

Conflict Resolution and United States History:

The Federal Convention, 1787

Student Handouts

Objectives

Historical Background of Slavery in the Colonies

- Early 18th Century Slave Trade

Federal Convention of 1787

- Experiences Leading to the Federal Convention
- Attendees at the Federal Convention
- Slavery Issues at the Federal Convention

Mock Mediation, Federal Convention of 1787

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 - Pierce Butler
 - John Dickinson
 - Rufus King
 - James Madison
 - George Mason
 - Gouverneur Morris
 - William Paterson
 - Charles Pinckney
 - Roger Sherman
 - James Wilson
- Slave and Total Populations by State
- Positions and Interests
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 - Northern Positions
 - Northern Interests
- Steps in Mediation
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What Really Happened?

- Representation in the American States
- Commerce and the Slave Trade
- The Issue of Fugitive Slaves
- Questions for Discussion

Objectives

- Understand the interconnected issues regarding slavery, representation, commerce and union at the Federal Convention
- Compare and contrast the positions and underlying interests of the delegates from various states at the Federal Convention
- Understand what alternative solutions were available at the Federal Convention
- Appreciate the long-term impact of decisions made about slavery in 1787

Historical Background: Slavery in the Colonies

- Spanish had brought African slaves to the Americans in early 16th century
- Dutch Man of War in 1619 sold Jamestown colony 20 and odd negroes—treated as indentured servants and gained their freedom
- South Carolina had slavery from start. By 1708 had a black majority; about 60% of population in 1775
- Slavery grew less rapidly in the North; however, slaves were common in most of the colonial seaboard cities as well as on farms and plantations. One eve of American Revolution, slaves were around 20% of population in New York and New Jersey
- Religious objections raised by Mennonites to slavery as early as 1688
- Slavery was legal in all 13 colonies in 1775

Early Eighteenth Century Slave Trade

- During and after the Revolutionary War, opponents of slavery formed abolitionist societies in all the northern states
- The state constitutions of Massachusetts (1780) and New Hampshire (1784) prohibited slavery.
- Pennsylvania (1780), Connecticut (1783) and Rhode Island (1783) passed gradual emancipation acts. Gradual emancipation passed in New York in 1799 and New Jersey in 1804.
- The American Revolution influenced attitudes toward slavery in the South. Quakers in Virginia and North Carolina formed abolitionist societies. Virginia allowed masters to manumit (free) their slaves and between 1782 and 1810 a significant number did.
- During and after the war, free blacks organized churches, schools and other institutions. Richard Allen began preaching to free blacks in Philadelphia and helped organized the Free African Society and the African Methodist Episcopal Church.
- African slave trade was banned during the Revolution and still closed in 1787.
- In 1787, blacks were 4% of the population in the northern states, less than a quarter of them slaves. By contrast, 43% of the population of South Carolina and 40% of the population of Virginia were slaves.

What experiences led to the Federal Convention in 1787?

- Articles of Confederation had created a relatively weak and decentralized government, without a single executive or a judiciary.
 - All national power rested with the Congress, which consisted of a single house.
 - Each state could send three to five delegates to the Congress, but no matter how many delegates the state had, each state had only one vote in Congress. This meant that tiny Rhode Island had as much political power as mammoth Virginia.
- Congress had no power to collect taxes.
 - During the war the national government teetered on the verge of bankruptcy and the army often went unpaid.
 - After the Revolution, Congress was unable to pay off its bonds while the states ignored the agreements that Congress had made with foreign nations, including key provisions of the peace treaty with England.
 - There was no national currency and trade and tariff policies were basically in the hands of the states.
- Nationalists, such as George Washington, James Madison, Alexander Hamilton, and John Jay, wanted a stronger government empowered to regulate commerce, enforce treaty obligations, collect taxes and maintain a strong defense.

Who was at the Federal Convention?

- After a series of failed attempts to amend the Articles of Confederation, including the Annapolis Convention, the Congress authorized the states to send delegates to meet in Philadelphia in May, 1787.
- Eventually a total of 55 delegates from 12 states came to the Convention, but no more than eleven delegations were present at any one time: New Hampshire did not arrive until mid-July, and New York left in early July. Rhode Island never sent a delegation.
- Most delegates were politically experienced, and many were wealthy.
- More than half had legal training.
- At least 26 delegates owned slaves.
- In order for a delegation to vote, it had to have at least two members on the floor.

Slavery Issues at the Federal Convention

- ✓ Representation and Slavery
- ✓ Commerce and Slave Trade
- ✓ Fugitive Slaves

Mock Mediation, 1787

After a long, hot summer in Philadelphia, the delegates to the Federal Convention have still not decided issues relating to the slave trade and commerce clause, fugitive slaves and whether and how slaves should be included in the population count for determining representation in the federal Congress. To avoid public speculation and lobbying, the delegates met in secret and were sworn to secrecy.

- It is now August 1787. The delegates have been meeting since late May.
- The convention has chosen George Washington as its president.
- The delegates to the Convention are at loggerheads as to whether and how slaves should be included in the population count for representation in the federal legislature, the slave trade and the commerce clause, and whether the national government should enforce the return of fugitive slaves.
- The delegates have taken a break this particular evening and retired to the City Tavern for dinner and caucusing about these issues.

Pierce Butler — South Carolina



Born in Ireland, Butler settled in South Carolina in 1771. A wealthy planter with more than 100 slaves, he served in the South Carolina legislature 1778–82 and 1784–89. At the Convention, Butler argued that “the labour of a slave in South Carolina was as productive and valuable as that of a freeman in Massachusetts,” and since the national government “was instituted principally for the protection of property,” slaves should be counted fully for representation. He strongly opposed ending the slave trade and introduced the fugitive slave clause requiring states to return runaways to their masters. He later served in the U.S. Senate (1789–96, 1802–06).

John Dickinson – Delaware



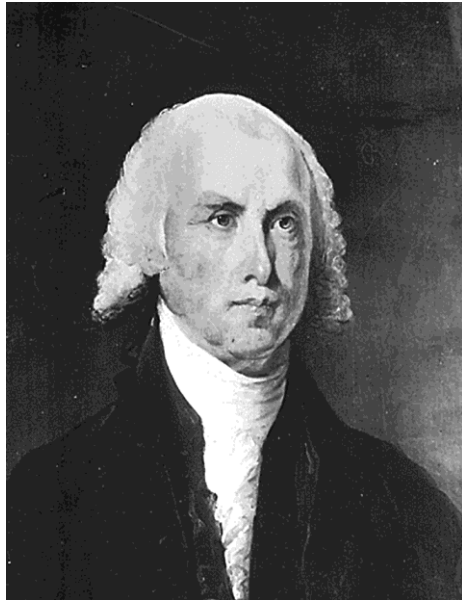
Dickinson practiced law and held numerous public offices in both Pennsylvania and Delaware. In *The Letters from a Pennsylvania Farmer* (1768) he denied that Parliament had any power to tax the colonies. Although Dickinson opposed British measures such as the Stamp Act, he disapproved of violent resistance and hoped for reconciliation between the colonies and England. He refused to sign the Declaration of Independence, but then enlisted in the Army. Dickinson owned slaves but fiercely opposed the continuation of the slave trade; a practice which he felt was “inadmissible on every principle of honor and safety.” He also believed that the representatives of the Deep South were bluffing when they said that they would reject the Constitution if they did not get their way on the slave trade.

Rufus King – Massachusetts



The eldest son of a successful merchant, King graduated from Harvard in 1777, was admitted to the bar in 1780, and opened an office in Newburyport, MA. He was a delegate to Congress 1784–86. Although he originally opposed any radical alteration of the Articles of Confederation, in the Convention he argued for a strong central government. After the Convention, King moved to New York City. He was elected to the New York Assembly and as a U.S. Senator from that state. He also served as a director of the Bank of the United States, and as minister to Great Britain under Washington. King was the Federalist candidate for vice-president in 1804 and 1808. He opposed the War of 1812. In his last term in the Senate he opposed admitting Missouri as a slave state during the Missouri Compromise debates.

James Madison – Virginia



Educated at the College of New Jersey (Princeton University), Madison served on the committee which framed Virginia's constitution and Declaration of Rights in 1776. As a delegate to the Continental Congress, he suggested that state contributions to the federal government be based on population and incorporate the three-fifths rule for counting slaves. This "federal ratio" was the model for the three-fifths compromise at the Constitutional Convention. At the Convention, Madison argued strongly for a powerful central government with representation based on population rather than the states themselves, a plan which would benefit more populous states such as Virginia. He feared that giving equal representation to the states would result in a northern majority, although he assumed, like many southerners, that the development of the trans-Appalachian interior would bring the South more into population parity with the North. Like other Virginians, he was opposed to the slave trade. Unlike most other southerners, Madison favored giving the federal government authority to regulate commerce. Madison took extensive notes of the proceedings of the Convention, and spoke out strongly for ratification of the Constitution. Madison served in Congress, as Secretary of State, and in 1809 became the fourth president.

George Mason – Virginia



Mason was a wealthy slaveholding planter who held numerous positions in local government and served with George Washington in the Virginia House of Burgesses in 1759. During the revolutionary period, he helped draft the Virginia state constitution and Declaration of Rights, which influenced the Declaration of Independence and the Bill of Rights of the U.S. Constitution. Mason denounced slavery as an evil system that produced “the most pernicious effect on manners,” and “would bring the judgment of heaven on the Country.” Yet, he only argued that the national government should have the power to end the African slave trade (an action which would have benefited Virginia planters who had a surplus of slaves in 1783) not slavery itself. Mason played an active part in the Federal Convention but finally refused to sign the Constitution and campaigned against its ratification.

Gouverneur Morris – Pennsylvania



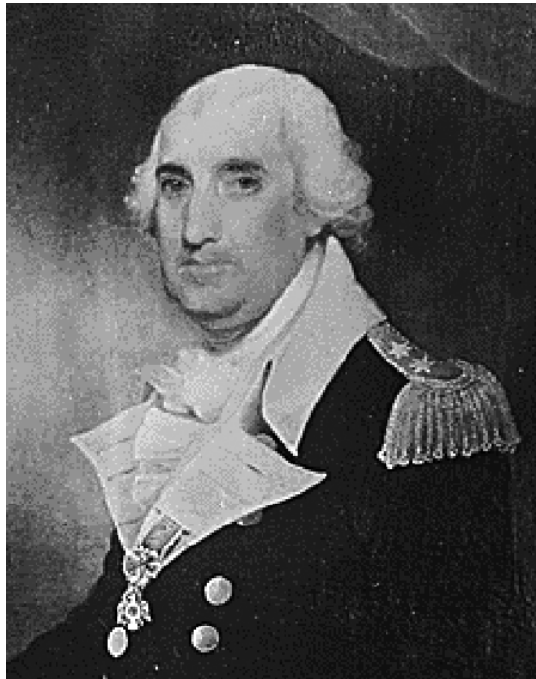
Gouverneur Morris was born in the manor house at Morrisania, New York. His grandfather served as Chief Justice of New York and governor of New Jersey. Morris graduated King's College (now Columbia University) in 1768 and was admitted to the bar in 1771. When the war began Morris became an ardent supporter of the Revolution. In 1777, along with John Jay and Robert Livingston, Morris helped draft the New York State Constitution. After service in the Continental Congress Morris moved to Philadelphia where he practiced law. As a delegate from Pennsylvania to the Convention of 1787, Morris favored a strong, centralized government. He strenuously opposed equal representation in the Senate, the concessions to slavery in the three-fifths clause, and the compromise over the slave trade. He explained the three-fifths clause and the compromise over the slave trade as follows "the inhabitant of Georgia and South Carolina who goes to the Coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections and damns them to the most cruel bondages, shall have more votes in a Government in-stituted for protection of the rights of mankind, than the Citizen of Pennsylvania or New Jersey who views with a laudable horror, so nefarious a practice." In spite of these concerns, he was a firm supporter of the final Constitution. In 1789 he replaced Jefferson as minister to France, until he was expelled by the French government. He was U.S. Senator from New York in 1800 to 1802 before retiring to the family mansion.

William Paterson — New Jersey



William Paterson was born in Ireland and raised in New Jersey. He graduated from the College of New Jersey (Princeton University) in 1763, and practiced law until 1775, when he entered politics. He helped write New Jersey's constitution and was elected state attorney general. He later served as governor of New Jersey, U.S. Senator, and as associate justice of the U.S. Supreme Court. Although a slave owner, Paterson opposed the three-fifths compromise, stating that he regarded "negroe slaves in no light but as property. They are not free agents, have no personal liberty, no faculty of acquiring property, but on the contrary are themselves property, and like other property entirely at the will of their master."

General Charles Pinckney — South Carolina



General Pinckney studied law in England, and began practice in his native South Carolina in 1770. He entered the army in 1775 as a colonel and was a general before his discharge. Like his younger cousin, Charles Pinckney, who was also a delegate from South Carolina, General Pinckney was deeply committed to protecting his state's interests and was a tenacious defender of slavery at the Convention. He threatened to vote against the plan "if the Committee should fail to insert some security to the Southern States against an emancipation of slaves." He urged that "blacks be included in the rule of Representation, equally with whites," and was unhappy with the three-fifths compromise. He argued strongly against ending the slave trade and was a supporter of the fugitive slave clause. In the end, he was very satisfied that the new Constitution protected slavery. He was an unsuccessful candidate for U.S. president in 1804 and 1808.

Roger Sherman — Connecticut



Born in Massachusetts, Sherman received no formal education beyond the common schools although he read widely. At age 20 Sherman moved to Connecticut where he became the surveyor for New Haven County. This position was unusually lucrative and Sherman became a considerable landowner. In 1754 he was admitted to the Litchfield bar and was elected to the General Assembly in 1755. He served in the Connecticut state legislature from 1764 to 1785. Frustrated with the limitations of the Confederation, Sherman had drawn up a series of amendments designed to strengthen it. He entered the Federal Convention still “disposed to patch up the old scheme of Government,” but soon saw the need of creating a new system. Sherman actively campaigned for ratification of the Constitution. He was elected to the U.S. Congress in 1789 and to the U.S. Senate in 1791.

James Wilson – Pennsylvania



Wilson moved from his native Scotland to Philadelphia in 1765, studied law with John Dickinson, and by 1774 was a successful attorney and a committed opponent of English rule. In an essay written in 1774 he set out a number of arguments challenging Parliamentary authority over the American colonies. He signed the Declaration of Independence as a delegate to the Second Continental Congresses. A firm believer in popular sovereignty, Wilson favored the direct election of the president and members of both houses of Congress, rejecting the idea of equal representation for each state in the Senate. He vigorously supported the three-fifths clause and the compromise over the slave trade, but expressed concern that the Fugitive Slave Clause would cost the Northern states money by requiring them to track down runaway slaves. While Wilson was personally opposed to slavery, he believed that compromise was necessary. He later served on the U. S. Supreme Court and died in disgrace, fleeing creditors.

Population by State (1790 census)

State	Total Population	Slave Population	Percentage Slave Population
Connecticut	237,946	2,764	1.2
Delaware	59,096	8,887	15
Georgia	82,548	29,264	35.5
Kentucky	73,667	12,430	16.9
Maryland	319,728	103,036	32.2
Massachusetts	378,787	0	0
New Hampshire	141,885	158	0.1
New Jersey	184,139	11,423	6.2
New York	340,120	21,324	6.3
North Carolina	393,751	100,783	25.6
Pennsylvania	434,373	3,737	0.9
Rhode Island	68,825	958	1.4
South Carolina	249,073	107,094	43
Tennessee	35,691	3,417	9.6
Vermont	85,425	0	0
Virginia	691,737	292,627	42.3
Totals	3,776,791	697,902	18.5

Southern Positions

- Slave trade was necessary for the economies and prosperity of the southern states.
- South Carolina threatened to walk out of the union if slaves were not included in representation. Virginia believed it was morally entitled to the most delegates in Congress because it was the biggest state.
- Slaves constitute an interest in the political economy of the society and that interest should be represented according to the population of slaves.
- Slave owners have considerable property investments in their slaves which should be recognized.
- Slavery was a legitimate institution, found in all the successful republics of the ancient world. It was not immoral.
- Slavery was the best system of race relations for controlling the dangerous impulses of African Americans.

Southern Interests

Economic:

- Slavery is highly profitable (South Carolina).
- Virginia and Maryland had more slaves than they needed--it was to their economic benefit to end the slave trade which was bringing in additional slaves, and thus diluting the sales price for their excess slaves. South Carolina and Georgia could get additional slaves at a lower price from foreign slave trade than if they bought slaves from Virginia or Maryland.
- The southern states did not want to lose their significant investment in their slaves.
- They wanted to make sure that the new Congress would not eliminate slave trade or pass commercial regulations favoring the northern states.

Political:

- Counting slaves as 3/5ths or equal with whites would give slave owning states (southern states) more political clout in the new Congress.
- The southern states wanted to form a stronger national government for defense and economy but still one with limited powers.

Security:

- They feared large numbers of freed slaves (never explicitly stated at the Convention).

Northern Positions

Delaware, Pennsylvania and New Jersey argued that:

- Slavery is immoral and should not be supported in a government of free people.
- Slaves are not citizens and do not vote; therefore they should not be counted for representation.
- The African slave trade is particularly immoral, and Congress should have the power to end it.
- Slavery weakens the national government, especially in time of war.

Massachusetts and Connecticut argued that:

- We need to form a national marketplace.
- The Commerce clause is necessary to protect property and to prevent states from being played off against each other by foreign powers.
- Southern property interests in slaves must be respected.

Northern Interests

Economic:

- The north wanted a national commerce clause to protect their mercantile and shipping interests.
- They had a commercial interest in carrying products of slavery.
- The northern states wanted to form a stronger union for defense and economy.

Political:

- They were concerned about the allocation of political power--counting slaves as part of population for purposes of determining representation in Congress gave the South more political power.
- Having one vote per state important for smaller states and those which cannot expand westward, e.g. Delaware and Connecticut
- The fugitive slave clause would involve all states in supporting the institution of slavery. There is something especially immoral about hunting people who have taken great risks to achieve freedom.
- The northern states want the southern states agree to a stronger national government.

Steps in Mediation

1. Discuss the rules—no triggers
2. Each party presents facts, feelings and issues from his or her perspective
3. Actively listen—indicate that you heard and understood
4. Brainstorm possible solutions
5. Evaluate alternatives
6. Agree on a solution
7. Agree what to do if conflict recurs
8. Write down the agreement
9. Preserve the relationship

Directions for the Mock Mediation

Count off by sevens and divide into groups of seven. In each group:

- 1s = Rufus King (Massachusetts) OR Roger Sherman (Connecticut)
- 2s = James Wilson OR Gouverneur Morris (Pennsylvania)
- 3s = William Paterson (New Jersey) OR John Dickinson (Delaware)
- 4s = George Mason OR James Madison (Virginia)
- 5s = Pierce Butler OR General Charles Cotesworth Pinckney (South Carolina)
- 6s = Benjamin Franklin OR George Washington—MEDIATOR
- 7s = Mark Anthony, a fictitious slave, OR Reverend Richard Allen
OBSERVER/RECORDER/REPORTER

You may want to add additional or alternative players—

If so, make sure that the various views are evenly represented.

Preparation:

- Review the historical background
- Summarize the discussions regarding these issues which have already taken place at the Convention (for example, the Connecticut Compromise has already been accepted but can be reopened for further discussion if the players and facilitator choose to do so),
- Review the background regarding the delegates and the positions and interests of the delegates
- Analyze the chart showing the population of the United States, 1790

The Roles

The role of the MEDIATOR (George Washington or Ben Franklin) is to help the delegates come to agreements regarding the commerce clause and slave trade, what, if anything, to do about fugitive slaves, and how, if at all, to count slaves for purposes of determining representation in the federal legislature. The mediator may:

- ask each participant to state his initial position;
- restate what has been said in order to clarify positions;
- speak with one or more participants separately (caucus); and
- try to bring participants to agreement on the three issues.

The role of the DELEGATES should try to stay within limits of historical reality but use conflict resolution skills (actively listen, brainstorm and evaluate options).

The role of the OBSERVER/RECORDER/REPORTER (Mark Anthony or Rev. Allen) is to objectively observe, record and report about what happened both in terms of agreements and the process. The observer does not participate in the negotiations. The Observer should use the Observer's Mediation Form to keep notes about:

- the facilitator's most effective efforts to help the delegates come to agreements;
- the facilitator's least effective efforts and why;
- if and when rhetoric got in the way of coming to agreements; and
- if and when there were missed opportunities for agreements.

Debriefing

The Process

- To what extent did the parties use active listening skills?
- To what extent did the parties brainstorm and evaluate possible alternatives?
- To what extent were the parties able to articulate their real interests?
- To what extent did rhetoric get in the way of pursuing the parties real interests?

The Results

- Were the parties able to reach mutually acceptable solutions?
- Why or why not?
- To what extent were the role played with historical accuracy?

What Really Happened?

- Discuss what actually happened at the Constitutional Convention ("The Facts Continued").
- Compare the results of the mock negotiation with what actually happened in history.
- Discuss why the results were the same or differed.

Representation

"Representation and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other persons." (Article I, Section 2)

The Vote:

YES: Connecticut, Pennsylvania, Maryland, Virginia, Georgia
NO: New Jersey, Delaware
DIVIDED: Massachusetts, South Carolina

The Result:

Slaves would be counted as three-fifths for representation in the lower house of Congress, for taxes, and for the makeup of the electoral college which was based on representation in Congress. The proportionate share of the population by the southern states turned out to be only 44.8 percent based on the 1790 census rather than the 47 percent which had been expected at the convention. Thereafter, the southern share declined. Ironically, while most of the delegates at the convention expected the Senate to protect the northern states, in fact, it has protected the southern states.

Commerce and the Slave Trade

"The migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1808, but a Tax or duty may be imposed on such importation, not exceeding ten dollars for each Person."

(Article I, section 9) "No Amendment which may be made prior to the Year 1808 shall in any Manner affect the first and fourth clauses in the Ninth Section of the first Article..." (Article V).

The Vote:

YES: New Hampshire, Massachusetts, Connecticut, Maryland,
North Carolina, South Carolina and Georgia

NO: New Jersey, Pennsylvania, Delaware, and Virginia

The Result:

The African Slave trade would continue until 1808 and any import tax on slaves would not be more than \$10 a person.

Fugitive Slaves

"No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour but shall be delivered up on Claim of the Party to whom such Services or Labour may be due." (Article IV, Section 2)

The Vote:

Agreed to without a formal vote being taken and without dissent.

The Result:

Fugitive slaves must be returned to their owners.

Questions for Discussion

1. Why were the delegates at the Constitutional Convention unable or unwilling to address the issue of slavery directly?
2. What alternatives to the compromises reached might have been possible at the Federal Convention in 1787?
3. Although little has been said in the letters of the delegates to the Federal Convention, some scholars have hypothesized that the "Great Compromise" at the Federal Convention included Article 6 of the Northwest Ordinance that precluded slavery north of the Ohio River and let it continue south of the Ohio River. Consider the dates of the two historic discussions that were taking place almost simultaneously during the summer of 1787 at the Continental Congress in New York and the Federal Convention in Philadelphia (see page 142). Do you believe that this hypothesis might be correct? Why or why not?
4. How would the history of the United States have differed if the gradual abolition of slavery had been included in the Constitution in 1787?