the Council, had the power to nominate and appoint all judicial officers, the attorney general, the solicitor general, sheriffs, coroners, and registers of probate. The legislature appointed most civil officers, including the secretary and treasurer, and it could create courts. Justices of the Supreme Judicial Court had “permanent and honorable salaries” established by law (which could be increased). They and most other judicial officers served during good behavior, although they could be removed by the governor with the consent of the Council upon the address of both houses of the legislature. Delegates to the Continental Congress were to be elected annually by joint ballot of the two houses of the legislature.

The Declaration of Rights consisted of thirty articles. The first article provided that “All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.” (Under this article, the state supreme court would in 1783 declare that slavery was unconstitutional in Massachusetts.) Two other articles deserve special mention. Article IV, borrowing from Article II of the Articles of Confederation, established the relationship between Massachusetts and the central government: “The people of this Commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America in Congress assembled.” Article XXX provided for the separation of powers by explicitly stating that the legislative, executive, and judicial departments should only exercise the powers assigned to them and never exercise the powers assigned to the other branches so that Massachusetts would have “a government of laws and not of men.” The Declaration also protected many personal rights.

On 15 November 1777 the Continental Congress adopted the Articles of Confederation. Two days later it approved an accompanying letter addressed to the states explaining the diffi-

culties in drafting the Articles and advocating the necessity of union and the adoption of the Articles. Unanimous adoption by the state legislatures was necessary for ratification of the Articles.

The Massachusetts General Court received an official copy of the Articles of Confederation on 15 December 1777. On the same day, the House of Representatives resolved that, since the Articles were “beyond the usual course of business expected by their constituents at the election of their representatives,” the Articles should be submitted to the towns so that they could “instruct their representatives to act and do as they shall judge meet for the advantage of this and the other United States, relative to this matter.” A month later the House of Representatives ordered its members to solicit the opinions of their towns on the Articles.

The towns proposed various amendments. Some towns suggested that the vote of eleven states be required to pass all measures; that amendments to the Articles be proposed by the states, not by Congress; that the power over war and peace be left to the people, not to Congress; and that taxes be apportioned among the states according to the value and income of personal property as well as real estate.

On 19 February 1778, the General Court appointed a joint committee to draft instructions on the Articles to the state’s delegates in Congress. The legislature adopted the committee’s report on 10 March, instructing the state’s delegates to subscribe to the Articles which were “well calculated to secure the freedom, sovereignty and independence of the United States.” Although the Articles had flaws, “perhaps no plan could have been proposed better adapted to the circumstances of all the states.” The delegates were instructed further to seek three changes if possible “without endangering the Union proposed.” Congress should experiment under Article VIII to determine the best method of collecting taxes and then adopt that method. Instead of nine states necessary to adopt important matters under Article IX, either ten states or two-thirds of the people should be required. The provision basing the state quotas for troops on the number of whites only should be changed to total population. Lastly, the delegates were authorized to propose other alterations or agree to amendments proposed by other states or delegates “provided that such amendments are not materially repugnant to the Articles of Confederation, or the spirit of these Instructions.”

On 23 June 1778 Congress considered and rejected Massachusetts’ proposed amendments, as it would all other amendments recommended by the ratifying states. Two weeks later, on 9 July, the Massachusetts delegation in Congress (John Hancock, Samuel Adams, Elbridge Gerry, Francis Dana, James Lovell, and Samuel Holten) joined seven other state delegations and subscribed the Articles of Confederation. Final ratification of the Articles, however, did not occur until 1 March 1781.

Periodically, calls had been made for a constitutional convention of the states that would provide Congress with additional powers. In early August 1780, while the war effort was at its bleakest, delegates from New Hampshire, Massachusetts, and Connecticut met in Boston to consider matters related to the war and to find means of achieving a good understanding with the French forces in America. After recommending certain measures, the convention resolved “that the Powers of Congress be more clearly ascertained and defined, and that the important national Concerns of the United States be under the Superintendency and Direction of one supreme Head. . . .” The convention also resolved that the three states empower their congressional delegates “to confederate with such of the States as will accede to the Confederation

proposed by Congress, and that they invest their Delegates in Congress with Powers competent for the Government and Direction of all those common and national Affairs which do not, nor can come within the Jurisdiction of the particular States. . . .” Copies of the convention proceedings were sent to the New England States and New York, along with an invitation to attend a convention in Hartford in November 1780.

In November 1780 delegates from the New England States and New York met at Hartford. The convention resolved that the commander in chief “be authorized and Impowered to take such measures as he may deem proper” to require the states to comply with Congress’ requisitions for supplies. It also recommended that the states grant Congress the power to levy duties on imports that would provide Congress with revenue to pay the interest on the public debt.

In a circular letter to the states attending, the convention regretted that the central government did not have the “power of Coertion.” As a remedy, the convention postulated the concept of implied powers. It agreed that Congress’ powers had never been explicitly defined, “but by the necessarily implied compact between the States at the commencement of the War, it may be certainly inferred that Congress was vested with every power essential to the common defense and which had the prosecution of the war, and the establishment of our General Liberties for its immediate object.” The convention was willing to waive this point, but it insisted that the states comply with Congress’ requisitions for supplies.

In a letter to the president of Congress, the convention stated that the commander in chief “ought to have the sole Direction of the military operations, and an individual should have the charge of each Department, who should be responsible. . . .” In particular, the convention wanted a man of ability and integrity “at the head of the Finances.”

James Warren of Massachusetts was appalled by the convention’s recommendations. From his home in Plymouth, Warren wrote Samuel Adams in Congress that “If one of them does not astonish you I have forgot my political catechism.” He could not believe that a convention of New England States, meeting “in the height of our contest for public liberty and security,” could “recommend to their several states to vest the military with civil powers of an extraordinary kind and where their own interest is concerned, no less than a compulsive power over deficient states to oblige them by the point of a bayonet to furnish money and supplies for their own pay and support.”

After the Continental currency depreciated severely, Congress in March 1780 requested that the states pay their quotas of federal expenditures in both specie and state paper money. Massachusetts delegate to Congress Elbridge Gerry believed that Congress assessed the commonwealth at too high a rate, overcharging it by almost twenty percent more men and over \$309,000 in specie. The extra charge for the year was bad enough, but Gerry predicted ominous consequences for Massachusetts because of the “*Precedent* for overrating the Abilities of the Common Wealth, and for loading it in future with insupportable burthens.” Furthermore, Congress had not compensated Massachusetts for the disastrous Penobscot expedition that cost the state dearly in men, ships, and money.

To meet its share of Continental requisitions, Massachusetts taxed polls and property. The General Court levied “beef taxes” in 1780 and 1781 payable in money or meat, a clothing tax in 1781, and two other continental taxes by 1784. These taxes hit the state’s money-poor towns, especially in the west, hard.

To ease its direct financial dependence on the states, Congress on 3 February 1781 requested that the states give it the power to levy a five percent ad valorem tariff, with the revenue earmarked exclusively for the payment of the principal and interest of the wartime debt of the United States. In Massachusetts, opposition arose because this federal impost would weaken the state's impost, would give too much power to Congress, and would result in the appointment of a swarm of federal custom collectors. After considerable pressure from Congress and the recently appointed Superintendent of Finance Robert Morris, Massachusetts adopted the Impost of 1781 on 4 May 1782. The debate over the impost demonstrated that Massachusetts leaders had become less willing to increase the powers of the central government, especially after the theater of war shifted to the South and the British were defeated at Yorktown in October 1781. The act stipulated, however, that no federal regulations in collecting the tariff be "repugnant" to the state's constitution and that the state's ratification would "cease and have no Effect" if the state legislature (with the consent of Congress) could "agree and determine upon any other Method of supplying the Treasury of the United States for the Purpose" of paying the debt.

Congress' financial plight continued as the war ended. Again Superintendent of Finance Robert Morris urged that Congress be given additional powers and financial resources. In July 1782 Massachusetts congressional delegate John Lowell praised Morris' efforts but, because of "the great Powers given him, [warned that he] should be watched." In late January 1783 Morris gave an example of his power and influence. He announced his resignation to take effect at the end of May if Congress did not adopt a plan to pay the public debt. His scheme worked. On 12 February Congress adopted a resolution, stating "that the establishment of permanent and adequate funds on taxes or duties . . . are indispensably necessary towards doing complete justice to the public creditors, for restoring public credit, and for providing for the future exigencies of the war." A special committee of five, chaired by Nathaniel Gorham of Massachusetts, was appointed on 21 February to consider the means of restoring public credit and of obtaining funds for the payment of the debt. The committee made two reports on 6 and 18 March that were vigorously debated until 18 April. The earlier report was submitted to Robert Morris for his opinion, and he espoused the doctrine of implied powers. The states, he declared, were obliged to agree to any federal plan for paying the debt. "*The right of Congress is perfect and the duty to pay absolute.*"

On 18 April 1783 Congress submitted to the states for their adoption a three-part financial program. The program called for a federal impost and an additional \$1.5 million in supplemental funds apportioned among the states, both limited to twenty-five years and earmarked to pay the wartime debt. Neither provision would go into effect until all of the states adopted both. Congress also requested the states to make "liberal cessions" of their western territorial claims. On the same day, Congress also adopted and sent to the states for their ratification an amendment to the Articles of Confederation changing the method of apportioning federal expenses among the states from a system based on the value of land to one based exclusively on population, with three-fifths of the slaves being counted.

Massachusetts delegate to Congress Stephen Higginson explained the three-part financial program as it neared completion. "We are still hammering on a strange, though artful, plan of finance, in which are combined a heterogeneous mixture of imperceptible and visible, constitutional and unconstitutional taxes. It contains the impost, quotas, and cessions of Western lands,

and no part of it is to be binding unless the whole is adopted by all the States. This connection and dependence of one part on another is designed to produce the adoption of the whole. The cessions are to serve as sweeteners to those who oppose the impost; the impost is intended to make the quotas more palatable to some States; and the receiving it in whole is made necessary to secure the adoption of the whole, by working on the fears of those States who wish to reject a part of it only." Massachusetts adopted the Impost of 1783 on 20 October 1783. In November 1784 it ceded its western lands to Congress. The population amendment was approved in July 1785, but the supplemental funds were not voted until July 1786.

In the fall of 1783 Congress turned to the question of commerce. In May and June 1783 two British orders-in-council restricted direct trade with the United States. On 2 July 1783 another order-in-council closed the British West Indies to American vessels, although certain enumerated goods and produce could be transported in British vessels. When news of these restrictions reached America, merchants in particular and the people in general demanded retaliation. On 30 April 1784 Congress proposed that the states grant it the power for fifteen years to prohibit the importation or exportation of any goods in ships of nations that did not have commercial treaties with the United States. Congress was also empowered to prohibit individuals from nations without commercial treaties with the United States from importing the goods and produce of another country. Massachusetts adopted this grant of temporary power on 1 July 1784.

America's commercial situation deteriorated in late 1784 and early 1785, and many people realized that, even if all the states adopted the temporary grant of commercial power, it would not be enough. Congress needed a permanent power over commerce. Consequently, on 28 March 1785 Congress considered an amendment to the Articles of Confederation authorizing it to regulate both foreign and domestic commerce and allowing it to lay imposts and duties on imports and exports. Congress debated the new powers again on 13 and 14 July, but there was so much opposition that the amendment was never sent to the states for adoption.

Massachusetts also took action on the matter of commerce. In April 1785 Boston merchants and tradesmen agreed to boycott British goods sold by resident British factors. Some merchants petitioned Congress, "requesting the immediate interposition of those powers for its relief, with which Congress may be now invested." Congress tabled the petition. In early May the Boston town meeting declared that Congress' powers had to be increased; it wanted the state legislature to ask the governor to correspond with the other state executives. Soon after, in his inaugural address, Governor James Bowdoin advocated that Congress be given more powers "to preserve the union" and to manage its concerns. Bowdoin told the legislature that the matter of commerce merited its "particular attention." If it was thought that Congress needed more power, the legislature should "take measures" to call a convention "to settle and define" these powers.

In late June 1785 the Massachusetts legislature passed a navigation act forbidding exports from Massachusetts ports in British vessels and establishing discriminatory duties on foreign vessels and imports. Massachusetts viewed this act as a "considerable Sacrifice" passed "for the common good." Other states were expected to follow Massachusetts' example and enact discriminatory measures that would remain in place until Congress was given "competent power" to regulate the trade of the United States. Then on 1 July the legislature adopted three resolutions. First, the powers of Congress were declared to be inadequate "to the great purposes they were originally designed to effect." Second, it was "highly expedient, if not indispensibly necessary"

that a convention of the states be called as soon as possible “for the sole purpose of revising the confederation and reporting, to Congress how far it may be necessary to alter or enlarge the same.” Third, Congress was asked to call such a convention and to receive its recommendations. Bowdoin sent copies of these resolutions to the Massachusetts delegates in Congress and to the other state executives.

According to Nathan Dane, a member of the state House of Representatives, the legislature passed these measures because the “federal compact is defective.” The chief defects and difficulties were “the want of a general and uniform power lodged somewhere to levy and collect monies sufficient to discharge the demands against the United States, and to regulate trade and commerce.” “Upon the whole,” Dane continued, “the measure proposed to Congress and the laws we have lately passed respecting it were, I fear, rather the effects of the impulse of the times of partial interests than the general purpose of the people; because but a few appear to have any system or idea to be adopted by the proposed Convention, or to be pursued by this Government.”

On 18 August the Massachusetts delegates to Congress (Elbridge Gerry, Rufus King, and Samuel Holten) informed Governor Bowdoin that they did not present the resolutions to Congress because they had “no cause to expect an adoption of the plan proposed by the Legislature. . . .” On 3 September the delegates declared that even admitting that Congress required additional commercial powers, these powers should be temporary only. If the powers proved “beneficial,” they could then be made permanent. The delegates were opposed to frequent revisions of the Articles of Confederation and the state constitutions because they were “the great Bulwarks of Liberty.” If they “are subject, on trivial or even important Occasions, to be revised & re-revised, altered & re-altered, they must cease to be considered as effectual & sacred Barriers. . . .”

The delegates followed with a classic statement of the position of the opponents of a strong central government: “the great object of the Revolution, was the Establishment of good Government, & each of the States, in forming their own, as well as the fœderal Constitution, have adopted republican principles—notwithstanding this, plans have been artfully laid, & vigorously pursued, which had they been successful, We think, would inevitably have changed our republican Governments, into baleful Aristocracies. Those plans are frustrated, but the same Spirit remains in their abettors. . . .” The delegates believed that the calling of a convention “would produce thro out the Union, an Exertion of the Friends of an Aristocracy, to send Members who would promote a Change of Government. . . .” The new government formed would not promote the happiness of the people, but would “afford lucrative Employments, civil & military.” The delegates preferred to continue with the present inconveniences than risk the “general Dissentions & Animosities, which may approach to Anarchy & prepare the Way to a ruinous System of Government.”

Two weeks later, Rufus King predicted that the end result of any revision of the confederation would “certainly be a confederation less republican than the present one.” Samuel Adams agreed, telling Elbridge Gerry that, if there were a general revision of the Articles, “the artifices of a few designing men” would destroy the liberry of the people. But Adams also believed that Congress needed the power over commerce—a power that would benefit Massachusetts. Gerry responded “happy to find that We unite in Sentiment in the Necessiry of vesting Congress with more

commercial powers: & flatter myself We shall not differ in making them in the first Instance temporary, & in opposing a general Revision of the Confederation.”

Governor Bowdoin replied on 24 October to the delegates’ letter of 3 September, that if such “discordant principles” existed which made it dangerous to give Congress more power, “the union cannot long subsist.” On 2 November the delegates rejoined that the best way to help Congress was to grant it a temporary power and that if a convention was necessary, it must be “confined to the revision of such parts of the Confederation as are supposed defective, & not entrusted with a general Revision of the Articles, & a Right to report a plan of fœderal Government, essentially different from the republican Form now administered.” If temporary grants of power to Congress were not adopted and if the Southern States failed to pass anti-British navigation acts, Rufus King believed that “a sub confederation remedial of all their present Embarrassments” must be formed. This sub-confederation of Northern States within the Confederation, which would have the approbation of Congress, would “raise them to a degree of power and Opulence which would surprize and astonish.” King, however, thought that American patriotism would “again be roused” and a comprehensive American system of navigation would be enacted.

On 21 January 1786 Virginia called for the states to appoint commissioners to meet in convention “to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony.” On 20 March Governor Bowdoin turned this invitation over to the General Court, and four days later the Court appointed merchants Caleb Davis, Benjamin Goodhue, Tristram Dalton, and John Coffin Jones to be delegates, together with Massachusetts’ agents dealing with New York over their disputed land claims (John Lowell, Theophilus Parsons, and James Sullivan).

Massachusetts political leaders were ambivalent about the chances of success for the convention, which was scheduled to meet in Annapolis in September 1786. Delegate to Congress Rufus King vacillated. In May he felt optimistic because of the quality of the delegates appointed. “If any thing can be concluded from the general Reputation of the Delegates already appointed, there is reason to hope that wisdom will govern their Deliberations, and that their Result will produce an union of Opinions on the subject of Commercial Regulations through all the States.” But a month later, he felt that the forces in the Virginia legislature that originated the idea of the convention opposed national commercial policies in favor of “the particular Regulations of individual states.”

For well over a year, Northerners had generally wanted to strengthen Congress’ commercial powers, but they felt that Southerners opposed such measures. According to Rufus King, one-third of the states opposed any national commercial treaty or commercial regulatory power for Congress. Southerners believed that “their countries yielded a plentiful and valueable export in their Indigo, Rice, Wheat, & Tobacco, that the freer the Trade the more valueable to the states possessing these Staples—that the more numerous the nations are who come to their countries to buy their Produce, the greater the competition among the purchasers, and consequently the higher the price at which the produce will sell; whilst the quantity of Goods in different hands suitable for their market may be purchased at a lower price than if the laws of trade restricted any power or nation in their intercourse . . . the eastern states will consent to vest powers in Congress competent to a regulation of foreign commerce, but the Southern States will never consent to regulations.”

Others also felt that the convention was doomed to fail. Theodore Sedgwick, another Massachusetts delegate in Congress, had reason to believe that the convention had been called by Virginia “with an intention of defeating the enlargement of the powers of Congress.” If such were the case, and of this Sedgwick had “the most decisive evidence,” New England and the Middle States ought to create a separate confederacy without the Southern States, “for if we do not controul events we shall be miserably controuled by them. No other substitute can be devised than that of contracting the limits of the confederacy to such as are natural and reasonable, and within those limits instead of a nominal to institute a real, and an efficient government.” Other opponents of the meeting “sounded the alarm that the liberties of the People were endangered by the plan of delegating additional powers to congress.” King’s early optimism wavered as he worried that the proposed convention “will go but a little way in Effecting those measures Essentially necessary for the prosperity and safety of the states.”

In early June 1786 Davis, Goodhue, Dalton, and Jones resigned as commissioners to the Annapolis Convention. On the 17th the legislature appointed four more commissioners (Francis Dana, Elbridge Gerry, Stephen Higginson, and George Cabot). Gerry declined a week later due to “private concerns.” In July the legislature instructed the commissioners to propose and attempt to carry “into effect a general regulation throughout the United States” that would require one-quarter (or some other percentage) of American exports should be paid for in “specie, in order to increase a medium of commerce, so much wanted throughout the union.” The legislature also authorized the governor and Council to fill any vacancies that might take place among the commissioners to the Annapolis Convention. (The legislature adjourned on 8 July.) By early August the three remaining commissioners appointed on 17 June had also resigned, as well as land agents Lowell, Parsons, and Sullivan. On 8 August the governor and Council requested that the commissioners living in or near Boston reconsider their resignations. Three days later the governor and Council appointed Lieutenant Governor Thomas Cushing a commissioner and a warrant was drawn on the treasury for his expenses. A warrant was also drawn for Francis Dana of Cambridge who had changed his mind and decided to go to Annapolis. When the Council adjourned on 24 August, it believed that Higginson and Gerry had agreed to join Cushing and Dana. But it authorized the governor to appoint another delegate if the need should arise. Accordingly, sometime during the last week of August, Governor Bowdoin appointed Samuel Breck (a Boston delegate to the House of Representatives) as a commissioner.

Cushing, Dana, and Breck left Massachusetts for the Annapolis Convention on Saturday, 2 September. They reached New York City on Friday evening, the 8th. After resting their horses and conferring with Nathaniel Gorham, Massachusetts’ only delegate to Congress then in New York, the Massachusetts commissioners resumed their journey on 11 September and arrived in Philadelphia on 13 September. That evening they conferred with Massachusetts congressional delegate Rufus King. Two days later, while within thirty miles of Rock Hall, Maryland, where the commissioners expected to cross Chesapeake Bay to Annapolis, they met the New York and New Jersey commissioners on their way home from the convention. Whereupon, the Massachusetts commissioners turned back.

The convention, with delegates from only five states present, had met on 11 September and adjourned on the 14th after recommending that a general convention be held in Philadelphia on the second Monday in May 1787 to revise the Articles of Confederation. Congress received

the convention's report by 20 September, and submitted it to a grand committee on 11 October. Massachusetts delegate Rufus King thought the convention had "terminated without credit, or prospect of having done much good" and that Congress would "not interfere in such manner as to patronize the project." Congress, he told John Adams, "can do all that a convention can, and certainly with more safety to original principles." Faced with such opposition to the convention and poor attendance, Congress took no further action on the report during the fall. Beginning in November various states, however, responded by electing delegates to the constitutional convention proposed by the Annapolis Convention.

On 27 September the *Massachusetts Centinel* printed an extract of a letter from one of the Massachusetts delegates who had met a New Jersey delegate. The letter explained why the Annapolis Convention had failed and what still had to be done to increase the powers of the central government. The commissions of the Annapolis delegates "were inadequate to the great national objects in view;—that the subject merited powers more extensive;—and that it is necessary a new Convention should be held . . . whose business it should be, fully to investigate the powers which Congress now have, and to propose such additional ones, as well commercial as others, as would clearly establish that body, on a footing the most permanent;—that when these great national points were settled, they should be fairly stated to Congress, and if approved of by them, be recommended to the several States, for their ratification, which being obtained, should be binding on all."

Governor James Bowdoin laid the report of the Annapolis Convention and other papers before the General Court on 2 October. Rufus King and Nathan Dane, Massachusetts delegates to Congress, addressed the House of Representatives on 11 October and 9 November, respectively. King told the House that "The Confederation was the act of the people. No part could be altered but by consent of Congress and confirmation of the several Legislatures. Congress therefore ought to make the examination first, because if it was done by a convention, no Legislature could have a right to confirm it. . . . Besides, if Congress should not agree upon a report of a convention, the most fatal consequences might follow. Congress therefore were the proper body to propose alterations." Dane suspected that the delegates to the Annapolis Convention wanted to discard the federal system and replace it with another. The legislature did not act on the report of the Annapolis Convention during the fall session.

Perhaps the most dramatic event that changed the public perception in Massachusetts in favor of a constitutional convention and the need for a stronger central government was the agrarian unrest in the state beginning in summer and fall of 1786 and extending into early 1787. Known as Shays's Rebellion, this agrarian discontent was a response to the state government's program of rigorous taxation and debt collection implemented during and after the war. In the spring of 1786 towns throughout the state petitioned for relief, but the legislature made only minor and temporary concessions and "did not provide for the public Tranquility during their recess." Consequently, county conventions met in July and August in the eastern counties of Bristol and Middlesex and in the western counties of Worcester, Hampshire, and Berkshire. The conventions recommended several forms of debtor relief laws and a new state constitution. At the same time, the towns in the three counties in Maine peacefully petitioned to be separated from the state and allowed to create their own government.

In late August and September farmers joined together into armed groups called “regulators” and closed the courts in five counties. Despite their insistence that they supported reform and not rebellion, the regulators were denounced as rebels who threatened the fabric of society and the principles of the Revolution. Consequently, in January 1787 the state government moved to crush the rebellion. It mobilized the militia in the east under the command of General Benjamin Lincoln and in the west under General William Shepard. Both men advanced on Springfield (the site of a federal arsenal), where large concentrations of “regulators” were stationed under the leadership of Daniel Shays, Luke Day, Eli Parsons, and Adam Wheeler. In late January Shepard’s forces killed several rebels near Springfield. Lincoln joined Shepard and together they pursued and routed the insurgents. A number of insurgent leaders and their followers escaped across the state border. As late as July 1787, small groups of fugitive “regulators” crossed the border and raided in Massachusetts. Although never a major threat, the specter of Shays was kept before the public, and in May and June newspapers were filled with rumors that Shays and his men were planning “to make incursions into several parts of this state [Massachusetts], and to kill, plunder, burn, and destroy whatever comes in their way.”

Shays’s Rebellion had an enormous impact on the attitudes of many men in Massachusetts and throughout America. Men such as Rufus King and Elbridge Gerry who had previously opposed the calling of a constitutional convention, now advocated one. King told Gerry that, although he still questioned “the legality of the measure, I think we ought not to oppose, but to coincide with this project. . . . Events are hurrying to a crisis; prudent and sagacious men should be ready to seize the most favourable circumstances to establish a more permanent and vigorous government.” Other men, such as Confederation Secretary at War Henry Knox, a native of Massachusetts who had long advocated the strengthening of Congress, alarmingly spread the news about the rebellion. On 23 October 1786 Knox, who had just visited Massachusetts on the order of Congress to report on the rebellion, wrote George Washington that taxes were not the true cause of the rebellion. Knox explained that the “creed” of the insurgents was that the property of the United States “ought to be the common property of all” and that the insurgents were “determined to annihilate all debts public and private and have agrarian Laws which are easily effected by the means of unfunded paper money which shall be a tender in all cases whatever.” Knox envisaged “a formidable rebellion against reason, the principles of all government, and the very name of liberty.” He suggested that the government “be braced, changed, or altered to secure our lives and property.”

Shays’s Rebellion and other acts of violence throughout America shocked many members of Congress. Their dismay was heightened by state legislatures—particularly Rhode Island’s—which enacted debtor relief laws or were excessively lenient toward lawbreakers. Consequently, they became more convinced of the need to strengthen the central government and to curtail the power of the state legislatures, whose excesses had endangered life, liberty, and property.

On 12 February 1787 Congress convened for the new federal year. A week later a grand committee approved the Annapolis Convention report by a one-vote margin and recommended that the states send delegates to the proposed convention to devise provisions to render the federal government “adequate to the exigencies of the Union.” On 21 February Congress read the report of the grand committee, but before any action was taken on it, the New York delegates to Congress moved to postpone the report so that Congress might consider a motion based upon instructions

they had just received from the New York legislature. Adopted on 20 February, the instructions directed the delegates to propose that Congress call a convention “for the purpose of revising the Articles of Confederation . . . to render them adequate to the preservation and support of the Union.” The convention was required to report any alterations and amendments to Congress and the states. The New York instructions and motion ignored the Annapolis Convention’s report and instead proposed that Congress call the convention at an unspecified time and place. They also disregarded the actions of the several states that had already elected delegates. Some congressmen questioned the sincerity of New York’s proposal, coming, as it did, on the heels of the legislature’s defeat of the Impost of 1783 on 15 February. In essentially disallowing the appointments of delegates already made, New York’s recommendation might have frustrated all efforts to get a convention called. As a result, New York’s motion was defeated.

Congress again postponed the consideration of the report of the grand committee and agreed to consider a motion by the Massachusetts delegates Rufus King and Nathan Dane, recommending that Congress call a convention “for the sole and express purpose of revising the Articles of Confederation,” any “alterations and provisions” to go into effect when approved by Congress and the states. The motion, moreover, acknowledged the Annapolis Convention’s report by tacitly recognizing that some delegates had already been appointed and by specifying that these delegates should meet, with delegates to be appointed, at Philadelphia on the second Monday in May—the same date and place assigned by the Annapolis Convention’s report.

Unlike the Annapolis Convention’s report, the Massachusetts motion sharply and specifically limited the purpose of the proposed convention. The motion’s preamble based the call for a convention on the fact that the Articles of Confederation contained a provision for altering them, that experience had revealed “defects” in the Confederation, that several states, particularly New York, had recommended a convention, and that a convention was “the most probable mean of establishing in these states a firm national government.” The Massachusetts motion passed by a vote of eight states to one on 21 February. On the same day, Charles Thomson, secretary of Congress, transmitted the resolution to the state executives without comment.

On 31 January 1787, the Massachusetts General Court reconvened, and ten days later both houses reconstituted the joint committee to consider the report of the Annapolis Convention. On 19 February, Governor Bowdoin delivered to the legislature the Virginia and North Carolina acts authorizing the appointment of delegates to a constitutional convention, both of which included political statements about the crisis facing America. Bowdoin urged that “The Subject is important, and merits an attentive consideration.”

On 21 February the joint committee reported to the Senate that five delegates be appointed to the constitutional convention to meet in Philadelphia. The delegates were authorized “to consider the trade & commerce of the United States” as well as alterations in the Articles of Confederation. “Such alterations & additions as may be made, to be however consistent with the true republican spirit & genius of the present articles of Confederation.” The delegates were instructed not to alter provisions in the fifth article of the Articles of Confederation providing that congressional delegates should be elected annually, should be subject to recall by their state, should serve no more than three years out of any six, and should be prohibited from dual office-holding. The report of the convention was to be submitted to Congress and, if approved, Congress should submit the report or any part of it to the state legislatures for their approval. If the legis-

latures accepted the report, it would become part of the Articles of Confederation. Perhaps remembering the difficulty in appointing delegates to the Annapolis Convention, the resolution allowed the governor with the advice of the council to fill vacancies in the delegation. The Senate approved the resolution on 21 February, and the House concurred the next day.

On the same day the Senate proposed and the House agreed that the choice of delegates might originate in either house. On 23 February the House of Representatives reconsidered the mode of election and voted to have a joint ballot by both houses sitting in one room. The Senate rejected this mode and proposed a joint committee to work out a new mode. The Senate appointed members to the committee. The House agreed to this committee and appointed members. On 1 March the joint committee reported to the House proposing that the delegates to the convention be elected by each house separately at the same time, and that those with a majority in both houses were to be declared elected. The House accepted this report the same day. On 2 March the Senate concurred. On that day, after the governor delivered the resolution of Congress of 21 February calling the convention, the House proposed and the Senate agreed to elect delegates at 11:00 A.M. on 3 March. When the votes of the two houses were compared, it was discovered that only Francis Dana had been chosen by both. Another ballot was taken and the two houses agreed to add Nathaniel Gorham, Elbridge Gerry, Rufus King, and Caleb Strong to the delegation.

On 7 March the House voted to repeal the resolve of 22 February and proposed a substitute. This new resolution based the election of Massachusetts delegates on Congress' 21 February resolution, eliminated the instructions to the delegates, and omitted the stipulation concerning approval by Congress. On 9 March the Senate attempted to restore the instructions, but the House rejected the Senate's proposal on the 10th. The Senate then acquiesced in the House's version of the resolution appointing convention delegates. Governor Bowdoin incorporated this new version of the resolution into the commissions he issued to each delegate on 9 April.

Massachusetts was the seventh state to appoint delegates; five others followed within a few months. Several days after the Constitutional Convention attained a quorum, Henry Knox wrote Mercy Warren that his "only hope of human assistance is founded on the convention. Should they possess the hardihood to be unpopular, and propose an efficient national government, free from the entanglements of the present defective state systems we may yet be a happy and great nation. . . . If the convention should propose to erect a temple to liberty on the solid, and durable foundation of Law and Justice, all men of principle in the first instance will embrace the proposal. Demagogues and vicious characters will oppose for a while—But reason will at length triumph. But should the convention be desirous of acquiring present popularity; Should they possess local and not general views; Should they propose a patch work to the present wretchedly defective thing called the confederation, look out ye patriots, Supplicate Heaven! for you will have need of its protection!"

The Massachusetts delegation of five to the Constitutional Convention was typical of the other delegations. Gorham, at 49, was the oldest; King, at 32, was the youngest. The other three were 42, 43, and 44. Three of the delegates were lawyers, two were merchants. Several of the most prominent political figures in Massachusetts were not chosen, namely, John Adams, the U.S. minister in Great Britain, Confederation Secretary at War Henry Knox, William Cushing, Chief Justice of the Supreme Judicial Court, Governor James Bowdoin, John Hancock (soon to

be elected governor), Samuel Adams (soon to be elected President of the state Senate), and James Warren (soon to be elected Speaker of the state House of Representatives). Except for Strong, all the delegates had been members of Congress. Gerry had served the longest, while Gorham was president in 1786. Strong had declined an appointment to Congress in 1780. Gerry signed the Declaration of Independence, while he and Dana subscribed the Articles of Confederation. Except for Gorham, the delegates were graduates of Harvard College; save for Gerry, they became members of the state ratifying convention.

Francis Dana did not attend the Constitutional Convention because of ill health. The others arrived in the Convention in late May. Caleb Strong left before 27 August due to an illness in his family. Gerry, Gorham, and King remained until the adjournment. The delegates came to the Constitutional Convention united in their support of a stronger central government and for limitations on the powers of the states. They firmly believed that a new federal system was necessary to protect Americans from foreign invasion and domestic unrest. Until 20 June, Nathaniel Gorham did not participate in the debates because he served as chairman of the committee of the whole. Gerry was the most frequent Massachusetts speaker, followed by King and Gorham. Strong spoke infrequently. On 17 September Gorham and King signed the Constitution, Gerry did not.

Elbridge Gerry came to the Convention troubled. Shays's Rebellion and the democratic excesses in Rhode Island had shaken his faith in the republican ideology that had shaped his long public career. In his first speech delivered on 30 May, he objected to the resolution to abandon the federal government in favor of a national government. The delegates ought not, said Gerry, make such a distinction, "for if we do, it is questionable not only whether this convention can propose an government totally different or whether Congress itself would have a right to pass such a resolution." The next day, he admitted that he had "been too republican heretofore: he was still however republican, but had been taught by experience the danger of the levelling spirit." "The evils we experience," he said, "flow from the excess of democracy." The people, Gerry asserted, did not lack virtue, although they had been duped by "pretended patriots."

Gerry believed that some power had to be taken from the states and given to the central government. Such a step would not be easy because "The States & the advocates for them were intoxicated with the idea of their *sovereignty*." According to Gerry, the Convention should propose changes that the people would be willing to adopt. He still felt that "their good sense will ever have its weight." Something positive must be proposed or the Convention would "disappoint not only America, but the whole world." "Unless a system of Government is adopted by *Compact*," Gerry feared that force would "plant the Standard: for such an anarchy as now exists cannot last long. Gentlemen seem to be impressed with the necessity of establishing some efficient system, & I hope it will secure us against domestic as well as Foreign Invasion." If the Convention failed, Gerry saw "war and confusion" on the horizon because "the old confederation would be at an end."

Until mid-August, Gerry supported and, in fact, proposed many of the provisions that eventually became part of the Constitution. During the last month of the Convention, however, most of his proposals were rejected. Gerry favored a single executive to be advised by a privy council. He strongly opposed both the popular and congressional election of the President, stating that

the latter was “radically and incurably wrong.” At first Gerry preferred that the President be elected by the state governors but later supported his election by the state legislatures through special electors. In both cases, he wanted the votes of the states for the President to be weighted in favor of the more populous states. To protect his authority, the President should have a conditional veto that could be overridden by a two-thirds vote of both houses of Congress. Gerry proposed that the President have a long term, suggesting ten, fifteen, even twenty years, but with no re-eligibility for a second term. The President should also be subject to impeachment and should not have the power to nominate judges. Gerry objected to the vice president sitting as president of the Senate, and, in fact, he opposed the creation of the office of vice president.

Gerry advocated that the people annually nominate and the state legislatures elect members of the House of Representatives. The Senate should be elected by some other method that would “secure more effectually a just preference of merit.” The election of Senators by state legislatures for terms of four or five years seemed appropriate. “A longer term would defeat itself. It never would be adopted by the people.” The size of both houses should be large to guarantee an adequate representation, and only native-born citizens should be eligible for the House of Representatives. Rotation in office should be required, while voting in both houses should be per capita, not by states. Members of Congress should be ineligible for other offices, and Congress should not have the power to determine where federal elections were to be held. Money bills should originate in the House of Representatives, whose complete journals should be published regularly. Exports should not be taxed. Gerry took issue with Congress’ power over the state militias, a federal standing army in peacetime, the two-year appropriations for the military, federal intervention in rebellions without the application for assistance by the state legislatures, and the power to pass laws deemed necessary and proper.

Gerry favored the concept of judicial review but took exception to the requirement that federal and state officeholders take oaths to support the Constitution. He rejected the division of the large states into small states and proposed (and King seconded) a provision guaranteeing that new states would not have more votes than the original states in Congress. He opposed the three-fifths clause and the sanctioning of the foreign slave trade by a prohibition on Congress from interfering with it. Gerry wanted to guarantee the financial obligations of the Confederation, but he disapproved of the federal assumption of state debts. He supported a provision for amending the Constitution, objected to the use of state conventions to ratify the Constitution, and wanted to restore the Confederation Congress’ role in approving the Constitution. The amending provisions of the Articles of Confederation should not be abandoned. Gerry proposed that Congress be prohibited from passing bills of attainder and ex post facto laws and insisted that the liberty of the press should “be inviolably observed.” On 12 September he moved for the appointment of a committee to prepare a bill of rights, a motion that was defeated 10 states to none. Three days later Gerry outlined his objections to the Constitution, and on the 17th he refused to sign that document.

King agreed with Gerry that the Convention had to address the issue of “the phantom of *State* sovereignty” and strongly opposed the equality of the states in the Senate. He believed that the states should be preserved “in a subordinate degree.” King also worried “that an extreme caution in favor of liberty might enervate the Government” that the Convention was forming. King seconded Gerry’s motion providing for a presidential veto with a congressional override.

In many areas King and Gorham differed from Gerry. King advocated that electors chosen by the people should elect the President, who should be eligible for re-election. He favored triennial elections for the House of Representatives. King also wanted Congress to have the power to regulate federal elections. He thought that the central government should assume the public debt of the states. King did not support the three-fifths clause in principle but acquiesced in it. He supported duties on exports, and objected to the continuance of the foreign slave trade, especially with duty-free importations. King strongly advocated the ratification of the new plan of government by only nine states in specially called conventions. He did not favor congressional approbation of the new Constitution.

Gorham spoke less frequently than either Gerry or King. He favored union, a strengthened central government, and a distinction between the large and small states. This distinction would gradually disappear, Gorham suggested, as large states continually divided until all of the states attained a common small size. According to Gorham, "The strength of the general Govt. will lie not in the largeness, but in the smallness of the States." Gerry adamantly opposed the reduction of all states to a small size. Gorham and King opposed a jury trial in civil cases, while Gerry supported it.

Gorham supported a six-year term for Senators, with one-third being elected every two years. He wanted the President, with the advice and consent of the Senate, to appoint judges. Congress should have the power to create inferior courts, to regulate federal elections, and to guarantee a republican form of government in each state and suppress rebellions in them. Gorham objected to judicial participation in the veto power, the origination of money bills in the Senate, a provision for trial by jury in civil cases, and the ratification of the Constitution by state legislatures, especially if unanimity were required. On the last day of the Convention, Gorham proposed (and the Convention agreed) that the ratio of representation in the House of Representatives be increased from not more than 1:40,000 to not more than 1:30,000.

Although Gerry, Gorham, and King went into the Constitutional Convention supporting the creation of a strong central government, they left the Convention divided. King and Gorham returned to Massachusetts as staunch advocates of the new form of government. Gerry believed that the delegates went too far in empowering the central government. Refusing to sign the Constitution, Gerry left Philadelphia worried that Massachusetts and the rest of the country would be torn apart by civil strife.

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