

# Lessons on the American Founding: The Creation and Ratification of the American Constitution

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# INTRODUCTION

## The Importance of Using Primary Sources in the Social Studies Classroom

Over the years many publications have appeared to assist teachers seeking to use primary source materials in their classrooms. Most notably, a publication in 2003 done by The National Archives and Records Administration (NARA) was *Our Documents: 100 Milestone Documents from the National Archives*. When explaining the rationale for each selection, it was suggested that each document had “helped shape the national character, and they reflect our diversity, our unity, and our commitment as a nation to continue our work toward forming a more perfect union.” As with any such effort, there was broad consensus regarding the selection as well as some debate over documents not selected.

Few teachers would suggest that the efforts of NARA were inconsequential or irrelevant. Americans have always been committed to the written word. Public conversation about the “canon of American identity” has always been, and will continue to be an important component of this debate. But, ironically, many teachers of American history still face questions from the public and educators as to the value of using primary sources. Many of these are often couched within a misconception as to what the task is when a student studies history. If the task is simple memorization and regurgitation of facts, primary source materials would not figure prominently in a classroom. If, however, the historical method consists of something more akin to inquiry and interpretation, the study of primary sources becomes paramount. We are decidedly of the latter opinion.

Perhaps the easiest rationale for using primary sources is that they serve as the building blocks for historical inquiry. In science classrooms, students experiment with chemicals in chemistry, test rocks in geology, dissect frogs in biology, and analyze plants in botany. All of these pedagogical approaches are active and without this method, students could not claim an understanding of the subject at hand. A chemist that simply memorized the periodic table without experimenting with the actual elements could not legitimately claim to be a chemist. A student that could identify the planets on a chart without scanning the heavens through a telescope should not be considered a well-trained astronomer. None of us would take our cars to a mechanic who had simply looked at illustrations in repair manuals. We want experts with hands on experience. We should expect nothing less when it comes to teaching history.

But there are significant challenges as teachers use primary sources in the classroom. The challenges for students are often issues of reading and understanding arcane language. Language evolves and few students can easily navigate through texts that are filled with words foreign to their modern ears. Frankly, many of us would have to admit to scrambling for a dictionary when we first read Magna Charta. Perhaps an even greater challenge is one of relevancy. George Bernard Shaw lamented “youth was wasted on the young.” Many history teachers would modify Shaw’s lament to something akin to “instruction of history is wasted on the young.” Studying history is never an easy sell to adolescents who sincerely believe nothing of importance happened before their birth and predictably ask, “Why is this important?” Add to these, a trend to rid the classroom of the printed word, where the careful reading of any text, let alone “old texts,” poses an increasing set of difficulties for teachers. If we as teachers of history cannot address these concerns, we are indeed doomed to the dustbin of irrelevancy.

The continuous cycle of debate over educational standards presents teachers with additional challenges. Those who advocate a content-based approach to standards are essentially locked into endless disputes regarding what might constitute the “essential core” of what students need to know. More recent developments that stress documentary analysis of texts can also create problems

for instructors. While offering greater flexibility for teachers in their content selections, instructors may find it an overwhelming task when making selections that are best utilized in this approach that emphasizes historical thinking skills.

If one wanted to read the entirety of the primary sources of the Founding Period, the twenty-six volumes of *The Documentary History of the Ratification of the Constitution* would be where one would find a mountain of written material. Since few have time to venture into such a mammoth undertaking, other smaller documentary editions have been published. Each seeks to “distill” the best material for students of the ratification debates. The present effort follows in that tradition; it seeks to present original sources in an accessible format to a wider audience in a variety of lessons related to the Constitutional Convention and the ratification debate that followed. In this work, we offer what we believe to be an essential core of content, and we offer some essential questions that frame the way students should think historically as they engage with these selections.

### **Nine Rationales for Using Primary Sources in the Social Studies Classroom**

1. Primary sources provide firsthand evidence of historical events. This often injects a “realistic” component into historical instruction.
2. Primary sources when used optimally force students to use critical and interpretive thinking skills.
3. Primary sources challenge student preconceived ideas about past events, people, and historic topics.
4. Students must make inferences and deal with personal bias and points of view when using primary sources. This is at the core of teaching literacy.
6. Many national and state standards are framed around the use and analysis of primary sources.
7. Students quickly realize that information is highly subjective. This can have a large effect on how students perceive information as evidence.
8. Primary sources foster the process of students “doing history.” This mirrors the process that historians follow when they debate, discuss, and interpret.
9. Students will learn to challenge assumptions and conclusions, both their own as well as their instructors.

# *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?

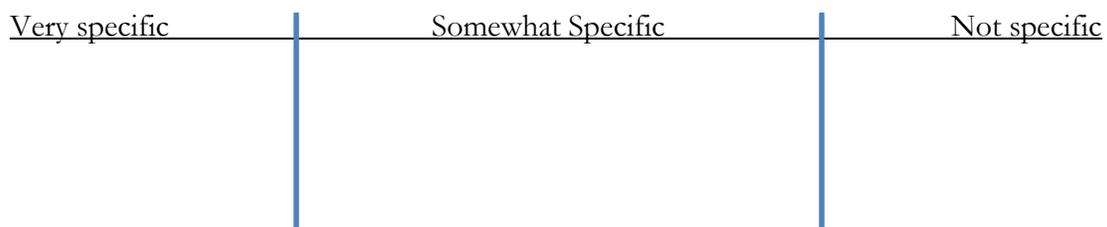
### THE OBJECTIVES OF THE LESSON

- \* 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

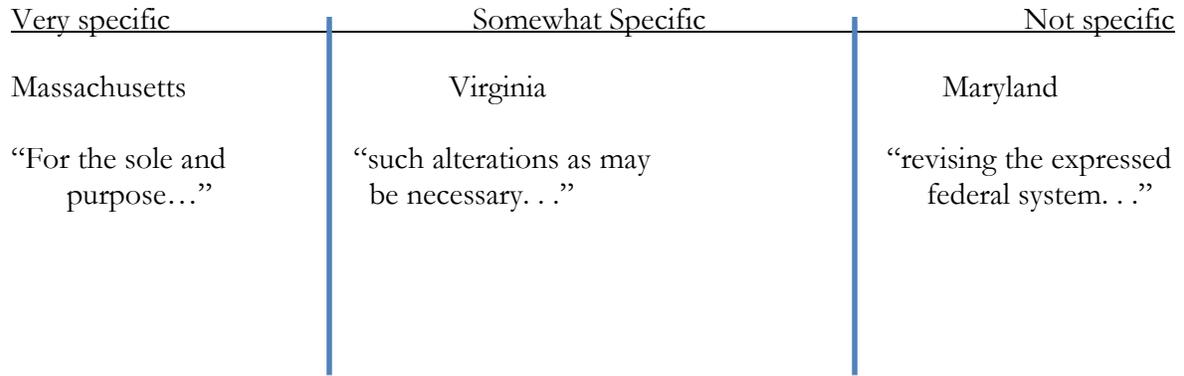
**A Note to the Teacher:** This exercise can be used as a lesson to illustrate the subtleties in the instructions given to the delegates to the Philadelphia Convention. This can be used when having students consider the legitimacy of the delegates creating an entirely new system of government rather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

## *Lesson Two:* *Comparing the Plans of Government at the Federal Convention*

### **BACKGROUND INFORMATION FOR INSTRUCTOR**

On March 27, 1787, Virginia Governor Edmund Randolph wrote James Madison a brief letter telling him that he had been thinking about the upcoming Constitutional Convention. Randolph believed that the basic form of the Articles of Confederation should be retained and alterations “should be grafted on.” He thought the Convention should propose the best possible revisions and not limit itself to the changes that the states might be expected to accept. Madison had already invested much thought to the problems of the Confederation, and he had ideas about what the Convention should propose. His response to Randolph stated the essence of what would be known as the “Virginia Plan” that served as the basis for the debate in the Convention.

### **The Virginia, New Jersey and Hamilton Plans**

Scheduled to meet on 14 May 1787, a majority of the state delegations did not arrive in Philadelphia until 25 May. In the meantime, the Virginia delegation caucused daily and devised the Virginia Plan, based on ideas developed by Madison earlier that year. Once the Convention elected George Washington as president of the Convention and adopted procedural rules, Randolph introduced the Virginia Plan, which was a radical departure from the form of government in the Articles of Confederation. In essence the plan abandoned the Articles. Instead, The Virginia Plan was a proposal for an entirely new, far more powerful form of government. This new government would consist of three branches: a legislative, and executive, and a judicial. The legislature was to consist of two houses, the first elected by the people and the second elected by members of the first house. Both were to have representatives apportioned proportionally based on population. The Congress was to have the power to legislate in all matters in which the states were incompetent, it could veto state laws that violated the Constitution, and it could call forth the force of the Union to enforce its will. Additionally, it would have the power to tax and to regulate commerce. The executive would execute the laws, and the executive some federal judges forming a council of revision could veto bills passed by Congress that contravened the Constitution. State office holders would be obligated to swear obedience to the Constitution. Finally, these proposals were to adopted or rejected not by the state legislatures (as provided by the Articles of Confederation), but by specially elected conventions chosen by the people in each state.

These revolutionary proposals served as the basis for the debate from May 30 to June 15, when an alternative proposal, the “New Jersey Amendments” was introduced. William Paterson of New Jersey presented the Convention an alternative to the Virginia Plan. He proposed that the Articles of Confederation be “revised, corrected & enlarged.” The New Jersey Amendments would have retained most of the features of the Articles of Confederation. The unicameral Congress would still represent the states, not the people proportionately, but it would have the power to regulate commerce and collect requisitions itself if the states did not. Congress would appoint a plural executive and there would be a supreme court. Federal laws were to be “supreme,” and force could be used to compel obedience. Congress would be given the power to levy duties or stamp taxes, to regulate commerce, and to collect requisitions itself if the states refused. The executive would appoint a supreme court, with justices serving for life. The New Jersey Amendments also provided

that federal laws and treaties were to be the “supreme law of the respective States” and if any state refused to obey, force could be used to “compel an obedience.” Convention delegates debated both the Virginia and New Jersey plans on June 16, 18, and 19. In comparing the merits of the two plans, two other significant issues were discussed; the legitimacy of the Convention abandoning the Articles of Confederation and should it propose something so radical, which might not be supported by the people.

During the debate over the Virginia and New Jersey plans, New York delegate Alexander Hamilton delivered an impassioned speech in which he expressed dissatisfaction with both plans, particularly the latter. In his speech on 18 June, he outlined the types of amendments he would add to the Virginia Plan. He proposed a two-house legislature. The Assembly would be elected by the people every three years. The Senate and national Governor, both with life terms, would be chosen by electors who were selected by the people. The Governor would have an absolute veto over acts passed by the legislature and would have sole power to appoint the heads of departments. The Senate would have sole power to declare war, while the Governor would direct the war once declared or begun. The judges of a supreme court were to hold their offices for life. State governors were to be appointed by the national government and could veto all state laws. Connecticut delegate William Samuel Johnson observed, though the “gentleman from New York . . . has been praised by everybody, he has been supported by none.” The Convention finally decided to proceed using the Virginia Plan as the basis of further debate. This was a decisive moment certainly in the Convention, but also in the constitutional history of the United States.

It remained for the Convention to flesh out the details of the Virginia Plan and many thorny issues that the proposal occasioned. The Convention still had to decide significant issues including: how to divide authority between the national and state governments, the branches of the national government, the differences between large and small states, and Northern States and Southern States.

The matter of representation would prove to be the most problematic of issue all the issues creating a bitter deadlock in the Convention from 27 June to 16 July. With this impasse, the Convention appointed on 2 July a “grand” committee—one member from each state—and adjourned until 5 July when the grand committee proposed a compromise. The House of Representatives, which had already been determined to be apportioned according to population and thus controlled by large states, would have sole power to originate bills for raising and appropriating money. Such bills could not be altered or amended by the Senate. On the other hand, to protect the small states, each state would be given an equal vote in the Senate. This compromise required that both propositions “shall be generally adopted.” This compromise between the large and small states was accepted on 16 July 1787.

### **The Issue of Slavery at the Convention**

Several compromises regarding slavery occurred at the Philadelphia Convention. On 21 August, the Convention began debate on a proposal that prohibited the national government from taxing or banning the importation of slaves. Luther Martin proposed the deleting the prohibition so that Congress could ban the nefarious traffic in human bondage. Delegates from the Deep South vehemently objected to outright prohibition of the slave trade. If the trade was not protected, delegates from Georgia and South Carolina predicted their states would never adopt the Constitution. Northerners generally acquiesced to these demands, arguing that slavery and the slave trade were not a federal matter and that the Convention should avoid measures that would drive any states into opposition to the Constitution. After more debate on 22 August, the slave trade provision was sent to a committee. The committee reported two days later with more debate ensuing.

Eventually, the final compromise prohibited the national government from banning the slave trade before 1808.

Slaves and representation were also debated at the Convention. If population was to be the basis of apportioning representatives in the states, the status of slaves would have to be determined. The North did not want slaves to be counted in apportioning representatives and the South predictably wanted all slaves counted. This impasse was finally resolved with a compromise that consisted of three-fifths of the slaves being counted for apportioning representatives and for direct taxes.

### **The Executive Branch**

The Convention also had difficulty in forming the executive branch. By 13 June, they had agreed that the executive would consist of a single person, who would be elected by Congress for seven years and be ineligible for a second term. The executive was given a delicate role: to protect the people from the “Legislative tyranny” of Congress, while not evolving into a monarchy. The debate over the best method of electing the executive and the term of office would consume most of the discussions regarding the executive branch. On 17 July the Convention again considered the executive branch and reaffirmed that Congress should select the president. The delegates, however, struck out the ineligibility for a second term. Two days later, the Convention voted to have electors choose the president, who could serve more than one six-year term. During the remaining two months the Convention eventually settled on a single executive, serving a four-year term, with the possibility of serving multiple terms.

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Finally, on 15 September 1787, James Madison moved that the Constitution be adopted by the Convention. The Convention agreed and ordered that the Constitution be engrossed (written on parchment) for signature by the delegates. On 17 September, all but three delegates present signed the Constitution. The three non-signers, Elbridge Gerry of Massachusetts and George Mason and Edmund Randolph of Virginia, refused fearing the new government was too powerful and that the absence of a bill of rights created a danger of a tyranny. The Constitution was then revealed to the public and published in newspapers and broadside throughout the United States.

## KEY IDEAS OF PRIMARY SOURCE DOCUMENTS

### THE VIRGINIA PLAN, 29 MAY 1787

#### **Proposals Regarding the Relation between the States and the National Government**

Legislature Supreme Over States; National Government Guarantees Representative Government in the States; State Government Officials Oath to Support Constitution; State Laws Void if they Violate Federal Constitution

#### **Proposals Regarding the Lower House**

State Representation Based on Population; Chosen by the People; Can Veto State Legislation; Use Force to Coerce States Obedience

#### **Proposals Regarding the Upper House**

State Representation Based on Population; Members Chosen by the Lower House

#### **Proposals Regarding the Executive**

Authority to Execute Laws; Limited to One Term; Be a Member with Members of the Judiciary on a Council of Revision; Bound by Oath to Defend the Constitution

#### **Proposals Regarding the Judiciary**

Members of a Council of Revision; One Supreme Court and Inferior Courts; Term of Good Behavior; Oath to Support Constitution

### THE NEW JERSEY AMENDMENTS, 15 JUNE 1787

#### **Proposals Regarding the Relation between the States and the National Government**

Generally Maintain the National/State Relationship as Under the Articles; State Governors Can Request Removal of Executive; Congress Laws and Treaties Supreme Law of the Land; National Naturalization Law

#### **Proposals Regarding the Legislature**

Unicameral Legislature; Taxing Power based on Population; Commerce Power; Additional Requisitions Must be Approved by the States

#### **Proposals Regarding the Executive**

Multiple Executive; Limited to One Term; Removable by Congress on Request from State Governors; Cannot Command Troops in Field; Appoint Judicial Officials; Can Call for Militias to Compel State Obedience

#### **Proposals Regarding the Judiciary**

One Supreme Court Appointed by Executive; Term of Good Behavior; Can Hear Cases Involving Impeachments, International Trade, Commerce, and Taxation

## ALEXANDER HAMILTON'S PLAN, 18 JUNE 1787

### Proposals Regarding the Relation between the States and the National Government

National Courts in States to Hear Cases Related to Revenue; State Laws Declared Void if They Violate the Constitution; National Government Appoints State Governors; State Governors Can Veto State Laws; National Army; State Militias Under National Authority

### Proposals Regarding the Lower House

Members Elected to Three Year Term; Can Create State Courts

### Proposals Regarding the Upper House

Term of Good Behavior; Chosen by Electors in Districts in States; Sole Power to Declare War and Advising, Approving Treaties, Appointing Government Officials; Create Courts in States

### Proposals Regarding the Executive

Term of Good Behavior; Chosen by Electors; Veto Power over All Laws; Commander and Chief; Appointments with Approval of Upper House of Government Officials; Pardoning Power

### Proposals Regarding the Judiciary

Supreme Court; Twelve Judges; Term of Good Behavior; Can Hear Appeals From State Courts Involving Revenue and Citizens of Other Nations

## PRIMARY SOURCE DOCUMENTS

### The Virginia Resolutions, 29 May 1787

1. Resolved that the articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely, "common defence, security of liberty and general welfare."

2. Resd. therefore that the rights of suffrage in the National Legislature ought to be proportioned to the Quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

3. Resd. that the National Legislature ought to consist of two branches.

4. Resd. that the members of the first branch of the National Legislature ought to be elected by the people of the several States every \_\_\_\_\_ for the term of \_\_\_\_\_; to be of the age of \_\_\_\_\_ years at least, to receive liberal stipends by which they may be compensated for the devotion of their time to public service; to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the first branch, during the term of service, and for the space of \_\_\_\_\_ after its expiration; to be incapable of reelection for the space of \_\_\_\_\_ after the expiration of their term of service, and to be subject to recall.

5. Resold. that the members of the second branch of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual Legislatures, to be of the age of \_\_\_\_\_ years at least; to hold their offices for a term sufficient to ensure their independency, to receive liberal stipends, by which they may be compensated for the devotion of their time to public service; and to be ineligible to any office established by a particular

State, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and for the space of \_\_\_\_\_ after the expiration thereof.

6. Resolved that each branch ought to possess the right of originating Acts; that the National Legislature ought to be empowered to enjoy the Legislative Rights vested in Congress by the Confederation & moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation; to negative all laws passed by the several States contravening in the opinion of the National Legislature the articles of Union; and to call forth the force of the Union agst. any member of the Union failing to fulfill its duty under the articles thereof.

7. Resd. that a National Executive be instituted, to be chosen by the National Legislature for the term of \_\_\_\_\_ years, to receive punctually at stated times, a fixed compensation for the services rendered, in which no increase or diminution shall be made so as to affect the Magistracy, existing at the time of increase or diminution, and to be ineligible a second time; and that besides a general authority to execute the National laws, it ought to enjoy the Executive rights vested in Congress by the Confederation.

8. Resd. that the Executive and a convenient number of the National Judiciary, ought to compose a Council of revision with authority to examine every act of the National Legislature before it shall operate, & every act of a particular Legislature before a Negative thereon shall be final; and that the dissent of the said Council shall amount to a rejection, unless the Act of the National Legislature be again passed, or that of a particular Legislature be again negated by \_\_\_\_\_ of the members of each branch.

9. Resd. that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature, to hold their offices during good behaviour; and to receive punctually at stated times fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office, at the time of such increase or diminution, that the jurisdiction of the inferior tribunals shall be to hear & determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all piracies & felonies on the high seas, captures from an enemy; cases in which foreigners or citizens of other States applying to such jurisdictions may be interested, or which respect the collection of the National revenue; impeachments of any National officers, and questions which may involve the national peace and harmony.

10. Resolvd. that provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of Government & Territory or otherwise, with the consent of a number of voices in the National legislature less than the whole.

11. Resd. that a Republican Government & the territory of each State, except in the instance of a voluntary junction of Government & territory, ought to be guaranteed by the United States to each State

12. Resd. that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day after the reform of the articles of Union shall be adopted, and for the completion of all their engagements.

13. Resd. that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto.

14. Resd. that the Legislative Executive & Judiciary powers within the several States ought to be bound by oath to support the articles of Union

15. Resd. that the amendments which shall be offered to the Confederation, by the Convention ought at a proper time, or times, after the approbation of Congress to be submitted to an assembly

or assemblies of Representatives, recommended by the several Legislatures to be expressly chosen by the people, to consider & decide thereon.

## **The New Jersey Plan: Amendments to the Articles of Confederation, 15 June 1787**

1. Resd. that the articles of Confederation ought to be so revised, corrected & enlarged, as to render the federal Constitution adequate to the exigencies of Government, & the preservation of the Union.

2. Resd. that in addition to the powers vested in the U. States in Congress, by the present existing articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandizes of foreign growth or manufacture imported into any part of the U. States, by Stamps on paper, vellum or parchment, and by a postage on all letters or packages passing through the general post-office, to be applied to such federal purposes as they shall deem proper & expedient, to make rules & regulations for the collection thereof, and the same from time to time, to alter & amend in such manner as they shall think proper: to pass Acts for the regulation of trade & commerce as well with foreign nations as with each other: provided that all punishments, fines, forfeitures & penalties to be incurred for contravening such acts rules and regulations shall be adjudged by the Common law Judiciarys of the State in which any offence contrary to the true intent & meaning of such Acts rules & regulations shall have been committed or perpetrated, with liberty of commencing in the first instance all suits & prosecutions for that purpose in the superior common law Judiciary in such State, subject nevertheless, for the correction of all errors, both in law & fact in rendering Judgment, to an appeal to the Judiciary of the U. States

3. Resd. that whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the articles of Confederation, the United States in Congs. be authorized to make such requisitions in proportion to the whole number of white & other free citizens & inhabitants of every age sex and condition including those bound to servitude for a term of years & three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that if such requisitions be not complied with, in the time specified therein, to direct the collection thereof in the non complying States & for that purpose to devise and pass acts directing & authorizing the same; provided that none of the powers hereby vested in the U. States in Congs. shall be exercised without the consent of at least \_\_\_\_\_ States, and in that proportion if the number of Confederated States should hereafter be increased or diminished.

4. Resd. that the U. States in Congs. be authorized to elect a federal Executive to consist of \_\_\_\_\_ persons, to continue in office for the term of \_\_\_\_\_ years, to receive punctually at stated times a fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons composing the Executive at the time of such increase or diminution, to be paid out of the federal treasury; to be incapable of holding any other office or appointment during their time of service and for \_\_\_\_\_ years thereafter; to be ineligible a second time, & removeable by Congs. on application by a majority of the Executives of the several States; that the Executives besides their general authority to execute the federal acts ought to appoint all federal officers not otherwise provided for, & to direct all military Operations; provided that none of the persons composing the federal Executive shall on any occasion take command of any troops, so as personally to conduct any enterprise as General, or in other capacity.

5. Resd. that a federal Judiciary be established to consist of a supreme Tribunal the Judges of which to be appointed by the Executive, & to hold their offices during good behaviour, to receive punctually at stated times a fixed compensation for their services in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or

diminution; that the Judiciary so established shall have authority to hear & determine in the first instance on all impeachments of federal officers, & by way of appeal in the dernier resort in all cases touching the rights of Ambassadors, in all cases of captures from an enemy, in all cases of piracies & felonies on the high seas, in all cases in which foreigners may be interested, in the construction of any treaty or treaties, or which may arise on any of the Acts for regulation of trade, or the collection of the federal Revenue: that none of the Judiciary shall during the time they remain in office be capable of receiving or holding any other office or appointment during their time of service, or for \_\_\_\_\_ thereafter.

6. Resd. that all acts of the U. States in Congs. made by virtue & in pursuance of the powers hereby & by the articles of Confederation vested in them, and all Treaties made & ratified under the authority of the U. States shall be the supreme law of the respective States, so far forth as those Acts or Treaties shall relate to the said States or their Citizens, and that the Judiciary of the several States shall be bound thereby in their decisions, any thing in the respective laws of the Individual States to the contrary notwithstanding; and that if any State, or any body of men in any State shall oppose or prevent ye. carrying into execution such acts or treaties, the federal Executive shall be authorized to call forth ye power of the Confederated States, or so much thereof as may be necessary to enforce and compel an obedience to such Acts, or an Observance of such Treaties.

7. Resd. that provision be made for the admission of new States into the Union.

8. Resd. the rule for naturalization ought to be the same in every State

9. Resd. that a Citizen of one State committing an offence in another State of the Union, shall be deemed guilty of the same offence as if it had been committed by a Citizen of the State in which the offence was committed.

## **The Hamilton Plan, 18 June 1787**

The Supreme Legislative Power of the United States of America to be vested in two distinct bodies of men—the one to be called the Assembly the other the senate; who together shall form the Legislature of the United States, with power to pass all laws whatsoever, subject to the negative hereafter mentioned.

The Assembly to consist of persons elected by the People to serve for three years.

The Senate to consist of persons elected to serve during good behaviour. Their election to be made by Electors chosen for that purpose by the People. In order to this The States to be divided into election districts. On the death, removal or resignation of any senator his place to be filled out of the district from which he came.

The Supreme Executive authority of the United States to be vested in a governor to be elected to serve during good behaviour. His election to be made by Electors chosen by electors chosen by the people in the election districts aforesaid. or by electors chosen for that purpose by the respective legislatures—provided that [if] an election be not made within a [limited time?] the President of the Senate shall [then?] be the Governor—The Governor to have a negative upon all laws about to be passed—and to have the execution of all laws passed—to be the Commander in Chief of the land and naval forces and of the Militia of the United States—to have the direction of war, when authorised or began—to have with the advice and approbation of the Senate the power of making all treaties—to have the appointment of the heads or chief officers of the departments of finance war and foreign affairs—to have the nomination of all other officers (ambassadors to foreign nations included) subject to the approbation or rejection of the Senate—to have the power of pardonning all offences but treason, which he shall not pardon without the approbation of the Senate—

On the death resignation or removal of the Governor his authorities to be exercised by the President of the Senate.

The Senate to have the sole power of declaring war—the power of advising and approving all treaties—the power of approving or rejecting all appointments of officers except the heads or chiefs of the departments of finance war and foreign affairs.

The Supreme Judicial authority of the United States to be vested in twelve Judges, to hold their offices during good behaviour with adequate and permanent salaries. This Court to have original jurisdiction in all causes of capture and an appellate jurisdiction (from the Courts of the several states) in all causes in which the revenues of the general government or the citizens of foreign nations are concerned.

The Legislature of the United States to have power to institute Courts in each state for the determination of all causes of capture and of all matters relating to their revenues, or in which the Citizens of foreign nations are concerned.

The Governor Senators and all Officers of the United States to be liable to impeachment for mal and corrupt conduct, and upon conviction to be removed from office and disqualified for holding any place of trust or profit.

All impeachments to be tried by a Court to consist of the Judges of the Supreme Court [and] Chief or Senior Judge of the superior Court of law of each state—provided that such judge hold his place during good behaviour and have a permanent salary.

All laws of the particular states contrary to the constitution or laws of the United States to be utterly void. And the better to prevent such laws being passed the Governor or President of each state shall be appointed by the general government and shall have a negative upon the laws about to be passed in the state of which he is governor or President.

No state to have any forces land or naval—and the Militia of all the states to be under the sole and exclusive direction of the United States the officers of which to be appointed and commissioned by them.

## THE LESSON PLAN–Evaluating Provisions of Three Plans at the Convention

### THE OBJECTIVES OF THE LESSON

- \* Students should be able to compare and contrast three plans of the Federal Convention in terms of:
  - a) The powers and branches of government.
  - b) The terms of office for government officials.
  - c) The status of state governments.
- \* Students should be able to explain why various factions would either support or oppose specific ideas in each of the proposed plans.

### THE LESSON

1. Divide the class into three groups and assign each group a specific plan for them to consider.
2. Each group should receive the appropriate graphic organizers below.
3. The first group should receive the graphic organizer for the Virginia Plan. The second group should receive the graphic organizer for the New Jersey Amendments. The third group should work with the graphic organizer for the Hamilton Plan.
4. Each group should read and discuss the provisions listed on its sheet and write down their thought on why each provision might be controversial and who might consider them to be controversial.
5. Students should consider the following as they decide on the controversial nature of the provisions in their plan:
  - a. How does it compare to provisions in the Articles of Confederation?
  - b. Does it strengthen or weaken state governments?
  - c. Are there powers that are cause for concern?
  - d. Does this plan adequately check powers?
  - e. Does this plan adequately or inadequately separate of powers?
  - f. Who actually proposed the plan?
6. After each group has completed its discussions, have them report their findings to the class.
7. You may want to lead a discussion by using the following questions:
  - a. Which plan is in line with the purpose of the gathering at Philadelphia?
  - b. Why might proportional representation be such an important feature in the Virginia Plan?
  - c. If you were considering the New Jersey Amendments, how many executives would you have suggested?
  - d. What provision(s) in each plan is most controversial?
8. You may want to conclude the lesson by asking students which plan they would have personally considered the best.

## Graphic Organizer for the Virginia Plan, 29 May 1787

Below are some of the key provisions of the Virginia Plan. Your job is to think of reasons why each provision might be cause for concern as well as to whom they might be of concern.

Provision	Why might this be Controversial?	Concern to Whom?
<p>the National Legislature ought to be proportioned to the Quotas of contribution, or to the number of free inhabitants . . .</p>		
<p>the National Legislature ought to consist of two branches. . . .</p>		
<p>the members of the first branch of the National Legislature ought to be elected by the people . . .</p>		
<p>the members of the second branch of the National Legislature ought to be elected by those of the first . . .</p>		
<p>National Legislature ought to be empowered . . . to negative all laws passed by the several States . . .</p>		
<p>a National Executive be instituted, to be chosen by the National Legislature . . .</p>		
<p>Executive and a convenient number of the National Judiciary, ought to compose a Council of revision . . . to examine every act of the National Legislature . . .</p>		
<p>a National Judiciary be established . . . to be chosen by the National Legislature, to hold their offices during good behavior . . .</p>		
<p>Legislative Executive &amp; Judiciary powers within the several States ought to be bound by oath to support the articles of Union . . .</p>		

# Graphic Organizer for the New Jersey Amendments, 15 June 1787

Below are some of the key provisions of the New Jersey Amendments. Your job is to think of reasons why each provision might be cause for concern as well as to whom they might be of concern.

Provision	Why might this be Controversial?	Concern to Whom?
<p>the articles of Confederation ought to be so revised, corrected &amp; enlarged . . .</p> <p>in addition to the powers vested in the U. States in Congress, by the present existing articles of Confederation, they be authorized to pass acts or raising a revenue, by levying a duty or duties . . .</p> <p>whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the articles of Confederation, the United States in Congs. be authorized to make such requisitions in proportion to the whole number of white &amp; other free citizens . . .</p> <p>that if such requisitions be not complied with, in the time specified therein, to direct the collection thereof in the non complying States . . .</p> <p>the U. States in Congs. be authorized to elect a federal Executive to consist of _____ persons . . .</p> <p>a federal Judiciary be established to consist of a supreme Tribunal the Judges of which to be appointed by the Executive . . .</p> <p>all acts of the U. States in Congs. made by virtue &amp; in pursuance of the powers hereby &amp; by the articles of Confederation vested in them . . . shall be the supreme law of the respective States . . .</p> <p>that if any State, or any body of men in any State shall oppose or prevent carrying into execution such acts or treaties, the federal Executive shall be authorized to call forth ye power of the Confederated States, or so much thereof as may be necessary to enforce and compel an obedience . . .</p>		

## Graphic Organizer for the Hamilton Plan, 18 June 1787

Below are some key provisions of the Hamilton Plan. Your job is to think of reasons why each provision might be cause for concern as well as to whom they might be of concern.

Provision	Why might this be Controversial?	Concern to Whom?
<p>The Supreme Legislative Power of the United States of America to be vested in two distinct bodies of men—the one to be called the Assembly the other the senate . . .</p>		
<p>Assembly to consist of persons elected by the People to serve for three years . . .</p>		
<p>Senate to consist of persons elected to serve during good behavior . . .</p>		
<p>Executive authority of the United States to be vested in a governor to be elected to serve during good behavior . . .</p>		
<p>The Governor [Executive] to have a negative upon all laws about to be passed . . .</p>		
<p>The Senate to have the sole power of declaring war . . .</p>		
<p>The Supreme Judicial authority of the United States to be vested in . . . twelve Judges, to hold their offices during good behavior . . .</p>		
<p>This Court to have . . . an appellate jurisdiction (from the Courts of the several states) . . .</p>		
<p>The Legislature of the United States to have power to institute Courts in each state . . .</p>		
<p>All laws of the particular states contrary to the constitution or laws of the United States to be utterly void.</p>		
<p>No state to have any forces land or naval—and the Militia of all the states to be under the sole and exclusive direction of the United States . . .</p>		

## *Lesson Three:* *Assessing the Constitutional Convention*

### BACKGROUND INFORMATION FOR INSTRUCTOR

#### **The Convention in General**

When assessing the Constitutional Convention of 1787 an initial consideration is its legitimacy. During the 1780s, conventions were viewed as dangerous, radical assemblies. This negative connotation was based upon the belief that such gatherings were seldom motivated by virtue. Furthermore, the Articles of Confederation had prohibited such meetings. The Shaysites in Massachusetts were also associated with county conventions. Consequently, suspicions about the motives of any extralegal assemblies were ever present. However, many fears subsided when the Confederation Congress sanctioned the Convention on 21 February 1787 and when George Washington and Benjamin Franklin were elected as delegates. As the Convention began, Benjamin Rush, writing under the pseudonym “Harrington,” observed that since the Convention consisted of such an “illustrious body of patriots and heroes,” no one could “doubt of the safety and blessings of government we are to receive from their hands.” As the ratification debate evolved, Rush’s optimistic predictions fell short as criticisms of the Convention and its work expanded.

#### **The Rule of Secrecy**

Soon after attaining a quorum in late May, the delegates adopted rules similar to those used by Congress. Among these was a rule of secrecy. Although this rule would become an important issue after the Convention adjourned, it was not particularly controversial while the Convention sat. The Confederation Congress, state legislatures, and the British Parliament all regularly met in secret. Secrecy provided an environment conducive for full and honest discussions. An item appearing in the *Pennsylvania Herald* on 2 June 1787 expressed hope “that the privacy of their transactions will be an additional motive for dispatch, as the anxiety of the people must be necessarily increased, by every appearance of mystery in conducting this important business.” The Convention abrogated the rule of secrecy when it adjourned on 17 September 1787.

Antifederalists later denounced the rule of secrecy casting a pall over the Convention labeling it a cabal. “Centinel,” among the harshest critics of the Convention and the Constitution, supposed an “evil genius of darkness presided at its birth, it came forth under the veil of mystery, its true features being carefully concealed, and every deceptive art has been and is practising to have this spurious brat received as the genuine offspring of heaven-born liberty.”

#### **Amity, Compromise and Unanimity at the Convention**

From the very beginning of the ratification debate, Federalists were quick to accentuate the spirit of cooperation that prevailed at the Convention. Convention President George Washington’s letter to the President of Congress of 17 September 1787 emphasized that their work was “the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.” “Centinel” XII countered by noting that “discord prevailed to such a degree, that the minority were upon the point of appealing to the public against the machinations of ambition.” Federalists argued that the public should support the Constitution because of the unanimity among the Convention delegates. Antifederalists countered by noting that this claim was disingenuous since reports had circulated demonstrating that, at times, the discussions

were contentious. Additionally, it was widely reported that three delegates in attendance on 17 September had refused to sign the Constitution.

### **Delegates Violating Their Instructions and the Resolution of Congress**

The legitimacy of the Constitutional Convention was based upon the Confederation Congress' resolution of 21 February 1787 and the appointment of delegates by their state legislatures. In both cases, the Convention was called for the "sole and express" purpose of revising the Articles of Confederation. On the second day of debates, the delegates voted to abandon the Articles of Confederation. Subsequently, reports circulated that the Convention would propose a new constitution. When the Constitution was promulgated, it was obvious that the delegates had violated both their instructions and the resolution of Congress. Consequently, it was easy for Antifederalists to attack the legitimacy of the Constitution. Federalists, however, maintained that (1) the Articles of Confederation were too defective to be simply amended, (2) delegates had a responsibility to do the best they could under the current set of circumstances, (3) giving the unicameral Confederation Congress additional powers would be dangerous, and (4) the Constitution was only a proposal that the American people could accept or reject.

### **Assessments of Individual Delegates**

Individual delegates attracted public and private attention both during and after the Convention. As the elections of state ratification conventions commenced, there was discussion as to whether delegates from the Philadelphia Convention should be elected to state conventions. Some, like James Madison, believed that those who drafted the Constitution should not determine whether or not it should be adopted. Others thought that former delegates could provide valuable insights into the proceedings of the Federal Convention. Eventually, thirty delegates from the Philadelphia Convention were elected to state ratification conventions. As Federalists addressed Antifederalist qualms about the Convention, they noted that George Washington's 17 September letter to the President of Congress, which was part of the Convention's report to Congress, illustrated his support for the Constitution. For Antifederalists, the treatment of George Washington and Benjamin Franklin proved especially problematic. Since there was virtually universal admiration for both, Antifederalists countered that these statesmen had been duped—Franklin being a dotard and Washington being a military man and not a legislator.

### **Benjamin Franklin**

Franklin's reputation as a scientist and statesman lent considerable credibility to the Convention. His speeches, though infrequent, were often couched in anecdote and humor, often alleviating tension among the delegates. Franklin's last speech delivered on 17 September 1787 became fodder in the ratification debate. In the speech, Franklin noted that although they could not produce a perfect system, he would consent to it and urged all of the delegates to sign the Constitution. Subsequently, two delegates had Franklin's final speech printed in newspapers in Massachusetts and Maryland from which it was reprinted throughout the country. Federalists suggested that Franklin's deference to the collective wisdom of the Convention should be an example to the public as they considered the new Constitution. Antifederalists saw Franklin's acquiescence as the resignation of an old man and his concerns about the Constitution should be a warning to the public as well.

### **Elbridge Gerry**

On 17 September 1787, Massachusetts delegate Elbridge Gerry was one of three delegates who refused to sign the Constitution. Writing from New York City on 18 October 1787, Gerry submitted his objections to the Constitution in a letter to the Massachusetts legislature. These objections were published on 3 November 1787 and caused controversy in Massachusetts and factored into Gerry's decision not to seek election to the Massachusetts ratifying Convention. Antifederalists in the state convention pushed to invite Gerry to attend as a visitor. Federalists originally opposed such a move, claiming that Gerry's well-known objections would be amplified in the convention and sway opinions against the Constitution. After considerable debate, Federalists relented and Gerry was allowed to attend. When restricted to answering specific questions in handwriting, Gerry angrily left the convention.

### **Alexander Hamilton**

An advocate of a stronger national government throughout the 1780s, Alexander Hamilton found himself in the minority among the three New York delegates at the Federal Convention. His attendance at the Convention was spotty. Additionally, after fellow delegates John Lansing, Jr. and Robert Yates left the Convention on 11 July 1787, Hamilton found himself the only delegate from New York and thus unable to vote because two delegates were needed to make an "official" delegation. Consequently, his critics denounced him for signing the Constitution as the sole delegate for New York on 17 September.

### **Luther Martin**

Martin arrived late at the Philadelphia Convention and immediately caused concern because of his long-winded oratory and excessive drinking. He left the Convention early and reported adversely to the Maryland assembly. His "Genuine Information" and other prolix writings describing the intricate maneuverings in the Federal Convention were printed in newspapers and pamphlets and circulated throughout the country attracting a great deal of attention.

### **George Mason**

Among those who had originally advocated a stronger national government, George Mason eventually refused to sign the Constitution on 17 September. Among his reservations was the lack of a bill of rights. Late in the Convention on 12 September he called for a committee to draft a bill of rights. The motion was unanimously defeated. In the final days of the Convention, Mason sketched out an informal set of objections, which would later become a critical reference point for opponents of the Constitution. In the fall of 1787 Mason revised and expanded his objections to the Constitution. Although manuscript copies of his objections were widely circulated, they were not published until 21 November 1787 after which Federalist responses abounded.

### **George Washington**

The mere presence of George Washington at the Philadelphia Convention lent credibility to the proceedings. Among the first decisions delegates made was to elect him unanimously as the Convention's president. Throughout the ratification debate, Washington's support for the new Constitution appeared in Federalist polemics. Federalists pointed to Washington's 17 September letter to the President of Congress in which he advocated ratification of the Constitution because "it may promote the lasting welfare of that country so dear to us all." The fact that it was universally assumed that Washington would be the country's first president made the Constitution more palatable.

## James Wilson

James Wilson was perhaps the most vilified delegate of the Federal Convention. Wilson willingly inserted himself into the fray on 6 October 1787, when he publicly addressed Philadelphians in the courtyard of the Pennsylvania State House. In this address and later in his 24 November speech in the Pennsylvania ratifying Convention, he defended and outlined the work of the Federal Convention explaining the merits of an extended republic and the benefits of the proposed Constitution. Of particular importance, Wilson espoused the principles of reserved powers—the federal would only have delegated powers while all other powers were reserved to the states or the people. Wilson’s explanations received national circulation and became the unofficial Federalist defense of the Constitution. Consequently, Antifederalists singled him out for criticism.

## THE PRIMARY SOURCE DOCUMENTS USED TO SUPPORT THE LESSON

### Antifederalist Sources

Centinel II, Philadelphia *Freeman’s Journal*, 24 October 1787  
Elbridge Gerry to the Massachusetts General Court, 18 October 1787, *Massachusetts Centinel*, 3 November 1787  
An Officer of the Late Continental Army, Philadelphia *Independent Gazetteer*, 6 November 1787  
Centinel III, Philadelphia *Independent Gazetteer*, 8 November 1787  
Centinel IV, Philadelphia *Independent Gazetteer*, 30 November 1787  
Helvidius Priscus I, Boston *Independent Chronicle*, 27 December 1787  
Luther Martin: Genuine Information I, Baltimore *Maryland Gazette*, 28 December 1787  
Helvidius Priscus II, Boston *Independent Chronicle*, 10 January 1788  
Centinel XII, Philadelphia *Independent Gazetteer*, 23 January 1788  
Centinel XIV, Philadelphia *Independent Gazetteer*, 5 February 1788  
Luther Martin: Address No. II, *Maryland Journal*, 21 March 1788  
Luther Martin: *To the Citizens of the United States*, Baltimore, 30 March 1788  
A Farmer, Philadelphia *Freeman’s Journal*, 16, 23 April 1788

### Federalist Sources

James Wilson: Speech at a Public Meeting in Philadelphia, 6 October 1787  
Publius: The Federalist 2, New York *Independent Journal*, 31 October 1787  
James Wilson: Speech in the Pennsylvania Convention, 24 November 1787  
Publius: The Federalist 37, New York *Daily Advertiser*, 11 January 1788  
Maryland Landholder No. X, *Maryland Journal*, 29 February 1788  
A Citizen of New-York: *An Address to the People of the State of New York*, 15 April 1788  
A Patriotic Citizen, *Pennsylvania Mercury*, 10 May 1788

## THE LESSON PLAN—What’s Wrong/Right with this Meeting?

### THE OBJECTIVES OF THE LESSON

- \* Students will be exposed to the many issues surrounding the legitimacy of the Constitutional Convention.
- \* Students should be able to effectively defend or critique the actions of the delegates at the Constitutional Convention.

### THE LESSON

1. The day before you want to use the script, you should select and assign the eleven roles to students who will play a role. You should stress that they should read and familiarize themselves with their parts.

#### Roles in Script—11 (L—large role; M—medium role; S—small role)

Moderator (L)

Antifederalist Panelists

Centinel (L)

Farmer (S)

Elbridge Gerry (M)

Luther Martin (L)

Helvidius Priscus (M)

Federalist Panelists

A Citizen of New York (L)

A Patriotic Citizen (M)

Maryland Landholder (M)

Publius (S)

James Wilson (S)

2. The day of the reading, distribute the two graphic organizers to the rest of the class. It will enable them to track through the presentation. You may want to use it as homework or the basis of a discussion after the presentation.

<b>The Issue</b>	<b>Why is this an Issue?</b>	<b>Federalist View</b>	<b>Antifederalist View</b>
Delegate Instructions			
Secrecy at Convention			
Amity at Convention			
Unanimity at Convention			

<u>The Delegate</u>	<u>The Criticism Leveled at Them</u>	<u>Legitimate or Illegitimate?</u>
Luther Martin		
James Wilson		
George Washington		
Benjamin Franklin		

3. After the performers have read the script, you should devote some time to check the observers for their understanding of the performance. You could do this with the class as a whole or by dividing the class into groups of 3-5 students.
4. After the class has discussed their findings from their graphic organizers, you could lead a discussion using the following questions:
  - a) In your opinion, which of the issues is most problematic in regards to the legitimacy of the Philadelphia Convention? Which is least problematic?
  - b) What are the advantages and disadvantages of holding a convention in secret?
  - c) When thinking about the various critiques of specific individuals in the script, is it reasonable to criticize specific individuals in a convention of 55 delegates?
  - d) If so, are there some criticisms that are reasonable? Are there unreasonable criticisms?
5. As an extension activity, you may have students do research on Elbridge Gerry, George Mason, and Edmund Randolph, the non-signers of the Constitution. Have them investigate the reasons why each refused to sign the document and consider whether they think their actions were justified.

## The Script

**Moderator:** I would like to extend a warm welcome to our audience and our panelists. Thank you for joining us.

**Panelists:** It's a pleasure to be here. Thank you for having us. It's nice to be here. Etc.

**Moderator:** We have with us a panel of distinguished gentlemen who are key figures in the debate over the Constitution. As many of you are aware Federalists and Antifederalist have been debating the merits of the Constitution itself, but the role of the Philadelphia Constitutional Convention itself is an item that has emerged as an issue as well in these debates over ratification.

**Helvidius Priscus:** [This convention] ambitiously and daringly presumed . . . to annihilate the sovereignties of the thirteen United States; to establish a DRACONIAN CODE; and to bind posterity by their secret councils.

**A Citizen of New-York:** The men who formed this plan are Americans, who had long deserved and enjoyed our confidence, and who are as much interested in having a good government as any of us are, or can be.

**Moderator:** Hold on gentlemen. Let's set the stage for our audience before we go further. Other Antifederalists joining Helvidius Priscus are Centinel, Elbridge Gerry, Luther Martin, An Officer of the Late Continental Army, and Farmer. A Citizen of New-York is joined by fellow Federalists James Wilson, A Patriotic Citizen, Maryland Landholder, and Publius.

**James Wilson:** This Convention [was] composed of men who possessed the confidence of the people. [They were] highly distinguished by their patriotism, virtue and wisdom . . . undertook the arduous task . . . and recommended to the people the plan produced by their joint and very unanimous counsels.

**Centinel:** What astonishing infatuation to stake [our] happiness on the wisdom and integrity of any set of men. . . . The celebrated Montesquieu, in his *Spirit of Laws*, says, "slavery is ever preceded by sleep."

**Moderator:** Again, gentlemen if we could pause a moment. I need to remind our audience that our agenda today is to discuss several issues surrounding the Convention. As you know, twelve states sent fifty-five delegates to Philadelphia in the summer of 1787 to discuss possible amendments to the Articles of Confederation that would address problems faced by the nation. After four months, the Convention completed its work and sent a new constitution to Congress. Convention President George Washington in a letter addressed to the President of Congress indicated that the Constitution was "the result of a spirit of amity" and hoped its adoption would "promote the lasting welfare" of the country.

**Martin:** The name of Washington is far above my praise! May that glory which encircles his head ever shine with undiminished rays!

**Moderator:** But, if I am not mistaken, you still have problems with the proposed plan even with

Washington being associated with the Convention?

**Martin:** To find myself under the necessity of opposing such illustrious characters, whom I venerated and loved, filled me with regret. . . . But to have hesitated would have been criminal; complaisance would have been guilt.

**Moderator:** Before we address matters about specific delegates at the Convention, let's explore the controversy surrounding the original purpose for the gathering. A Citizen of New-York, could you summarize why the Convention gathered?

**A Citizen of New-York:** The Convention concurred . . . that a national government . . . was indispensably necessary; and it was as plain to them . . . that the present confederation does not provide for such a government. They proceeded to consider how and in what manner such a Government could be formed.

**Farmer:** [This is simply not true.] They were strictly bound by the law of their appointment to revise the confederation; the additional powers with which it ought to have been vested were generally understood, and would have been universally submitted to.

**Moderator:** So for you, it is important to remember the instructions given to them?

**Farmer:** [Yes.] This convention not only neglected the duty of their appointment, but assumed a power of the most extraordinary kind.

**Moderator:** By doing what?

**Farmer:** They proceeded to destroy the very government which they were solemnly enjoined to strengthen and improve.

**Moderator:** Who actually authorized these delegates?

**Farmer:** The legislature of the various states, elected members for a federal convention.

**Gerry:** As the Convention was called for "the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures such alterations and provisions as shall render the Federal Constitution adequate to the exigencies of government and the preservation of the union," I did not conceive that these powers extended to the formation of the plan proposed.

**Moderator:** But you were a delegate Mr. Gerry. You certainly were aware the delegates had in a sense violated their instructions.

**Gerry:** [Indeed,] but the Convention being of a different opinion, I acquiesced in it, being fully convinced that to preserve the union, an efficient government was indispensably necessary; and that it would be difficult to make proper amendments to the articles of Confederation.

**Publius:** It is worthy of remark that . . . the late Convention invariably joined with the people in thinking that the prosperity of America depended on its Union.

**Moderator:** And, in your opinion, this was not possible by simply revising the Article of Confederation?

**Publius:** [No.]

**Moderator:** In a sense this issue boils down to whether you believe that the instructions given to the delegates were binding or not. Or perhaps they couldn't address the nation's problems if they strictly followed their instructions.

**Centinel:** If you were even well assured that the utmost purity of intention predominated in the production of the proposed government . . . it would not be wise . . . to adopt it . . . in toto.

**Moderator:** Why not?

**Centinel:** All former experience must teach you the propriety of a revision on such occasions, to correct the errors.

**Moderator:** But, why not trust the delegates? Even though they may not have done exactly what they were sent to do, it appears they had the best interests of the country in mind.

**Centinel:** What then are we to think of the motives and designs of those men who are urging the implicit and immediate adoption of the proposed government?

**A Patriotic Citizen:** To have asserted, in plain English, that the framers of it, and those who have ratified it, are all villainous conspirators, and consequently that this plan of government is calculated to enslave the people of America, to make them hewers of wood and drawers of water, and to force them to make bricks without straw. What an insult to the freemen of America!

**Centinel:** If you exercise your good sense and discernment, you will discover the masqued aristocracy, that they are attempting to smuggle upon you, under the suspicious garb of republicanism.

**A Patriotic Citizen:** Much might here be said of the patriotism, integrity, abilities, and past service, of almost all the gentlemen who were honored, by their respective states, with seats in that august assembly.

**Centinel:** They have despised their delegated power and assumed sovereignty [and created] a government that will give full scope to the magnificent designs of the well-born.

**A Patriotic Citizen:** Conspiracies are usually formed and executed by desperate and abandoned wretches, who have neither fortune nor reputation to lose.

**Moderator:** This might be a good point in our discussion to turn to the decision of the delegates to adopt a rule of secrecy. I am sure that Centinel has a few thoughts on this.

**Centinel:** If you are in doubt about the . . . proposed government, view the conduct of its authors and patrons, that affords the best explanation, the most striking comment.

**Moderator:** So, the fact that their conduct was done in secret means their work is suspect?

**Centinel:** The evil genius of darkness presided at its birth, it came forth under the veil of mystery, its true features being carefully concealed, and every deceptive art has been and is practising to have this spurious brat received as the genuine offspring of heaven-born liberty.

**Martin:** Could there possibly be a greater indignity and insult offered to . . . the free citizens of America . . . than to shut themselves up in mystery and darkness; to keep all their deliberations an absolute secret from their constituents . . . to prevent the publication of their journals; to deprive the free citizens of America of every means of information?

**Moderator:** But at the time many thought the rule was a good thing. In fact one editorial in a Boston newspaper said “The profound secrecy hitherto observed by this august body, we cannot help considering as a happy omen; as it demonstrates, that the spirit of party, on any great and essential point, cannot have arisen to any height.”

**Martin:** The doors were to be shut, and the whole proceedings were to be kept secret; and so far did this rule extend, that we were thereby prevented from corresponding with gentlemen in the different States upon the subjects under our discussion—a circumstance, Sir, which I confess, I greatly regretted.

**Moderator:** Wouldn't this secrecy be important though? It might provide the opportunity for delegates to express a wide range of ideas without the fear of having their views misconstrued by the public.

**Centinel:** Attempts to prevent discussion by shackling the press ought ever to be a signal of alarm to freemen, and considered as an annunciation of meditated tyranny.

**A Citizen of New-York:** [These] gentlemen met in Convention with minds perfectly unprejudiced in favor of any particular plan. All agreed in the necessity of doing something, but no one ventured to say decidedly what precisely ought to be done—opinions were then fluctuating and unfixed. . . . The members were more desirous to receive light from, than to impress their private sentiments on one another.

**Martin:** [But,] members were prohibited even from taking copies of resolutions, on which the convention were deliberating, or extracts of any kind from the journals without formally moving for, and obtaining permission, by a vote of the convention for that purpose.

**A Citizen of New-York:** These circumstances naturally opened the door to that spirit of candor, of calm enquiry, of mutual accommodation, and mutual respect, which entered into the Convention with them, and regulated their debates and proceedings.

**Moderator:** Let's pick up on that idea. Federalists have submitted that discussions among the delegates were generally calm and as Washington said, with “mutual deference and concession.” Antifederalists suggest otherwise.

**Publius:** The real wonder is, that so many difficulties should have been surmounted . . . with a unanimity almost as unprecedented as it must have been unexpected. It is . . . impossible for the

man of pious reflection not to perceive in it, a finger of that Almighty hand which has been so frequently and signally extended to our relief.

**A Citizen of New-York:** [Yes. And] it does great credit to the . . . talents of the Convention, that they were able so to reconcile the different views and interests of the different States, and the clashing opinions of their members, as to unite with such singular and almost perfect unanimity in any plan whatever, on a subject so intricate and perplexed.

**Moderator:** If there were major differences of opinions, how was broad agreement among the delegates achieved?

**A Citizen of New-York:** Liberality . . . as well as prudence, induced them to treat each other's opinions with tenderness, to argue without asperity, and to endeavor to convince the judgment without hurting the feelings of each other. Although many weeks were passed in these discussions, some points remained, on which a unison of opinions could not be effected.

**Moderator:** So you are admitting to there being strong disagreements among the delegates?

**A Citizen of New-York:** Here again that same happy disposition to unite and conciliate induced them to meet each other; and enabled them by mutual concessions, finally to complete and agree to the plan they have recommended, and that too with a degree of unanimity, which, considering the variety of discordant views and ideas they had to reconcile, is really astonishing.

**Centinel:** Mr. Martin [said] when the public prints were announcing our perfect unanimity, discord prevailed to such a degree, that the minority were upon the point of appealing to the public against the machinations of ambition.

**Moderator:** You're suggesting that newspapers were incorrect in reporting that the proceedings of the Convention were going smoothly.

**Centinel:** [Yes. These reports were] repeated in every newspaper and reverberated from one end of the union to the other. . . . The people [were] lulled into a false confidence, into an implicit reliance upon the wisdom and patriotism of the convention.

**Moderator:** What's wrong with the suggestion that the delegates were wise and patriotic?

**Centinel:** [It's worse than that.] Extravagant fictions were palmed upon the people, the seal of divinity was even ascribed to the new constitution.

**Moderator:** Mr. Martin, you were there, can you shed some light on this?

**Maryland Landholder:** [I object. Mr. Martin] attended only 66 days out of 126.

**Moderator:** And your point being what?

**Maryland Landholder:** Is it to be presumed that [Mr. Martin] could have been minutely informed of all that happened in the Convention, and committees of Convention, during the 60 days of [his] absence?

**Centinel:** [Hold on here.] I am happy to find the . . . Honorable Luther Martin . . . has laid open the conclave . . . and illustrated the machinations of ambition. His public spirit has drawn upon him the rage of the conspirators, for daring to remove the veil of secrecy, and announcing to the public the meditated, gilded mischief: all their powers are exerting for his destruction; the mint of calumny is assiduously engaged in coining scandal to blacken his character, and thereby to invalidate his testimony.

**Martin:** [And frankly,] it was not in my power to attend the convention immediately on my appointment—I took my seat, I believe, about the eighth or ninth of June.

**A Citizen of New-York:** This plan is the result of accommodation. [Let us] hold it up as . . . the best which they could unite in, and agree to. If such men, appointed and meeting under such auspicious circumstances, and . . . disposed to conciliation, could . . . please every State and every body, what reason have we at present to expect any system that would give more general satisfaction?

**Helvidius Priscus:** [OK,] Let us candidly . . . examine [some of the delegates'] conduct. Several of them left the [Convention] in disgust before the decision of the question.

**Moderator:** I am assuming you are referring to Robert Yates and John Lansing, Jr. two of the three delegates from New York?

**Helvidius Priscus:** [Yes.] Others expressly reprobated the proceedings of a conclave, where it [was] ridiculously asserted all the wisdom of America was concentrated.

**Moderator:** And if I am not mistaken, several delegates refused to sign the completed Constitution.

**Helvidius Priscus:** [Absolutely. Edmund] Randolph, [George] Mason, and [Elbridge] Gerry, [had] the firmness to avow their dissent to support their opinions in the Legislatures of their several States.

**Moderator:** I have also heard reports that Benjamin Franklin was not particularly fond of the Constitution?

**Helvidius Priscus:** It is true indeed that the ancient Doctor, who has been always republican in principle and conduct, doubted, trembled, hesitated, wept, and signed.

**Moderator:** So I can see how these claims of unanimity at the Convention are a bit overstated.

**Publius:** The history of almost all the great councils . . . held among mankind for reconciling their discordant opinions . . . is a history of factions, contentions, and disappointments.

**Moderator:** So, is it your belief these particular delegates were able to rise above their self-interest and create this Constitution?

**Publius:** [Yes.] The Convention . . . enjoyed in a very singular degree, an exemption from the pestilential influence of party animosities; the diseases most incident to deliberative bodies, and most apt to contaminate their proceedings.

**Moderator:** Let's turn our attention to specific delegates. The newspapers have been filled with various assessments of individuals attending the Convention. Perhaps among the most vilified is Luther Martin from Maryland.

**Martin:** [No kidding.]

**Centinel:** This illustrious patriot will rise superior . . . and be the better confirmed in the good opinion and esteem of his fellow-citizens . . . by standing forth their champion at a crisis when most men would have shrunk from such a duty. Mr. Martin [is] . . . undaunted by the threats of his and his country's enemies, is nobly persevering in the cause of liberty and mankind.

**Maryland Landholder:** [Luther,] the day you took your seat must be long remembered by those who were present.

**Moderator:** What was so memorable about that day?

**Landholder:** [He] had scarcely time to read the propositions which had been agreed to after the fullest investigation, when, without requesting information, or to be let into the reasons of the adoption of what you might not approve, [he] opened against them, in a speech which held during two days, and which might have continued two months.

**Martin:** In so momentous an undertaking, in forming a system for such an extensive continent, on which the political happiness of so many millions, even to the latest ages, may depend, no time could be too long—no thought and reflection too great—and that if by continuing six months, or even as many years, we could free the system from all its errors and defects, it would be the best use to which we could possibly devote our time.

**Maryland Landholder:** [Even] the pleasant Mr. Gerry [sarcastically remarked that] he admired the strength of your lungs . . . that never fail to lengthen out . . . his oratory. [Gerry's] reply . . . so comic, had the happy effect to put the house in good humour. . . . But these did not teach you to bound your future speeches by the lines of moderation; for the very next day you exhibited, without a blush, another specimen of eternal volubility.

**Martin:** [My speeches weren't that long.]

**Maryland Landholder:** [Luther,] you exhausted the politeness of the Convention, which at length prepared to slumber when you rose to speak: nor can you have forgotten, you were only twice appointed a member of a Committee, or that these appointments were made, merely to avoid your endless garrulity, and if possible, lead you to reason.

**Martin:** From the best judgment I could form while in Convention, I then was, and yet remain, decidedly of the opinion, that ambition and interest had so far blinded the understanding of some of the principal framers of the constitution, that . . . they were labouring to erect a fabrick by which they themselves might be exalted and benefited.

**Moderator:** Another delegate who has been singled out for ridicule is James Wilson from Pennsylvania.

**Wilson:** [No kidding.]

**Helvidius Priscus:** Mr. Wilson observe[d] “that after a lapse of six thousand years America has now presented the first instance of a people assembled to weigh deliberately, and calmly, and to decide leisurely, and peaceably, on a form of government, by which they shall bind themselves and their posterity.”

**Moderator:** What is the problem you see with this?

**Helvidius Priscus:** Has he not here suggested the strongest reason . . . for postponing the adoption of the new system?

**Moderator:** How so?

**Helvidius Priscus:** If the assertion is true, is it prudent for this extensive Continent implicitly to accept, and rapidly and irrevocably adopt, the propositions of thirty or forty men, some of whom were infants, when the principles of the late revolution animated the patriots of this country to a noble resistance.

**Moderator:** So as you see it, Wilson is asking us to trust the efforts of young and inexperienced individuals.

**Helvidius Priscus:** [Yes.]

**Moderator:** I recently read a piece by an author calling himself “An Officer of the Late Continental Army” noted Wilson’s arguments “contained no more than a train of pitiful sophistry and evasions.” In that same article the author noted that “He sees at a distance the pomp and pageantry of courts, he sighs after those stately palaces and that apparatus of human greatness which his vivid fancy has taught him to consider as the supreme good.” Essentially, it accuses Wilson of being a monarchist.

**A Citizen of New-York:** The illiberal manner in which some have taken the liberty to treat [some delegates at the Convention]; to impute it to impure and improper motives . . . may sometimes carry men beyond the bounds of reason.

**Wilson:** I would simply say this to my critics. Oft have I viewed, with . . . pleasure and admiration, the force and prevalence through the United States, that the supreme power resides in the people; and that they never part with it. There can be no disorder in the community but may here receive a radical cure. If the error be in the legislature, it may be corrected by the constitution. If in the constitution, it may be corrected by the people.

**Moderator:** What about George Washington? No one is more revered. One writer said that Americans have been slow to be critical of Washington since “all feel a respectful delicacy towards that Great Man, and have therefore been silent.”

**Martin:** [In regards to Washington,] would to Heaven that, on this occasion, one more wreath had been added to the number of those which are twined around his amiable brow!—that those with which it is already surrounded, may flourish with immortal verdure, nor wither or fade till time shall be no more, is my fervent prayer! and may that glory which encircles his head, ever shine with undiminished rays!

**Moderator:** So you have no criticisms of Washington?

**Centinel:** [Not exactly.] In despair [the supporters of the Constitution] are weakly endeavouring to screen their criminality by interposing the shield of the virtues of a Washington, in representing his concurrence in the proposed system of government, as evidence of the purity of their intentions.

**Moderator:** But in his letter to Congress, Washington did say he thought the Constitution would “promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness.”

**Centinel:** [But] this . . . attempt to degrade the brightest ornament of his country . . . will be considered as . . . an insult on the good sense of the people, who have too much discernment not to make a just discrimination between the honest mistaken zeal of the patriot, and the flagitious machinations of an ambitious junto.

**Moderator:** In other words, using Washington’s reputation could backfire?

**Centinel:** [Yes. The people] will resent the . . . consummate cunning . . . practised upon our illustrious chief.

**Moderator:** Are you suggesting that Washington was duped at the Convention? That’s a pretty serious charge.

**Centinel:** Is it derogating from the character of the illustrious and highly revered Washington, to suppose him fallible on a subject that must be in a great measure novel to him?

**Moderator:** The fact that Washington is a military man has bearing on this point?

**Centinel:** [Yes.]

**Moderator:** And what about Benjamin Franklin? Antifederalists have said his age was a factor at the Convention.

**Centinel:** [Certainly,] the weakness and indecision attendant on old age [was a factor].

**Helvidius Priscus:** And why was the aged Dr. Franklin, so darkened in his councils, as to make a motion that the President should have no salary? and to oppose almost every article in the system till the last, when he lent his signature in tears?

**Moderator:** But many would probably agree with what one Federalist said about Franklin noting he “would not be guilty of embarking in any undertaking, which appeared futile and unnecessary. Rest

assured, therefore, that [Franklin] in conjunction with many others, have the good of America at heart.”

**Gerry:** It may be urged by some, that an *implicit* confidence should be placed in the Convention: But, however respectable the members may be who signed the Constitution, it must be admitted, that a free people are the proper guardians of their rights and liberties—that the greatest men may err—and that their errors are sometimes, of the greatest magnitude.

**A Citizen of New-York:** That Convention was in general composed of excellent and tried men—men who had become conspicuous for their wisdom and public services, and whose names and characters will be venerated by posterity. . . . Let us continue careful therefore that facts do not warrant historians to tell future generations, that envy, malice and uncharitableness pursued our patriotic benefactors to their graves.

**Moderator:** And with that we need to wrap up our discussion. Let’s have a few panelist from each side end with a concluding statements.

**Publius:** A strong sense of the value and blessings of Union induced the people, at a very early period, to institute a Fœderal Government. . . . They formed it . . . when their habitations were in flames, when many of their Citizens were bleeding, and when the progress of hostility and desolation left little room for those calm and mature enquiries and reflections. . . . It is not to be wondered at that a Government instituted in times so inauspicious, should on experiment be found greatly deficient and inadequate. . . . This intelligent people perceived and regretted these defects. Still continuing no less attached to union . . . they observed the danger . . . and being persuaded that ample security could only be found in a national Government more wisely framed. . . . they convened the late Convention at Philadelphia, to take that important subject under consideration.

**Wilson:** I will confess indeed, that I am not a blind admirer of this plan of government, and that there are some parts of it, which if my wish had prevailed, would certainly have been altered. But, when I reflect how widely men differ in their opinions, and that every man (and the observation applies likewise to every state) has an equal pretension to assert his own, I am satisfied that any thing nearer to perfection could not have been accomplished. . . .

**A Citizen of New-York:** What measures would you propose for obtaining a better? Some will answer, let us appoint another Convention. . . . This reasoning is fair . . . but it nevertheless takes one thing for granted. . . . Although the new Convention might have more information, and perhaps equal abilities, yet it does not from thence follow that they would be equally disposed to agree. The contrary of this position is the most probable. You must have observed that the same temper and equanimity which prevailed among the people on the former occasion, no longer exists.

**Moderator:** And from the Antifederalists?

**Centinel:** Friends, Countrymen, and Fellow Citizens! The formation of a good government, is the greatest effort of human wisdom . . . but such is the cursed nature of ambition, so prevalent among men, that it would sacrifice every thing to its selfish gratification; hence the fairest opportunities of advancing the happiness of humanity . . . are too often converted to the votaries of power and domination. . . . If you are in doubt about the nature and principles of the proposed government, view the conduct of its authors and patrons, that affords the best explanation, the most striking

comment. . . . So fearful are its patrons that you should discern the imposition, that they have hurried on its adoption, with the greatest precipitation; they have endeavored also to preclude all investigation, they have endeavored to intimidate all opposition.

**Helvidius Priscus:** Mankind have always been lulled by sounds into a fatal security, without giving themselves the trouble of investigation. Yet . . . [some will attempt to] persuade the world that the majority of the late convention were so much the peculiar favourites of heaven as to receive an immediate inspiration for the model of a government, that should subjugate a country.

**Centinel:** The system of deception that has been practised . . . [is] evidence of a conspiracy. The means practised to establish the new constitution are demonstrative of the principles and designs of its authors and abettors. . . . Bring the conduct of the authors and abettors of the new constitution to this test, let this be the criterion of their criminality, and every patriotic mind must unite in branding them with the stigma of conspirators against the public liberties.

**Moderator:** And with that we conclude our discussion. Good night and good luck.

*Lesson Four:*  
*The Debate over the Nature of the Union and*  
*Republican Government*

**BACKGROUND INFORMATION FOR INSTRUCTOR**

Many of the same issues that had occupied the attention of Americans since 1763 continued to be discussed during the ratification debate. Americans again considered what constituted a good republic and what could be considered suitable representation within it.

Antifederalists argued that the new Constitution would destroy the states and create a large consolidated system that would eventually result in either monarchy or despotism. They espoused the theories of the baron de Montesquieu who maintained that a good republican government was based on consent and featured officials who were chosen directly by the people in elections held on a regular basis. According to Montesquieu, this was only possible in a relatively small territory to ensure that the populations shared similar values and interests. Representatives could know the minds of their constituents since there was an intimacy between the people and their representatives. In a large country this would be lost and the result would be constant clashing and disorder.

After 17 September 1787, when the public debate over the proposed Constitution began, Antifederalists acknowledged the need for a stronger central government. However, they suggested that the central government possess a minimum of delegated powers to maintain the Union and no implied powers. They desired a central government that could not act directly on the people, but one acting through the states.

Federalists believed that a confederacy was not an adequate form of government for the United States. Since many of the requisite conditions for a successful confederation were not extant in the United States, Federalists argued that it was necessary to rethink the nature of republican government. In doing so they needed to address the ideas of Montesquieu. He had insisted that “In an extensive republic the public good is sacrificed to a thousand private views. In a small one, the interest of the public is more obvious, better understood, and more within the reach of every citizen.” James Wilson suggested that Montesquieu’s theories were valid to a point. Wilson equated the states with Montesquieu’s republics. In the American context, the states were joined as “federated republics.” Seemingly there was no limit to the number of federal republics that could be joined together. Federalists “unofficially” espoused Wilson’s theory. Antifederalists attacked it, suggesting that the states were too large to fit Montesquieu’s model. Federalists denied that the Constitution would destroy the states by creating one large, consolidated republic. Instead the Constitution would form a system that was partly national and partly federal (local). Federalist also argued that the central government would in fact need the states to survive and function properly, i.e., state legislatures would elect U.S. Senators.

James Madison devised a new theory that valued a large and diverse polity. This clashing of diverse interests in the large American republic would solve the problems of instability that had afflicted all prior attempts at republican government. These factions under the new Constitution, through the refining process of deliberation, would serve the overall public interest. Although Madison’s Federalist 10 has been accepted as the most significant explanation of the idea of the extended republic, at the time, it did not generate criticism among Antifederalists or support among Federalists. James Wilson would be the official spokesman for the idea of the extended republic.

## KEY IDEAS IN PRIMARY SOURCE DOCUMENTS

### **Brutus I, *New York Journal*, 18 October 1787**

Republics Need to be Small; No Example of Large Republics Succeeding

### **An Old Whig IV, *Philadelphia Independent Gazetteer*, 27 October 1787**

Constitution Will Destroy States and End in Tyranny

### **A Citizen of Philadelphia: The Weaknesses of Brutus Exposed, 8 November 1787**

Necessity of Strong National Government to Control States

### **James Wilson's Speech in Pennsylvania Convention, 24 November 1787**

Constitution Will Control Factions in a Large Republic

### **Publius: *Federalist 10*, *New York Daily Advertiser*, 22 November 1787**

Factions Cause Problems in Small Republics, Increasing the Size of the Nation will Add Factions, Added Factions will be Neutralized in Large Republic

## PRIMARY SOURCE DOCUMENTS

### **Brutus I, *New York Journal*, 18 October 1787**

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these encreasing in such rapid progression as that of the whole United States. Among the many illustrious authorities which might be produced to this point, I shall content myself with quoting only two. The one is the baron de Montesquieu, spirit of laws, chap. xvi. vol. 1. "It is natural to a republic to have only a small territory, otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation; there are trusts too great to be placed in any single subject; he has interest of his own; he soon begins to think that he may be happy, great and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country. In a large republic, the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses are of less extent, and of course are less protected." Of the same opinion is the marquis Beccarari.

History furnishes no example of a free republic, any thing like the extent of the United States. The Grecian republics were of small extent; so also was that of the Romans. Both of these, it is true, in process of time, extended their conquests over large territories of country; and the consequence was, that their governments were changed from that of free governments to those of the most tyrannical that ever existed in the world.

Not only the opinion of the greatest men, and the experience of mankind, are against the idea of an extensive republic, but a variety of reasons may be drawn from the reason and nature of things, against it. In every government, the will of the sovereign is the law. In despotic governments, the supreme authority being lodged in one, his will is law, and can be as easily expressed to a large extensive territory as to a small one.

## **An Old Whig IV, Philadelphia *Independent Gazetteer*, 27 October 1787**

It is beyond a doubt that the new federal constitution, if adopted, will in a great measure destroy, if it do not totally annihilate, the separate governments of the several states. We shall, in effect, become one great Republic.—Every measure of any importance, will be Continental.—What will be the consequence of this? One thing is evident—that no Republic of so great a magnitude, ever did, or ever can exist. But a few years elapsed, from the time in which ancient Rome extended her dominions beyond the bounds of Italy, until the down fall of her Republic; and all political writers agree, that a Republican government can exist only in a narrow territory: but a confederacy of different Republics has, in many instances, existed and flourished for a long time together—The celebrated *Helvetian* league, which exists at this moment in full vigor, and with unimpaired strength, whilst its origin may be traced to the confines of antiquity, is one, among many examples on this head; and at the same time furnishes an eminent proof of how much less importance it is, that the constituent parts of a confederacy of Republics may be rightly framed than it is, that the confederacy itself should be rightly organized;—for hardly any two of the Swiss cantons have the same form of government, and they are almost equally divided in their religious principles, which have so often rent asunder the firmest establishments. A confederacy of Republics must be the establishment in America, or we must cease altogether to retain the Republican form of government. From the moment we become one great Republic, either in form or substance, the period is very shortly removed, when we shall sink first into monarchy, and then into despotism.—If there were no other fault in the proposed constitution, it must sink by its own weight. The continent of North-America can no more be governed by one Republic, than the fabled Atlas could support the heavens.

## **A Citizen of Philadelphia: The Weaknesses of Brutus Exposed, 8 November 1787**

This government must have a supreme power, *superior to and able to controul* each and all of its parts. 'Tis essential to all governments, that such a power be somewhere existing in it. . . . The supreme power of government ought to be *full, definite, established, and acknowledged*. Powers of government too limited, or uncertain and disputed, have ever proved, like *Pandora's* box, a most fruitful source of quarrels, animosities, wars, devastation, and ruin, in all shapes and degrees, in all communities, states, and kingdoms on earth.

Nothing tends more to the honour, establishment, and peace of society, than public decisions, grounded on principles of right, natural fitness, and prudence; but when the powers of government are *too limited*, such decisions can't be made and enforced; so the mischief goes without a remedy: dreadful examples of which we have felt, in instances more than enough, for seven years past.

'Tis necessary in States, as well as in private families, that controversies should have a just, *speedy*, and effectual decision, that right may be done before the contention has *time* to grow up into habits of malignity, resentment, ill nature, and ill offices. If a controversy happens between two states, must it continue undecided, and daily increase, and be more and more aggravated, by the repeated insults and injuries of the contending parties, 'till they are ripe for the decision of the sword? or must the weaker states suffer, without remedy, the groundless demands and oppressions of their stronger neighbours, because they have no avenger, or umpire of their disputes?

Or shall we institute a supreme power with full and effectual authority to controul the animosities, and decide the disputes of these strong contending bodies? In the one proposed to us, we have perhaps every chance of a *righteous judgment*, that we have any reason to hope for; but I am

clearly of opinion, that even a *wrongful decision*, would, in most cases, be preferable to the continuance of such destructive controversies.

### **James Wilson's Speech in Pennsylvania Convention, 24 November 1787**

Such a number of separate states, contiguous in situation, unconnected and disunited in government, would be, at one time, the prey of foreign force, foreign influence, and foreign intrigue; at another, the victim of mutual rage, rancor, and revenge. . . .

The aim of the Convention was to form a system of good and efficient government on the more extensive scale of the United States. . . .

When we had baffled all the menaces of foreign power, we neglected to establish among ourselves a government, that would insure domestic vigor and stability. What was the consequence? The commencement of peace was the commencement of every disgrace and distress, that could befall a people in a peaceful state. Devoid of national power, we could not prohibit the extravagance of our importations, nor could we derive a revenue from their excess. Devoid of national importance, we could not procure, for our exports, a tolerable sale at foreign markets. Devoid of national credit, we saw our public securities melt in the hands of the holders, like snow before the sun. Devoid of national dignity, we could not, in some instances, perform our treaties, on our parts; and, in other instances, we could neither obtain nor compel the performance of them on the part of others. Devoid of national energy, we could not carry into execution our own resolutions, decisions, or laws. . . .

For the confirmation of these remarks, I need not appeal to an enumeration of facts. The proceedings of Congress, and of the several states, are replete with them. They all point out the weakness and insufficiency as the cause, and an efficient general government as the only cure of our political distempers. Under these impressions . . . the late Convention met.

We now see the great end which they propose to accomplish. It was to frame, for the consideration of their constituents, one federal and national constitution—a constitution, that would produce the advantages of good, and prevent the inconveniences of bad government—a constitution whose beneficence and energy would pervade the whole Union; and bind and embrace the interests of every part—a constitution that would insure peace, freedom, and happiness, to the states and people of America.

### **Publius: Federalist 10, New York *Daily Advertiser*, 22 November 1787**

Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary. . . . Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic, -- is enjoyed by the Union over the States composing it. . . .

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. . . .

A rage . . . for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State. . . .

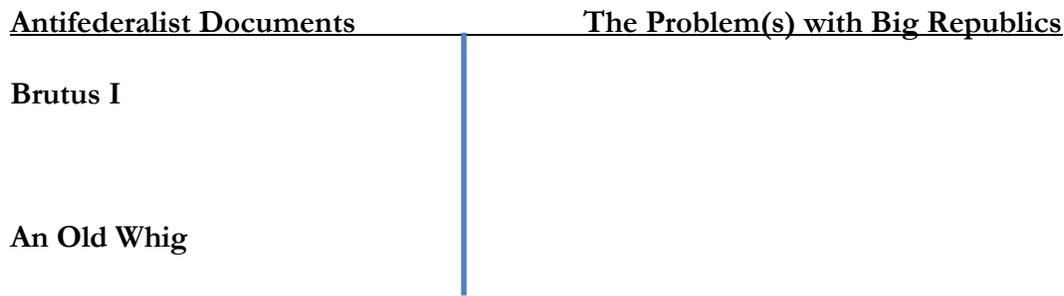
# THE LESSON PLAN—The Problems with Big, the Problems with Small, the “Publius Solution”

## OBJECTIVES OF THE LESSON

- \* Students will read and consider the Federalist and Antifederalist debate over the merits of having a large or small republic.
- \* Students will consider the effectiveness of using fear as a form of persuasion in political debate.

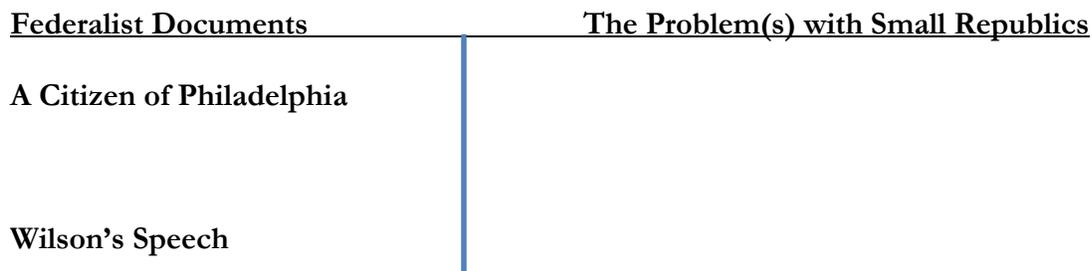
## THE LESSON

1. Divide the class into groups of 3-5 students.
2. Half of the groups should be designated as Federalist groups and given “A Citizen of Philadelphia” and James Wilson’s speech. The other half should be designated as Antifederalist groups and given the “Brutus” and “An Old Whig” essays.
3. Groups should be given their specific graphic organizer below.



**Brutus I**

**An Old Whig**



**A Citizen of Philadelphia**

**Wilson’s Speech**

4. After groups have completed their work you can have them report their findings to the class.
5. You can continue the lesson by leading a discussion using the following questions.
  - a) In your opinion, are the Antifederalist essays similar or different in their reasoning?
  - b) In your estimation, do the Federalists overstate the problems facing the nation?

- c) How does the notion of fear factor into the reasoning of the each author? Would you say that one side is more prone to use fear more than the other?
  - d) What does the use of fear as a theme suggest about the nature of the debate over the Constitution?
6. To conclude the lesson have the class read “Publius.” Point out that they should note the solution offers to solve the problems addressed in the other documents.
7. After students have read “Publius,” you can lead a discussion using the following questions.
- a) How does “Publius” propose to manage the negative effects of factions?
  - b) Do you think his solution is effective in managing factions?
  - c) In what ways might “Publius” be considered a pessimist? Is he overly pessimistic?
  - d) In what ways might “Publius” be considered an optimist? Is he overly optimistic?

## *Lesson Five:* *The Debate over the Branches of Government*

### **BACKGROUND INFORMATION FOR INSTRUCTOR**

#### **The Debate over the House of Representatives**

During the Revolution all of the American states established republican forms of government where people chose representatives to attend state legislatures. The lower houses of the legislatures were always the center of power.

The Constitution called for a bicameral Congress composed of a House of Representatives and a Senate. Representation in the House was proportionately based on population, while the states were equally represented in the Senate. Small-state Antifederalists opposed proportional representation in the House. They maintained the states had always been distinct and sovereign political units, as such, they should be represented equally. Large-state Antifederalists favored the proportional representation in the House but opposed the equal state representation in the Senate. Antifederalist also maintained that the House of Representatives was too small to adequately represent all segments of the American society because the first U.S. House of Representatives would be composed of only 65 members (if all 13 states ratified). They cited the fact that many of the lower houses of the state legislatures had more members than would serve in the House under the proposed Constitution. Antifederalists also attacked the biennial elections of representatives. Under the Articles of Confederation, delegates to Congress had one-year terms, were subject to recall, and could only serve three years within a six-year period. The Constitution did not have recall or rotation in office provisions. The Constitution was also criticized for neglecting to grant treaty-making powers to the House of Representatives even though treaties would be the law of the land. Although they liked the requirement that money bills would originate in the lower house, Antifederalists criticized the Senate's power to amend money bills. In Parliament, the House of Lords could only accept or reject money bills. Antifederalists belittled the House's power to impeach government officials, saying no convictions and removals would take place in trials held in the Senate.

Federalists countered these criticisms forcefully. Under the Articles of Confederation, state legislatures determined how their delegates to Congress were elected. All but Rhode Island and Connecticut opted that the state legislatures did the electing. Under the Constitution, voters qualified to vote for members of their state assemblies could vote for U.S. Representatives. Federalists argued that this meant the House of Representatives was more democratic than the Confederation Congress.

In countering Antifederalist qualms about representation, "An American Citizen" III noted that proportional representation in the proposed Constitution "accords with reason and the true principles of liberty . . . and is one more great step towards the perfection of equal liberty and genuine republicanism in America." Federalists also countered concerns that the House was too small pointing out that it would enlarge as the nation's population increased. Additionally, they argued that the two-year term would create a degree of continuity. Representatives from distant states would find a one-year term difficult simply because much of their time would be spent in transit or running for office detracting them from pressing national affairs. Federalists also argued that although the House of Representatives had no direct involvement in treaty-making, it still had influence through its control over the appropriation of funds. In addition, its impeachment powers gave it considerable powers in all governmental affairs.

## **The Debate over the Senate**

Because most states had bicameral legislatures, there was little debate at the Philadelphia Convention over the establishment of a bicameral legislature that would replace the unicameral Confederation Congress. However, there was considerable debate over representation in each house.

During the debate over ratification, large-state Antifederalists attacked the equal state representation in the Senate as inequitable. If Delaware, with less than ten percent of Virginia's population, had the same representation as the Old Dominion in the Senate, how could anyone imagine that Virginians were fairly represented? Antifederalists also denounced the aristocratic nature of the Senate. Senators were to be elected by their state legislatures to six-year terms. Because Senators did not face mandatory rotation in office and were not subject to recall (as was the case in the Confederation Congress), Antifederalists feared they would serve for life.

Antifederalists also objected to the Senate's blended functions with the executive branch in appointments and making treaties that violated the principle of separation of powers between the branches of government. Additional concerns centered on the Vice-President serving as the president of the Senate with voting powers in the event of a deadlock. Antifederalists were also critical of the Senate's role in judicial nominations as well as in the impeachment process. Because of this blending of powers, they speculated that the Senate would not convict anyone who was impeached.

Large-state Federalists justified the equality of the states in the Senate largely on the basis of expediency. Without this concession to the small states at the Philadelphia Convention, consensus would have been impossible. Furthermore, the different constituency of the Senate, coupled with the six-year term with one-third of the Senators being elected every two years, promised greater stability for Congress as a whole. The Senate's role in advising the President was justified in several ways. It was argued that the Senate would be a repository of experience and wisdom, and as such, should be made available to the President. To counter the charge that the Senate would be aristocratic, Federalists pointed out that it could do nothing by itself. In passing legislation, the Senate needed the agreement of the House. In treaty-making and appointments, the Senate acted in conjunction with, and most probably in response to, the actions of the President. If Senators violated their trust, they would not be re-elected by their state legislatures.

## **The Debate over the Executive Branch**

Americans had considerable experience with executives—they had lived under the British king, who although less powerful than in previous times, still had broad powers. The Articles of Confederation provided for no separate executive, but the Congress did elect its own president who acted more or less like the Speaker of a legislative body. Charles Thomson of Pennsylvania served as secretary of Congress from 1774 to 1789 and handled some executive functions. After a couple of years, Congress realized that it could not effectively deal with all executive matters in committees, therefore several departments were created: Finance, War, Foreign Affairs in addition to the Post Office. The Post Office had originally been established under the Continental Congress. Superintendent of Finance Robert Morris initially served as defacto prime minister. When Morris resigned, Secretary for Foreign Affairs John Jay filled the political vacuum and served as defacto prime minister. All states had relatively weak governors with the exception of New York and Massachusetts, who served as the best models for the Constitutional Convention when creating the American Presidency.

Soon after it convened, the Constitutional Convention agreed to have a single executive as opposed to a plural executive which was favored by a few delegates who feared the reestablishment of a monarchy. Greater disagreements persisted on the manner of electing the executive. Some

wanted the President to be elected by Congress for a long term but ineligible for reelection. Others favored direct election by the people for a shorter term with no restriction on the number of consecutive terms. A compromise eventually provided that the President would be elected for a four-year term by electors chosen in a manner prescribed by the state legislatures. Each state would have the number of electors equivalent to its members of U.S. Representatives and Senators. No restrictions were placed on the President's eligibility for reelection.

During the ratification debates, Antifederalists charged that the President would become a king—in fact, he would be the worst kind of king— an elected one. They charged that cabals and intrigues would certainly develop over the reelection of the incumbent. Antifederalists also charged that the Constitution was defective in that it denied the commonly held belief that the three branches of government ought to be separate. The mixture of power and responsibility over appointments to offices and treaty-making bothered many Americans. Since treaties were to be the supreme law of the land, and the House was excluded from the process, Antifederalists saw a dangerous combination between the Executive and the Senate and in turn advocated that a privy council be created to assist the President in appointments and treaty-making. If the Privy Council offered faulty advice, they could be held accountable. Antifederalists also alleged that the Executive held too much power over legislation through the veto. The pardoning power of the President was alleged to be a dangerous feature in the proposed Constitution. The President could conspire with others in treasonable activities and guarantee his co-conspirators pardons if their activities were discovered.

Federalists praised the Presidency. They pointed to the weaknesses of the Confederation and state governments with their nearly powerless executives. For Federalists, America needed a separate President with executive powers to enforce federal laws and conduct foreign policy effectively. Federalists contrasted the American Presidency with the British monarchy. They argued that the former had limited power checked by the two other branches whereas the latter had almost unlimited power. Federalists maintained that the President would be accountable to both the people and Congress. If he failed to satisfy the people, he would not be reelected; if he committed crimes, he could be impeached by Congress. Furthermore, everyone realized that George Washington would be elected the first President. Washington had previously rejected total power in 1783, preferring retirement. He could be expected to follow a similar course of action after he set in motion the new government under the Constitution. Federalists argued that this example would be followed by his successors.

### **The Debate over the Judicial Branch**

Antifederalists viewed the federal judiciary as a source of danger to individual liberty, the state judiciaries, and the future existence of the states themselves. The Constitution guaranteed jury trials in criminal cases, but it said nothing about civil cases. Thus, Antifederalists were concerned that the judicial power of the United States would compromise the right to jury trials in civil cases. They also noted that in criminal cases, juries of vicinage (local juries) were not guaranteed. This meant that individuals might need to travel great distances to federal courts placing undue hardship on them and their witnesses. In cases that would come before the Supreme Court, travel could be more than a thousand miles. Additionally, Antifederalists worried that the jurisdiction of the federal courts was too broad, and as federal power grew, which they believed was inevitable, more cases would be taken to federal courts rather than state courts, thus reducing the importance of and need for state judiciaries. Since federal judges would be the interpreters of the ambiguities of the Constitution, the federal courts would accrue more power as they allowed federal power to expand at state expense.

Federalists responded that of the three branches, the judicial branch was “least dangerous,” because it only had the power of judgment. The judges had to interpret laws passed by Congress, and then the executive would enforce the decisions of the judges. Federalists denied that jury trials were always necessary or were endangered, either by the silence of the Constitution on civil cases or by the appellate jurisdiction of federal courts in matters of fact. They defended the jurisdiction of the federal courts as the only means to provide justice in foreign and interstate cases, and uniformity in interpreting the Constitution and federal law.

Federalists viewed the courts as the intermediary between the people and Congress and the Presidency. The courts, through judicial review, would uphold the Constitution against attempts by Congress or the President to enlarge their powers. As such, the judiciary was a protector of the people, not a danger to their liberties.

Judicial review was not heavily debated because both Federalists and Antifederalists recognized that the judiciary would exercise this power under the new Constitution. The precedents of courts exercising the power of judicial review were well known to the Founders. However, during the ratification period, the debate centered on whether judicial review was synonymous with judicial supremacy.

Federal courts in the proposed Constitution were uniquely independent from the other branches of government. In England the Law Lords served as a court of last resort. In both the colonial and post-Revolutionary years, some legislative councils continued this tradition. In New York, the Court of Error and Impeachment had appellate jurisdiction and impeachment power. This independence, when coupled with the power of judicial review, was central in the debates between Federalists and Antifederalists. Publius in *The Federalist 78* suggested that having judicial review was advantageous because it afforded federal judges “an essential safeguard against the effects of occasional ill humours in the society.” Antifederalist Brutus argued that federal judges would be “independent of the people, of the legislature, and of every power under heaven. Men placed in this situation will generally soon feel themselves independent of heaven itself.”

## PRIMARY SOURCE DOCUMENT EXCERPTS

### QUOTATIONS ABOUT THE HOUSE OF REPRESENTATIVES

**An American Citizen III: On the Federal Government, Philadelphia *Independent Gazetteer*, 29 September 1787**

“Each member of this truly popular assembly will be chosen by about six thousand electors, *by the poor as well as the rich.*”

**Cato V, *New York Journal*, 22 November 1787**

“Bi-ennial elections for representatives are a departure from the safe democratical principles of annual ones.”

**Publius: The Federalist 53, *New York Independent Journal*, 9 February 1788**

“Biennial elections will be as useful to the affairs of the public, as we have seen that they will be safe to the liberties of the people.”

**George Mason Speech: Virginia Ratifying Convention, 4 June 1788**

“Sixty-five members cannot possibly know the situation and circumstances of all the inhabitants of this immense continent.”

“Suppose Congress should say, that we should have one for every 200,000, will not the Constitution be complied with? For one for every 200,000 does not exceed one for every 30,000.”

### QUOTATIONS ABOUT THE SENATE

**An American Citizen II: On the Federal Government, Philadelphia *Independent Gazetteer*, 28 September 1787**

“They possess *a much smaller share of the judicial power* than the upper house in Britain, for they are not, as there, the highest court in civil affairs. Impeachments *alone* are the cases cognizable before them.”

“No ambitious, undeserving or unexperienced *youth* can acquire a seat in this house by means of the most enormous wealth or most powerful connections, *till thirty years have ripened his abilities and fully discovered his merits to his country.*”

**Brutus XVI, *New York Journal*, 10 April 1788**

“They are to be elected by the legislatures of the States and not by the people, and each State is to be represented by an equal number.”

“They should not be so long in office as to be likely to forget the hand that formed them. They will for the most part of the time be absent from the state they represent, and associate with such company as will possess very little of the feelings of the middling class of people.

“They are a branch of the executive in the appointment of ambassadors and public ministers, and in the appointment of all other officers, not otherwise provided for; whether the forming of treaties, in which they are joined with the president.”

“They are part of the judicial, for they form the court of impeachments.”

## QUOTATIONS ABOUT THE EXECUTIVE

**An American Citizen I: On the Federal Government, Philadelphia  
*Independent Gazetteer*, 26 September 1787**

“The president is to be one of the people at the end of his short term, so will he and his fellow citizens remember, *that he was originally one of the people; and that he is created by their breath.*”

**An Old Whig V, Philadelphia *Independent Gazetteer*, 1 November 1787**

“The office of President . . . is in reality to be a king as much *a King as the King of Great Britain*, and a King too of the worst kind;—an elective King.”

**Philadelphiensis IX, Philadelphia *Freeman’s Journal*, 6 February 1788**

“The great powers of the president, that of his *negative* upon the laws, is one of the most inconsiderable, indeed it is more a sound than any thing else.”

“The two branches of the legislature, will be at his service; no law contrary to his sentiments, however salutary in its operation, dare be mentioned by them. As a body, and as individuals, they will be his sycophants and flatterers.

**Publius: The Federalist 69, *New York Packet*, 14 March 1788**

“The President of the United States would be liable to be impeached, tried, and upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office.”

“The President will have only the occasional command of such part of the militia of the nation, as by legislative provision may be called into the actual service of the Union.”

**Publius: The Federalist 73, *New York Packet*, 21 March 1788**

“[The veto] not only serves as a shield to the executive, but it furnishes an additional security against the enactment of improper laws.”

## QUOTATIONS ABOUT THE JUDICIARY

***Federal Farmer, Letters to the Republican*, 8 November 1787**

“It would be impracticable to derive these advantages from one judiciary—the one supreme court at most could only set in the centre of the union, and move once a year into the centre of the eastern and southern extremes of it—and, in this case, each citizen, on an average, would travel 150 or 200 miles to find this court.”

**Luther Martin: Genuine Information X, Baltimore *Maryland Gazette*, 1 February 1788**

“The proposed constitution *not only* makes *no provision for the trial by jury* in the *first* instance, but by its appellate jurisdiction *absolutely takes away that inestimable privilege*, since it expressly declares the supreme court shall have appellate jurisdiction both as to law and *fact*.”

**Brutus XV, *New York Journal*, 20 March 1788**

“The framers of this constitution appear to have followed that of the British, in rendering the judges independent, by granting them their offices during good behaviour, without following the constitution of England, in instituting a tribunal in which their errors may be corrected.”

“There is no power above them, to controul any of their decisions. There is no authority that can remove them, and they cannot be controuled by the laws of the legislature. In short, they are independent of the people, of the legislature, and of every power under heaven.”

**Publius: The Federalist 78, New York, 28 May 1788**

“The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment.”

**Publius: The Federalist 80, New York, 28 May 1788**

“The power of determining causes between two states, between one state and the citizens of another, and between the citizens of different states, is perhaps not less essential to the peace of the union than that which has been just examined.”

“Controversies between the nation and its members or citizens, can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum.”

## **THE LESSON PLAN—You Make the Call.**

### **OBJECTIVES OF THE LESSON**

- \* Students should be able to apply ideas from the Federalist/Antifederalist debate to interpret quotations from essayists who either supported or opposed the Constitution.
- \* Students will consider the basic assumptions of the Federalists and Antifederalists in regards to government power and human nature.
- \* Student should be able to make a reasoned argument as to which view they think is most convincing?

### **THE LESSON**

\* This lesson can be used as an extension activity after the students have covered the Federalist/Antifederalist Debates. Student will be asked to apply their knowledge of the arguments and viewpoints of the Federalists and Antifederalists.

1. Divide the class into groups of 3-5 students.
2. Distribute to each student a copy of the Student Quotation Worksheet.
3. The teacher can distribute, read or display the Selected Federalist/Antifederalist Quotations page.
4. Have the groups as they read or listen to the quotations student should use the worksheet to decide:
  - a) Which branch is being addressed in each of the excerpts?
  - b) Whether each excerpt is something a Federalist or an Antifederalist would say?
  - c) List the key words or phrases that are clues that influenced their decisions.
5. After each group has completed all of the items on the worksheet, have a student from each group report their findings.
6. You may want to conclude the lesson by leading a discussion using the following questions.
  - a) What do the excerpts of the Antifederalists reveal about their attitude about the powers of government?
  - b) What do the excerpts of the Federalists reveal about their attitude about the powers of government?
  - c) In your view, what are the assumptions of each group about human nature?
  - d) What criticisms of the Antifederalist seem most valid? What Federalist arguments seem most convincing?
  - e) If you were at a state ratification convention, which view would you have taken?

## Selected Federalist/Antifederalist Quotations

1. “[The veto] not only serves as a shield to the executive, but it furnishes an additional security against the enactment of improper laws.”
2. “Each member of this truly popular assembly will be chosen by about six thousand electors, *by the poor as well as the rich.*”
3. “No ambitious, undeserving or unexperienced *youth* can acquire a seat in this house by means of the most enormous wealth or most powerful connections, *till thirty years have ripened his abilities and fully discovered his merits to his country.*”
4. “The framers of this constitution appear to have followed that of the British, in rendering the judges independent, by granting them their offices during good behaviour, without following the constitution of England, in instituting a tribunal in which their errors may be corrected”
5. “The president is to be one of the people at the end of his short term, so will he and his fellow citizens remember, *that he was originally one of the people; and that he is created by their breath.*”
6. “Bi-ennial elections for representatives are a departure from the safe democratical principles of annual ones.”
7. “They are to be elected by the legislatures of the States and not by the people, and each State is to be represented by an equal number.”
8. “The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment”
9. “The President will have only the occasional command of such part of the militia of the nation, as by legislative provision may be called into the actual service of the Union.”
10. “The two branches of the legislature, will be at his service; no law contrary to his sentiments, however salutary in its operation, dare be mentioned by them. As a body, and as individuals, they will be his sycophants and flatterers.”
11. “Biennial elections will be as useful to the affairs of the public, as we have seen that they will be safe to the liberties of the people.”
12. “They are a branch of the executive in the appointment of ambassadors and public ministers, and in the appointment of all other officers, not otherwise provided for; whether the forming of treaties, in which they are joined with the president.”
13. “The one supreme court at most could only set in the centre of the union, and move once a year into the centre of the eastern and southern extremes of it—and, in this case, each citizen, on an average, would travel 150 or 200 miles to find this court.”

14. "They possess *a much smaller share of the judicial power* than the upper house in Britain, for they are not, as there, the highest court in civil affairs. Impeachments *alone* are the cases cognizable before them."

15. "They are part of the judicial, for they form the court of impeachments."

16. "The power of determining causes between two states, between one state and the citizens of another, and between the citizens of different states, is perhaps not less essential to the peace of the union than that which has been just examined."

17. "The proposed constitution *not only* makes *no provision for the trial by jury* in the *first* instance, but by its appellate jurisdiction *absolutely takes away that inestimable privilege*, since it expressly declares the supreme court shall have appellate jurisdiction both as to law and *fact*."

18. "Suppose Congress should say, that we should have one for every 200,000, will not the Constitution be complied with? For one for every 200,000 does not exceed one for every 30,000."

19. "The office of President . . . is in reality to be a king as much *a King as the King of Great Britain*, and a King too of the worst kind;—an elective King."

20. "Sixty-five members cannot possibly know the situation and circumstances of all the inhabitants of this immense continent."

21. "They should not be so long in office as to be likely to forget the hand that formed them. They will for the most part of the time be absent from the state they represent, and associate with such company as will possess very little of the feelings of the middling class of people."

22. "Controversies between the nation and its members or citizens, can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum."

23. "The President of the United States would be liable to be impeached, tried, and upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office."

24. "The great powers . . . that of his *negative* upon the laws, is one of the most inconsiderable, indeed it is more a sound than any thing else."

25. "There is no power above them, to controul any of their decisions. There is no authority that can remove them, and they cannot be controuled by the laws of the legislature. In short, they are independent of the people, of the legislature, and of every power under heaven."

## Student Quotation Worksheet

The Quotation	Which Branch?	Key Words	Federalist/Antifederalist?
1.			
2.			
3.			
4.			
5.			
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20.			
21.			
22.			
23.			
24.			
25.			

## Teacher Guide for Student Quotation Worksheet

Source	Which Branch?	Key Words	Federalist/Antifederalist?
1. Federalist 73	Executive		Federalist
2. An American Citizen III	House		Federalist
3. An American Citizen II	Senate		Federalist
4. Brutus XV	Judiciary		Antifederalist
5. An American Citizen I	Executive		Federalist
6. Cato V	House		Antifederalist
7. Brutus XVI	Senate		Antifederalist
8. Federalist 78	Judiciary		Federalist
9. Federalist 69	Executive		Federalist
10. Philadelphiensis IX	Executive		Antifederalist
11. Federalist 53	House		Federalist
12. Brutus XVI	Senate		Antifederalist
13. Federal Farmer	Judiciary		Antifederalist
14. An American Citizen II	Senate		Federalist
15. Brutus XVI	Senate		Antifederalist
16. Federalist 80	Judiciary		Federalist
17. Luther Martin	Judiciary		Antifederalist
18. George Mason	House		Antifederalist
19. An Old Whig V	Executive		Antifederalist
20. George Mason	House		Antifederalist
21. Brutus XVI	Senate		Antifederalist
22. Federalist 80	Judiciary		Federalist
23. Federalist 69	Executive		Federalist
24. Brutus XV	Judiciary		Antifederalist
25. Philadelphiensis IX	Executive		Antifederalist

## *Lesson Six:* *The Debate over the Bill of Rights*

### **BACKGROUND INFORMATION FOR INSTRUCTOR**

Antifederalists argued that in a state of nature people were entirely free. In society some rights were yielded for the common good. But, there were some rights so fundamental that to give them up would be contrary to the common good. These rights, which should always be retained by the people, needed to be explicitly stated in a bill of rights that would clearly define the limits of government. A bill of rights would serve as a fire bell for the people, enabling them to immediately know when their rights were threatened.

Additionally, some Antifederalists argued that the protections of a bill of rights were especially important under the Constitution, which was an original compact with the people. State bills of rights offered no protection from oppressive acts of the federal government because the Constitution, treaties and laws made in pursuance of the Constitution were declared to be the supreme law of the land. Antifederalists argued that a bill of rights was necessary because, the supremacy clause in combination with the necessary and proper and general welfare clauses would allow implied powers that could endanger rights.

Federalists rejected the proposition that a bill of rights was needed. They made a clear distinction between the state constitutions and the U.S. Constitution. Using the language of social compact, Federalists asserted that when the people formed their state constitutions, they delegated to the state all rights and powers which were not explicitly reserved to the people. The state governments had broad authority to regulate even personal and private matters. But in the U.S. Constitution, the people or the states retained all rights and powers that were not positively granted to the federal government. In short, everything not given was reserved. The U.S. government only had strictly delegated powers, limited to the general interests of the nation. Consequently, a bill of rights was not necessary and was perhaps a dangerous proposition. It was unnecessary because the new federal government could in no way endanger the freedoms of the press or religion since it was not granted any authority to regulate either. It was dangerous because any listing of rights could potentially be interpreted as exhaustive. Rights omitted could be considered as not retained. Finally, Federalists believed that bills of rights in history had been nothing more than paper protections, useless when they were most needed. In times of crisis they had been and would continue to be overridden. The people's rights are best secured not by bills of rights, but by auxiliary precautions: the division and separation of powers, bicameralism, and a representative form of government in which officeholders were responsible to the people, derive their power from the people, and would themselves suffer from the loss of basic rights.

## KEY IDEAS IN PRIMARY SOURCE DOCUMENTS

**An Old Whig IV, Philadelphia *Independent Gazetteer*, 27 October 1787**

Original Contracts Need Rights Stated/Listed

**Brutus II, *New York Journal*, 1 November 1787**

Not Stating Rights May Mean Rights are Surrendered

**Robert Whitehill Speech: Pennsylvania Ratifying Convention, 28 November 1787**

Original Contracts Need Rights Listed; Listed Rights are Reminders to Rulers

**John Smilie Speech: Pennsylvania Ratifying Convention, 28 November 1787**

Partial Listing of Rights is Insufficient; Vagueness of Powers is a Threat to Liberty

**James Wilson Speech: Pennsylvania Ratifying Convention, 28 November 1787**

Bill of Rights not a Task of Convention; Some States do not have Bills of Rights

**Marcus I, *Norfolk and Portsmouth Journal*, 20 February 1788**

Bills of Rights are only Needed in Monarchy System

**Publius: The Federalist 84, New York, 28 May 1788**

The Structure of the Constitution Makes Bill of Rights Unnecessary

## THE PRIMARY SOURCE DOCUMENT EXCERPTS

**An Old Whig IV, Philadelphia *Independent Gazetteer*, 27 October 1787**

Men when they enter into society, yield up a part of their natural liberty, for the sake of being protected by government. If they yield up all their natural rights they are absolute slaves to their governors. . . . To define what portion of his natural liberty, the subject shall at all times be entitled to retain, is one great end of a bill of rights. . . . Without such a bill of rights, firmly securing the privileges of the subject, the government is always in danger of degenerating into tyranny.

**Brutus II, *New York Journal*, 1 November 1787**

In a state of nature every individual pursues his own interest; in this pursuit it frequently happened, that the possessions or enjoyments of one were sacrificed to the views and designs of another. . . . In this state of things, every individual was insecure; common interest therefore directed, that government should be established. . . . It is not necessary, for this purpose, that individuals should relinquish all their natural rights. Some are of such a nature that they cannot be surrendered. . . . To surrender them, would counteract the very end of government, to wit, the common good. From these observations it appears, that in forming a government on its true principles, the foundation should be laid . . . expressly reserving to the people such of their essential natural rights, as are not necessary to be parted with.

### **John Smilie Speech: Pennsylvania Ratifying Convention, 28 November 1787**

It seems however that . . . the Federal Convention were themselves convinced . . . of the expediency and propriety of a bill of rights, for we find them expressly declaring that the writ of habeas corpus and the trial by jury in criminal cases shall not be suspended or infringed. . . . This, sir, must prove the necessity of a full and explicit declaration of rights. . . . So loosely, so inaccurately are the powers which are enumerated in this Constitution defined, that it will be impossible, without a test of that kind, to ascertain the limits of authority and to declare when government has degenerated into oppression. . . . It will be impracticable to stop the progress of tyranny, for there will be no check but the people, and their exertions must be futile and uncertain; since it will be difficult indeed, to communicate to them the violation that has been committed, and their proceedings will be neither systematical nor unanimous.

### **Robert Whitehill Speech: Pennsylvania Ratifying Convention, 28 November 1787**

If indeed the Constitution itself so well defined the powers of the government that no mistake could arise, and we were well assured that our governors would always act right, then we might be satisfied without an explicit reservation of those rights with which the people ought not, and mean not to part. . . . In entering into the social compact, men ought not to leave their rulers at large, but erect a permanent landmark by which they may learn the extent of their authority, and the people be able to discover the first encroachments on their liberties.

### **James Wilson Speech: Pennsylvania Ratifying Convention, 28 November 1787**

I cannot say . . . what were the reasons, of every member of that Convention, for not adding a bill of rights; I believe the truth is, that such an idea never entered the mind of many of them. . . . If the powers of the people rest on the same establishment, as is expressed in this Constitution, a bill of rights is by no means a necessary measure. In a government possessed of enumerated powers, such a measure would be not only unnecessary, but preposterous and dangerous. Whence comes this notion, that in the United States there is no security without a bill of rights? Have the citizens of South Carolina no security for their liberties? They have no bill of rights. Are the citizens on the eastern side of the Delaware less free, or less secured in their liberties, than those on the western side? The State of New Jersey has no bill of rights. The State of New York has no bill of rights. The states of Connecticut and Rhode Island have no bills of rights. But in a government consisting of enumerated powers, such as is proposed for the United States, a bill of rights would not only be unnecessary, but, in my humble judgment, highly imprudent. . . .

If we attempt an enumeration, everything that is not enumerated is presumed to be given. The consequence is, that an imperfect enumeration would throw all implied power into the scale of the government; and the rights of the people would be rendered incomplete. . . .

### **Marcus I, *Norfolk and Portsmouth Journal*, 20 February 1788**

The introduction of these [i.e. a bill of rights] in England . . . was in consequence of usurpations of the Crown, contrary, as was conceived, to the principles of their government. . . . The question then only is, whether more power will be vested in the future government than is necessary for the general purposes of the Union. . . . After expressly defining the powers that are to be exercised, to say that they shall exercise no other powers (either by a general or particular enumeration) would seem to me both nugatory and ridiculous.

**Publius: The Federalist 84, New York, 28 May 1788**

It has been several times truly remarked, that bills of rights are in their origin, stipulations between kings and their subjects. . . . Such was MAGNA CHARTA, obtained by the Barons, sword in hand, from king John. Such was the *petition of right* assented to by Charles the First, in the beginning of his reign. Such also was the declaration of right presented by the lords and commons to the prince of Orange in 1688, and afterwards thrown into the form of an act of parliament, called the bill of rights. It is evident, therefore, that according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing, and as they retain every thing, they have no need of particular reservations.

There remains but one other view of this matter to conclude the point. The truth is, after all the declamation we have heard, that the constitution is itself in every rational sense, and to every useful purpose, A BILL OF RIGHTS.

## THE LESSON PLAN—The Critical Passage and the “Found Poem”

### OBJECTIVES OF THE LESSON

- \* Students will read Federalist and Antifederalist views on adding a bill of rights to the Constitution.
- \* Students will discuss and identify the critical idea in various documents relating to the debate between the Federalists and Antifederalists.
- \* Students will create limericks from primary source materials.

### THE LESSON

1. Divide the class into groups of 3-5 students. Half of the groups should be groups that will work with the Antifederalist documents. The other half will be working with Federalist documents. Each group should use the appropriate graphic organizer below.

<u>Antifederalist Documents</u>	<u>Critical/Important Phrase(s) in Documents</u>
An Old Whig IV, <i>Philadelphia Independent Gazetteer</i> , 27 October 1787	
Brutus II, <i>New York Journal</i> , 1 November 1787	
Robert Whitehill Speech: Pennsylvania Ratifying Convention, 28 November 1787	
John Smilie Speech: Pennsylvania Ratifying Convention, 28 November 1787	

<u>Federalist Documents</u>	<u>Critical/Important Phrase(s) in Documents</u>
James Wilson Speech: Pennsylvania Ratifying Convention, 28 November 1787	
Marcus I, <i>Norfolk and Portsmouth Journal</i> , 20 February 1788	
Publius: The Federalist 84, New York, 28 May 1788	

2. Have the groups read their documents and discuss which lines they believe to be the most essential to the argument the author is making. Have each group record those passages in the second column of their worksheets. For example, the groups might identify the critical portion of Antifederalist “Brutus” as “expressly reserving to the people such of their essential natural rights.” Groups working with Federalist documents might select “such a measure would be not only unnecessary, but preposterous and dangerous” from James

Wilson. Groups can and should be encouraged to come to different conclusions as to the critical passage in each of their selections.

3. After groups have completed their discussions you can have them report their findings to the class.
4. To conclude the lesson, you can have individual students create a poem that restates the critical passages from the documents. For example, a limerick based on Antifederalist passages might be:

In a state of nature, my rights are at risk	(from Brutus II "In a state of nature every individual pursues his own interest.")
Without a bill, violations are brisk	(from John Smilie "It will be impracticable to stop the progress of tyranny.")
The constitution is vague	(from John Smilie "so inaccurately are the powers which are enumerated.")
All governments a plague	(from An Old Whig IV "government is always in danger of degenerating into tyranny.")
List them, lest we see them gone in a whisk	(from John Smilie "It will be impracticable to stop the progress of tyranny.")

5. You could conclude the lesson by having students share their poems with the class.

## *Lesson Seven:* *The Issue of Religious Liberty During Ratification*

### BACKGROUND INFORMATION FOR INSTRUCTOR

#### **General Context of Religion in Revolutionary America**

The American Revolution led to a significant separation between church and state. Of the nine states that had established religions during the late colonial period, three separated church and state in their new constitutions—New York, North Carolina, and Virginia. For many, a continuing relationship between church and state was still considered important. This was made explicit in Massachusetts, where its Declaration of Rights of 1780 provided that because “the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality,” the legislature was required to provide public revenues to support ministers. In the remaining six states with established churches, concessions were made over several decades allowing public support of more than one church. Often, however, in New England, this concession was nominal because public funds would be given to only one church in a town, which always happened to be the dominant Congregational church. By the end of the eighteenth century, most states that had tax-supported churches, passed legislation increasing the flexibility individuals had by earmarking their taxes for the support of their own minister.

Virginia disestablished the Anglican Church merely by not specifically retaining the church-state relationship. The last provision of the Virginia Declaration of Rights provided “That religion, or the duty which we owe to our CREATOR, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other.” But in 1784, when Patrick Henry, Edmund Pendleton, and Richard Henry Lee joined with Anglican ministers in an effort to provide public financial support for all Christian denominations (in essence creating a multiple establishment) James Madison revived Thomas Jefferson's bill for religious freedom which provided for the true separation of church and state. The advocates of the general assessment measure all supported liberty of conscience and toleration, but because they strongly believed that Christianity was needed to support public morality, they supported the general assessment on behalf of all Christian denominations. They also noted that because ministers were woefully underpaid by their congregations, Christian clergy needed the financial support of the state. In the end, Madison's efforts were successful in defeating the general assessment bill and obtaining the passage of an act for religious freedom, thereby extinguishing “for ever the ambitious hope of making laws for the human mind.”

In other state constitutions, like New York's, explicit provision was made that “the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever hereafter be allowed within this State to all mankind.” Religious liberty was not unlimited, however. According to the New York constitution, “the liberty of conscience hereby granted, shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.” Although this form of religious liberty was rare in the world, it existed in several American states.

The Articles of Confederation made only indirect reference to religion. In Article III the states bound themselves together "in a league of friendship" to secure themselves from attacks on

"any of them, on account of religion, sovereignty, trade or any other pretence whatever." In the last article, "the Great Governor of the World" was acknowledged for being pleased with the states' ratification of the Articles. As with all of America's fundamental documents, the Articles were dated "in the year of our Lord. . . ." No specific religious protection was needed under the Articles because the Confederation had only delegated powers none of which touched on religion and, in fact, Congress could pass no measure directed at individuals.

On 13 July 1787—when the Constitutional Convention was meeting in Philadelphia—Congress, meeting in New York City, adopted the Northwest Ordinance which included an abbreviated bill of rights guaranteeing religious freedom in the first article. "No person demeaning himself in a peaceable and orderly manner shall ever be molested on account of his mode of worship or religious sentiments in the said territory." It also acknowledged the necessity of "Religion, morality and knowledge" in promoting "good government and the happiness of mankind" and provided that "schools and the means of education shall forever be encouraged." Two years later the first federal Congress reenacted the Ordinance.

### **The Debate over Guaranteeing Freedom of Religion**

When the delegates to the Federal Convention of 1787 drafted a new Constitution for the United States, the omission of any specific references to God or religion was for many a fundamental flaw. While some Federalists asserted that the Constitution was divinely inspired, Antifederalists responded that God could never have inspired such a flawed document. Some Antifederalists wanted the Constitution explicitly to acknowledge the existence of God and a dependence on Him. William Williams of Connecticut suggested a modification to the Constitution's Preamble formally stating "a firm belief of the being and perfections of the one living and true God, the creator and supreme Governor of the world." A week later Williams was answered by the pseudonymous writer "Elihu." "A low mind may imagine that God, like a foolish old man, will think himself slighted and dishonored if he is not complimented with a seat or a prologue of recognition in the Constitution, but those great philosophers who formed the Constitution had a higher idea of the perfection of that INFINITE MIND which governs all worlds than to suppose they could add to his honor or glory, or that He would be pleased with such low familiarity or vulgar flattery."

The lack of an explicit provision protecting freedom of religion created a groundswell of criticism demanding that the freedom of religion be protected. Eleven state constitutions or bills of rights contained such a provision. Consequently, Antifederalists in a majority of the ratifying conventions recommended that an amendment guaranteeing religious freedom be added to the Constitution. Patrick Henry argued in the Virginia ratifying Convention that the "sacred and lovely thing Religion, ought not to rest on the ingenuity of logical deduction." Without an explicit protection, religion "will be prostituted to the lowest purposes of human policy." Antifederalists in several states demanded specific protections for conscientious objectors noting that without them, the "rights of conscience may be violated, as there is no exemption of those persons who are conscientiously scrupulous of bearing arms." Antifederalist writer Philadelphiensis went so far as to suggest without such protections, "the cruelty of the new government will probably be felt sooner in Pennsylvania than in any state in the union. The number of religious denominations in this state, who are principled against *fighting* or *bearing arms*, will be greatly distressed indeed." Federalists, however, argued that the Constitution would create a federal government of strictly enumerated powers that would never be capable of violating religious liberty. According to James Madison in the Virginia Convention, there was "not a shadow of right in the General Government to intermeddle with religion—Its least interference with it would be a most flagrant usurpation."

Furthermore, with the “multiplicity of sects” throughout America, Madison asserted that no one sect “could oppress and persecute the rest.” Federalists also argued that the protections for religious freedom in state constitutions and bills of rights were sufficient.

### **The Debate over the a Religious Oath**

The prohibition against a religious oath for officeholders was a troublesome issue. Article VI stipulated that “no religious Test shall ever be required as a Qualification to any Office or public trust under the United States.” This was unique because every state had some sort of religious test requirement for officeholders either in their new state constitution or in laws. These oaths included the belief in one God, the Trinity, the divine inspiration of both the Old and New Testaments, and the existence of a world after death. In New York Huguenot-descended John Jay argued unsuccessfully in the provincial convention for a constitutional prohibition against Catholic officeholding. In February 1788, however, the New York legislature approved an act requiring officeholders to swear allegiance to the state and renounce all foreign authorities, “in all Matters Ecclesiastical as well as Civil,” an obvious exclusion of Catholics from holding office. The colonial charters of Connecticut (1662) and Rhode Island (1663), which became their state constitutions, granted broad religious toleration. Subsequent legislation prohibited Catholics and Jews from holding office. Most of these state restrictions were removed by 1800. While most Americans favored requirements for officeholding, such as owning land and religious tests, during the ratification debate, Federalists naturally opted to not object to the clause. Antifederalists, on the other hand, voiced concerns calculating that their objections would resonate enough to defeat the Constitution. In this context, the lack of a religious oath was a significant but not a widespread part of the debate over the Constitution. One Antifederalist concluded that “the Constitution was de(i)stical in principle and in all probability the cumposers had no thought of God in the consultations.” A Federalist argued that religious tests were “useless, tyrannical, and peculiarly unfit for the people of this country.”

At the time, many believed religious oaths were supposed to guarantee honorable public service for fear of incurring the wrath of God. Public officials who violated their oaths might escape punishment here on earth but could not avoid punishment in the hereafter. Federalists argued that the unscrupulous and hypocritical would readily subscribe to oaths and would not hesitate to violate them. Theophilus Parsons in the Massachusetts Convention rhetorically asked, “Will an unprincipled man be entangled by an oath?” Only the conscientious—those who would be the best public officials—would refuse to take a religious oath if they did not believe in its provisions. Thus, test oaths were ineffectual and in fact counterproductive. Antifederalists raised the specter of Jews, Turks, and infidels being elected to key federal positions, while Federalists argued that voters would be knowledgeable enough to select the best people to serve. Isaac Backus, a Baptist pastor from Massachusetts, believed “that religion is a matter between God and individuals.” and that “the imposing of religious tests hath been the greatest engine of tyranny in the world.”

## KEY IDEAS IN PRIMARY SOURCE DOCUMENTS

### CONCERNS OVER THE FREEDOM OF RELIGION

**Timothy Meanwell, Philadelphia *Independent Gazetteer*, 29 October 1787**

Constitution Needs a Statement Affirming Religious Freedom, Pennsylvania's Constitution is a Suggested Model for Religious Liberty

**Philadelphiensis II, Philadelphia *Freeman's Journal*, 28 November 1787**

Constitution's Lack of a Statement about Religious Liberty Puts Conscientious Objectors at Risk, President Will Force Conscientious Objectors into Military Service

**James Madison Speech in the Virginia Convention, 12 June 1788**

Religious Diversity will Ensure Religious Liberty, Bills of Rights Containing Protection of Religious Liberty are not Effective, National Government has no Authority to Interfere in Religious Matters of States

**Zachariah Johnston Speech in the Virginia Convention, 25 June 1788**

Lack of Religious Tests Creates Religious Liberty, Religious Diversity in America Ensures Religious Liberty

### CONCERNS OVER THE RELIGIOUS TEST CLAUSE

**Samuel, Boston *Independent Chronicle*, 10 January 1788**

National Survival Necessitates an Official Religion, Religion Necessary for Stability of Nation

**Theophilus Parsons Speech in the Massachusetts Convention, 23 January 1788**

The Limits and Ineffectiveness of a Religious Test, A Religious Test Will Lead Dishonest Men to Lie about Their Religious Beliefs, The Narrowness of a Religious Test is a Problem Due to Diversity of Christian Beliefs

**Elihu, Hartford *American Mercury*, 18 February 1788**

Religious Tests are Outdated, God does not Need Human Affirmation, Founders Praised for Excluding a Religious Test

**William Lancaster Speech in the North Carolina Convention, 30 July 1788**

State Religious Tests Should be a Model for National Constitution, Fear of Catholics and Mahometans Serving in Office

## PRIMARY SOURCE DOCUMENTS

**Timothy Meanwell, Philadelphia *Independent Gazetteer*, 29 October 1787**

I have also read the new constitution which is offered to us, and I am very sorry to inform thee that I don't altogether like it.

I have searched it from beginning to ending, and I don't find a protection for the liberty of conscience, and that all men shall worship god agreeable to their own dictates. I should have liked the constitution much better if our friends of the Convention had inserted the 2d article of the Bill of Rights prefixed to the Constitution of Pennsylvania.—“That all men have a natural and unalienable right to worship Almighty God, according to the dictates of their own conscience and understanding: And that no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against his own free will and consent: Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship.”

### **Philadelphiensis II, Philadelphia *Freeman's Journal*, 28 November 1787**

In regard to religious liberty, the cruelty of the new government will probably be felt sooner in Pennsylvania than in any state in the union. The number of religious denominations in this state, who are principled against *fighting* or *bearing arms*, will be greatly distressed indeed. In the new constitution there is no declaration in their favour; but on the contrary, the Congress and President are to have an absolute power over the *standing army, navy, and militia*; and the *president*, or rather *emperor*, is to be commander in chief. Now, I think, that it will appear plain, that no exemption whatever from militia duty, shall be allowed to any set of men, however conscientiously scrupulous they may be *against bearing arms*. Indeed, from the nature and qualifications of the president, we may justly infer, that such an idea is altogether preposterous: he is by profession a *military man*, and possibly an old soldier; now, such a man, from his natural temper, necessarily despises those who have a conscientious aversion to a military profession, which is probably the very thing in which he principally piques himself. Only men of his own kind will be esteemed by him; his fellow soldier he will conceive to be his true friend, and the only character worthy of his notice and confidence.

Since, in the new constitution no provision is made for securing to these peaceable citizens their religious liberties, it follows then by implication, that no such provision was intended. . . . How can we expect that a special law will be made by the new Congress merely on their account; and yet it will be absolutely necessary that such a law shall be made, before this privilege is secured to them? Can any man rationally suppose that the president will give his assent to a law in favor of the men whom he heartily despises; a law also, that in its operation must curtail his own *dignity* and *splendor*, by reducing the number of his military? No certainly. . . . The friends of this scheme of government may possibly attempt to say, that this religious liberty is sufficiently secured by the constitution of the state. But I say not; for, this is a case in which the United States are a party, and every case of this kind, according to the new plan, must be determined by the *supreme law of the land*; that is, by the Congress and president, who are to have the sole direction of the militia. This will be a matter then, in which a particular state can have no concern.

### **James Madison Speech in the Virginia Convention, 12 June 1788**

The honorable member has introduced the subject of religion.—Religion is not guarded—There is no Bill of Rights declaring that religion should be secure.—Is a Bill of Rights a security for religion? . . . If there were a majority of one sect, a Bill of Rights would be a poor protection for religion. Happily for the States, they enjoy the utmost freedom of religion. This freedom arises from that multiplicity of sects, which pervades America, and which is the best and only security for

religious liberty in any society. For where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest. Fortunately for this Commonwealth, a majority of the people are decidedly against any exclusive establishment—I believe it to be so in the other States. There is not a shadow of right in the General Government to intermeddle with religion.—Its least interference with it would be a most flagrant usurpation.—I can appeal to my uniform conduct on this subject, that I have warmly supported religious freedom.—It is better that this security should be depended upon from the General Legislature, than from one particular State. A particular State might concur in one religious project.—But the United States abound in such a vast variety of sects, that it is a strong security against religious persecution, and is sufficient to authorise a conclusion, that no one sect will ever be able to out number or depress the rest.

### **Zachariah Johnston Speech in the Virginia Convention, 25 June 1788**

We are also told, that religion is not secured—that religious tests are not required.—You will find that the exclusion of tests, will strongly tend to establish religious freedom. If tests were required—and if the church of England or any other were established, I might be excluded from any office under the Government, because my conscience might not permit me to take the test required. The diversity of opinions and variety of sects in the United States, have justly been reckoned a great security with respect to religious liberty. The difficulty of establishing an uniformity of religion in this country is immense.—The extent of the country is very great. The multiplicity of sects is very great likewise.—The people are not to be disarmed of their weapons—They are left in full possession of them. The Government is administered by the Representatives of the people voluntarily and freely chosen. Under these circumstances, should any one attempt to establish their own system, in prejudice of the rest, they would be universally detested and opposed, and easily frustrated. This is a principle which secures religious liberty most firmly.—The Government will depend on the assistance of the people in the day of distress. This is the case in all Governments. It never was otherwise.

### **Samuel, Boston *Independent Chronicle*, 10 January 1788**

Was there ever any State or kingdom, that could subsist, without adopting some system of religion? Not so much as to own the being, and government of a Deity; or any acknowledgment of him! or having any revelation from him! Should we adopt such a rejection of religion as this, the words of Samuel to Saul, will literally apply to us,—*Because thou hast rejected the word of the Lord, he hath also rejected thee from being king.* We may justly expect, that God will reject us, from that self government, we have obtained thro' his divine interposition: Or being able to keep up government and order among us; for he has commanded the rulers of the earth, to kiss the son, lest he be angry, and they perish from the way.

If civil rulers won't acknowledge God, he won't acknowledge them; and they must perish from the way. And there can be no rational doubt, that the prevailing neglect of acknowledging God in the time of the revolution, and since, is the cause of our having such convulsions as have been among us; we are perishing from the way.

## Theophilus Parsons Speech in the Massachusetts Ratifying Convention, 23 January 1788

It has been objected, that the Constitution provides no religious test by oath, and we may have in power unprincipled men, atheists and pagans. No man can wish more ardently than I do, that all our publick offices may be filled by men who fear God and hate wickedness; but it must remain with the electors to give the government this security—an oath will not do it: Will an unprincipled man be entangled by an oath? Will an atheist or a pagan dread the vengeance of the christian's God, a being in his opinion the creature of fancy and credulity? It is a solecism in expression. No man is so illiberal as to wish the confining places of honour or profit to any one sect of christians: But what security is it to government, that every publick officer shall swear that he is a christian? For what will then be called Christianity? One man will declare that the christian religion is only an illumination of natural religion, and that he is a christian; another christian will assert, that all men must be happy hereafter in spite of themselves; a third christian reverses the image, and declares, that let a man do all he can, he will certainly be punished in another world; and a fourth will tell us, that if a man use any force for the common defence, he violates every principle of Christianity. Sir, the only evidence we can have of the sincerity and excellency of a man's religion, is a good life—and I trust that such evidence will be required of every candidate by every elector. That man who acts an honest part to his neighbour, will most probably conduct honourably towards the publick.

## Elihu, Hartford *American Mercury*, 18 February 1788

The mind is free; it may be convinced by reasoning, but cannot be compelled by laws *or constitutions*, no, nor by fire, faggot, or the halter. Such an acknowledgment is moreover useless *as a religious test*—it is calculated to exclude from office *fools* only, who believe there is no God; and the people of America are now become so enlightened that no fool hereafter (it is hoped) will ever be promoted to any office or high station. . . .

Making the glory of God subservient to the temporal interest of men is a wornout trick, and a pretense to superior sanctity and special grace will not much longer promote weakness over the head of wisdom.

A low mind may imagine that God, like a foolish old man, will think himself slighted and dishonored if he is not complimented with a seat or a prologue of recognition in the Constitution, but those great philosophers who formed the Constitution had a higher idea of the perfection of that INFINITE MIND which governs all worlds than to suppose they could add to his honor or glory, or that He would be pleased with such low familiarity or vulgar flattery.

The most shining part, the most brilliant circumstance in honor of the framers of the Constitution is their avoiding all appearance of craft, declining to dazzle even the superstitious by a hint about grace or ghostly knowledge. They come to us in the plain language of common sense and propose to our understanding a system of government as the invention of mere human wisdom; no deity comes down to dictate it, not even a God appears in a dream to propose any part of it.

A knowledge of human nature, the aid of philosophy, and the experience of ages are seen in the very face of it; whilst it stands forth like a magnificent STATUE of gold. Yet, there are not wanting FANATICS who would crown it with the periwig of an old monk and wrap it up in a black cloak—whilst *political quackery* is contending to secure it with fetters and decorate it with a leather apron!!

## **William Lancaster Speech in the North Carolina Convention, 30 July 1788**

It hath been asserted, by several worthy gentlemen, that it is the most excellent Constitution that ever was formed. I could wish to be of that opinion if it were so. . . . As to a religious test, had the article which excludes it provided none but what had been in the states heretofore, I would not have objected to it. It would secure religion. Religious liberty ought to be provided for. I acquiesce with the gentleman, who spoke, on this point, my sentiments better than I could have done myself. For my part, in reviewing the qualifications necessary for a President, I did not suppose that the pope could occupy the President's chair. But let us remember that we form a government for millions not yet in existence. I have not the art of divination. In the course of four or five hundred years, I do not know how it will work.

This is most certain, that Papists may occupy that chair, and Mahometans may take it. I see nothing against it. There is a disqualification, I believe, in every state in the Union—it ought to be so in this system.

# THE LESSON PLANS—Should We or Shouldn't We?

## OBJECTIVES OF THE LESSONS

- \* Students should be able to identify Federalist and Antifederalist viewpoints in primary source materials.
- \* Students will consider how religious rhetoric was used both in favor and in opposition to the Constitution.
- \* Students will evaluate the legitimacy of religious beliefs being used to advocate for and against the Constitution.

## THE LESSONS

### LESSON ONE

1. Divide the class into groups of 3-5 students.
2. Half of the groups should be given “Timothy Meanwell,” “Philadelphiensis,” James Madison, and Zachariah Johnston. The other half should be given “Samuel,” Theophilus Parsons, “Elihu,” and William Lancaster.
3. All groups should be given the graphic organizer below. Give groups time to read their documents and discuss the central religious issue in each item.

<b>Document</b>	<b>Federalist or Antifederalist?</b>	<b>Religious Issue</b>	<b>Argument</b>
<b>Group 1</b>			
Timothy Meanwell			
Philadelphiensis			
James Madison			
Zachariah Johnston			
<b>Group 2</b>			
Samuel			
Theophilus Parsons			
Elihu			
William Lancaster			

4. After students have read through their documents, they should record their findings in the appropriate section of the graphic organizer. Each group should come to a consensus regarding three things.
  - a) Are their items written by a Federalist or Antifederalist?
  - b) What is the central religious issue being addressed in each document?
  - c) How they would summarize the argument of the writer.
5. After groups have completed their discussions, have the groups report their findings to the class.
6. You can conclude the lesson by leading a discussion using the following questions.
  - \* Of these two religious issues discussed, which would you consider more important? The less important?
  - \* What does it suggest about the culture at that time, when individuals use religious beliefs in their support or opposition to the Constitution?
  - \* In your view, are individuals justified in using their religious beliefs in their arguments in support of and in opposition to the Constitution?
  - \* Do you think that the diversity of religious beliefs that Madison and Johnston pointed out in their speeches has proven to be adequate in protecting religious liberty?

## LESSON TWO

1. Display or distribute the religious oath contained in the Delaware 1776 Constitution. Remind students that elected officials in Delaware had to agree and swear or affirm by it if they wanted to hold office.

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### Delaware, 1776

Every person who shall be chosen a member of either house, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take the following oath, or affirmation, if conscientiously scrupulous of taking an oath, to wit: "I, do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration."

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2. Divide the class into seven groups and distribute the graphic organizer below. Note that each group will be assuming the role of an individual belonging to a particular sect who wants to run for office in the state of Delaware. Each group will need to consider if in fact they can hold office or whether the required oath would prevent them from holding office. To do this, groups may need to do some simple research as the basic beliefs of their assigned religious group.

Religious Sect	Beliefs	Objectionable Clauses	Acceptable Clauses
1. Anglicans			
2. Baptists			
3. Catholics			
4. Jews			
5. Protestants			
6. Quakers			
7. Atheists			

3. After the groups have researched the views of their particular sect, have them discuss the Delaware oath. Have them note clauses that would be objectionable and acceptable to them as a member of their particular group.
4. After groups have completed their discussions, you can have them report their findings to the class.
5. You can conclude the lesson by leading a discussion using the following questions.
  - \* What does the diversity of religious beliefs suggest about the challenges associated with religious oaths?
  - \* Does the diversity of the American religious landscape necessitate writing a religious oath that satisfies all religions or is not having a religious oath at all a better option?

## *Lesson Eight: The Use of Visual Symbols during Ratification*

### BACKGROUND INFORMATION FOR INSTRUCTOR

Both the supporters and critics of the Constitution used rhetorical flourishes in poems, songs, and essays when describing the Constitution during the Ratification debates. The use of these devices assumed an audience that was well read since many of the metaphors and analogies referenced Biblical passages, literature, mythology classical antiquity, English history, and architecture.

Throughout the ratification debate, Federalists and Antifederalists referred to the Constitution metaphorically. Timothy Pickering called it a “mansion,” Francis Hopkinson “The New Roof,” “Centinel” “the monster,” “Brutus” “the gilded pill,” and “Philadelphensis” “the rivet of tyranny.” On 7 December 1787 the *Massachusetts Gazette* published a short piece describing “the *disunited* states of America” as “thirteen distinct, separate, independent, *unsupported* columns.” Later in December, a new metaphorical device was created by Benjamin Russell, printer of the *Massachusetts Centinel*. Russell introduced his reprint of the Delaware Convention’s form of ratification with the heading: “*The first pillar of a great federal superstructure raised.*” Thereafter, newspapers throughout the country published variations on this theme. Russell brought his metaphor to life visually on 16 January 1788 when he published a wood cut illustration entitled “THE FEDERAL PILLARS” that showed five state pillars erected with a sixth pillar labeled “Mass.” in the process of being raised by the hand of God. Russell updated his “pillars” as additional states ratified the Constitution. In the case of Rhode Island, a reclining or fallen pillar appeared or would be shown kneeling over a stool of repentance.

The use of the pillars and other architectural typologies would continue throughout the Ratification Period. Robert Alexander has noted that symbolizing concepts was part and parcel to discussions surrounding the Ratification Debate. In his article, “The Grand Federal Edifice” he concluded “these concepts traveled speedily through newspapers and pamphlets and, owing to the allegorical temper of the age, soon became commonly accepted synonyms for the Constitution. Even before the Constitutional Convention had completed its work, Pennsylvania delegate James Wilson evoked an architectural metaphor when describing the states as “the pillars of the national legislature.”

## KEY IDEAS IN PRIMARY SOURCE DOCUMENTS

**Massachusetts: The Sixth Pillar of the Great Federal Superstructure, 6 February 1788**

States as Pillars: Divine Intervention and Assistance, Order of Ratification

**The Sixth Pillar Raised, *Independent Chronicle*, 7 February 1788**

Divine Intervention and Assistance, Massachusetts has Ratified

**Newburyport *Essex Journal*, 13 February 1788**

Dark Clouds, New Hampshire in Process, Reverse Order of Ratification

***Massachusetts Centinel*, 11 June 1788**

Order of Ratification, Virginia in Process, Divine Intervention and Assistance, New Hampshire on the Side

**North Carolina *Wilmington Centinel*, 9 July 1788**

Combination of Pillars and Dome, A Banner, Missing Pillars

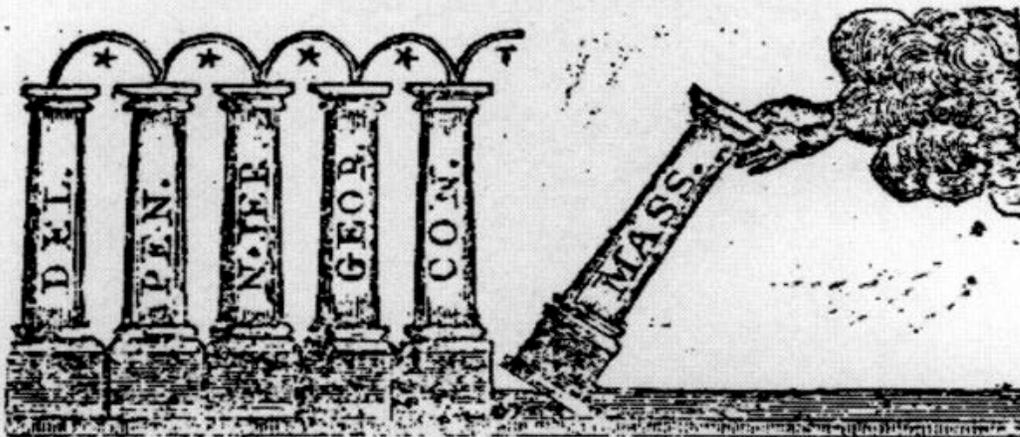
**Charleston *City Gazette*, 16 July 1788**

States as Pillars; Some Pillars Missing, Angelic Announcement

## PRIMARY SOURCE DOCUMENTS

Massachusetts: The Sixth Pillar of the Great Federal Superstructure,  
6 February 1788

States—like the gen'rous vine supported livē,  
The strength they gain is from th'embrace they giv  
*THE FEDERAL PILLARS.*



**UNITED THEY STAND—DIVIDED FALL.**

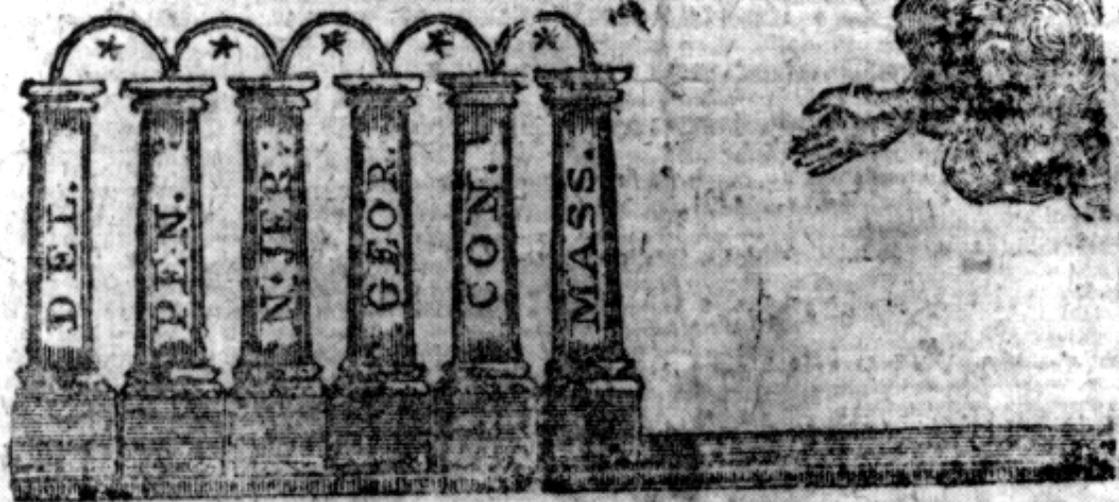
A vessel arriv'd at Cape-Ann, after a short passage from Georgia, confirms the pleasing intelligence announced in our last, that that State has unanimously ratified the Federal Constitution. Thus is a **FIFTH PILLAR** added to the glorious fabrick. May Massachusetts rear the **SIXTH**.

As we predicted in our last, so it happened—Monday morning, was ushered in with the ringing of bells in this metropolis, on account of the pleasing intelligence received by Saturday night's mail, that the State of Connecticut had added a **FOURTH PILLAR** to that **GRAND REPUBLICAN SUPERSTRUCTURE**, the **FEDERAL CONSTITUTION**.

The Sixth Pillar Raised, Boston *Independent Chronicle*, 7 February 1788

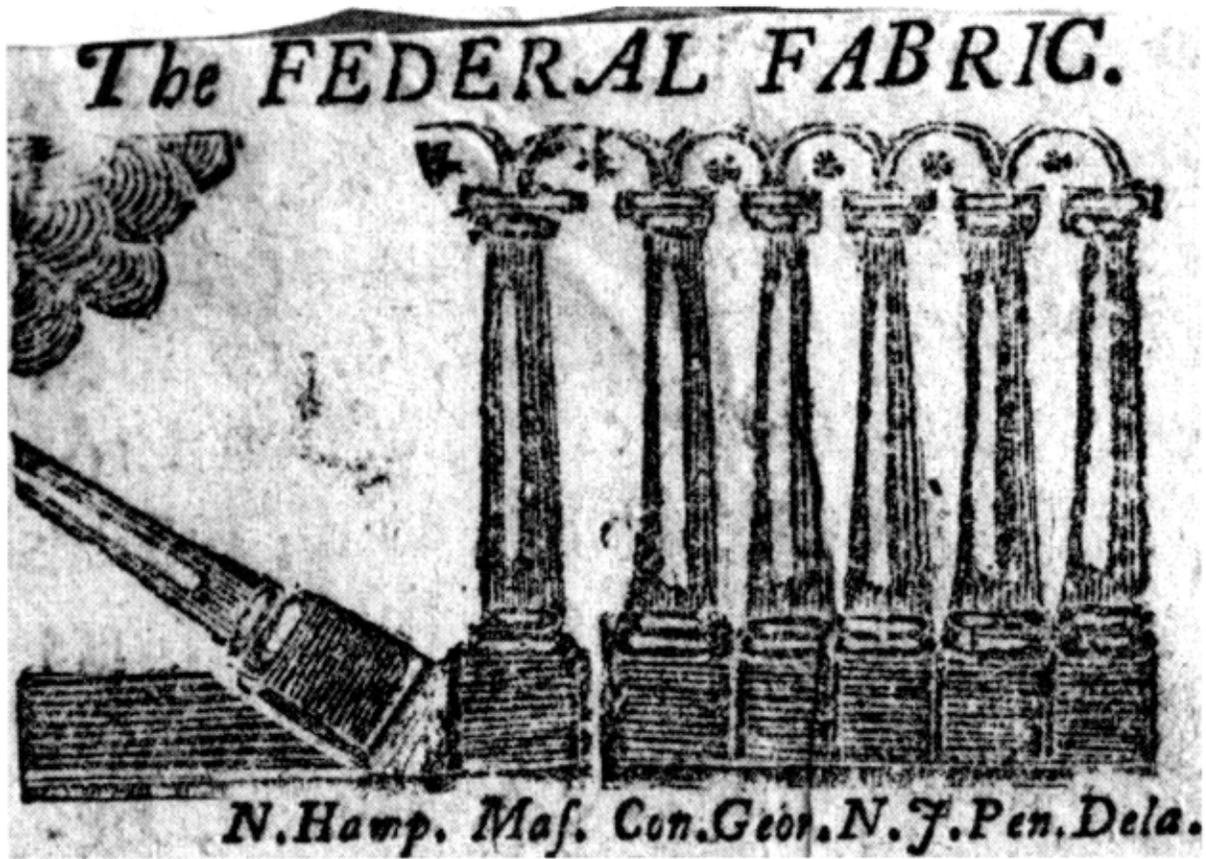
*On the glorious sixth of February, 1788.*

Hail the DAY, and MARK it well,  
Then Old ANARCH's Kingdom fell—  
Then our *dawning* GLORY shone,  
Mark it, FREEMEN, 'tis our own.

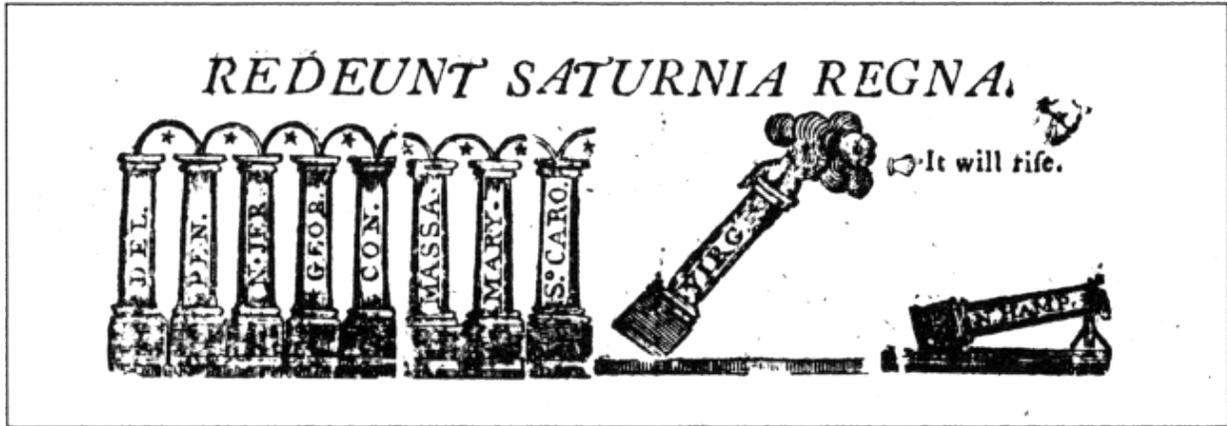


*Ratification of the FEDERAL CONSTI-  
TUTION, by Massachusetts!*

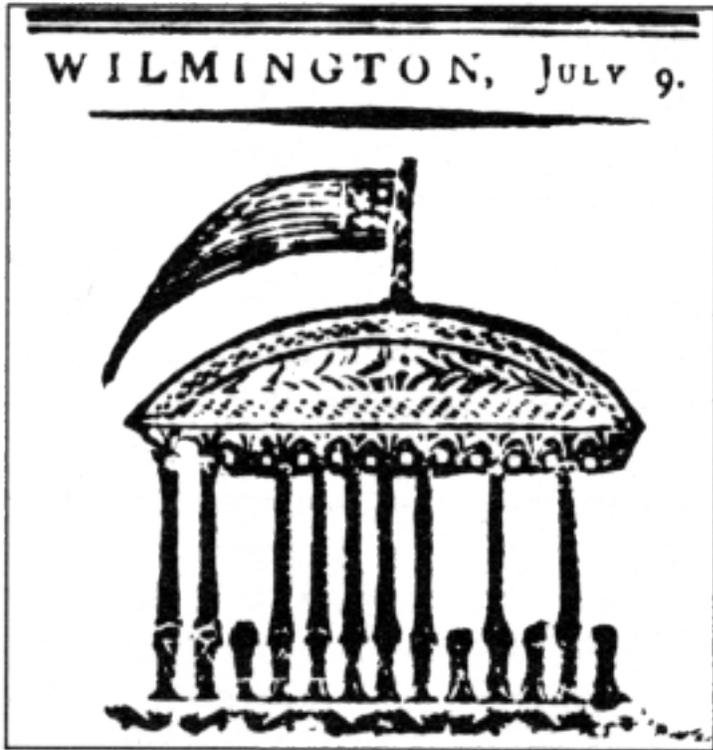
Newburyport *Essex Journal*, 13 February 1788



*Massachusetts Centinel*, 11 June 1788



North Carolina *Wilmington Centinel*, 9 July 1788



Charleston *City Gazette*, 16 July 1788



## THE LESSON PLAN—The Evolution and Use of the Pillars Illustration

### THE OBJECTIVES OF THE LESSON

- \* Students will compare and contrast several visuals that illustrated the process of ratification.
- \* Students will look for bias in the various illustrations.
- \* Students will consider the merits of using the idea of pillars to illustrate the process of ratification.

### THE LESSON

1. Divide the class into groups of 3-5 students. Each group should select a recorder.
2. The group should evaluate all six illustrations. The recorder can use the worksheet below to take notes of their group's observations for each illustration.

<u>Illustration</u>	<u>Symbols Used</u>	<u>Bias or Opinion Expressed</u>
Massachusetts: The Sixth Pillar of the Great Federal Superstructure, 6 February 1788		
The Sixth Pillar Raised, <i>Independent Chronicle</i> , 7 February 1788		
Newburyport <i>Essex Journal</i> , 13 February 1788		
<i>Massachusetts Centinel</i> , 11 June 1788		
North Carolina <i>Wilmington Centinel</i> , 9 July 1788		
Charleston <i>City Gazette</i> , 16 July 1788		

3. Each group should discuss and note each of the illustrations and the opinions that they might see in them. (**Note:** Some illustrations will have more overt opinion in them than others. Some may have no opinion in them.)
4. After going through all of the illustrations, the groups should report their finding to the entire class.
5. Conclude with a discussion possibly centered round the following questions:
  - a) Is it important to have opinion in these types of illustrations? Why or Why not?
  - b) If you were to insert your opinion into these illustrations, how would you do that?
  - c) Why might you think the illustrator utilized the pillar as the symbol for states in these illustrations?
  - d) Do you think it is the best choice to use the pillar? Why or Why not?
  - e) Are there any other symbols that could be used in the process of ratifying the Constitution?
6. **An extension activity:** You could have students research the use of symbols for national identity in other nations. Begin by having student consider the ways and reasons various symbols are

used to represent various nations. Among the examples you might want to have students consider could be the following:

France- The Rooster

England- The Lion

Wales- The Dragon

Canada- The Maple Leaf

Thailand- The Elephant

## *Lesson Nine:* *The Use of Metaphors during Ratification*

### **BACKGROUND INFORMATION FOR INSTRUCTOR**

In any public debate, metaphor is often used in an attempt to persuade. Throughout the ratification debates, writers and speakers would frequently employ this literary device. Many were favorable assessments while others were used in an attempt to convince the public of the dangers associated with the Constitution. Many of these assume an audience that was well read since many of these metaphors reference Biblical passages, literature, mythology, and architecture. Both sides were prone to hyperbole.

As the national debates enveloped the country, the discussions were not confined within the framework of the formal essay; the high-toned writings of writers like Publius or Brutus. Pauline Maier has rightly noted in her book *Ratification: The People Debate the Constitution, 1787-1788* that, “the debate raged in newspapers, taverns, coffeehouses and over dinner tables as well as in the Confederation Congress, state legislatures and state ratifying conventions.” Many newspapers featured sections specifically devoted to poetry and frequently ran pieces relating to the Constitution and the ratification process. At times the offerings in these publications were not genteel.

Both the supporters and critics of the Constitution used rhetorical flourishes in poems, songs, and essays when describing the Constitution during the ratification debates. In their attempts to convince the public of the dangers associated with the Constitution, Antifederalist employed imagery associated with monsters, demons, and poisons. William Grayson went so far as to suggest that the Constitution was “a most ridiculous piece of business—something like the legs of Nebuchadnezzar.”

Federalist Francis Hopkinson’s extended allegorical poem, “The New Roof” and song “The Raising: A New Song for the Federal Mechanics” both praised the benefits of the Constitution using dozens of architectural terms. Temples, grand domes, and magnificent arch were other architectural motifs used by Federalists.

## METAPHORS IN PRIMARY SOURCES

### ABLE ADVOCATE

“Conscious of the rectitude of his own intentions however, and trusting that ‘in searching after error truth will appear,’ he flatters himself he should be excused, were he to leave the merits of this cause to that more able ADVOCATE, the CONSTITUTION itself.”

### ARCH

“If the Constitution should be finally accepted and established, it will complete the temple of American liberty: and like the key stone of a grand and magnificent arch, be the bond of union to keep all the parts firm, and compacted together.”

### BANTLING

“Whether the *bantling* would be *black* or *white*, was not to be a matter of *free* discussion with the people, but *they*, forsooth, must at all hazards *adopt* and *foster* the new-born ruler, in whatever *garb* it might come attired.”

### BOON FROM HEAVEN

“It is ardently to be wished, writes a correspondent, that the little nest of villains, who inhabit the petty territory of R. I. may not have the grace to accept of the CONSTITUTION—that boon from heaven.”

### BRAT

“The above mentioned letter, our correspondent asserts, is sufficient of itself, to stifle this brat in the moment of its birth.”

### CHILD OF FORTUNE

“It is now a Child of fortune, to be fostered by some and buffeted by others, what will be the General opinion on, or the reception of it, is not for me to, decide, nor shall I say any thing for or against it.”

### CHILD OF HEAVEN

“Exert, yourself labor hard for without this child of Heaven our days in future will not be worth Counting.”

### CHILD OF MUTUAL CONCESSIONS

“I have no doubt but that you will discover some imperfections in it, but when it is considered that it is the child of mutual concessions between States different in Situation and Interest, and that without some Efficient Government we must shortly be involved in Anarchy that certain road to Despotism.”

### COLOSSUS WITH A SWORD OF TYRANNY

“exceeds the description of the wonderful Colossus at Rhodes . . . and instead of holding a light-house in its hand, holds forth to the people the sword of tyranny.”

**DAZZLING SUN**

“you will find its excellencies eclipsed, like the faint lustre of the *moon*, by the dazzling splendor of the *sun*.”

**DEADLY SERPENT**

“under this specious covering lurks a deadly serpent, which like Aaron’s, will swallow up the liberties of your country!”

**EDIFICE**

“It thus appears that either Virginia or New Hampshire is to [have?] the honor of establishing an edifice.”

**ENGINE OF DESTRUCTION**

“a pretty considerable band consists of those who hold it as the engine of destruction—& never think or speak of it but with detestation and abhorrence.”

**FABRICK**

“We may now contemplate this Fabrick as erected, and permit me my dear Friend to congratulate you upon the event.”

**FAMILY (PARAPHRASE)**

“Let us be familiar, it is demonstrable by a family; although the father, or master, may prefer mildness in his family.”

**FEDERAL BUILDING**

“the Federal Building goes on rapidly, considering its extent and magnitude; and we doubt not, but in a short time we shall have the pleasure of announcing its entire completion.”

**FEDERAL EDIFICE**

“Virginia will shortly become one of the brightest pillars of the federal edifice.”

**FEDERAL FABRIC**

“That citizen who feels and avows such a maxim, need not apologize for collecting the following observations on the foederal fabric.”

**FEDERAL PILLARS**

“The Fed’ral pillars firmly stand.”

**FEDERAL TEMPLE**

“I cannot avoid hoping, and believing, to use the fashionable phraze that Virginia will make the ninth column in the foederal Temple.”

**FIERY HIGH-BLOODED STEED**

“I really at this time think there is a decided majority for anterior amendments that is, who do not think it prudent to mount a fiery high-blooded Steed without a bridle.”

**FOETUS**

“Tis not a birth, my dear Sir, ’tis a Fœtus only.”

**GILDED PILL**

“When the gilded Pill was swallowed by a Majority of Ten out of one hundred and four Members present.”

**GILDED TRAP**

“they have insidiously attempted to confine and cramp by palming this “*gilded trap*” the new breeches on me.”

**GREAT NATIONAL DOME**

“and to give it a place as one of the noble PILLARS of the GREAT NATIONAL DOME.”

**HARBOR ATTAINABLE**

“Our situation is like that of a ship at sea, the harbour attainable, but the crew divided by a ridiculous feud.”

**HEAVY MANNA**

“On the other hand should she accept the heavenly manna, her decision will be enstamped on the page of time.”

**HOME-BRED MONSTER**

“now tamely submit to the home bread Monster of a form equally detestable if viewed when striped of its disguise.”

**LEGS OF NEBUCHADNEZZAR’S IMAGE**

“I look upon the new system as a most ridiculous piece of business—something (*entre nous*) like the legs of Nebuchadnezzar’s image.”

**MAGNA CARTA**

“The Constitution therefore defines those powers which in the grants for regulating trade were indefinite; thereby it secures and perpetuates the liberty of the people, and becomes the Magna Charta of the Union to check any encroachments of our rights.”

**MANY-HEADED LEVIATHAN**

“the *new leviathan* or proposed constitution for the United States, has exhibited the talents of the Americans in a most exalted point of view.”

**MASTER-PIECE OF POLITICAL WISDOM**

“and there is no doubt but that a few revolving months will set this master-piece of political wisdom in motion.”

**MENSTRUOUS CLOTH**

“The new constitution therefore is cast out of that state (to use the strong expression of the prophet) AS A MENSTRUOUS CLOTH.”

**MONSTER**

“Truly sir, I do not see in it those features of a monster.”

**NEW BORN RULER**

“Whether the *bantling* would be *black* or *white*, was not to be a matter of *free* discussion with the people, but *they*, forsooth, must at all hazards *adopt* and *foster* the new-born ruler.”

**NEW BREECHES**

“these cursed new breeches would utterly ruin me; they are calculated to enslave my thighs, to confine my waist, and totally to destroy the liberty of my knees, by buttoning tightly around them.”

**NEW LEVIATHAN**

“to cajole and betray the honest yeomanry of our country into the horrid fangs of the new leviathan of power.”

**NEW MACHINE**

“advocates for the requisite measures for setting the new machine at work may be needed as much in Congress as in this State.”

**NEW ROOF**

“This proposal of a new roof, it may well be supposed, became the principal subject of conversation in the family, and the opinions upon it were various according to the judgment, interest, or ignorance of the disputants.”

**NEW SHIP**

“I tell you, my friend, the Politicians in general blame the Carpenters for not launching the Hull of the new Ship.”

**NEW SYSTEM OF SLAVERY**

“Not a single newspaper that contains essays or intelligence against the new system of slavery.”

**NEW WHEEL**

“I find it is the general opinion that the New wheel will revolve.”

**NOBLE EDIFICE**

“and in all probability this state will very soon be called on to raise a Pillar to the Noble Edifice.”

**ONE GREAT COLOSSUS**

“one great Collosus erected in the Room thereof which shall stand astride of all the States.”

**ORPHAN**

“It goes forth among us in the unprotected situation of an *orphan*, with a modest request to all, entreating, that it may be heard, before it is abused, and examined, before it is condemned.”

**OUR HOLY RELIGION**

“The Fœderal Constitution, like our holy religion, knows no invidious distinctions.”

**OUR INTENDED**

“I have received your welcome favor giving a partial account of the Procession in your City on the 4th. inst. in honor of our *Intended*.”

**PANDORA'S BOX**

“like Pandora’s box, pregnant with every evil, full of design, a fatal tendency, and diametrically repugnant to the true interests, happiness, and safety of the United States.”

**PATIENT SICK OF PREJUDICE AND MISREPRESENTATION BUT GETTING BETTER**

“The Constitution thrives—it has been Extremely sick of prejudice and misrepresentation, but it is daily growing better and better.”

**PHOENIX**

“but I hope, Phoenix like, a better will soon rise out of its ashes.”

**POLITICAL MONSTER**

“it is a political monster of absurdity.”

**PYRAMID**

“It rises to view like a pyramid, whose broad foundation is the people.”

**RISING FABRIC**

“and give stability to the rising fabric with the greatest rapidity and least difficulty.”

**RISING PILLAR OF GOVERNMENT**

“Various towns in this state have also shewn the same friendly disposition, on the great jubilee of America, the fourth of July, towards the rising pillar of government.”

**RISING SUN**

“the NEW FEDERAL CONSTITUTION as the rising SUN of the western world.”

**ROCK OF OUR POLITICAL SALVATION**

“he [George Washington] looks up to it as the rock of our political salvation.”

**ROCK OF OUR SALVATION**

“Should it however fail in the first instance I hope it will prove a Rock of Salvation on which we may rest in our career to that fatal extreme.”

**ROOF**

“*Columbia's* standard on HER ROOF display.”

**SACRED PALLADIUM**

“this sacred palladium that can effectually secure us and our posterity from the odious tyranny of an aristocratic government.”

**STATELY PALACE**

“they built a stately palace after their own fancies, and in every convenient part of the floor, and of the foundation, securely planted the seeds of monarchy.”

**TEMPLE**

“a temple built by men equally mortal.”

**TEMPLE OF LIBERTY**

“the firmest and fairest Temple to LIBERTY, that has ever yet dignified this Globe.”

**THIRTEEN PILLARS**

“permit the thirteen Pillars to be bent down, in Stead of being supported.”

**TOTTERING PILE**

“for the present generation have too strong a sense of the rights of nature, of the sufferings experienced for their re-establishment, to set down passively under a tottering pile.”

**TRAP**

“I shall rely on the good sense of the public to keep themselves out of the trap.”

**TREE OF LIFE**

“that it is *the Tree of Life*, whose Fruit will enthrone this western Empire high among the Nations, and raise the firmest and fairest Temple to LIBERTY, that has ever yet dignified this Globe.”

**TRIUMPHANT ARCH OF FREEDOM’S TEMPLE**

“And when once the triumphant arch is erected.”

**UNGOVERNABLE MONSTER**

“an ungovernable monster, without constitutional checks, deplorable and to be deplored, dangerous and destructive.”

**VIOLENT DOSE**

“the case is sufficiently desperate when we consider that violent as the dose is, the best thing we can do is to swallow it.”

**VIOLENT REMEDY**

“We all know however the more desperate any disease has become, so much more violent must be the remedy.”

**WEDDING SUIT**

“I am daily making Calculations for the United States to be adorned with her new *wedding Suit*.”

**WIFE AND PEOPLE AS HUSBAND (PARAPHRASE)**

“The great Body of the People in every Free Government, must always be considered as the Husband of the Constitution thereof, and consequently that as long as such Constitution performs the duties of Love Honor and Obedience to Her great Constituent Body, or Political Husband, She is entitled to be Kept both in sickness and in Health, with all possible Love and Fidelity by such her said Husband and that on a breach of her Duty she must expect to incur the Pains and Penalties of *Divorce*.”

**YOUNG LION**

“To you perhaps our America must owe the indelible Honour of chaining and reducing within proper Bounds this young Lion.”

## THE LESSON PLAN—Who Said What and Who’s Overreacting?

### OBJECTIVES OF THE LESSON

- \* Students will be able to see how the Federalists and Antifederalists used metaphors to communicate their opinions about the Constitution.
- \* Students will consider the effectiveness of using hyperbole in political speech.

### THE LESSON

1. Divide the class into groups of 3-5 students.
2. Each group should have access to the complete list of metaphors.
3. Distribute the graphic organizer below to each student.

Federalist Metaphor	How Extreme is it? (1-5 scale)		Antifederalist Metaphor
	Federalist Rank	Antifederalist Rank	
1.			1.
2.			2.
3.			3.
4.			4.
5.			5.

4. Have each group read through the list and select ten metaphors. Using the first and fourth columns of the graphic organizer, they should list their selections after discussion whether they believe each selection is from a Federalist or from an Antifederalist perspective.
5. After each group has made their ten selections they should rank each item they have selected and consider a ranking for each. Students can use the second and third columns to record their rankings. In their discussions they should reflect on which items they considered as hyperbole. Groups should be able to explain the reasons they used to come to their assessments.
6. After groups have completed their work you can have each group report their findings to the class.
7. You can conclude the lesson by leading a discussion using the following questions.
  - a) Are there any metaphors that might be considered having a balanced perspective?
  - b) Are there patterns or trends that are noticeable among the Federalist metaphors? Among the Antifederalist metaphors?
  - c) Which side do you consider the most prone to using hyperbole? Why might this be the case?
  - d) In your opinion, is hyperbole an effective strategy in a political debate?

8. As an extension activity, you may want to have students create political cartoons based on a metaphor.

## *Lesson Ten:* *Political Humor during Ratification*

### **BACKGROUND INFORMATION FOR INSTRUCTOR**

Americans historically have liberally used humor in the political arena. The Ratification Period is no exception. Often students of the ratification debate are prone to associate that public discourse with the lofty prose of “Publius” in the Federalist Papers or the Antifederalist writings of the “Federal Farmer” and “Brutus.” Not all of the discourse, however, was of an elevated nature. For many Americans, the issues of ratification were disseminated using the various devices of satire, fictitious letters, dialogues, metaphorical rhetoric, burlesque, parody, allegory, and ridicule. All of these formats had popular appeal.

Dating back to the Revolutionary Era when the British invented the pejorative character Yankee Doodle, Americans were accustomed to seeing themselves as irreverent and uncouth. It is as if Americans proudly took on the caricature and were willing to use this archetype as they engaged in public debate.

Often in the ratification debate, class and social standing was an issue that provided occasions for writers to disparage their opponents through the use of political humor. Even after achieving independence, America was a highly deferential society. Only men who did not work with their hands could be considered a gentleman. Antifederalists leveled accusations against Federalists alleging their aristocratic tendencies were at odds with the democratic principles of the American Revolution. Thus, Federalists were forced to defend themselves against these charges of being elitists. In turn, they countered suggesting that many Antifederalists were demagogues exploiting the ignorance of the masses. These stereotypes would often appear in satires and ridicule.

The authors of the items highlighted in these lessons are examples of such writings. The Federalist writer of “Peter Prejudice” ridicules his opponents as ignorant fools unwilling to accept new solutions to century-old problems in government. The Antifederalist author of “Honestus” mocks his antagonists inferring that they are elitist snobs who fail to understand that working men had the capacity to engage in sophisticated political debate.

Authorship of these essays is uncertain. However, the reprinting in the June issue of the Philadelphia *American Museum* revealed “Peter Prejudice’s was written by “John Mifflin, Esq.” Mifflin was a graduate of the College of Philadelphia (1775) and a prominent lawyer. Postmaster General Ebenezer Hazard, writing from New York City where “Peter Prejudice” had been reprinted in the *New York Packet* on 22 April, thought that the prolific Federalist propagandist Francis Hopkinson was the author. In alluding to the breeches allegory, Hazard in a letter to Jeremy Belknap said “I believe F.H. wrote the Piece about the Breeches.” On occasion, its publication evoked strong reactions among Antifederalists. One such response was “Timothy Takeall” who urged his readers not to accept the new breeches because the tailor had not yet presented his bill. He suggested, “Your taylor told you, when he made the old breeches, that they would last fifteen years without repairing; but after half of that time is expired, he informs you that they are past mending, and sends you a new pair, which he says are calculated for your benefit, but will not suffer you to try them on, and in case of their illy fitting you, to return them; but if you put them on, you must wear them, and pay the bill which he will then exhibit.”

The debate over the ratification of the Constitution in New York began with the publication of two items by the Antifederalist “Cato” and the Federalist “Cæsar” in September and October 1787. “Cato” I had encouraged all citizens of New York to “Deliberate ... on this new national

government with coolness; analyze it with criticism; and reflect on it with candour.” Referring to George Washington, who signed the Constitution, “Cato” maintained that even “the wisest and best of men may err, and their errors, if adopted, may be fatal to the community.” “Cæsar” II countered by suggesting the people in general were “very ill qualified to *judge* for themselves what government will best suit their peculiar situations.” On the eve of the election for the New York convention, “Honestus” asserted that such a disparaging view of the people fails to take into account the wisdom and virtues of workingmen.

The publication of “Honestus” drew an immediate Federalist response. “One and All,” in a broadside dated 29 April, warned his fellow citizens to “Keep a good *Look-Out*. . . . The enemies of federalism know they can do nothing in this City by *fair play*. . . . Honestus; who, under the mask of friendship to the proposed Constitution, insults the whole body of Mechanics, in order to raise their prejudices against it.”

## KEY IDEAS IN PRIMARY SOURCE DOCUMENTS

### **Peter Prejudice: The New Breeches, Philadelphia *Federal Gazette*, 15 April 1788**

A Tailor (The Convention) Makes an Alarmed Antifederalist an Ill-Fitting Pair of Pants; His Wife and Children (Federalists) Assure and Calm Him

### **Honestus, *New York Journal*, 26 April 1788**

Antifederalists Alleged to be Ignorant and Unsited to Consider the Constitution;  
Federalists Spoofed as Elitists

## PRIMARY SOURCE DOCUMENTS

### **Peter Prejudice: The New Breeches, Philadelphia *Federal Gazette*, 15 April 1788**

Mr. Editor, I some time since sent a pair of old breeches to a taylor, in order to have them patched; as the breaches, both in front and rear, were very numerous I was obliged to purchase a considerable quantity of cloth wherewith to mend them—Well sir, what do you think the taylor has had the assurance to do? Why, after detaining my breeches upwards of four months, he has presumed to return them unpatched, and has also sent a new pair along with them, and a message, “That upon examining the old pair he had found them so rotten that they were not worth mending, nor could it be easily done, that he had also found that the cloth sent for that purpose was sufficient to make an entire new pair, much better than the old ones had ever been, which he had done accordingly, and hoped for my approbation of his conduct.” He added moreover “that if upon trial they should happen to pinch me in any part, he had left a sufficient space for outlets at every seam.”

Oh height of insult! said I on receiving this arrogant message, what has this fellow done! A conspiracy! A conspiracy! As sure as I’m alive the traitor, his journeymen, and apprentices have *meditated* the ruin of my old breeches, and *conspired* against the liberty of my thighs, knees, and loins, which they have insidiously attempted to confine and cramp by palming this “*gilded trap*” the new breeches on me, “*Curse on the villains!*” they have conspired to lay restraints upon my *free-born* members, which are utterly incompatible with our republican form of government! Here indignation choked my utterance—My dearly beloved spouse and my little children were all gather’d about me by this time, to know the cause of my anger. It was, however, a considerable while before the boiling madness of my rage was sufficiently calmed for me to give them the information they desired; but my heat being somewhat allayed, I at length deigned to answer their interrogatories.

Well my dear (said my sweet partner) I think you are under many obligations to our good neighbour the taylor, who has rendered you very important services on former occasions; and has certainly consulted your interest in this business; for my part, I highly approve of his conduct, and am well pleased that he has made you these pretty new *small clothes*, (for she does not like to say *breeches*) to hide your nakedness, and defend you from the inclemency of the weather. Sure you know how you have been laughed at, wherever you went, this long time past on account of your old pair, which the neighbours all say, are no better than an Indian’s breech-clout; I protest my own modesty has been often put to the blush by the holes in that plaguy old pair—My lovely tormentor was about to proceed in her condemnation of the old pair, and her praises of the new—Hold! hold! said I, let us reason the matter fairly. In the first place, he has disobeyed my orders, which were only that he should repair the old breeches. But has he not made a new pair much preferable to the old? By no

means, I replied, these cursed new breeches would utterly ruin me; they are calculated to enslave my thighs, to confine my waist, and totally to destroy the liberty of my knees, by buttoning tightly around them, they will also render a considerable part of my hose totally useless by buckling below my knees; nor is this all, they will imprison my femoral parts nor suffer them to enjoy fresh air as the old ones do; to be brief, they are *too long* and *too short*, *too strait* and *too wide*, they would *pinch me in all parts*, and *fit me in none*.

Methinks you reason very strangely, my love (replied my solicitous advocate for the new breeches, who was now joined by all the children,) your argument, against being under the restraint and confinement of clothes, is only calculated for a circle of savages, and can never have any weight among civilized and social beings; your objection to the want of breaches in the new pair, for admission of fresh air, is an excellent argument in their favour, and shews that they are well calculated to skreen you from the inclemency of the seasons; your concluding objections are so inconsistent and contradictory, that they fall to the ground without any comment. Further, continued she, if they have faults you know the taylor says they can be easily amended; would not you do well therefore to put them on, in order to ascertain their faults truly, and I shall have no objection to the necessary alterations being made in them.

No, no, said I, "*don't think to catch old birds with chaff.*" I'm determined never to draw them on, unless the amendments shall have been first made. Here again I was replied to—How in the name of goodness, said she, can you undertake to have amendments made, before you know that the parts you would wish to have amended are indeed faulty! By such preposterous doings you might spoil their best parts; but would have no tolerable chance of amending even one fault; therefore, I beg you may first try them on, that you may be enabled to discover their faults with precision. Do papa, do try on your new breeches, exclaimed the children with one voice.

Hush! hush! said I once more, I believe the woman and the children are all crazy! Do you think I am fool enough to be gulled thus! If I should put them on, how shall I be able to get them off again? I have no security that they will not cling to my skin, tear away my flesh, break my bones, and boil my marrow, like Hercules's poisoned shirt, which insidiously destroyed him. And all this must be born, without the liberty of even remonstrating against the tyranny of these accursed "*consolidating*" breeches. I say *consolidating*; for they are evidently calculated to supersede the use of every other garment; or at least to "melt them all down into one" general garment; and the taylor certainly intended this to be the case. Do they not already exhibit a specimen of their despotism, by being framed so as to "lord it over" a considerable part of my stockings and shirt? And is it not more than probable, that they would, very speedily, encroach upon the prerogative of *all* my clothes; nay, that they would even extend their sway to my head, and, by closing my mouth, prevent me from expostulating against my "cruel taskmasters?" With these over my face, for a mask, I should appear no less ridiculous, than a modern fine lady with her head in a calash, or in a fashionable bonnet.

Here the whole family burst into laughter, and the dispute ended for that time. I have reason to expect another attack on the same score shortly; for my wife is exceedingly fond of the new breeches, and is supported by all my neighbours in her controversies with me on this subject. As I am nearly exhausted, I will be much obliged to any of your correspondents who will be so condescending as to favour me with a fresh supply of arguments, sufficient to repel those of my spouse in our next rencountre.

## Honestus, *New York Journal*, 26 April 1788

Mr. Greenleaf, I was led to the following reflections, by accidentally falling in company, some evenings since, with a number of characters (chiefly mechanics) at an ale-house, who were making absurd comments on the constitution proposed by the general convention; which convention was composed of the greatest and most enlightened characters in this country. It must be considered, that government is a very abstruse science, and political disquisition a very arduous task, far beyond the reach of common capacities; and that no men, but those who have had a liberal education, and have time to study, can possibly be competent to such an important matter, as the framing a government for such an extensive country, as is comprehended within the United States. Whenever men of neither abilities or education, presume to meddle, with such matters as are above the reach of their knowledge or abilities, they will find themselves out of their proper sphere.

The blacksmith will find that he had better attend to his hammer and anvil, and hammer out hob-nails, for country hoof, than concern himself with affairs of state, should he be weak enough to suppose that he has abilities equal to such an undertaking; he will find, that there is a material difference, between welding together two pieces of steel or iron, and that of uniting heterogeneous and jarring interests, so as to make them productive of the public good.

The mariner may very well understand, how to take an observation, and navigate his ship; but he cannot possibly be acquainted with every point of the political compass, or so to steer the ship of state, as to avoid the hidden and dangerous rocks, and shelves, that may lay in the way—and whenever he makes the attempt, he will undoubtedly find himself out of his latitude.

The distiller, brewer and baker, may be perfectly well acquainted with the principles of fermentation, and how to regulate and check the same, so as to answer their particular purposes; but they must be entirely ignorant of the laws and means that will be necessary to prevent a dangerous fermentation in the community, or what steps it may be necessary to take, to check such fermentation, when excited.

The farmer may have a sufficiency of knowledge to guide and govern the plough, and team; and understand the best method to thrash his grain—but he must be incompetent to the great purpose of guiding the machinery of the state, or to suggest the best and most effectual method, to thrash the enemies of his country.

The carpenter may be a perfect master of his trade, and understand the rules of architecture; he may frame an edifice, complete in all its parts, and sufficiently strong to secure the proprietor from the attempts of the midnight robber; but he will be totally ignorant, how to frame laws for the security of society, so as to prevent the artful and designing from preying upon the ignorant and innocent.

The miller may be a complete artist in his profession, and know how to regulate every thing appertaining to his mill; he may understand extremely well, how to separate the flour from the bran; but he cannot possibly be master of the address, that will be necessary, to distinguish the wheat from the chaff; in the choice of officers, to fill the different departments in the state.

The clock and watch-maker may know very well how to regulate the wheels, and other movements of a clock or watch; but he will be ignorant of the necessary art, how to regulate the complex machinery of government, so as to dispose the different wheels, as will prevent their interfering with, and bearing too hard on each other.

The mason may be an excellent workman, and understand how to lay the foundation of an house or a wall properly—but he will be at a loss how to determine what base will be necessary on which such a superstructure as government should be erected.

The sadler may be a proficient in his business, and may know what kind of curb is proper to restrain an unruly and restive horse—but he cannot possibly be a judge what laws or curbs will be

proper and necessary to restrain the unruly passions of men, so as to prevent their injuring one another.

The turner may be a very expert artizan, but he cannot possibly be acquainted with all the turns and windings, that are used by bad men to evade the laws, and escape the punishment which they justly deserve.

The cooper may know extremely well, how to stop the flaws and worm holes in a cask, and make it so tight as to hold water, rum, or any other liquor; but he will be much puzzled to stop the flaws, and worm-holes in a law; so as to prevent its operating, either to the injury of individuals, or the government.

The barber may know very well how to make a wig, to suit either the priest, phisician or gentleman of the long-robe [i.e., lawyers], or how to shave his customer with dexterity,—but whenever he attempts to meddle with affairs of state, he will find that his razors have lost their edge, and that he is himself compleatly in the suds.

If this production should operate in such a manner, as to prevent people's neglecting their business and meddling with public matters, beyond their capacities, it will be a sufficient compensation to the writer, who has no other object in view, than that of confining every man within his proper sphere.

## THE LESSON PLANS—Two Reader’s Theater Lessons

### OBJECTIVES OF THE LESSONS

- \* Students will read and consider the use of satire as a form of political discourse in the ratification debate.
- \* Students will evaluate the effectiveness of ridicule in political debate.

### THE LESSONS

**A Note to the Instructor:** “Peter Prejudice” is a satirical piece that spoofs the Antifederalists and their alleged ignorance. “Honestus” pokes fun at the Federalists’ assumptions about the intelligence of Antifederalists. It is possible to have a class do both of these scripts in one class period. In fact it is preferable since it will expose the students to how both sides used political humor to convey their message. You may want half of the class to be involved in the reading of “Peter Prejudice” and the other half to read “Honestus.”

#### I. Peter Prejudice: A Reader’s Theater

1. Select six students and assign each of them a character. You may want to select six students prior to using this lesson and have them read the script so they are not reading it in class for the first time.
2. Have the six students present the reader’s theater for the entire class.
3. As the class listens to the presentation, you can have them use the graphic organizer below to organize their thoughts for the discussion portion of the lesson.

#### Graphic Organizer:

<u>Item in Script</u>	<u>Item Symbolizes?</u>
The Taylor	George Washington or the Philadelphia Convention or Congress
Peter Prejudice	
The Prejudice Family	
The New Breeches	
The Old Breeches	

4. At the conclusion of the reading, you may want to have a discussion using some of the following questions.
  - a) In this piece, what do the following items symbolize?
    - The New Breeches?
    - The Old Breeches?
    - Peter Prejudice?

Mrs. Prejudice?  
 The Children?  
 The Taylor?

- b) What are the arguments proposed by “Peter Prejudice” against accepting the new breeches?
  - c) What are the main arguments proposed by the family in favor of accepting the new breeches?
  - d) In this piece, who are the Federalists? The Antifederalists?
  - e) Would you consider ridicule as appropriate in the ratification debates? Is it effective in this case?
  - f) How effective is the breeches metaphor in describing the Constitution? Would another metaphor be better? If so, what might be a better alternative?
5. An extension activity could be to have students select another metaphor and have them rewrite the script using the new metaphor.

**II. Honestus: A Reader’s Theater**

- 1. Select 25 students to play a part in the reader’s theater script. If you have smaller classes you may want to assign multiple parts to each reader.
- 2. Have the selected students read the “Honestus” script.
- 3. As the cast reads the script, you may want to have the remainder of the class complete the T chart below.

<u>Occupation</u>	<u>Essential Skill</u>	<u>Why skill isn’t sufficient to the task</u>
blacksmith	welding iron and steel	combining the various interests of a nation is harder
mariner		
distiller		
farmer		
carpenter		
miller		
watch-maker		
mason		
sadler		
turner		
cooper		
barber		

- 4. After the class has listened to the reading, you may want to lead a discussion using the following questions.
  - a) Is this item written by a Federalist or an Antifederalist? What would you reference in the script that would lead you to your conclusion? (“Honestus” is Antifederalist attempting to rile opposition to the Constitution among the tradesmen. By creating these “conversations” he hopes the insults to their

intelligence will unite them in their opposition to the Constitution.)

- b) What similarities do you see among the occupations highlighted in the piece?
  - c) Why would the author select occupations in the skilled trades to express an opinion about the Constitution?
  - d) In your opinion, can “Honestus” be accused of creating conflicts between the various classes of society?
5. An extension activity could be to have students add other occupations to the T Chart. Students could then identify the skill(s) used in that occupation and write as “Honestus” as to why that skill is insufficient to the task of a political/constitutional debate. Modern occupations that could be used might be doctors, engineers, computer programmers, garbage men, librarians, plumbers, teachers, computer game designers, etc.

## The Script for Peter Prejudice:

**Peter Prejudice:** Mr. Editor, I some time since sent a pair of old breeches to a taylor, in order to have them patched; as the breaches, both in front and rear, were very numerous I was obliged to purchase a considerable quantity of cloth wherewith to mend them—Well sir, what do you think the taylor has had the assurance to do? Why, after detaining my breeches upwards of four months, he has presumed to return them unpatched, and has also sent a new pair along with them, and a message. . . .

**The Tailor:** That upon examining the old pair I found them so rotten that they were not worth mending, nor could it be easily done, I found that the cloth sent for that purpose was sufficient to make an entire new pair, much better than the old ones had ever been, which I have done accordingly, and I hope for my approbation of my conduct.

**Peter Prejudice:** He added moreover. . .

**The Tailor:** . . . that if upon trial they should happen to pinch in any part, I left a sufficient space for outlets at every seam.

**Peter Prejudice:** Oh height of insult! said I on receiving this arrogant message, what has this fellow done! A conspiracy! A conspiracy! As sure as I'm alive the traitor, his journeymen, and apprentices have *meditated* the ruin of my old breeches, and *conspired* against the liberty of my thighs, knees, and loins, which they have insidiously attempted to confine and cramp by palming this "*gilded trap*" the new breeches on me, "*Curse on the villains!*" they have conspired to lay restraints upon my *free-born* members, which are utterly incompatible with our republican form of government! Here indignation choked my utterance—My dearly beloved spouse and my little children were all gather'd about me by this time, to know the cause of my anger. It was, however, a considerable while before the boiling madness of my rage was sufficiently calmed for me to give them the information they desired; but my heat being somewhat allayed, I at length deigned to answer their interrogatories.

**Mrs. Prejudice:** Well my dear . . .

**Peter Prejudice:** . . . said my sweet partner . . .

**Mrs. Prejudice:** . . . I think you are under many obligations to our good neighbour the taylor, who has rendered you very important services on former occasions; and has certainly consulted your interest in this business; for my part, I highly approve of his conduct, and am well pleased that he has made you these pretty new *small clothes* . . .

**Peter Prejudice:** . . . for she does not like to say *breeches* . . .

**Mrs. Prejudice:** . . . to hide your nakedness, and defend you from the inclemency of the weather. Sure you know how you have been laughed at, wherever you went, this long time past on account of your old pair, which the neighbours all say, are no better than an Indian's breech-clout; I protest my own modesty has been often put to the blush by the holes in that plaguy old pair.

**Peter Prejudice:** My lovely tormentor was about to proceed in her condemnation of the old pair, and her praises of the new—Hold! hold! said I, let us reason the matter fairly. In the first place, he has disobeyed my orders, which were only that he should repair the old breeches.

**Mrs. Prejudice:** But has he not made a new pair much preferable to the old?

**Peter Prejudice:** By no means, I replied, these cursed new breeches would utterly ruin me; they are calculated to enslave my thighs, to confine my waist, and totally to destroy the liberty of my knees, by buttoning tightly around them, they will also render a considerable part of my hose totally useless by buckling below my knees; nor is this all, they will imprison my femoral parts nor suffer them to enjoy fresh air as the old ones do; to be brief, they are *too long* and *too short*, *too strait* and *too wide*, they would *pinch me in all parts*, and *fit me in none*.

**Mrs. Prejudice:** Methinks you reason very strangely, my love . . .

**Peter Prejudice:** . . . replied my solicitous advocate for the new breeches, who was now joined by all the children . . .

**Child #1:** . . . your argument, against being under the restraint and confinement of clothes, is only calculated for a circle of savages, and can never have any weight among civilized and social beings.

**Child #2:** . . . your objection to the want of breaches in the new pair, for admission of fresh air, is an excellent argument in their favour, and shews that they are well calculated to skreen you from the inclemency of the seasons.

**Child #3:** . . . your concluding objections are so inconsistent and contradictory, that they fall to the ground without any comment.

**Mrs. Prejudice:** . . . if they have faults you know the taylor says they can be easily amended; would not you do well therefore to put them on, in order to ascertain their faults truly, and I shall have no objection to the necessary alterations being made in them.

**Peter Prejudice:** No, no, said I, "*don't think to catch old birds with chaff.*" I'm determined never to draw them on, unless the amendments shall have been first made. Here again I was replied to.

**Mrs. Prejudice:** How in the name of goodness, can you undertake to have amendments made, before you know that the parts you would wish to have amended are indeed faulty!

**Child #1:** By such preposterous doings you might spoil their best parts; but would have no tolerable chance of amending even one fault.

**Child #2:** I beg you may first try them on.

**Child #3:** That way you may be enabled to discover their faults with precision.

**The Children Together:** Do papa, do try on your new breeches . . .

**Peter Prejudice:** . . . Hush! hush! said I once more. . . . Do you think I am fool enough to be gulled thus! If I should put them on, how shall I be able to get them off again? I have no security that they will not cling to my skin, tear away my flesh, break my bones, and boil my marrow, like Hercules's poisoned shirt, which insidiously destroyed him. And all this must be born, without the liberty of even remonstrating against the tyranny of these accursed "*consolidating*" breeches. I say *consolidating*; for they are evidently calculated to supersede the use of every other garment; or at least to "melt them all down into one" general garment; and the taylor certainly intended this to be the case. Do they not already exhibit a specimen of their despotism, by being framed so as to "lord it over" a considerable part of my stockings and shirt? Here the whole family burst into . . .

**The Children and Mrs. Prejudice:** raucous laughter . . .

**Peter Prejudice:** . . . and the dispute ended for that time. I have reason to expect another attack on the same score shortly; for my wife is exceedingly fond of the new breeches, and is supported by all my neighbours in her controversies with me on this subject. As I am nearly exhausted, I will be much obliged to any of your correspondents who will be so condescending as to favour me with a fresh supply of arguments, sufficient to repel those of my spouse in our next rencountre.

## The Script for Honestus:

**Honestus:** Mr. Greenleaf, I was led to the following reflections, by accidentally falling in company, some evenings since, with a number of characters . . . at an ale-house, who were making comments on the constitution proposed by the general convention. . . . To my recollection, their animated and heated conversations went something akin to this . . .

**Voice 1A:** The blacksmith [is] best suited . . . to his hammer and anvil, and hammer out hob-nails, for country hoof . . .

**Voice 1B:** . . . but . . . he will find, that there is a material difference, between welding together two pieces of steel or iron, and that of uniting heterogeneous and jarring interests, so as to make them productive of the public good.

**Voice 2A:** The mariner may very well understand, how to take an observation, and navigate his ship . . .

**Voice 2B:** . . . but he cannot possibly be acquainted with every point of the political compass, or so to steer the ship of state, as to avoid the hidden and dangerous rocks, and shelves, that may lay in the way—and whenever he makes the attempt, he will undoubtedly find himself out of his latitude.

**Voice 3A:** The distiller, brewer and baker, [are] perfectly well acquainted with the principles of fermentation, and how to regulate and check the same, so as to answer their particular purposes . . .

**Voice 3B:** . . . but they must be entirely ignorant of the laws and means that will be necessary to prevent a dangerous fermentation in the community, or what steps it may be necessary to take, to check such fermentation, when excited.

**Voice 4A:** The farmer [has] a sufficiency of knowledge to guide and govern the plough, and team; and understand the best method to thrash his grain . . .

**Voice 4B:** . . . but he must be incompetent to the great purpose of guiding the machinery of the state, or to suggest the best and most effectual method, to thrash the enemies of his country.

**Voice 5A:** The carpenter may be a perfect master of his trade, and understand the rules of architecture; he may frame an edifice, complete in all its parts, and sufficiently strong to secure the proprietor from the attempts of the midnight robber . . .

**Voice 5B:** . . . but he will be totally ignorant, how to frame laws for the security of society, so as to prevent the artful and designing from preying upon the ignorant and innocent.

**Voice 6A:** The miller [is] a complete artist in his profession, and know how to regulate every thing appertaining to his mill; he may understand extremely well, how to separate the flour from the bran . . .

**Voice 6B:** . . . but he cannot possibly be master of the address, that will be necessary, to distinguish the wheat from the chaff; in the choice of officers, to fill the different departments in the state.

**Voice 7A:** The clock and watch-maker may know very well how to regulate the wheels, and other movements of a clock or watch . . .

**Voice 7B:** . . . but he will be ignorant of the necessary art, how to regulate the complex machinery of government, so as to dispose the different wheels, as will prevent their interfering with, and bearing too hard on each other.

**Voice 8A:** The mason [is] an excellent workman, and understand how to lay the foundation of an house or a wall properly . . .

**Voice 8B:** . . . but he will be at a loss how to determine what base will be necessary on which such a superstructure as government should be erected.

**Voice 9A:** The saddler may be a proficient in his business, and may know what kind of curb is proper to restrain an unruly and restive horse . . .

**Voice 9B:** . . . but he cannot possibly be a judge what laws or curbs will be proper and necessary to restrain the unruly passions of men, so as to prevent their injuring one another.

**Voice 10A:** The turner may be a very expert artizan . . .

**Voice 10B:** . . . but he cannot possibly be acquainted with all the turns and windings, that are used by bad men to evade the laws, and escape the punishment which they justly deserve.

**Voice 11A:** The cooper knows extremely well, how to stop the flaws and worm holes in a cask, and make it so tight as to hold water, rum, or any other liquor . . .

**Voice 11B:** . . .but he will be much puzzled to stop the flaws, and worm-holes in a law; so as to prevent its operating, either to the injury of individuals, or the government.

**Voice 12A:** The barber knows very well how to make a wig, to suit either the priest, phisician or gentleman of the long-robe, or how to shave his customer with dexterity . . .

**Voice 12B:** . . . but whenever he attempts to meddle with affairs of state, he will find that his razors have lost their edge, and that he is himself compleatly in the suds.

## *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?

## *Lesson Twelve:* *The Process of Ratification: A Study of Four States*

### **BACKGROUND INFORMATION FOR INSTRUCTOR**

The first five states that ratified the Constitution followed the procedure specified by the Constitutional Convention, the Confederation Congress, and advocated by Federalists. In fact, three of those five states ratified unanimously (Delaware, New Jersey, and Georgia). Federalists held dominant majorities in the other two states (Pennsylvania and Connecticut). Only in the Pennsylvania Convention did Antifederalists seek amendments to the Constitution. On 12 December 1787 Antifederalists proposed a bill of rights that they wanted the people to consider when the Pennsylvania Convention recessed. Federalists, however, rejected the amendments and refused to allow them or the minority's reason for dissent to appear on the Convention's journal. Pennsylvania Antifederalists thereupon published the amendments embodied in their lengthy dissent in newspapers, broadsides, and pamphlets that circulated widely throughout the country.

#### **Ratification in Massachusetts**

The Massachusetts ratifying convention met in early January 1788. Being the second largest state in the Union in population and the dominant New England state, a rejection of the Constitution by Massachusetts would probably mean the death of the Constitution. With over 350 delegates, no one could accurately predict what the Convention would do. After three weeks of debate, it became clear that a majority of delegates would vote against ratification. Federalist leaders realized that the process of ratification had to be altered somewhat if they hoped to ratify the Constitution.

Federalist leaders approached Governor John Hancock, their erstwhile political opponent, with a proposition. Governor Hancock had been elected to the Massachusetts Convention and had been elected president of the Convention by his fellow delegates even though he never attended the Convention sessions. Not publicly taking a stand on the Constitution, Hancock was unable to attend the Convention because of an attack of the gout, a malady that often flared up at convenient political opportunities. Federalist leaders offered not to run a candidate against Hancock in the spring gubernatorial election and they vowed to support him as vice president of the United States if the Constitution was adopted. They also suggested to Hancock that George Washington might not be eligible to be the first president if Virginia did not ratify the Constitution. In exchange for their support, Federalists wanted Hancock to submit nine recommendatory amendments to the Constitution. The Massachusetts Convention would ratify unconditionally while the state's future U.S. Senators and Representatives would support the amendments in the first federal Congress. Hancock agreed to the deal and the Massachusetts Convention ratified the Constitution by a slim majority of nineteen votes. Six of the remaining seven states used this procedure in adopting the Constitution. Without recommendatory amendments, it is unlikely that the Constitution would have been adopted by the required nine states. This slight variance from the process of ratification devised by the Constitutional Convention was absolutely critical.

#### **Ratification in Rhode Island**

While Massachusetts tweaked the process of ratification, Rhode Island totally rejected it and substituted its own process. Throughout its colonial history, Rhode Island had often been a maverick both socially and politically. This uniqueness surfaced again during the Confederation

years. The state alone defeated the Impost of 1781—a proposed amendment to the Articles of Confederation that would have allowed the Confederation Congress to levy a tariff providing Congress with an independent source of revenue. In 1787 Rhode Island was the only state that refused to appoint delegates to the Constitutional Convention. The Rhode Island legislature then became the only state to reject the calling of a state ratifying convention. Leaders of the Country Party saw the Constitution as a danger to its radical financial policy in which a huge amount of paper money was emitted in 1786. Declared legal tender, creditors were forced to accept the depreciated currency in payment for debt. More importantly, the Country Party used the depreciated currency to pay the state's wartime debt that had by this time gravitated into the hands of speculators. Through an ingenious method of quarterly payments, speculators were forced to accept the depreciated currency for their state securities or see these securities forfeited. The Constitution's prohibition of state paper money endangered this fiscal scheme.

Rather than calling a state convention, the legislature dominated by the Country Party called a statewide referendum to consider the Constitution. Federalists condemned the referendum as undemocratic because the Constitution would not have a fair hearing in town meetings where local leaders would intimidate people who voted publicly. Alternatively, conventions would allow a forum in which the Constitution could be thoroughly debated by wise delegates who would then vote intelligently for or against the Constitution.

Freemen met in Rhode Island's thirty towns on 24 March 1788 and overwhelmingly rejected the Constitution 2,714 to 238. Only two of the state's thirty towns (Bristol and Little Compton) voted for ratification while many Federalists, particularly in Newport and Providence, boycotted the referendum. Over the next two years, the legislature repeatedly rejected calling a state convention to consider the Constitution. Federalists nationwide used Rhode Island's obstructionism as an argument in favor of the convention method of ratifying the Constitution. Not until January 1790 did Rhode Island call a convention to meet on 1 March when, after six days it adjourned to re-assemble in Newport on 24 May 1790. Five days later the Convention ratified the Constitution and Rhode Island rejoined the Union.

### **Ratification in New York**

New York provided another variant in the process of ratifying the Constitution. Assumed by many to be an Antifederalist state, it was uncertain whether New York would call a convention. Richard Sill, an Albany lawyer, wrote that "Our Legislature have formed a house at Poughkeepsie, and the first of their attention will be the calling a Convention—This however will meet a warm opposition & 'tis doubted by the best friends to the New Government whether we shall have a Convention called by a Legislative Act, the opposition are determined to make their first stand here." After a month in session, the state Assembly began its consideration of the call of a state convention. After heated debates, the Assembly rejected a preamble that would have implied that (1) the new Constitution would hurt New York's constitution and government and that (2) the proposed convention could amend the new Constitution. A convention was called to assemble in Poughkeepsie on 17 June 1788. For the first time, the state's property requirement for suffrage was suspended and all adult males could vote for convention delegates.

Two-thirds of the delegates elected to the New York Convention were Antifederalists. They agreed to consider the Constitution by sections without a final vote taken until the entire Constitution had been considered. When news arrived in Poughkeepsie on 24 June 1788 that New Hampshire had become the ninth state to ratify the Constitution, thus allowing the Constitution to be implemented among the ratifying states, it had little impact on most Antifederalists. They felt that a new government without Virginia and New York would not be viable. But when news arrived a

week later on 2 July that Virginia had ratified, New York Antifederalist leaders realized that they had to alter their position. Rejection of the Constitution or adjournment of the Convention was no longer a valid option.

Antifederalist leaders in the New York Convention developed an intricate Form of Ratification. At first they thought about ratifying for a limited number of years. If a second constitutional convention was not held within two years, the state's ratification would lapse. Alexander Hamilton, one of the Federalist leaders in the New York Convention, wrote to James Madison, then serving as a Virginia delegate to Congress in New York City, asking whether such a limited-term ratification was acceptable to Congress. Madison wrote back telling Hamilton that such a ratification was unacceptable. Seemingly no one in Congress authorized Madison to respond accordingly. In any event, New York Convention Antifederalists dropped the option for a limited-term ratification when Hamilton delivered Madison's opinion.

The preamble to New York's Form of Ratification stated "That all power is originally vested in and consequently derived from the people" and "That the powers of government may be reassumed by the people, whensoever it shall become necessary to their happiness." The Form then contained a long list of rights that should be protected followed by another lengthy list of structural changes to the government created by the Constitution. In the closing statement, the Form indicated that the Convention believed that four provisions of the Constitution should not be implemented before a second constitutional convention was called to consider amendments to the Constitution: (1) the state militia could not be sent out of state for more than six weeks without the approval of the state legislature, (2) Congress' power to regulate elections of federal representatives and senators was limited, (3) no excise taxes would be imposed on New York goods (except ardent spirits), and (4) no direct taxes would be levied before requisitions would be assessed so that the state legislatures could then determine how taxes would be collected. Finally, a circular letter was written calling upon the state legislatures to pass resolutions requesting the first federal Congress to call a constitutional convention to consider amendments to the Constitution. Many Federalists both in New York and in other states were relieved that New York had ratified the Constitution. Others, like James Madison, felt that the price for New York's ratification was too steep. On 24 August 1788 Madison wrote George Washington "that the circumstances involved in the ratification of New York will prove more injurious than a rejection would have done."

## KEY IDEAS IN PRIMARY SOURCE DOCUMENTS

### **Pennsylvania Form of Ratification, 12 December 1787**

Reference to Popular Sovereignty, Reference to the Revolution

### **Massachusetts Form of Ratification, 6-7 February 1788**

Amendments to Constitution Would Calm Fears of the People, Several Proposed Amendments to Powers Assigned in the Constitution, Several Suggestions Regarding Rights, Recommendation that First Federal Congress Work to Alter the Constitution

### **Rhode Island Act Calling a Referendum on the Constitution, 1 March 1788**

Reference to Constitutional Convention, Calling a Statewide Referendum, Suggestions for Procedures in Town Meetings, Reporting Votes to State Assembly

### **New York Form of Ratification, 26 July 1788**

Social Contract Language, Reference to Popular Sovereignty, List of Proposed Rights, List of Proposed Structural Amendments, Call on First Federal Congress to Secure Amendments through a Constitutional Convention

## PRIMARY SOURCE DOCUMENTS

### **The Pennsylvania Form of Ratification, 12 December 1787**

In the Name of the PEOPLE of Pennsylvania.

BE IT KNOWN UNTO ALL MEN,—That We, the Delegates of the PEOPLE of the Commonwealth of Pennsylvania, in General Convention assembled, have assented to and ratified, and by these Presents DO, in the Name and by the Authority of the same PEOPLE, and for ourselves, assent to and ratify the foregoing Constitution for the UNITED STATES of AMERICA.

DONE in Convention, the Twelfth Day of December, in the Year one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the Twelfth. In witness whereof, we have hereunto subscribed our Names.

### **Massachusetts Form of Ratification, 6-7 February 1788**

The Convention having impartially discussed, & fully considered The Constitution for the United States of America, reported to Congress by the Convention of Delegates from the United States of America, & submitted to us by a resolution of the General Court of the said Commonwealth, passed the twenty fifth day of October last past, & acknowledging with grateful hearts the goodness of the Supreme Ruler of the Universe in affording the People of the United States in the course of his providence an opportunity deliberately & peaceably without fraud or surprize of entering into an explicit & solemn Compact with each other by assenting to & ratifying a New Constitution in order to form a more perfect Union, establish Justice, insure Domestic tranquillity, provide for the common defence, promote the general welfare & secure the blessings of Liberty to themselves & their posterity; Do in the name & in behalf of the People of the Commonwealth of Massachusetts assent to & ratify the said Constitution for the United States of America. And as it is the opinion of this Convention that certain amendments & alterations in the said Constitution would remove the fears & quiet the apprehensions of many of the good people of

this Commonwealth & more effectually guard against an undue administration of the Federal Government, The Convention do therefore recommend that the following alterations & provisions be introduced into the said Constitution.

*First*, That it be explicitly declared that all Powers not expressly delegated by the aforesaid Constitution are reserved to the several States to be by them exercised.

*Secondly*, That there shall be one representative to every thirty thousand persons according to the Census mentioned in the Constitution until the whole number of the Representatives amounts to Two hundred.

*Thirdly*, That Congress do not exercise the powers vested in them by the fourth Section of the first article, but in cases when a State shall neglect or refuse to make the regulations therein mentioned or shall make regulations subversive of the rights of the People to a free & equal representation in Congress agreeably to the Constitution.

*Fourthly*, That Congress do not lay direct Taxes but when the Monies arising from the Impost & Excise are insufficient for the Publick exigencies nor then until Congress shall have first made a requisition upon the States to assess levy & pay their respective proportions of such Requisition agreeably to the Census fixed in the said Constitution, in such way & manner as the Legislature of the States shall think best, & in such case if any State shall neglect or refuse to pay its proportion pursuant to such requisition then Congress may assess & levy such State's proportion together with interest thereon at the rate of Six percent per annum from the time of payment prescribed in such requisition.

*Fifthly*, That Congress erect no Company of Merchants with exclusive advantages of Commerce.

*Sixthly*, That no person shall be tried for any Crime by which he may incur an infamous punishment or loss of life until he be first indicted by a Grand Jury, except in such cases as may arise in the Government & regulation of the Land & Naval forces.

*Seventhly*, The Supreme Judicial Federal Court shall have no jurisdiction of Causes between Citizens of different States unless the matter in dispute whether it concerns the realty or personalty be of the value of Three thousand dollars at the least nor shall the Federal Judicial Powers extend to any actions between Citizens of different States where the matter in dispute whether it concerns the Realty or Personalty is not of the value of Fifteen hundred dollars at the least.

*Eighthly*, In civil actions between Citizens of different States every issue of fact arising in Actions at common law shall be tried by a Jury if the parties or either of them request it.

*Ninthly*, Congress shall at no time consent that any Person holding an office of trust or profit under the United States shall accept of a title of Nobility or any other title or office from any King, Prince or Foreign State.

And the Convention do in the name & in behalf of the People of this Commonwealth enjoin it upon their Representatives in Congress at all times until the alterations & provisions aforesaid have been considered agreeably to the Fifth article of the said Constitution to exert all their influence & use all reasonable & legal methods to obtain a ratification of the said alterations & provisions in such manner as is provided in the said Article.

And that the United States in Congress Assembled may have due notice of the Assent & Ratification of the said Constitution by this Convention it is, Resolved, that the Assent & Ratification aforesaid be engrossed on Parchment together with the recommendation & injunction aforesaid & with this resolution & that His Excellency John Hancock Esqr. President & the Honble. William Cushing Esqr. Vice President, of this Convention transmit the same, counter-signed by the Secretary of the Convention under their hands & seals to the United States in Congress Assembled.

George Richards Minot, Secretary

John Hancock President  
Wm. Cushing Vice President

Pursuant to the Resolution aforesaid WE the President & Vice President above named Do hereby transmit to the United States in Congress Assembled, the same Resolution with the above Assent and Ratification of the Constitution aforesaid for the United States, And the recommendation & injunction above specified.

## **Rhode Island Act Calling a Referendum on the Constitution, 1 March 1788**

*An ACT submitting to the Consideration of the Freemen of this State, the Report of the Convention of Delegates for a Constitution for the United States, as agreed on in Philadelphia, the 17th of September, A. D. 1787.*

WHEREAS the Honorable the Continental Congress did heretofore recommend to the Legislatures of the respective States, to appoint Delegates to meet in Convention, at Philadelphia, in May, A. D. 1787, to make such Alterations and Amendments in the present Confederation of the United States as would tend to promote the Happiness, good Government and Welfare of the Federal Union: And whereas the said Delegates, on the 17th Day of September, 1787, did agree upon, and report to the Congress of the United States, a Form of a Constitution for the United States of America: And whereas the said United States in Congress assembled did, by a Resolution passed the 28th Day of September, A. D. 1787, transmit said Report to the Legislature of this State, to be submitted to the Consideration of the People thereof: And whereas this Legislative Body, in General Assembly convened, conceiving themselves Representatives of the great Body of People at large, and that they cannot make any Innovations in a Constitution which has been agreed upon, and the Compact settled between the Governors and Governed, without the express Consent of the Freemen at large, by their own Voices individually taken in Town-Meetings assembled: Wherefore, for the Purpose aforesaid, and for submitting the said Constitution for the United States to the Consideration of the Freemen of this State:

*BE it Enacted by this General Assembly, and by the Authority thereof it is hereby Enacted,* That the Fourth Monday in March inst. be, and the same is hereby appointed, the Day for all the Freemen and Freeholders within this State, to convene in their respective Towns, in Town-Meetings assembled, and to deliberate upon, and determine each Individual (who hath a Right by Law to vote for the Choice of General Officers) by himself by Poll, whether the said Constitution for the United States shall be adopted or negatived.

*AND be it further Enacted by the Authority aforesaid,* That the Town-Clerks in the respective Towns shall forthwith issue their Warrants, for the convening of the Freemen and Freeholders to meet, on said Fourth Monday of March inst. at such Place where the Town-Meetings are usually holden: And the same shall be directed to the Town-Serjeants and Constables of the respective Towns, who shall cause Notifications to be set up in the most public Places of Resort within such Towns; and also shall repair to the usual Place of Abode of the Freemen and Freeholders in such Town, and give them Notice of the Meeting aforesaid, for the Purpose aforesaid. The said Town-Serjeants and Constables to have particular Districts pointed out to them, to warn the Freemen and Freeholders, so as not to interfere with each other's District, that all the Freemen and Freeholders may, if possible, have Notice and attend accordingly. And upon the Convention of said Freemen, they shall appoint a Moderator, who shall regulate such Meeting; and the Voices of the Freemen and

Freeholders shall be taken by Yeas and Nays, and the Town-Clerk of each Town shall register the Name of each and every Freeman and Freeholder, with the Yea or Nay, as he shall respectively give his Voice aloud, in open Town-Meeting, and shall keep the Original in his Office, and shall make out a true and fair certified Copy of the Register aforesaid, with the Yeas and Nays of each and every Person thereon, and carefully seal the same up, and direct it to the General Assembly, to be holden by Adjournment, at East-Greenwich, in the County of Kent, on the last Monday of March inst. and deliver the same to One of the Representatives of such Town, or other careful Person, who will take Charge of the same, to be delivered to the said General Assembly, then and there to be opened, that the Sentiments of the People may be known respecting the same. . . .

### **Rhode Island Assembly Committee on the Referendum, 3 April 1788**

We the Subscribers, being appointed a Committee to examine the Votes given by the Freemen of this State, agreeably to an Act of the General-Assembly passed at last Session, upon the Question whether the new proposed Constitution for the United States, be adopted by this State or not, beg Leave to Report, that we have examined the Yeas and Nays and find the Number of Yeas to be Two Hundred and Thirty-seven and the Number of Nays Two Thousand Seven Hundred and Eight, so that there is a Majority of Two Thousand Four Hundred and Seventy-one Nays. . . .

Which being duly considered, It is Voted and Resolved, That the said Report be, and the same is hereby accepted, And that his Honor the Deputy Governor (Daniel Owen), Jonathan J. Hazard, Thomas Joslin, and Rowse J. Helme, be appointed a Committee to draft a Letter to the President of Congress, inclosing the aforesaid Returns.

### **New York Form of Ratification, 26 July 1788**

WE the Delegates of the People of the State of New York, duly elected and Met in Convention, having maturely considered the Constitution for the United States of America . . . and having also seriously and deliberately considered the present situation of the United States, Do declare and make known.

That all Power is originally vested in and consequently derived from the People, and that Government is instituted by them for their common Interest Protection and Security.

That the enjoyment of Life, Liberty and the pursuit of Happiness are essential rights which every Government ought to respect and preserve.

That the Powers of Government may be reassumed by the People, whensoever it shall become necessary to their Happiness; that every Power, Jurisdiction and right, which is not by the said Constitution clearly delegated to the Congress of the United States, or the departments of the Government thereof, remains to the People of the several States, or to their respective State Governments to whom they may have granted the same; And that those Clauses in the said Constitution, which declare, that Congress shall not have or exercise certain Powers, do not imply that Congress is entitled to any Powers not given by the said Constitution; but such Clauses are to be construed either as exceptions to certain specified Powers, or as inserted merely for greater Caution.

### **Declaration of Rights**

That the People have an equal, natural and unalienable right, freely and peaceably to Exercise their Religion according to the dictates of Conscience, and that no Religious Sect or Society ought to be favoured or established by Law in preference of others.

That the People have a right to keep and bear Arms; that a well regulated Militia, including the body of the People *capable of bearing Arms*, is the proper, natural and safe defence of a free State;

That the Militia should not be subject to Martial Law, except in time of War, Rebellion or Insurrection.

That standing Armies in time of Peace are dangerous to Liberty . . . and that at all times, the Military should be under strict Subordination to the civil Power.

That in time of Peace no Soldier ought to be quartered in any House without the consent of the Owner. . . .

That no Person ought to be taken imprisoned . . . be exiled or deprived of his Privileges Franchises, Life, Liberty or Property, but by due process of Law.

That no Person ought to be put twice in Jeopardy of Life or Limb for one and the same Offence, nor . . . be punished more than once for the same Offence.

That every Person restrained of his Liberty is entitled to an enquiry into the lawfulness of such restraint . . . and that such enquiry and removal ought not to be denied or delayed, except when on account of Public Danger the Congress shall suspend the privilege of the Writ of Habeas Corpus.

That excessive Bail ought not to be required; nor excessive Fines imposed; nor Cruel or unusual Punishments inflicted.

That . . . a Presentment or Indictment by a Grand Jury ought to be observed as a necessary preliminary to the trial of all Crimes cognizable by the Judiciary of the United States, and such Trial should be speedy, public, and by an impartial Jury of the County where the Crime was committed; and that no person can be found Guilty without the unanimous consent of such Jury. . . . And that in all Criminal Prosecutions, the Accused ought to be informed of the cause and nature of his Accusation, to be confronted with his accusers and the Witnesses against him, to have the means of producing his Witnesses, and the assistance of Council for his defence, and should not be compelled to give Evidence against himself.

That the trial by Jury . . . is one of the greatest securities to the rights of a free People, and ought to remain inviolate.

That every Freeman has a right to be secure from all unreasonable searches and seizures of his person his papers or his property, and therefore, that all Warrants to search suspected places or seize any Freeman his papers or property, without information upon Oath or Affirmation of sufficient cause, are grievous and oppressive; and that all general Warrants . . . are dangerous and ought not to be granted.

That the People have a right peaceably to assemble together to consult for their common good, or to instruct their Representatives; and that every person has a right to Petition or apply to the Legislature for redress of Grievances.

That the Freedom of the Press ought not to be violated or restrained. . . .

That the Judicial Power of the United States in cases in which a State may be a party, does not extend to criminal Prosecutions, or to authorize any Suit by any Person against a State.

That the Judicial Power of the United States as to Controversies between Citizens of the same State claiming Lands under Grants of different States is not to be construed to extend to any other Controversies between them. . . .

That the Jurisdiction of the Supreme Court of the United States, or of any other Court to be instituted by the Congress, is not in any case to be increased enlarged or extended by any Fiction Collusion or mere suggestion;—And

That no Treaty is to be construed so to operate as to alter the Constitution of any State.

## Recommendatory Amendments

AND the Convention do in the Name and Behalf of the People of the State of New York enjoin it upon their Representatives in the Congress, to Exert all their Influence, and use all reasonable means to Obtain a Ratification of the following Amendments to the said Constitution. . . . That there shall be one Representative for every thirty thousand Inhabitants, according to the enumeration or Census mentioned in the Constitution, until the whole number of Representatives amounts to two hundred; after which that number shall be continued or encreased but not diminished, as Congress shall direct. . . .

That the Congress do not impose any Excise on any Article (except Ardent Spirits) of the Growth production or Manufacture of the United States. . . .

That Congress do not lay direct Taxes but when the Monies arising from the Impost and Excise shall be insufficient for the Public Exigencies . . . and in such Case, if any State shall neglect or refuse to pay its proportion . . . Congress may assess and levy such States proportion. . . .

That the Congress shall not make or alter any Regulation in any State respecting the times places and manner of holding Elections for Senators or Representatives, unless the Legislature of such State shall neglect or refuse to make Laws or Regulations for the purpose. . . .

That no Persons except natural born Citizens, or such as were Citizens on or before the fourth day of July one thousand seven hundred and seventy six, or such as held Commissions under the United States during the War, and have at any time since the fourth day of July one thousand seven hundred and seventy six become Citizens of one or other of the United States, and who shall be Freeholders, shall be eligible to the Places of President, Vice President, or Members of either House of the Congress of the United States.

That the Congress do not grant Monopolies. . . . no standing Army or regular Troops shall be raised or kept up in time of peace . . . no Money be borrowed on the Credit of the United States . . . declare War without the concurrence of two-thirds of the Senators and Representatives. . . .

That the Privilege of the *Habeas Corpus* shall not by any Law be suspended for a longer term than six Months. . . .

That the Compensation for the Senators and Representatives be ascertained by standing Laws; and that no alteration of the existing rate of Compensation shall . . . until after a subsequent Election shall have been had.

That the Journals of the Congress shall be published at least once a year . . . and that both Houses of Congress shall always keep their Doors open during their Sessions, unless the Business may in their Opinion require Secrecy. . . .

That no Capitation Tax shall ever be laid by the Congress.

That no Person be eligible as a Senator for more than six years in any term of twelve years; and that the Legislatures of the respective States may recal their Senators. . . .

That the Authority given to the Executives of the States to fill the vacancies of Senators be abolished, and that such vacancies be filled by the respective Legislatures.

That no Person shall be eligible to the Office of President of the United States a third time.

That the Executive shall not grant Pardons for Treason, unless with the Consent of the Congress. . . .

That the President or person exercising his Powers for the time being, shall not command an Army in the Field in person, without the previous desire of the Congress. . . .

That the Congress shall not constitute ordain or establish any Tribunals or Inferior Courts, with any other than Appellate Jurisdiction . . . and in all other Cases . . . the Causes shall be heard tried, and determined in some one of the State Courts, with the right of appeal to the Supreme Court of the United States. . . .

That no Judge of the Supreme Court of the United States shall hold any other Office under the United States. . . .

That the Judicial Power of the United States shall extend to no Controversies respecting Land . . . or to Claims of Lands between Individuals, or between States and Individuals under the Grants of different States.

That the Militia of any State shall not be compelled to serve without the limits of the State for a longer term than six weeks. . . .

That the Senators and Representatives and all Executive and Judicial officers of the United States shall be bound by Oath or Affirmation not to infringe or violate the Constitutions or Rights of the respective States.

DONE in Convention at Poughkeepsie in the County of Dutchess in the State of New York the twenty sixth day of July in the year of our Lord One thousand seven hundred and Eighty eight.

## **THE LESSON PLAN—A Comparison of Four Approaches to Ratification**

### **OBJECTIVES OF THE LESSON**

- \* Students will consider the types of alteration and amendments Massachusetts and New York proposed in their forms of ratification.
- \* Students will evaluate if it was reasonable for Rhode Island holding a statewide referendum on the Constitution.
- \* Students will evaluate the various approaches as to how the Constitution was ratified.

### **THE LESSON**

1. Have the entire class read the Pennsylvania Form of Ratification. As they read the document, they need to consider if Pennsylvania's method is reasonable and if other states should follow this example.

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#### **The Pennsylvania Form of Ratification, 12 December 1787**

In the Name of the PEOPLE of Pennsylvania.

BE IT KNOWN UNTO ALL MEN,—That We, the Delegates of the PEOPLE of the Commonwealth of Pennsylvania, in General Convention assembled, have assented to and ratified, and by these Presents DO, in the Name and by the Authority of the same PEOPLE, and for ourselves, assent to and ratify the foregoing Constitution for the UNITED STATES of AMERICA.

DONE in Convention, the Twelfth Day of December, in the Year one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the Twelfth. In witness whereof, we have hereunto subscribed our Names.

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2. After the class has read the Pennsylvania Form of Ratification, you may want to lead a short discussion by asking the following questions:
  - \* Is this an acceptable method of ratification?
  - \* Should other states be influenced or bound by the process used in Pennsylvania?
3. Divide the class into three groups. One group should be assigned to read the Massachusetts Form of Ratification. One group should be assigned to read the Rhode Island Referendum documents. One group should be assigned to read the New York Form of Ratification. Explain to the groups that they will consider the way in which a specific state went about ratifying the Constitution. Indicate that there were differences among these states.
5. You can display these documents or have handouts for the groups as they consider these four forms of ratification.
6. Using the guiding questions below, have students in their groups read and discuss their thoughts about their assigned document.

#### **Considerations for Group Reading the Massachusetts Form of Ratification**

- \* Observations on the proposed changes to the Constitution.
- \* Observations on proposal to have the First Federal Congress amend the Constitution.

### **Considerations for Group Reading the Rhode Island Referendum Documents**

- \* Observations on the rationale used in the Rhode Island Call for a Referendum.
- \* Was Rhode Island justified in rejecting a Convention and opting for a referendum?
- \* Would you consider the Rhode Island process a legitimate process? Why or why not?

### **Considerations for the Group Reading the New York Form of Ratification**

- \* Observations on the proposed changes to the Constitution.
- \* Observations on proposal to have First Federal Congress amend the Constitution.

7. After each group has completed reading and discussing their assigned document, have the groups report their findings to the class.
8. Conclude the lesson by leading a discussion using the following questions.
  - \* What conclusions can you make about the ratification process?
  - \* Would you conclude there was a “right way” and a “wrong way” to ratify the Constitution?
  - \* To what extent should states have followed the recommendation of the Constitutional Convention? (See lesson #11 for the Constitutional Convention Resolution of 17 September 1787).
  - \* In your opinion, would the ratification process be similar or different today if we were to propose a new constitution?

## ADDITIONAL RESOURCES

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- Benton, Wolbourn E., ed. *1787: Drafting the U.S. Constitution*. 2 vols., College Station, Texas, 1986.
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- Kurland, Philip B., and Ralph Lerner, eds. *The Founders' Constitution*. 5 vols., Chicago, 1987.
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- Zuckert, Michael P. and Derek Webb, eds. *The Anti-federalist Writings of the Melancton Smith Circle*. Indianapolis, 2009.



