

“Every man, and every body of men on Earth, possesses the right of self-government.”

Drafter of the Declaration of Independence
Thomas Jefferson, 1790

STATE CONSTITUTIONS

The success of the Revolution gave Americans the opportunity to give legal form to their ideals as expressed in the Declaration of Independence, and to remedy some of their grievances through state constitutions. As early as May 10, 1776, Congress had passed a resolution advising the colonies to form new governments “such as shall best conduce to the happiness and safety of their constituents.” Some of them had already done so, and within a year after the Declaration of Independence, all but three had drawn up constitutions.

The new constitutions showed the impact of democratic ideas. None made any drastic break with the past, since all were built on the

solid foundation of colonial experience and English practice. But each was also animated by the spirit of republicanism, an ideal that had long been praised by Enlightenment philosophers.

Naturally, the first objective of the framers of the state constitutions was to secure those “unalienable rights” whose violation had caused the former colonies to repudiate their connection with Britain. Thus, each constitution began with a declaration or bill of rights. Virginia’s, which served as a model for all the others, included a declaration of principles: popular sovereignty, rotation in office, freedom of elections, and an enumeration of fundamental liberties: moderate bail and humane punishment, speedy trial by jury, freedom of the press and of con-

science, and the right of the majority to reform or alter the government.

Other states enlarged the list of liberties to freedom of speech, of assembly, and of petition. Their constitutions frequently included such provisions as the right to bear arms, to a writ of habeas corpus, to inviolability of domicile, and to equal protection under the law. Moreover, all prescribed a three-branch structure of government — executive, legislative, and judiciary — each checked and balanced by the others.

Pennsylvania's constitution was the most radical. In that state, Philadelphia artisans, Scots-Irish frontiersmen, and German-speaking farmers had taken control. The provincial congress adopted a constitution that permitted every male taxpayer and his sons to vote, required rotation in office (no one could serve as a representative more than four years out of every seven), and set up a single-chamber legislature.

The state constitutions had some glaring limitations, particularly by more recent standards. Constitutions established to guarantee people their natural rights did not secure for everyone the most fundamental natural right — equality. The colonies south of Pennsylvania excluded their slave populations from their inalienable rights as human beings. Women had no political rights. No state went so far as to permit universal male suffrage, and even in those states that permitted all taxpayers to vote (Delaware, North Carolina, and Georgia, in addition to Pennsylva-

nia), office-holders were required to own a certain amount of property.

THE ARTICLES OF CONFEDERATION

The struggle with England had done much to change colonial attitudes. Local assemblies had rejected the Albany Plan of Union in 1754, refusing to surrender even the smallest part of their autonomy to any other body, even one they themselves had elected. But in the course of the Revolution, mutual aid had proved effective, and the fear of relinquishing individual authority had lessened to a large degree.

John Dickinson produced the "Articles of Confederation and Perpetual Union" in 1776. The Continental Congress adopted them in November 1777, and they went into effect in 1781, having been ratified by all the states. Reflecting the fragility of a nascent sense of nationhood, the Articles provided only for a very loose union. The national government lacked the authority to set up tariffs, to regulate commerce, and to levy taxes. It possessed scant control of international relations: A number of states had begun their own negotiations with foreign countries. Nine states had their own armies, several their own navies. In the absence of a sound common currency, the new nation conducted its commerce with a curious hodgepodge of coins and a bewildering variety of state and national paper bills, all fast depreciating in value.

Economic difficulties after the war prompted calls for change. The end of the war had a severe effect on merchants who supplied the armies of both sides and who had lost the advantages deriving from participation in the British mercantile system. The states gave preference to American goods in their tariff policies, but these were inconsistent, leading to the demand for a stronger central government to implement a uniform policy.

Farmers probably suffered the most from economic difficulties following the Revolution. The supply of farm produce exceeded demand; unrest centered chiefly among farmer-debtors who wanted strong remedies to avoid foreclosure on their property and imprisonment for debt. Courts were clogged with suits for payment filed by their creditors. All through the summer of 1786, popular conventions and informal gatherings in several states demanded reform in the state administrations.

That autumn, mobs of farmers in Massachusetts under the leadership of a former army captain, Daniel Shays, began forcibly to prevent the county courts from sitting and passing further judgments for debt, pending the next state election. In January 1787 a ragtag army of 1,200 farmers moved toward the federal arsenal at Springfield. The rebels, armed chiefly with staves and pitchforks, were repulsed by a small state militia force; General Benjamin Lincoln then arrived with

reinforcements from Boston and routed the remaining Shaysites, whose leader escaped to Vermont. The government captured 14 rebels and sentenced them to death, but ultimately pardoned some and let the others off with short prison terms. After the defeat of the rebellion, a newly elected legislature, whose majority sympathized with the rebels, met some of their demands for debt relief.

THE PROBLEM OF EXPANSION

With the end of the Revolution, the United States again had to face the old unsolved Western question, the problem of expansion, with its complications of land, fur trade, Indians, settlement, and local government. Lured by the richest land yet found in the country, pioneers poured over the Appalachian Mountains and beyond. By 1775 the far-flung outposts scattered along the waterways had tens of thousands of settlers. Separated by mountain ranges and hundreds of kilometers from the centers of political authority in the East, the inhabitants established their own governments. Settlers from all the Tidewater states pressed on into the fertile river valleys, hardwood forests, and rolling prairies of the interior. By 1790 the population of the trans-Appalachian region numbered well over 120,000.

Before the war, several colonies had laid extensive and often overlapping claims to land beyond the

Appalachians. To those without such claims this rich territorial prize seemed unfairly apportioned. Maryland, speaking for the latter group, introduced a resolution that the western lands be considered common property to be parceled by the Congress into free and independent governments. This idea was not received enthusiastically. Nonetheless, in 1780 New York led the way by ceding its claims. In 1784 Virginia, which held the grandest claims, relinquished all land north of the Ohio River. Other states ceded their claims, and it became apparent that Congress would come into possession of all the lands north of the Ohio River and west of the Allegheny Mountains. This common possession of millions of hectares was the most tangible evidence yet of nationality and unity, and gave a certain substance to the idea of national sovereignty. At the same time, these vast territories were a problem that required solution.

The Confederation Congress established a system of limited self-government for this new national Northwest Territory. The Northwest Ordinance of 1787 provided for its organization, initially as a single district, ruled by a governor and judges appointed by the Congress. When this territory had 5,000 free male inhabitants of voting age, it was to be entitled to a legislature of two chambers, itself electing the lower house. In addition, it could at that time send a nonvoting delegate to Congress. Three to five states

would be formed as the territory was settled. Whenever any one of them had 60,000 free inhabitants, it was to be admitted to the Union "on an equal footing with the original states in all respects." The ordinance guaranteed civil rights and liberties, encouraged education, and prohibited slavery or other forms of involuntary servitude.

The new policy repudiated the time-honored concept that colonies existed for the benefit of the mother country, were politically subordinate, and peopled by social inferiors. Instead, it established the principle that colonies ("territories") were an extension of the nation and entitled, not as a privilege but as a right, to all the benefits of equality.

CONSTITUTIONAL CONVENTION

By the time the Northwest Ordinance was enacted, American leaders were in the midst of drafting a new and stronger constitution to replace the Articles of Confederation. Their presiding officer, George Washington, had written accurately that the states were united only by a "rope of sand." Disputes between Maryland and Virginia over navigation on the Potomac River led to a conference of representatives of five states at Annapolis, Maryland, in 1786. One of the delegates, Alexander Hamilton of New York, convinced his colleagues that commerce was bound up with large political and economic questions. What was re-

quired was a fundamental rethinking of the Confederation.

The Annapolis conference issued a call for all the states to appoint representatives to a convention to be held the following spring in Philadelphia. The Continental Congress was at first indignant over this bold step, but it acquiesced after Washington gave the project his backing and was elected a delegate. During the next fall and winter, elections were held in all states but Rhode Island.

A remarkable gathering of notables assembled at the Federal Convention in May 1787. The state legislatures sent leaders with experience in colonial and state governments, in Congress, on the bench, and in the army. Washington, regarded as the country's first citizen because of his integrity and his military leadership during the Revolution, was chosen as presiding officer.

Prominent among the more active members were two Pennsylvanians: Gouverneur Morris, who clearly saw the need for national government, and James Wilson, who labored indefatigably for the national idea. Also elected by Pennsylvania was Benjamin Franklin, nearing the end of an extraordinary career of public service and scientific achievement. From Virginia came James Madison, a practical young statesman, a thorough student of politics and history, and, according to a colleague, "from a spirit of industry and application ... the best-informed man on any point in debate." He would be recognized as the "Father of the Constitution."

Massachusetts sent Rufus King and Elbridge Gerry, young men of ability and experience. Roger Sherman, shoemaker turned judge, was one of the representatives from Connecticut. From New York came Alexander Hamilton, who had proposed the meeting. Absent from the Convention were Thomas Jefferson, who was serving as minister representing the United States in France, and John Adams, serving in the same capacity in Great Britain. Youth predominated among the 55 delegates — the average age was 42.

Congress had authorized the Convention merely to draft amendments to the Articles of Confederation but, as Madison later wrote, the delegates, "with a manly confidence in their country," simply threw the Articles aside and went ahead with the building of a wholly new form of government.

They recognized that the paramount need was to reconcile two different powers — the power of local control, which was already being exercised by the 13 semi-independent states, and the power of a central government. They adopted the principle that the functions and powers of the national government — being new, general, and inclusive — had to be carefully defined and stated, while all other functions and powers were to be understood as belonging to the states. But realizing that the central government had to have real power, the delegates also generally accepted the fact that the government should be authorized,

among other things, to coin money, to regulate commerce, to declare war, and to make peace.

DEBATE AND COMPROMISE

The 18th-century statesmen who met in Philadelphia were adherents of Montesquieu's concept of the balance of power in politics. This principle was supported by colonial experience and strengthened by the writings of John Locke, with which most of the delegates were familiar. These influences led to the conviction that three equal and coordinate branches of government should be established. Legislative, executive, and judicial powers were to be so harmoniously balanced that no one could ever gain control. The delegates agreed that the legislative branch, like the colonial legislatures and the British Parliament, should consist of two houses.

On these points there was unanimity within the assembly. But sharp differences also arose. Representatives of the small states — New Jersey, for instance — objected to changes that would reduce their influence in the national government by basing representation upon population rather than upon statehood, as was the case under the Articles of Confederation.

On the other hand, representatives of large states, like Virginia, argued for proportionate representation. This debate threatened to go on endlessly until Roger Sherman came forward with arguments for

representation in proportion to the population of the states in one house of Congress, the House of Representatives, and equal representation in the other, the Senate.

The alignment of large against small states then dissolved. But almost every succeeding question raised new divisions, to be resolved only by new compromises. Northerners wanted slaves counted when determining each state's tax share, but not in determining the number of seats a state would have in the House of Representatives. Under a compromise reached with little dissent, tax levies and House membership would be apportioned according to the number of free inhabitants plus three-fifths of the slaves.

Certain members, such as Sherman and Elbridge Gerry, still smarting from Shays's Rebellion, feared that the mass of people lacked sufficient wisdom to govern themselves and thus wished no branch of the federal government to be elected directly by the people. Others thought the national government should be given as broad a popular base as possible. Some delegates wished to exclude the growing West from the opportunity of statehood; others championed the equality principle established in the Northwest Ordinance of 1787.

There was no serious difference on such national economic questions as paper money, laws concerning contract obligations, or the role of women, who were excluded from politics. But there was a need for

balancing sectional economic interests; for settling arguments as to the powers, term, and selection of the chief executive; and for solving problems involving the tenure of judges and the kind of courts to be established.

Laboring through a hot Philadelphia summer, the convention finally achieved a draft incorporating in a brief document the organization of the most complex government yet devised, one that would be supreme within a clearly defined and limited sphere. It would have full power to levy taxes, borrow money, establish uniform duties and excise taxes, coin money, regulate interstate commerce, fix weights and measures, grant patents and copyrights, set up post offices, and build post roads. It also was authorized to raise and maintain an army and navy, manage Native American affairs, conduct foreign policy, and wage war. It could pass laws for naturalizing foreigners and controlling public lands; it could admit new states on a basis of absolute equality with the old. The power to pass all necessary and proper laws for executing these clearly defined powers rendered the federal government able to meet the needs of later generations and of a greatly expanded body politic.

The principle of separation of powers had already been given a fair trial in most state constitutions and had proved sound. Accordingly, the convention set up a governmental

system with separate legislative, executive, and judiciary branches, each checked by the others. Thus congressional enactments were not to become law until approved by the president. And the president was to submit the most important of his appointments and all his treaties to the Senate for confirmation. The president, in turn, could be impeached and removed by Congress. The judiciary was to hear all cases arising under federal laws and the Constitution; in effect, the courts were empowered to interpret both the fundamental and the statute law. But members of the judiciary, appointed by the president and confirmed by the Senate, could also be impeached by Congress.

To protect the Constitution from hasty alteration, Article V stipulated that amendments to the Constitution be proposed either by two-thirds of both houses of Congress or by two-thirds of the states, meeting in convention. The proposals were to be ratified by one of two methods: either by the legislatures of three-fourths of the states, or by convention in three-fourths of the states, with the Congress proposing the method to be used.

Finally, the convention faced the most important problem of all: How should the powers given to the new government be enforced? Under the Articles of Confederation, the national government had possessed — on paper — significant powers, which, in practice, had

come to naught, for the states paid no attention to them. What was to save the new government from the same fate?

At the outset, most delegates furnished a single answer — the use of force. But it was quickly seen that the application of force upon the states would destroy the Union. The decision was that the government should not act upon the states but upon the people within the states, and should legislate for and upon all the individual residents of the country. As the keystone of the Constitution, the convention adopted two brief but highly significant statements:

Congress shall have power ... to make all Laws which shall be necessary and proper for carrying into Execution the ... Powers vested by this Constitution in the Government of the United States.
... (Article I, Section 7)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. (Article VI)

Thus the laws of the United States became enforceable in its own national courts, through its own judges and marshals, as well as in the state courts through the state judges and state law officers.

Debate continues to this day about the motives of those who wrote the Constitution. In 1913 historian Charles Beard, in *An Economic Interpretation of the Constitution*, argued that the Founding Fathers represented emerging commercial-capitalist interests that needed a strong national government. He also believed many may have been motivated by personal holdings of large amounts of depreciated government securities. However, James Madison, principal drafter of the Constitution, held no bonds and was a Virginia planter. Conversely, some opponents of the Constitution owned large amounts of bonds and securities. Economic interests influenced the course of the debate, but so did state, sectional, and ideological interests. Equally important was the idealism of the framers. Products of the Enlightenment, the Founding Fathers designed a government that they believed would promote individual liberty and public virtue. The ideals embodied in the U.S. Constitution remain an essential element of the American national identity.

RATIFICATION AND THE BILL OF RIGHTS

On September 17, 1787, after 16 weeks of deliberation, the finished Constitution was signed by 39 of the 42 delegates present. Franklin, pointing to the half-sun painted in brilliant gold on the back of Washington's chair, said:

I have often in the course of the session ... looked at that [chair] behind the president, without being able to tell whether it was rising or setting; but now, at length, I have the happiness to know that it is a rising, and not a setting, sun.

The convention was over; the members “adjourned to the City Tavern, dined together, and took a cordial leave of each other.” Yet a crucial part of the struggle for a more perfect union remained to be faced. The consent of popularly elected state conventions was still required before the document could become effective.

The convention had decided that the Constitution would take effect upon ratification by conventions in nine of the 13 states. By June 1788 the required nine states had ratified the Constitution, but the large states of Virginia and New York had not. Most people felt that without their support the Constitution would never be honored. To many, the document seemed full of dangers: Would not the strong central government that it established tyrannize them, oppress them with heavy taxes, and drag them into wars?

Differing views on these questions brought into existence two parties, the Federalists, who favored a strong central government, and the Antifederalists, who preferred a loose association of separate states. Impassioned arguments on both sides were voiced by the press, the legislatures, and the state conventions.

In Virginia, the Antifederalists attacked the proposed new government by challenging the opening phrase of the Constitution: “We the People of the United States.” Without using the individual state names in the Constitution, the delegates argued, the states would not retain their separate rights or powers. Virginia Antifederalists were led by Patrick Henry, who became the chief spokesman for back-country farmers who feared the powers of the new central government. Wavering delegates were persuaded by a proposal that the Virginia convention recommend a bill of rights, and Antifederalists joined with the Federalists to ratify the Constitution on June 25.

In New York, Alexander Hamilton, John Jay, and James Madison pushed for the ratification of the Constitution in a series of essays known as *The Federalist Papers*. The essays, published in New York newspapers, provided a now-classic argument for a central federal government, with separate executive, legislative, and judicial branches that checked and balanced one another. With *The Federalist Papers* influencing the New York delegates, the Constitution was ratified on July 26.

Antipathy toward a strong central government was only one concern among those opposed to the Constitution; of equal concern to many was the fear that the Constitution did not protect individual rights and freedoms sufficiently. Virginian George Mason, author

of Virginia's Declaration of Rights of 1776, was one of three delegates to the Constitutional Convention who had refused to sign the final document because it did not enumerate individual rights. Together with Patrick Henry, he campaigned vigorously against ratification of the Constitution by Virginia. Indeed, five states, including Massachusetts, ratified the Constitution on the condition that such amendments be added immediately.

When the first Congress convened in New York City in September 1789, the calls for amendments protecting individual rights were virtually unanimous. Congress quickly adopted 12 such amendments; by December 1791, enough states had ratified 10 amendments to make them part of the Constitution. Collectively, they are known as the Bill of Rights. Among their provisions: freedom of speech, press, religion, and the right to assemble peacefully, protest, and demand changes (First Amendment); protection against unreasonable searches, seizures of property, and arrest (Fourth Amendment); due process of law in all criminal cases (Fifth Amendment); right to a fair and speedy trial (Sixth Amendment); protection against cruel and unusual punishment (Eighth Amendment); and provision that the people retain additional rights not listed in the Constitution (Ninth Amendment).

Since the adoption of the Bill of Rights, only 17 more amendments have been added to the

Constitution. Although a number of the subsequent amendments revised the federal government's structure and operations, most followed the precedent established by the Bill of Rights and expanded individual rights and freedoms.

PRESIDENT WASHINGTON

One of the last acts of the Congress of the Confederation was to arrange for the first presidential election, setting March 4, 1789, as the date that the new government would come into being. One name was on everyone's lips for the new chief of state, George Washington. He was unanimously chosen president and took the oath of office at his inauguration on April 30, 1789. In words spoken by every president since, Washington pledged to execute the duties of the presidency faithfully and, to the best of his ability, to "preserve, protect, and defend the Constitution of the United States."

When Washington took office, the new Constitution enjoyed neither tradition nor the full backing of organized public opinion. The new government had to create its own machinery and legislate a system of taxation that would support it. Until a judiciary could be established, laws could not be enforced. The army was small. The navy had ceased to exist.

Congress quickly created the departments of State and Treasury, with Thomas Jefferson and Alexander Hamilton as their respective secretaries. Departments of War