

## Chapter 3

### The Age of Constitution Writing

Even before independence was declared, seven colonies had begun writing new constitutions. Four others followed shortly after July 4, 1776. At the same time, the Continental Congress appointed a committee to draw up a constitution for the 13 colonies. Although they did not break violently with the past, these new constitutions took on the form of "social contracts," a term used by the British philosopher John Locke to describe governments created to protect the people's natural rights.

Examining the differences between the old and new constitutions shows how ideas about government had changed in early years of the new nation. The following chart demonstrates the differences between the forms that the three major branches of government took under British rule and after independence

Under British Rule	After Independence
<p><b>Executive Branch</b></p> <p><b>Governor:</b> Appointed by Crown or proprietor in 11 states; elected by people in 2.</p> <p><b>Term Office:</b> Determined by crown: could be for life, but averaged five years.</p> <p><b>Veto Power:</b> for all laws passed by assembly. Assembly could not override veto.</p> <p><b>Advisory Council:</b> in all colonies advised governor, served as upper house of legislature and often as supreme court.</p>	<p><b>Executive Branch</b></p> <p><b>Governor:</b> Elected by voters in five states and by combined house and senate (or equivalent) in seven.</p> <p><b>Term of Office:</b> Ranged from one to three years; often could not be re-elected for successive terms.</p> <p><b>Veto Power:</b> Denied governor in all states except Massachusetts.</p> <p><b>Advisory Council:</b> Had 4 to 12 members in 11 states; intended to share governor's powers, but not serve as part of legislature.</p>
<p><b>Legislative Branch</b></p> <p><b>Upper House</b> (called Council): Generally appointed by governor. Advised governor, gave assent to all laws passed by lower house, and acted as supreme judicial court in colony. Terms of office usually determined by governor.</p> <p><b>Lower House</b> (called Assembly): Elected by voters. Could originate laws concerning money matters. Appointed some government officials in five colonies and shared this power with governor in most others.</p>	<p><b>Legislative Branch</b></p> <p><b>Upper House</b> (called Senate): Generally elected by voters for terms ranging from one to five years and occasionally serving on rotational basis (i.e., terms expired at different times.) Required higher qualifications for office than members of lower house (i.e. members had to hold greater amounts of property than members of lower house). Had to agree to a bill for it to become a law.</p> <p><b>Lower House</b> (called House): Elected by voters. Had power to originate laws concerning money matters. Principle that taxation rested on consent of people generally written into constitution.</p>

## Judicial Branch

**Judges:** Appointed by governor In most cases

**Separation of Powers Between Branches:** Principle not specifically stated in constitution or charters.

**Bill of Rights:** Generally not articulated in charters but often drawn up by legislatures

**Qualifications for Voters:** All colonies had property qualifications. Average was property worth £ 50. High qualifications for being member of assembly, member of governor's council, and governor.

**Rights of Colonies:** England claimed in Declaratory Act of 1766 the right to make laws for colonies in all cases whatsoever.

**Ratification and Amending:** Constitutions or charters were generally imposed by England or developed through practice.

## Judicial Branch

**Judges** Appointed by governor in eight states; by legislature in four; elected by people in one. Legislatures determined their salaries. Could be removed for good cause in seven states.

**Separation of Powers Between Branches:** Principle of separation of powers specifically stated In five constitutions in statements similar to the following: the legislative department shall never exercise the executive and Judicial powers, or either of them, the executive shall never exercise the legislative *or judicial* powers or either of them; the judicial shall never exercise the legislative or executive powers, or either of them."

**Bill of Rights:** Contained In constitutions of eight states. Others incorporated general principles contained in Stamp Act of Congress of 1755 or Declaration of Rights (1774). All bills contained principles of human equality and guarded rights to trial by jury, freedom of press, and free elections. Generally they protected rights of assembly, right of petition, and right of taxation without representation. A number of states abolished slavery or importation of slaves.

**Qualifications for Voters:** Property qualifications were reduced or eliminated in four states; maintained in nine. Qualifications for holding office remained higher than voting qualifications, were higher for senators than members of the House, and were higher for governor than for senators.

**Rights of States:** Six states guarantee, state sovereignty with declarations similar to or stronger than the following: The People at this state have sole, exclusive and inherent right of governing and regulating the internal policies of the same. "

**Ratification and Amending:** Two states required the people to ratify their constitutions; in others the constitution needed only assent by

the group writing it. In six states amendments to the constitution could be made by state legislatures.

## The Articles of Confederation

Even before Independence from England was declared, the Continental Congress appointed a committee to write a constitution for the colonies in revolt against their mother country. The Committee appointed to draw up this new constitution consisted of one delegate from each of the thirteen states. On July 12, 1776, it submitted a plan to Congress for Articles of Confederation and Perpetual Union, which was written primarily by John Dickinson. Congress significantly altered the original draft and finally approved of a revised version of the Articles in November, 1777. The new plan was submitted to the states for their approval and required the unanimous consent from each of the 13 states before the Articles of Confederation were officially ratified. Innumerable delays, prompted primarily by Maryland's refusal to agree to the plan unless all states surrender their claims to western lands, postponed final acceptance until 1781. By this time the Revolutionary War had all but ended, and the weaknesses of the Articles of Confederation had become apparent to many Americans. But no consensus had been achieved on the remedies for these weaknesses.

The following summation of the Articles of Confederation will provide you with an opportunity to decide for yourself what was wrong with the Articles of Confederation, the first constitution for the not so united states of America.

### **THE ARTICLES OF CONFEDERATION:**

**Article I.** The stile of this confederacy shall be "The United States of America."

**Article II.** Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

**Article III.** The said states hereby enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force or attacks made on them.

**Article IV.** [The] free inhabitants of these states shall enjoy all the privileges of trade and commerce and be subject to the same duties. Any person fleeing from Justice from one state will be returned to the state from which he has fled.

**Article V.** No State will be represented in Congress by less than two or more than seven members; and no person shall be a delegate for more than three years in any term of six years. In determining questions in the united states, in Congress assembled, each state shall have one vote.

**Article VI.** No state without the consent of the united states in Congress assembled, shall... make any agreement, alliance or treaty with any other country without consent of Congress, or enter into an alliance, etc. with any King, prince, or state without the agreement of the united states in congress assembled, nor shall any state engage in war without the agreement of the united states in congress assembled.

**Article VIII.** All charges of war and all other expenses for the common defense or general welfare ... shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of the land in each state. The method of determining the value of this land shall be determined by congress.

The taxes for paying that proportion shall be laid and collected by the authority of the legislatures of the several states ...

**Article IX.** The united states in congress assembled shall have the sole and exclusive power of determining on peace and war [and] entering into treaties and alliances The united states in Congress assembled shall be the last resort in all disputes and differences that hereafter may arise between two or more states.

The united states in congress assembled shall have the sole and exclusive right and power over regulating the alloy and value of coins struck by their own authority or the states, regulating the trade and managing all affairs with Indians, and regulating post offices ... appointing all the officers of the naval forces, and commissioning all officers whatever in the services of the united states.

The united states in congress assembled shall have authority to appoint ... A "Committee of the States" to consist of one delegate from each state, and to appoint such other committees and civil offices as may be necessary for managing the general affairs of the united states under their direction - to appoint one of their number to preside (a president) provided that no person shall serve in office for more than one year in any term of three. This Committee (or these committees) may carry out the power of the united states.

For important matters of government such as declaring war, making treaties, coining or borrowing money, appropriating money, or raising an army or navy, or admitting new states, 9 of the 13 states must agree.

**Article XIII.** Every state shall abide by the decisions of the united states in congress assembled ... and the Union shall be perpetual; nor shall any alteration (changes or

amendments) be made in any of them; unless such alteration be ... confirmed by the legislatures of every state.<sup>1</sup>

## Student Exercises:

1. Based on your analysis of the changes in state Constitutions, do you believe the US was significantly more democratic as a result of the overthrow of British authorities? Support your answer with specific examples.
2. What strengths and weaknesses do you see in the Articles of Confederation? Look specifically at the question of number of votes for states, power granted Congress, strength of the executive branch, democratic features, slavery, and a bill of rights.

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<sup>1</sup> Henry Steele Commager, ed., *Documents of American History* (New York: Appleton-Century-Crofts, 1963), pp.111-14. edited