

CHAPTER 5

Forming a New Government

The newly independent United States faced political and economic difficulties. The first government the Americans set up was unable to deal with these difficulties. The second not only met the needs of the times, but it also still survives.

THE CONFEDERATION PERIOD

During the Revolution, the Continental Congress had written a constitution called the Articles of Confederation. Adopted in 1781, the Articles provided a government that would last only eight years—the so-called Confederation period. The Articles gave more power to the states than they gave to Congress. As a result, the central government was unable to operate effectively.

1. Postwar Problems. Under the Articles of Confederation, the government could not solve the nation's economic problems.

a. Trade problems. The old British trade regulations had provided guaranteed markets in the British Empire for colonial goods. Now, Americans had to compete with everyone else. Other nations refused to make trade agreements with the United States because Congress lacked the power to enforce such agreements.

b. Debts. In addition, the government was unable to pay its debts. To carry on the war, Congress had borrowed money from Americans. The United States also owed a great deal of money to other countries. Since Congress could not levy taxes, it had to depend on the states for funds. But the states refused to give more than a sixth of what Congress requested. Foreigners had little faith that the United States could pay its debts.

c. Territorial disputes. There were conflicts over control of the American frontier. Contrary to the terms of the 1783 peace treaty, Britain kept military posts in the Northwest Territory. Spain claimed land in what the United States considered its own territory west of Georgia. Spain refused to allow Americans to navigate the lower Mississippi River.

Government Under the Articles of Confederation

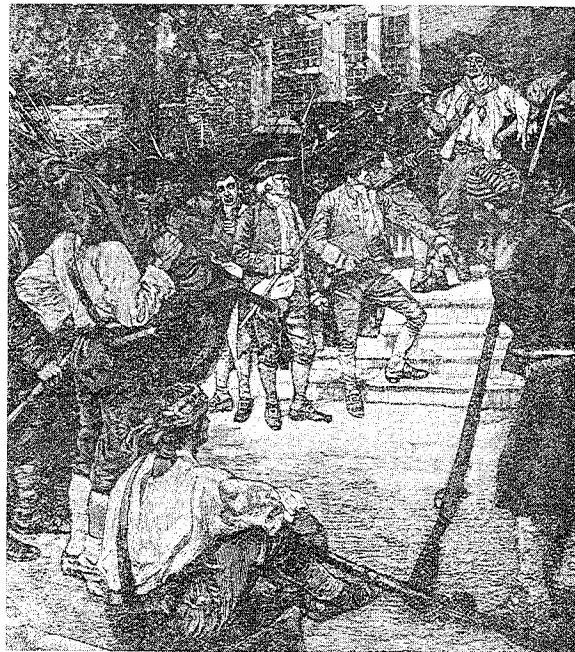
<i>Provision</i>	<i>Weakness</i>
States were organized into loose confederation, with single branch of government: Congress.	There was no executive to enforce laws and no judiciary to settle disputes.
Congress could request funds from states.	Congress lacked power to tax.
Congress could request troops from states.	Congress had no power to raise an army on its own.
Congress could issue money and regulate weights and measures.	States could also issue money. Congress could not regulate states' domestic and foreign trade.
Each state had one vote in Congress.	Heavily populated states were not represented proportionately.
Any measure required 9 of 13 votes for passage; amending Articles required unanimous vote.	Legislation was difficult to pass; amendment was virtually impossible.

d. State vs. state. During the Confederation period, the individual states quarreled with one another. Many states claimed western boundaries that extended to the Mississippi River or even the Pacific Ocean. The land claims of some states overlapped one another. States also disagreed over navigation rights on rivers that served as boundaries between states. The states taxed one another's products and set up their own systems of duties on foreign imports.

2. Accomplishments of the Confederation. In spite of its limitations, the government of the Confederation led the American people through the last years of the Revolution. It negotiated the 1783 Treaty of Paris. It also kept the 13 states together until they were able to work out a stronger government.

One of the Confederation Congress's most important accomplishments was passage of two laws that lay the foundation for America's expansion: (1) The Ordinance of 1785 provided for the sale of public land to settlers. (2) The Northwest Ordinance (1787) drew up a plan for governing the Northwest Territory. (Both of these measures are discussed at greater length on pages 124-126.)

3. Growing Dissatisfaction. Many Americans liked the weak government. After all, they had just fought a revolution to be rid of



In 1786, Shays's forces temporarily occupied the State Supreme Courthouse in Springfield, Massachusetts.

strong central authority. But others wanted a stronger national government and began to work for change.

An event in Massachusetts made the situation more urgent. Because of the weak economy, farmers had trouble making their mortgage payments to banks. When the farmers fell behind, the banks *foreclosed* (seized) their property. In western Massachusetts, Daniel Shays, a former captain in the Continental Army, organized farmers who feared foreclosure. In the fall of 1786, these farmers forced the closing of a number of state courts that were prosecuting debtors. They also organized a march on Springfield to seize federal arms stored there. Massachusetts raised a large state militia, which succeeded in ending the disturbance in February 1787. Shays's Rebellion was a minor uprising, but it shocked such prominent citizens as George Washington. Support for a stronger national government increased.

THE CONSTITUTIONAL CONVENTION

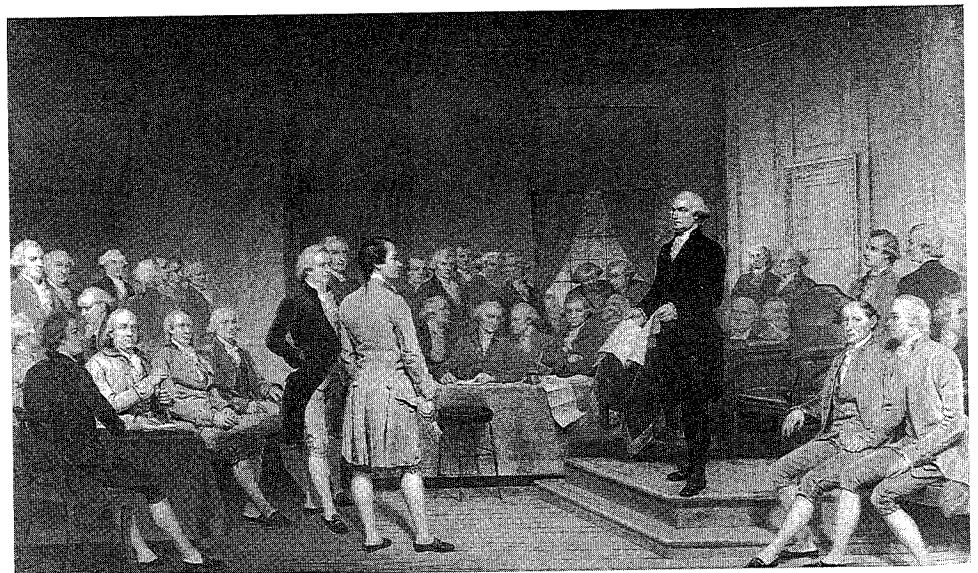
Early in 1787, Congress called on the states to send delegates to a meeting to revise the Articles of Confederation. This conference, later known as the Constitutional Convention, met at Independence Hall in Philadelphia in May 1787.

1. The Delegates. All the states except Rhode Island sent delegates to the Constitutional Convention. Its 55 members—often called the *Founders*—shared a conservative outlook. About half of them were lawyers. Many of the others were planters and merchants.

The delegates elected George Washington president of the convention. Another delegate, James Madison, took detailed notes of the debate; he also played a key role in the debates and formulated compromises. Other important members included Benjamin Franklin, John Rutledge, and Alexander Hamilton. No women, African Americans, or Native Americans were delegates. Some prominent men, such as Patrick Henry, refused to attend because they liked the looseness of the Confederacy.

2. Constitutional Compromises. The delegates soon abandoned their original purpose of revising the Articles of Confederation. Instead, they began to work out a new constitution for a new government. Serious differences arose but were resolved by compromises.

a. State representation. One compromise dealt with the question: Should all states be represented equally, or should states with larger populations have more representatives? Large states favored the Virginia Plan, which called for representation based on population. Small states supported the New Jersey Plan, which gave each state equal representation. The so-called Great Compromise settled this dispute. Congress would consist of two houses. In the upper house, the *Senate*, each state would have two senators. In



American artist Junius Brutus Stearns made this oil painting in 1856. It is titled *Washington Addressing the Constitutional Convention*.

the lower house, the *House of Representatives*, each state would be represented on the basis of population.

b. Determining population. The Great Compromise led to another issue. How should enslaved people be counted in each state's population? The Southern states wanted the number of their representatives in the House of Representatives to be based on their total populations, including slaves. But they did not want slaves to be counted for the purpose of direct taxation. The Northern states did not want to count enslaved people for representation, but they did want to include them for taxation. This difficulty was resolved by the Three-Fifths Compromise. It stated that three-fifths of the enslaved population would be counted for both representation and taxation.

c. Regulating commerce. Manufacturers and shippers in the North wanted Congress to have the power to regulate interstate and foreign commerce. But farmers in the South were worried that Congress might use this power to tax agricultural exports. Southerners were afraid that Congress might ban the importation of enslaved people. Compromises gave Congress the power to regulate both interstate and foreign commerce. It could levy tariffs on imports, but it could not tax exports. Congress would be unable to restrict the importing of slaves until 1808.

IDENTIFY OR DEFINE: Articles of Confederation, foreclose, Virginia Plan, New Jersey Plan, Great Compromise, Three-Fifths Compromise.

CRITICAL THINKING: Do you think that the U.S. Constitution could have been adopted by the Constitutional Convention without the use of compromises? Explain your answer.

FEATURES OF THE CONSTITUTION

The introduction to the Constitution of the United States is known as the Preamble. It says that the purposes of the new government are "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty."



1. Separation of Powers. The Founders set up three branches of government: legislative, executive, and judicial. This division of governmental authority and duties is called *separation of powers*.

a. Legislative branch. The chief duty of the legislative branch is to make laws. The legislature, Congress, has two houses. The upper one, the Senate, consists of two members from each state. The present membership is 100, since there are now 50 states. In the lower house, the House of Representatives, each state is represented according to its population. Current law fixes its membership at 435.

b. Executive branch. The executive branch enforces the laws. The president, or chief executive, is aided by a vice president and executive assistants. At present, there are 15 executive departments and many administrative agencies. The heads of the executive departments serve in the president's *Cabinet*.

c. Judicial branch. The judicial branch interprets the laws. The federal court system consists of a Supreme Court and lower federal courts. At present, the Supreme Court has nine justices, one of whom serves as chief justice. The lower courts consist of 12 circuit courts of appeals, 94 district courts, and several special courts.

2. Checks and Balances. The Founders devised the system of *checks and balances* to give each branch of the federal government some control over the others.

a. Legislative checks. Congress can check the president by refusing to allot money to the executive branch. The legislature can also block the creation of new executive agencies and do away with existing ones. The Senate can reject a treaty made by the president. (A two-thirds vote of the Senate is required to ratify a treaty.) It can reject presidential appointments by a majority vote. The House of Representatives has the power to impeach the president—that is, to bring charges of wrongdoing against him or her. If it does so, the Senate tries the president.

Congress can check the judiciary by creating or abolishing lower federal courts. It can also impeach federal judges. In addition, the Senate must approve the appointment of all federal judges. The Senate and House can check each other. Both houses must pass a bill before it becomes law.

b. Executive checks. The president can check Congress through the *veto*, a refusal to sign a bill into law. (But Congress can override a veto by a two-thirds vote of both houses.) The president

can check the courts by his or her powers to appoint federal judges and to pardon convicted persons.

c. Judicial checks. The judiciary can declare acts of Congress and actions of the president *unconstitutional* (contrary to the Constitution) and therefore void. The Court's power to make this kind of judgment is called *judicial review*. (Judicial review is discussed further on page 109.)

d. Checks on the people. The Founders had little confidence in people's ability to choose officials wisely. Therefore, they called for the president to be elected indirectly by an *electoral college*. (At first, state legislatures voted for members of the electoral college. After a few decades, citizens voted directly for members of the electoral college.) Judges were to be appointed, instead of elected. Until the passage of the Seventeenth Amendment in 1913, senators were chosen by the legislatures of their states rather than elected by citizens. The delegates also wanted to keep voters from upsetting the machinery of government at any one election. To avoid this, the terms of officeholders were varied. U.S. representatives serve two-year terms; presidents, four-year terms; and senators, six-year terms. Members of the federal judiciary can hold office for life.

3. Federalism. To give the states adequate authority to function effectively, the delegates set up a system called federalism, in which power is shared by a national government and states. In the United States, powers assigned to the national government are known as delegated powers. Those retained by the states are reserved powers. Powers shared by both levels of government are concurrent powers.

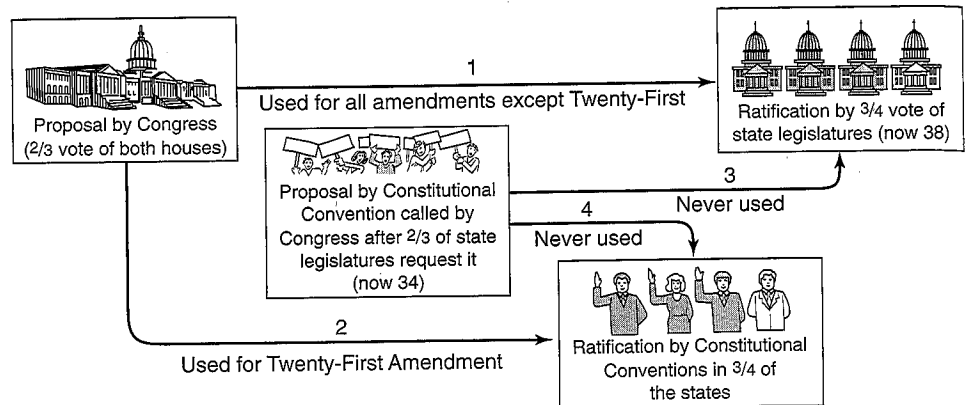
In the *elastic clause*, the Constitution grants the national government the right to make all laws "necessary and proper" for carrying out its delegated powers. Powers derived from the elastic clause, called *implied powers*, are implied from those stated in the Constitution.

4. Amending the Constitution. Changing the provisions of the Articles of Confederation required the consent of every state. The Founders made the Constitution more flexible.

The Constitution can be amended in four ways. The most common of these is to have an amendment proposed by a two-thirds vote of both houses of Congress. Then the legislatures of three-fourths of the states must ratify it. The chart on the next page explains the four ways to amend the Constitution.

INTERPRETING A DIAGRAM

Four Ways to Amend the U.S. Constitution



1. Although there are four legal methods to amend the Constitution, all amendments to the Constitution have started with the same action. What is that?
2. What has been the most common method for ratifying the Constitution?
3. What method of ratification has been used successfully only once?
4. Name *one* method never used successfully to amend the Constitution.

RATIFYING THE CONSTITUTION

Before the Constitution could be put into effect, at least 9 of the 13 states had to *ratify* (officially approve) it. This was to be done by a special convention in each state, not by the people directly.

1. The Struggle for Adoption. The issue of ratification divided the politically active into two groups: (1) *Federalists* (those who favored the Constitution) were mainly businesspeople, large landowners, and professionals. They wanted a strong central government that could regulate commerce, maintain law and order, and improve the nation's finances. (2) *Anti-Federalists* opposed ratifying the Constitution. People such as Patrick Henry of Virginia argued that the Constitution failed to protect fundamental rights. Federalist leaders promised them that a bill of rights would be added to the Constitution after its adoption.

Each side argued its case in articles and pamphlets. Alexander Hamilton, James Madison, and John Jay presented pro-Federalist arguments in newspaper articles that were later collected in a book called *The Federalist*. After heated debates, the Constitution was approved.

2. The Bill of Rights. The first ten amendments that make up the *Bill of Rights* were ratified and added to the Constitution in 1791. They restrict the central government and assure individual freedoms.

The First Amendment guarantees a number of basic personal rights, including freedom of religion, speech, and press. It also guarantees people the right to hold peaceful meetings and to ask the government to correct wrongs. Amendments Two, Three, and Four guarantee citizens the right to bear arms, prohibit the quartering of troops in private homes, and protect people against unreasonable searches of their property. The next four amendments provide legal safeguards (trial by jury, for example). Amendments Nine and Ten are general guarantees of individual rights and state powers.

IDENTIFY OR DEFINE: separation of powers, unconstitutional, federalism, ratify, Federalist, Anti-Federalist.

CRITICAL THINKING: To what extent is the Bill of Rights the product of the process to ratify the Constitution? Explain your answer.

Chapter Review

MATCHING TEST

Column A

1. Daniel Shays
2. George Washington
3. delegated powers
4. reserved powers
5. implied powers

Column B

- a. leader of rebellion of Massachusetts farmers
- b. powers assumed under elastic clause
- c. president of Constitutional Convention
- d. powers given to the federal government alone by the Constitution
- e. powers to be used by states

MULTIPLE-CHOICE TEST

1. The United States was governed by the Articles of Confederation during (a) 1776–1783 (b) 1776–1789 (c) 1781–1789 (d) 1775–1781.
2. Under the Articles of Confederation, Congress (a) had the power to tax (b) could raise an army (c) had one representative from each state (d) could amend the Articles by a 9-to-4 vote.
3. All of the following were problems for the United States after the Revolutionary War *except* (a) failure to negotiate a peace treaty with Britain (b) lack of unity among Americans (c) a large debt (d) British forts in the Northwest Territory.
4. The only state *not* represented at the Constitutional Convention was (a) Georgia (b) New York (c) Virginia (d) Rhode Island.
5. The Virginia Plan and New Jersey Plan offered different methods of (a) counting slaves (b) allotting representation in the national legislature (c) regulating foreign trade (d) taxing imports.
6. Under the Constitution, enforcing laws is the main task of (a) the legislative branch (b) the executive branch (c) the judicial branch (d) all of the above.
7. The power of the courts to declare an act of Congress unconstitutional is called (a) judicial review (b) separation of powers (c) impeachment (d) federalism.
8. In order to limit the power of the people, the Founders provided for all of the following *except* (a) the appointment of judges (b) indirect election of the president (c) indirect election of senators (d) election of members of the House of Representatives by state legislatures.
9. The Constitution gives the power to declare war to (a) the states only (b) both the federal government and the states (c) the people only (d) the federal government only.
10. Anti-Federalists opposed the Constitution because they felt that it (a) did not give the president enough power (b) did not safeguard the people's fundamental rights (c) gave the states too much authority (d) did not allow for regulating commerce.



ESSAY QUESTIONS

1. What were *three* weaknesses of the Articles of Confederation? How were these weaknesses corrected by the Constitution?
2. Describe *two* important compromises that were worked out by the delegates during the Constitutional Convention.
3. Explain the operation of the system of checks and balances, using examples from each branch of government.
4. Why did the Founders set up a federal system? Give *two* examples to show how the system divides governmental power.
5. List *three* rights guaranteed by the Bill of Rights and tell why you think each is important.

DOCUMENT-BASED QUESTION

This question is based on the accompanying documents (1–5). It will improve your ability to work with historical documents.

Historical Context:

The Articles of Confederation, the country's constitution since 1781, could not solve the many problems the United States had. In part, this was because Congress had no power to tax and the government lacked an executive branch. In 1787, the Constitutional Convention drafted and sent to the states a new Constitution. Since many Americans opposed this Constitution, it was not ratified by all 13 states until 1790.

Task:

Using information from the documents and your knowledge of United States history, read each document and answer the question or questions that follow it. Your answers to the questions will help you write the document-based essay.

Document 1. Excerpt from a letter by Abigail Adams to her husband, John Adams, written in 1776 when the Second Continental Congress was beginning to draft the Articles of Confederation:

In the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favourable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could.

Source: Adams, Charles Francis (ed.) *Familiar Letters of John Adams and His Wife Abigail Adams*. Boston: Houghton Mifflin, 1876.

What did Abigail Adams think that men could do with “unlimited power”?

Document 2. Excerpts from the Articles of Confederation, agreed to by Congress November 15, 1777, and in force after ratification by Maryland, March 1, 1781:

X. The Committee of the States, or any nine of them, shall be authorized to execute . . . such of the powers of Congress as the United States in Congress assembled, by the consent of the nine States, shall from time to time think expedient. . . .

XIII. Every State shall abide by the . . . Articles of this Confederation . . . ; 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.

Source: www.constitution.org/cons/usa-conf.htm

- a. How many states had to approve giving the Committee of the States the authority to execute the powers of Congress?
- b. How many states had to approve altering the Articles of Confederation?

Document 3. Excerpt from James Madison’s notes during the Philadelphia convention that drew up the U.S. Constitution, June 11, 1787:

Mr. GERRY [of Massachusetts] thought property not the rule of representation. Why then should the blacks, who were property in the South, be in the rule of representation more than the Cattle & horses of the North.

Source: www.teachingamericanhistory.org/convention/debates/0911.html

Slave owners in the South did not want slaves to be considered persons. Why did they want the slaves to count for the purpose of deciding representation in Congress?

Document 4. Excerpt from remarks by Amos Singletree during the debate in the Massachusetts Ratifying Convention, January 25, 1788:

We contended with Great Britain . . . [over the] right to tax us and bind us in all cases whatever. And does not this constitution do the same? . . . Does it not lay all taxes, duties, imports and excises? . . . These lawyers and men of learning, and monied men [who wrote this constitution] . . . expect to get into Congress themselves . . . and get all the power and all the money into their own hands, and then they will swallow up all us little folks.

Source: Elliot, Jonathan. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, 2nd ed. Philadelphia: J.B. Lippincott, 1881, II, pp. 101–102.

Why did Amos Singletree feel that the U.S. Constitution was not going to be able to protect the little folks' money?

Document 5. Excerpt from Patrick Henry's remarks during the debate in the Virginia Ratifying Convention, June 5, 1788:

This constitution . . . squints towards monarchy. . . . Your president may easily become king. . . . If your American chief be a man of ambition and abilities, how easy it is for him to render himself absolute. . . . Away with your president, we shall have a king: the army will salute him monarch.

Source: *ibid.*, III, pp. 58–60.

Did Henry believe that the proposed U.S. Constitution contained sufficient "checks and balances" over the three branches of government? Explain your answer.

DOCUMENT-BASED ESSAY

Using information from the above documents and your knowledge of United States history, write an essay in which you:

- Explain how the issues raised in the documents and elsewhere in the chapter divided Americans in the 1770s and 1780s and made it difficult to write and ratify a new constitution for the country.
- Discuss whether it was inevitable that a new constitution would be drawn up and ratified.