

Introduction to the Actions of the States in Calling for a Convention

Members of Congress agreed early in 1786 that the central government needed more power, but the question, as James Monroe explained to James Madison, “is whether it will be better to correct the vices of the Confederation by recommendation gradually as it moves along, or by a Convention.”

By March 1786 some members of Congress were ready to propose a “general convention.” Charles Pinckney told Congress in May that the federal government would fall unless Congress acquired more power and that the states must be told that it was necessary to call a convention for the purpose, or that they must grant the power to Congress. James Monroe spoke for those opposed to a convention when he replied that Congress had the right to compel the states to comply when it acted according to the powers given it by the Articles of Confederation and that therefore “he saw no occasion of a convention.”

The outcome of the debate was that Congress decided to draft amendments to the Articles of Confederation rather than to call a convention. Shortly thereafter, the delegates who had met at Annapolis to consider a grant of commercial power to Congress called upon the states to send delegates to a convention in May 1787 to consider measures “to render the constitution of the Foederal Government adequate to the exigencies of the Union; and to report such an Act for that purpose to the United States in Congress Assembled, as when agreed to, by them, and afterwards confirmed by the Legislatures of every State will effectually provide for the same.”

The report was laid before Congress in October, but the Massachusetts and certain other delegates blocked congressional approval. They argued that the Articles of Confederation provided that amendments should originate in Congress and be approved by the states, and that it would derogate from the dignity and weight of Congress “to take a secondary position in the business.”

The question of the legality of a convention also concerned men who favored more power for Congress. In January 1787 Rufus King reported that John Jay and others were opposed to a convention “not alone because it is unauthorized, but from an opinion that the result will prove inefficacious.” Jay, who ardently supported the creation of a powerful central government, explained his doubts to George Washington in a letter of 7 January. “To me the policy of *such* a convention appears questionable; their authority is to be derived from acts of state legislatures. Are the state legislatures authorized, either by themselves or others, to alter constitutions? I think not....” Jay asked if it would not be better for Congress to declare the present government inadequate and suggest that the people in each state elect conventions for the sole and express purpose of appointing delegates to a general convention for the purpose of amending the Articles of Confederation. He declared that no alterations in the government should be made, or would easily take place, “unless deducible from the only source of just authority—*the People.*”

Washington replied that he favored the proposed convention, although he said that “in strict propriety a convention so holden may not be legal....” He thought that Congress might “give it a coloring by recommendation, which would fit it more to the taste” but that “however constitutionally it might be done,” it would not be expedient “for delicacy on the one hand, and jealousy on the other, would produce a mere nihil.”

On 23 November the Virginia legislature adopted an act authorizing the appointment of delegates to a convention. The 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, was circulated throughout the United States by Governor Edmund Randolph. 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 in electing and empowering its delegates on 30 December. North Carolina elected and empowered 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 of 17 January 1787 electing delegates. The House used the language of the Annapolis Convention, but the Senate offered an amendment which the House accepted: the New Hampshire delegates were to attend only if Congress signified that it approved the convention “as advantageous to the Union, and not an infringement of the powers granted to Congress by the Confederation.”

New York and Massachusetts took the lead in limiting the powers of the proposed convention. The New York legislature instructed its delegates in Congress to move that Congress call a convention, a motion that ignored the call from Annapolis. The delegates did so on 21 February. The next day the Massachusetts legislature adopted resolutions authorizing the election of delegates and defining their power. The delegates were instructed 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 which, 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.

Congress’ call of a convention “for the sole and express purpose of revising the Articles of Confederation” was followed by the election of delegates by Massachusetts, New York, South Carolina, Connecticut, Maryland, and a second election by New Hampshire. After electing delegates on 3 March, the Massachusetts legislature repealed its instructions of 22 February and replaced them with new instructions based solely upon the congressional resolution of 21 February. The New York legislature also agreed that its delegates would attend the Convention “for the sole and express purpose of revising the Articles of Confederation,” and so did

Connecticut. The South Carolina 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.” The minority of the legislature scorned the interpretation and agreed that the power to elect delegates lay with the legislature.

The opposing positions concerning the constitutionality and legality of the Constitutional Convention set forth in debates before the Convention met; in the instructions to the delegates elected; and in the debates in the Convention, in Congress, and in the state conventions which followed have been reflected in studies of the period from time to time since then.

Upon their arrival in Philadelphia, the delegates presented their credentials, but Secretary William Jackson did not record them in the Convention Journals, and the originals have disappeared. Before their disappearance, however, Benjamin Bankson, a clerk of Congress, recorded them in a manuscript volume labelled “Ratifications of the Constitution” (RCC, DNA). Bankson’s “Journal” has been used as the standard source for the instructions of the delegates ever since.

The Journal is a hodgepodge of acts, resolutions, commissions, and legislative proceedings, with much duplication. Furthermore, some of the documents Bankson transcribed were copies or copies of copies. Moreover, the authorization acts of North Carolina, South Carolina, and Massachusetts, as well as Rhode Island’s reasons for not sending delegates are not included.

It seems fitting, therefore, to transcribe the documents below from the contemporary session laws and legislative journals of the states rather than to provide yet another copy of material in Bankson’s Journal. The documents below consist of legislative acts and resolutions authorizing the election of delegates and acts appointing delegates if they are not named in the authorization acts. The states have been arranged in chronological order according to the dates on which the delegates were elected.

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).

Following the documents for the appointment of delegates is a list of the fifty-five men who attended the Convention.

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