

# The Convention of States in American History

by Robert G. Natelson<sup>1</sup>

When delegations from the states assemble in Phoenix, Arizona later this year, they will be basking in a long and rich American tradition.

## THE COLONIAL HISTORY

As far back as 1677, British colonies in North America sent “commissioners” (delegates) to meet with each other to discuss common issues. These gatherings were essentially problem-solving task forces. That is, they were temporary assemblies charged with proposing solutions to prescribed problems.

During the colonial era, most conventions met in Boston, New York City, or Albany, New York: Albany was popular because it was close to the homes of the Iroquois tribes, who frequently participated. However, one of the most notable conventions occurred in Lancaster, Pennsylvania (1744).

The convention agenda was always set in advance. It sometimes involved common defense against hostile Indians or against French Canada. Often, the colonies convened to hammer out treaties with Indian tribes.

“Convention” was not the only name for these conclaves. Occasionally, they were called councils; more often congresses. (In the international practice of the time a “congress” was a diplomatic meeting of governments on equal terms.)

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The Article V Information Center promotes truthful, unbiased information about the U.S. Constitution's amendment process. It does not take stands on particular amendments, but instead functions much like a non-partisan voter information resource. Just as a voter information center provides correct information and helps prevent efforts to suppress the vote, the Article V Information Center corrects misinformation so citizens may exercise an important constitutional right.

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Most of these gatherings were regional. That is, they involved only three or four colonies. But the 1754 Albany Congress included colonies from all regions—that is, it was a national or “general” convention. The Albany Congress became famous because Benjamin Franklin served as a commissioner, and because it negotiated an Indian treaty and proposed a plan for a continental government.

When tensions with Britain grew, the colonies met in conventions to plan common strategy. In the years just before the Revolution, New York City hosted the Stamp Act Congress (1765) and the First Continental Congress (1774).

#### 1776: CONVENTIONS OF COLONIES BECOME CONVENTIONS OF STATES

The Declaration of Independence (1776) converted the colonies into states. Even though they erected a permanent body (confusingly called “Congress”) to deal with national issues, they continued to meet among themselves in temporary *conventions of states*.

During the Revolution and for several years after, these conventions occurred regularly: In Providence, Rhode Island (1776-77 and again in 1781); in York Town, Pennsylvania and Springfield, Massachusetts (both during 1777); in New Haven, Connecticut (1778); in Hartford, Connecticut (1779 and again in 1780); in Boston and Philadelphia (both in 1780); and in Annapolis, Maryland (1786). Several other conventions were proposed, but never materialized. Most of these meetings were regional, involving as few as three states. Some, like the 1780 Philadelphia convention, called to address wartime inflation, were general (national).

#### HOW THE PROCESS WORKED

By 1787, colonies and states had been meeting with each other regularly for more than a century, so the basic protocols were well worked out. The first thing that happened was that a state—or occasionally Congress or a prior convention—issued an invitation usually designated a *call*.<sup>2</sup> The call specified what states were invited, the time and place of initial meeting, and the problems to be addressed. Conventions meeting between 1776 and 1786 were called to propose solutions for monetary inflation, defense against the British, interstate trade regulation, and other issues.

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<sup>2</sup> *What is an Amendments Convention “Application?” What is a “Call?”*, <http://articlevinfocenter.com/what-is-an-amendments-convention-application-what-is-a-call/>.

Once invited, a state had to decide whether to accept. Usually this was up to the state legislature. If the legislature opted to attend, it chose representatives (commissioners) and provided them with instructions. Sometimes the legislature authorized the executive to choose and instruct commissioners.

When a quorum of invited states arrived at the designated meeting place, a temporary presiding officer called the group to order, and it elected permanent officers. For officer elections, as on all other matters, the rule of suffrage was “one state/one vote.”

If the convention was small, it might elect only a president and a secretary or clerk. Larger conventions chose additional officers and commissioned a committee to propose formal rules. Proposed rules were then amended and adopted on the floor. The clerk or a credentials committee verified the credentials of each person attending.

Next, the assembly turned to its assigned subject(s). After deliberation, the states voted on whether to propose a course of action and, if so, what to propose.

The whole process might last only a day. Or it might last several months.

In late 1786, Virginia (not Congress, as many have erroneously claimed) called the Constitutional Convention.<sup>3</sup> It was to meet in Philadelphia the following May. The subject assigned was a very large one: “devising and discussing all such Alterations and farther Provisions as may be necessary to render the Foederal Constitution [i.e., the political system] adequate to the Exigencies of the Union.” The states elected George Washington to chair the gathering.

One reason the Constitutional Convention was so successful is all of the attending commissioners were familiar with the standard protocols. They had learned about them while serving in Congress or in state government. Many commissioners had served in prior conventions. Roger Sherman of Connecticut, for example, was attending his fifth!

#### CONVENTIONS OF STATES IN THE 19<sup>TH</sup> CENTURY

Creation of the federal government reduced the need for interstate conventions, but did not end it. In fact, Article V of the new Constitution explicitly recognized the interstate convention as a method for proposing constitutional

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<sup>3</sup> *Who Called the Constitutional Convention? Answer: The Commonwealth of Virginia*, <http://articlevinfocenter.com/newly-rediscovered-1889-st-louis-convention-states/>.

amendments.

In 1814, the New England states, unhappy with the War of 1812, convened in Hartford, Connecticut and proposed seven constitutional amendments—although that convention did not act under Article V. In 1850, the Nashville Convention met to develop a common Southern strategy against what Southerners thought was Northern overreaching.<sup>4</sup>

The year 1861 witnessed two competing interstate conventions, both triggered by the decision of some states to secede from the Union. Seceding Southern states gathered in Montgomery, Alabama to draft the Confederate constitution. Non-seceding states (including some that left the Union later) met in Washington, D.C. to propose a constitutional amendment in a last-ditch effort to prevent further secession.

The Washington Conference Convention, also called the Washington Peace Conference, proved to be the largest convention of states ever held. Twenty-one states participated. The gathering was chaired by former President John Tyler.<sup>5</sup>

The Washington conclave deliberated for three weeks, and, despite bitter dissension, finally recommended a constitutional amendment. Because the convention did not have Article V power, it could only recommend to Congress. But Congress delayed and the proposal died—and so did 620,000 Americans in the ensuing Civil War.

The recommendations of the 1889 St. Louis convention were more successful.<sup>6</sup> The Kansas legislature called the gathering to propose a common solution to monopolistic practices in the meat industry. The nine states present issued proposals that led to adoption of remedial state laws and to congressional passage of the Sherman Anti-Trust Act the following year.

By and large, these 19<sup>th</sup> century conventions followed the same protocols established in the previous century—except that the St. Louis convention gave each state eight votes instead of one!

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<sup>4</sup> See THELMA JENNINGS, *THE NASHVILLE CONVENTION: SOUTHERN MOVEMENT FOR UNITY* (1980).

<sup>5</sup> The proceedings of the Washington Conference Convention are available on line at Google Books, [https://books.google.com/books/about/A\\_Report\\_of\\_the\\_Debates\\_and\\_Proceedings.html?id=Zh5cAAAACAAJ](https://books.google.com/books/about/A_Report_of_the_Debates_and_Proceedings.html?id=Zh5cAAAACAAJ).

<sup>6</sup> On this interesting gathering, see *Newly Rediscovered: The 1889 St. Louis Convention of States*, <http://articlevinfocenter.com/newly-rediscovered-1889-st-louis-convention-states/>.

## CONVENTIONS IN THE 20<sup>TH</sup> CENTURY

Early in the 20<sup>th</sup> century, the dry Western states were concerned that their scarce river water might be divided unfairly. Even worse, the federal government might divide it for them. However, Delphus Carpenter, a prominent Denver water attorney, was convinced that the states could reach acceptable solutions themselves. At his urging, the Colorado River states met in Denver in 1920. That gathering was followed by a series of conventions (called “commissions”) in which states negotiated in groups.<sup>7</sup>

The most important of these gatherings negotiated the Colorado River Compact in 1922.<sup>8</sup> The State of Colorado issued the call, inviting the other six Colorado River states and the federal government to send representatives. President Harding chose as the federal representative Secretary of Commerce Herbert Hoover, who was elected chairman. Hoover thus became the third former or future president to preside at a convention of states. The first seven sessions occurred in Washington, D.C., the eighth in Phoenix, the ninth in Denver, and the remaining 18 in Santa Fe.

Other conventions met to divide up the waters of the North Platte and Rio Grande Rivers. As far as I can determine, the most recent convention of states was the assembly that negotiated the Upper Colorado River Basin Compact. It met intermittently from 1946 to 1949.<sup>9</sup>

Like the 19<sup>th</sup> century conventions, the 20<sup>th</sup> century conventions seem to have followed the established protocols, including one state/one vote. The chief exception was that the 1922 Colorado River convention required a unanimous vote for some decisions rather than a mere majority.

### SOME “TAKE-AWAYS”

All this history inspires a few conclusions:

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<sup>7</sup>These conventions or “commissions” should not be confused with the permanent commissions later established to administer the compacts.

<sup>8</sup> *The Santa Fe Convention: A 20<sup>th</sup> Century Convention of States*, <http://articleinfo.com/the-santa-fe-convention-a-20th-century-convention-of-states/>.

<sup>9</sup>*The Last Convention of States Ever Held? It Centered on the Upper Colorado River*, <http://articleinfo.com/last-convention-states-ever-held/>.

*First:* The history of interstate conventions is not only long and rich, but a source of useful precedent. The standard protocols have worked even in situations of extreme political stress, as proved by the 1861 Washington Conference Convention.

Future conventions should stick with what has worked, updating only as necessary. Adopting novel, untested procedures is a prescription for trouble.<sup>10</sup>

One option is to begin the rule-making process with a set of rules I pulled together for Citizens for Self-Governance’s “convention of states” project. Those rules are based firmly on traditional practice, with updates and other changes recommended by a panel of experienced state lawmakers. And they have proved themselves in actual practice: They were used at a simulated convention held in Williamsburg, Virginia in 2016, with great success.<sup>11</sup>

*Second:* People who insist that every interstate convention is a “constitutional convention” reveal only their own ignorance. Among the more than 40 conventions of states already held, only two were constitutional conventions: Philadelphia in 1787 and Montgomery in 1861. Several other assemblies have proposed constitutional amendments, but none of those was ever called a constitutional convention.

*Third:* Not all conventions have been successful. The 1777 York Town convention ended in deadlock. The 1780 Philadelphia convention adjourned “temporarily” but never re-convened. And the 1786 Annapolis Convention had such poor attendance that it merely recommended another convention. But Americans learned from all those gatherings. Some of the “failures” led directly to later success. Perhaps the best example was how the recommendations of the Annapolis Convention were carried out by the Constitutional Convention the following year.

*Finally:* This history shows that state-selected commissioners are highly responsible and effective. They stick to their agenda and produce well-thought out proposals.

When commissioners from the participating states meet in Phoenix, may they attain the same high standard!

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<sup>10</sup>On this, see *Robert G. Natelson: A Brief Assessment of the Proposed Convention Rules Adopted by the Assembly of State Legislatures*, <https://www.i2i.org/wp-content/uploads/2015/01/ASL-Rules-Assessment-Final.pdf>.

<sup>11</sup>These rules, with slight revisions based on the Williamsburg experience are available at <http://robnatelson.com/wp-content/uploads/2017/05/2016-1221-rules-draft.pdf>.